

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: EXPRESS GRAIN TERMINALS, LLC

CHAPTER 11

BANKRUPTCY CASE NO: 21-11832-SDM

**MEMORANDUM BRIEF IN SUPPORT OF
JOINT MOTION FOR SUMMARY JUDGMENT**

Farm Group,¹ Farm Group I,² Farm Group II³ and Farm Group III⁴ (hereinafter collectively referred to as "All Moving Farmers"⁵) submit this Memorandum Brief in Support of

¹ Farm Group consists of the following: Ashley Selman/Ashley Selman Farms Partnership, Brian Barham/Lagniappe Planting Company, Brian Lloyd/Triple L. Farms & Livestock LLC, Parker Adcock/d/b/a Island Farms, Clint Dunn/Dunn Farms I, II & III, Jim Osborn/Osborn Farms, Porter Planting Company, AR Farms, Ashland Plantation, Brown Farms, Buckhorn Farm Partners, PM Farms, Richard Brown, Ronnie Brown Farms LLC, Travis Davis/T&R Farms, Will Jones/Wyatt Farms, Killebrew Cotton Company, Murrah Hardy/Murrah Hardy Farms, Carty & Ashley Tillman Farms, Ashley Millican/AN&K Farms, Joe Bell/Bell Farms Inc., Gary Bright/Bright Farms, Matt Bell/Cattlemen's Advantage, Inc., Timothy Ellis/Bobo Farms and Ellis & Ellis Farms, Robert Moody/Moody Farms, William Dunn Farms II, Ronnie Moss Farms, Eric Easley/E-Farm LLC, Southside Farm/Darrell Green, Larry Killebrew, Eric Livingston, Ryan Lawrence/Aldy Farms II, Walt Diggs/Tchula Grain Company, Collier Tillman/Twin Bayou Farms, Clifton D. Steed/Random Shot Farms and D&J Land & Agriculture, Bradley Preston McGregor, Tony Morgan Farms, Tobin L Parker Farms/Toby Parker, Trey Hardin, William Livingston, Ray Hardy/Hardy Farms, Brad Funderburk/Funderburk Farms, Rocky and Will Fleming, Tommy Watkins/Way Farms, Billy Whittington/Buckhorn Planting Company/Marsh Bayou Planting Co. and Whittington and Sumner Farms, LLC, Bryant Parrish Farms PTNR, Jay McBride/Jay McBride Farms, Chris Killebrew/Chris Killebrew Farms, Strider McCrory/MHC Farms, Inc., Joshua M. Henderson, Jim Suber/Jim Suber Farms, Milton Parrish/Tipple D Planting Co. II PTNR, Drew Parrish/Chenoah Planting, Johny Murtagh/Double J Farms PTNR, Mike Bowen Farms, James T. Thomas/Egypt Planting Company III, Thomas Farms and Howard Turner/Triple Tee Farms, Brian Andrus, Chuck Lawrence, Craig Rozier, Edmond Clark, Lashunkeita Clark, Herbert Hill, James Alderman, Jason Hyde, John Patridge, Josh James, Kyle Carter, Kenny Weeks, Nancy & Jerry Tindall, Tim Tindall, Jason Tindall, Seth Hutton, Tyler Gann, and Jerry Watkins.

² Farm Group I consists of the following: Adron Farms, Ashton Planting Company, BC Farms, Black Dog Farms, Buck Harris Planting Company, Champion Farms, D.W. Clark, Jr., Tonia T. Clardy, Corley Moses Farms, DLH Farms, David Bratton Farms, Davis and Davis Farms, DeLoach Farms, Dodson Planting Company, Fulgham Farms, Tyler Gilliland, Highlandale Planting Company, Howard Farms, Idlewood Plantation, Jennings Planting Company, KMC Farms, Jacob Lindsey, Lake Lindsey, Little Bee Lake Farms, LLC, Jim Locke, MBM Farms, Inc., O'Neal Planting Company, Poe Planting Company, Fred J. Poindexter, Porter Farms, Prestidge Farms II, Ridgecrest Farms, Scott Farms, Mary Annette Morgan Smith, Tackett Planting Company II, Taylor Farms, Kelsie Fennell Tribble, VK Farms, W B Farms, W.M. Jennings & Son, Westwood Farms, Lawyer Wheeler and Wolf Run Farms.

³ Farm Group II consists of the following: Jody Murphey d/b/a Jody Murphey Farms, Bacon Bros. Farms Partnership, and Sam Stone.

