

2. This adversary proceeding is brought in connection with the Chapter 11 case filed by John R. Coleman (the “Debtor”) as case number 21-11833-SDM, now pending in this Court.

3. The Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on September 29, 2021 (the “Petition Date”). This Court set Monday, January 24, 2022, as the last day for the filing of Complaints objecting to discharge and for determination of dischargeability of debts. This Complaint has, therefore, been timely filed.

4. This is a “core proceeding” as defined in 28 U.S.C. § 157(b).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

6. UMB consents to entry of final orders or judgment by this Court in this proceeding.

Parties

7. Plaintiff UMB is a national banking association having its principal place of business located at 1010 Grand Boulevard, Kansas City, Missouri.

8. Defendant John Coleman is an adult resident citizen of the State of Mississippi and may be served, pursuant to Fed. B. Bankr. P. 7004(b)(9), by mailing a copy of the Summons and Complaint to Defendant at 1107 Robert E. Lee Drive, Greenwood, Mississippi 38930 and through counsel. At all times relevant hereto, Defendant John Coleman was the President of Express Grain Terminals, LLC, and Manager of Express Processing, LLC, and Express Biodiesel, LLC.

Factual Allegations Common to All Claims

A. The Loans Guaranteed by Debtor

9. On or about December 17, 2020, Express Grain Terminals, LLC (“EGT”), Express Processing, LLC (“EP”), and Express Biodiesel, LLC (“EB”) (collectively, the “Borrowers”) executed a Fourth Amended and Restated Loan and Security Agreement (as amended, the “Loan”

Agreement”) with UMB. The Loan Agreement was subsequently amended. A true and correct copy of the Loan Agreement and amendments are attached hereto as Exhibit A.

10. Pursuant to the Loan Agreement, UMB made an unconditionally cancellable revolving loan to Borrowers in the original maximum principal amount of \$40,000,000 (“Revolving Loan”), and a term loan to Borrowers in the original principal amount of \$35,000,000 (the “Term Loan,” and collectively with the Revolving Loan, the “Loans”).

11. In connection with the Revolving Loan, Borrowers executed an Amended and Restated Revolving Note dated December 17, 2020 in the original principal amount of \$40,000,000 (the “Revolving Note”). A true and accurate copy of the Revolving Note is attached hereto as Exhibit B.

12. In connection with the Term Loan, Borrowers executed an Amended and Restated Term Note dated December 17, 2020 in the original principal amount of \$35,000,000 (the “Term Note”). A true and accurate copy of the Term Note is attached hereto as Exhibit C. The Revolving Note and the Term Note shall be collectively referred to herein as the “Notes.”

13. As security for Borrowers’ obligations to UMB under the Notes and the Loan Agreement, Borrowers granted UMB a continuing security interest upon all property of Borrowers, whether then owned or existing or thereafter created, acquired, or arising and wherever located, as described more particularly in Sections 6.1 of the Loan Agreement (the “Personal Property Collateral”). Exhibit A, § 6.1.

14. UMB properly perfected its security interest in the Personal Property Collateral by filing financing statements with the Mississippi Secretary of State.

15. As further security for Borrowers’ obligations to UMB under the Notes and Loan Agreement, EGT granted UMB security interests in certain hedging accounts (the “ADM

Accounts”) held at ADM Investor Services, Inc., pursuant to that certain Security Agreement and Assignment of Hedging Account (the “Pledge Agreement”).

16. As further security for Borrowers’ obligations to UMB under the Notes and Loan Agreement, EGT also granted UMB a first-priority security interest in certain real and personal property owned by EGT, pursuant to that certain Deed of Trust, Assignment of Leases and Rents and Fixture Filing from EGT for the benefit of UMB, dated November 13, 2015 and filed of record November 13, 2015 in Deed of Trust Book 804, Page 97 in the Chancery Clerk’s Office for Leflore County (as amended and modified, the “Greenwood and Minter City Deed of Trust”). The real property that is subject to the Greenwood and Minter City Deed of Trust is described more particularly in Exhibit A to the Greenwood Deed of Trust (the “Greenwood and Minter City Property”).

17. As further security for Borrowers’ obligations to UMB under the Notes and Loan Agreement, EGT also granted UMB a first-priority security interest in certain real and personal property owned by EGT, pursuant to that certain Deed of Trust, Assignment of Leases and Rents and Fixture Filing from EGT for the benefit of UMB, dated November 13, 2015 and filed of record November 13, 2015 in Deed of Trust Book 804, page 59 in the Chancery Clerk’s Office for Leflore County (as amended and modified, the “Sidon Deed of Trust”). The real property that is subject to the Sidon Deed of Trust is more particularly described in Exhibit A to the Sidon Deed of Trust (the “Sidon Property”).