⁴ Farm Group III consists of the following: Dendy Farms, LLC, Flying Tater Farm, Inc., and Joe D. Evans.

⁵ Subject to a few exceptions, those farmers comprising "All Moving Farmers" constitute substantially all farmers represented by counsel in this matter.

the Joint Motion for Summary Judgment with respect to the Section 557 Assertions of Interest in Grain of UMB Bank, N.A. (“UMB”), StoneX Commodity Solutions LLC (“StoneX”) and Macquarie Commodities (USA) Inc. (“Macquarie”) based on warehouse receipts.

I. INTRODUCTION

This is a simple and straightforward issue that will greatly narrow the issues for trial in the §557 Proceeding and reduce the expense of costly and unnecessary discovery. UMB, StoneX and Macquarie all claim to own the grain held by the Business Debtors⁶ as a result of warehouse receipts issued by the Business Debtors to them. But these warehouse receipts are invalid under Mississippi law and, therefore, cannot support claims for an interest in grain. Contrary to state law requirements, UMB, StoneX and Macquarie never delivered any soybeans to the Business Debtors. Therefore, the Business Debtors had no authority to issue warehouse receipts to them and the warehouse receipts upon which StoneX, Macquarie and UMB’s claims are based fail as valid as a matter of law.

II. ARGUMENT

StoneX, Macquarie, and UMB are not holders of valid warehouse receipts and, therefore, do not own the soybeans covered by the warehouse receipts.

StoneX, Macquarie and UMB are not producers of grain. It is undisputed that none of these entities delivered any soybeans to be stored at the Business Debtors’ facilities. According to StoneX’s Amended Assertion of Interest, Dkt. #1437, it purchased, not delivered, soybeans from the Business Debtors for which the Business Debtors issued warehouse receipts:

StoneX provides cash flow to Express Grain Terminals by way of a series of repurchase agreements, whereby StoneX purchases and takes title to specified quantities of soybean bushels stored in Express Grain's grain terminals, and then resells the bushels and surrenders title to the soybeans back to Express Grain at a

⁶Express Grain Terminals, LLC, Express Biodiesel, LLC, and Express Processing, LLC are referred to collectively as “Business Debtors.”

specified date and price only after Express Grain has paid cash in full pursuant to a contract.

(Emphasis added.)

Likewise, Macquarie did not deliver any soybeans to the Business Debtors. Instead, it entered a series of “grain purchase contracts” pursuant to which it allegedly “purchased” soybeans from the Business Debtors:

On January 15, 2021, Macquarie entered into a grain purchase contract (the “First Grain Purchase Contract”), to purchase 1000 bushels, of No. 2 Yellow soybeans...).

On September 28, 2021... the Debtor and Macquarie entered into a new grain purchase contract (the “Fourth Grain Purchase Contract”) reflecting Macquarie’s purchase of 750,000 bushels of No. 2 soybeans from the Debtor....

Addendum to Macquarie Commodities (USA), Inc.’s Assertion of Interest in Grain, Dkt. #1428-1, p. 4.

UMB did not deliver or purchase any soybeans from Business Debtors. Instead, Business Debtors issued warehouse receipts to UMB for soybeans without any so-called purchase or sale contract:

The Business Debtors issued the following warehouse receipts to UMB that remain outstanding:

- a. A warehouse receipt ending in numbers 1046 for 300,000 bushels of soybeans;
- b. A warehouse receipt ending in numbers 3138 for 385,000 bushels of soybeans; and
- c. A warehouse receipt ending in numbers 3163 for 600,000 bushels of soybeans.

UMB Bank, N.A.’s Attachment to Official Form for Assertion of Interest in Grain, Dkt. #14-17-1, p. 2.

According to the 557 Grain Report Supplement, the following Warehouse Receipts were issued for which no grain was delivered to the Business Debtors:

<u>HOLDER</u>	<u>BUSHEL</u>	<u>DATE</u>	<u>LOCATION</u>
StoneX	300,000	11/16/18	Sidon
StoneX	500,000	5/9/19	Sidon
StoneX	350,000	6/1/20	Sidon
StoneX	200,000	6/1/20	Minter City
UMB Bank	385,000	10/22/20	Sidon
StoneX	450,000	12/1/20	Greenwood
Macquarie	1,000,000	1/15/21	Sidon ⁷
UMB Bank	300,000	1/21/21	Minter City
StoneX	200,000	6/28/21	Greenwood
Macquarie	800,000	7/16/21	Sidon ⁸
Macquarie	100,000	7/16/21	Sidon ⁹
StoneX	195,000	7/21/21	Greenwood
UMB Bank	600,000	8/31/21	Minter City
Macquarie	50,000	9/21/21	Sidon ¹⁰
Macquarie	650,000	9/28/21	Sidon
Macquarie	100,000	9/28/21	Sidon

As of September 1, 2021, the Business Debtors had issued outstanding warehouse receipts totaling 4,480,000 bushels of soybeans to these three entities, none of whom delivered the first bushel of soybeans to the Business Debtors. All warehouse receipts issued to StoneX, Macquarie and UMB are Exhibits 1 through 3¹¹ to the Joint Motion for Summary Judgment.

⁷ Returned to the Business Debtors on 7/16/21

⁸ Returned to the Business Debtors on 9/28/21

⁹ Returned to the Business Debtors on 9/21/21

¹⁰ Returned to the Business Debtors on 9/28/21

¹¹ All exhibits referenced herein are attached to the Joint Motion for Summary Judgment filed contemporaneously herewith.

Under Mississippi law, the Business Debtors are prohibited from issuing any warehouse receipts except in cases where there is an actual delivery of soybeans into the warehouse from which the warehouse receipts are issued. Specifically, Miss. Code Ann. §75-44-61 (Rev. 2016) states:

No warehouse receipt shall be issued except upon actual delivery of grain into storage in the warehouse from which it purports to be issued, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel or received for storage, nor shall more than one (1) receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more.

Regulations issued by the Mississippi Department of Agriculture and Commerce are in accord:

110.02 A warehouse shall issue a warehouse receipt only upon actual delivery of grain into storage. The receipt must be issued from the warehouse of storage, except as otherwise provided. The warehouseman shall not issue more than one receipt for the same lot of grain, except where partial receipts are desired. The total of the aggregate receipts of a particular lot shall be no greater than the total of the original lot unless additional grain is deposited. Should the depositor desire to consolidate several receipts into one, the warehouseman may issue a new consolidated receipt, but only after the original receipts have been cancelled.

110.03 A warehouseman or his employees shall not issue, cause to be issued, or assist in issuing warehouse receipts for grain that has not been delivered to a warehouse or not under their control as otherwise provided in the statute or rules and regulations. The issuer of such a receipt and the receiver of such a receipt shall be subject to the penalty provision of the Act.

Subpart 2 – Administrative Rules; Chapter 10 Grain Warehouses. (Emphasis added).

StoneX, Macquarie and UMB, by their own admissions, did not deliver any soybeans to the Business Debtors and certainly did not deliver bushels in a quantity “in the lot or parcel received for storage . . .” As such, the Business Debtors had no authority to issue any warehouse receipts to these entities and their warehouse receipts are invalid as a matter of law. StoneX,

Macquarie and UMB have no claim for any soybeans represented by the illegal warehouse receipts.¹²

Further, although Miss. Code Ann. §75-44-63 allows for the “sale or pledge of any warehouse receipts for grain of which the warehouseman is the owner, . . . and recital of ownership in the receipt shall constitute notice of the right to sell or pledge the same,” the Business Debtors did not sell, and StoneX, Macquarie or UMB do not contend that the Business Debtors sold them, already issued warehouse receipts and the warehouse receipts certainly do not indicate ownership as required by the statute. The Business Debtors held already-delivered grain for which they issued warehouse receipts to StoneX, Macquarie and UMB. As such, this statute does not apply and even if it did, the warehouse receipts issued to StoneX, Macquarie and UMB do not state on their face that the Business Debtors own the grain as is required by Mississippi law.

The case of *Central States Corp. v. Luther (In re Garden Grain & Seed Co., Inc.)*, 215 F.2d 38 (10th Cir. 1954) is on point. In *Garden Grain & Seed Co., Inc.*, the court held that the elevator’s warehouse receipts issued to Central States were illegal and therefore unenforceable in bankruptcy. The court based its ruling on two Kansas statutes that are similar to the Mississippi Grain Warehouse Law, Miss. Code Ann. §75-44-1 *et seq.* (Rev. 2016). The Kansas statutes allowed for a warehouse receipt to only be issued “upon actual delivery of grain into the warehouse from which it purports to be issued,” and allowed a warehouseman to make a sale or pledge of warehouse receipts for grain upon which it was the owner, provided the warehouse receipt states on its face that the warehouse owns the grain. *Id.* at 41-42. The court held the warehouse receipts that were issued in violation of those statutes were not enforceable:

¹² The actual warehouse receipts appear to contain inaccurate information about the source of the soybeans. For example, the warehouse receipt issued to Macquarie on September 28, 2021, which is included in Exhibit 3, states that 100,000 net bushels of soybeans were received by truck; however, Macquarie did not deliver any grain to the Business Debtors by truck or otherwise.

“The claimant did not deliver any grain to the bankrupt for storage. No physical deposit of grain was made and none was ever intended by the parties. The receipts were never registered and the word ‘registered’ was never stamped upon them with the official registration stamp. The claimant knew that no grain was deposited with the bankrupt for storage, and it knew that the receipts did not indicate on their face that they had been registered. The receipts were not conventional bona fide vouchers issued to a depositor of grain. Neither were they receipts for grain belonging to the bankrupt and then presently stored in its warehouse. It seems clear that the transactions between the claimant and the bankrupt, which included as an integrated part thereof the issuance and delivery of the receipts, did not conform to the statutory exactions of the state in respect to the issuance of warehouse receipts. Our attention has not been called to any case decided by the Supreme Court of Kansas involving the validity of warehouse receipts issued under similar or fairly comparable circumstances to those present here. But in Kipp v. Goffe & Carkener, 144 Kan. 95, 58 P.2d 102, 108 A.L.R., it was held that one dealing with a warehouseman who had not been licensed under the act was bound to know that the warehouseman had no right, power, or authority as a public warehouseman to receive grain for storage or transfer for the public; and that one storing grain with such a non-licensed warehouseman and taking receipts therefor could not invoke the protection of the act. If one who accepts from a warehouseman not licensed under the act receipts for grain stored in his warehouse cannot invoke the protective provisions of the act, it must follow by appropriate analogy that where one, in disregard of the act, obtains warehouse receipts from a licensed public warehouseman without depositing with such warehouseman any grain for storage and without the receipts being registered in the manner specified in the CT cannot be heard to urge with success that the receipts were validly issued under the act and therefore constitute sustainable basis for the assertion in bankruptcy of a right of reclamation, an equitable lien, or preferred claim.”

Id. at 42-43.

In *Fidelity State Bank v. Central Sur. & Ins. Corp.*, 228 F. 2d 654, 656 (10th Cir. 1955), another case arising out of the bankruptcy of Garden Grain & Seed Company, the court rejected a bank’s claim to grain represented by warehouse receipts that were not issued in accordance with the Kansas statute.

The bank deposited no grain in the elevator for storage, and the receipts which it accepted could relate only to grain which the bankrupt represented that it owned. A warehouseman may under Section 34-240 pledge his grain through the medium of warehouse receipts. He may do this, however, only by a strict compliance with the statute. He must strictly follow the requirements of the statute as to registration of the receipts. One who accepts receipts from the warehouseman

which have been issued contrary to the statutory requirements, may not be heard to say that he had no notice that there was no compliance with the provisions of the Act. If the receipt is for grain purportedly owned by the warehouseman, the person who accepts it is bound to know that it must recite that the warehouseman is the owner, either solely or jointly or in common with others, and he must be held to know that the receipt which he accepts is registered or unregistered.

StoneX, Macquarie and UMB knew the warehouse receipts they received from the Business Debtors were not issued in accordance with Mississippi law. They “may not be heard to say” that they had no notice of the Business Debtors’ failure to follow the law. The warehouse receipts are unenforceable as a matter of law and this Court should find, as a matter of law, that StoneX, Macquarie and UMB have no ownership interest in grain held by the Business Debtors.

III. CONCLUSION

All Moving Farmers respectfully request that this Court enter an order granting their Joint Motion for Summary Judgment and finding, as a matter of law, that the warehouse receipts issued by the Business Debtors to UMB, StoneX, and Macquarie are invalid under Mississippi law and do not afford UMB, StoneX, or Macquarie any interest in grain held by the Business Debtors.

This the 31st day of January, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jim F. Spencer, Jr., do hereby certify that I have caused to be served the above and for going pleading on all parties requesting notice by using the MEC filing system of the court.

This the 31st day of January, 2022.

/s/ Jim F. Spencer, Jr.
Jim F. Spencer, Jr.