18. EB has leased certain Personal Property Collateral and a portion of the Greenwood and Minter City Property from EGT. As further security for Borrowers’ obligations to UMB under the Notes and Loan Agreement, EB granted UMB a first-priority security interest in its leasehold interest in such Personal Property Collateral and in a portion of the Greenwood and Minter City

Property, pursuant to that certain Leasehold Deed of Trust, Assignment of Leases and Rents and Fixture Filing executed by EB for the benefit of UMB, dated May 10, 2018 and filed of record May 10, 2018 in Deed of Trust Book 846, page 336 in the Chancery Clerk's Office for Leflore County (as amended and modified, the "Leasehold Deed of Trust"). The real property that is subject to the Leasehold Deed of Trust is described in Exhibit A to the Leasehold Deed of Trust and consists of a portion of the Greenwood and Minter City Property (the "Leasehold Property").

19. The property that is subject to the Greenwood and Minter Deed of Trust, the Sidon Deed of Trust, the Leasehold Deed of Trust (collectively, the "Deeds of Trust"), the property subject to the Pledge Agreement, and the Personal Property Collateral shall be referred to herein as the "Collateral."

20. In exchange for UMB's extension of credit to Borrowers, Debtor and Michael W. Coleman (together, the "Guarantors") executed that certain Third Amended and Restated Guaranty Agreement dated May 7, 2018 in favor of UMB (the "Guaranty"). A true and accurate copy of the Guaranty is attached hereto as Exhibit D. The Guarantors each consented to the Loan Agreement and amendments thereto.

21. In the Guaranty, Guarantors guaranteed the prompt payment in full of all Borrowers' obligations to UMB, which includes the Loans.

22. The Notes, Loan Agreement, Pledge Agreement, Deeds of Trust, and Guaranty, and all other documents referring to, relating to, or evidencing the Loans are hereinafter referred to as the "Loan Documents," and any capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

B. Misreporting of Warehouse Receipts

23. The borrowing availability under the Revolving Loan was the lesser of the Revolving Loan Commitment or the Borrowing Base Amount. The Borrowing Base Amount was calculated pursuant to a formula set forth in the Loan Agreement. Among other things, the Borrowing Base calculation included the addition of 90% of the market value of the Borrowers' eligible inventory consisting of grain evidenced by warehouse receipts in favor of UMB and 80% of the market value of the Borrowers' eligible inventory consisting of grain that is not evidenced by warehouse receipts in favor of anyone.

24. In other words, the amount that Borrowers could borrow under the Revolving Loan was determined in part by the amount of Borrowers' eligible inventory under the terms of the Loan Agreement. To be included within eligible inventory for purposes of the Borrowing Base, the inventory must be owned by a Borrower free and clear of any assignment, claim, or lien except a first-priority lien in favor of UMB. Exhibit A at 11.

25. To determine the Borrowing Base Amount, under the Loan Agreement, Borrowers were required to provide a Borrowing Base Certificate certifying as true and complete by the president and controller of the Borrowers, the Borrowing Base Amount and each of its components. Borrowers had also been required to provide Borrowing Base Certificates under the terms of previous loan agreements.

26. Borrowers submitted a number of Borrowing Base Certificates to UMB, in which Borrowers represented the amount of company-owned soybean inventory and warehouse receipts. Each of the Borrowing Base Certificates were signed and/or sent by Debtor. Debtor, as an officer of Borrowers, also provided certain financial reporting to UMB on a periodic basis.

27. Debtor, as an officer of Borrowers, materially misrepresented the amount of eligible inventory on Borrowers' Borrowing Base Certificates and supporting documentation.

28. Debtor, as an officer of Borrowers, reported that as of June 30, 2020, EGT was holding 2,080,000 bushels of soybeans subject to warehouse receipts not held by UMB (the "Non-UMB Warehouse Receipts"). This statement was false.

29. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of June 30, 2020 was 5,680,000 bushels of soybeans.

30. Debtor, as an officer of Borrowers, reported that as of July 31, 2020, EGT was holding 1,600,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

31. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of July 31, 2020 was 5,355,000 bushels of soybeans.

32. Debtor, as an officer of Borrowers, reported that as of August 31, 2020, EGT was holding 350,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

33. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of August 31, 2020 was 4,880,000 bushels of soybeans.

34. Debtor, as an officer of Borrowers, reported that as of September 30, 2020, EGT was holding 350,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

35. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of September 30, 2020 was 4,115,000 bushels of soybeans.

36. Debtor, as an officer of Borrowers, reported that as of October 31, 2020, EGT was holding 1,025,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

37. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of October 31, 2020 was 4,765,000 bushels of soybeans.

38. Debtor, as an officer of Borrowers, reported that as of November 30, 2020, EGT was holding 805,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

39. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of November 30, 2020 was 3,565,000 bushels of soybeans.

40. Debtor, as an officer of Borrowers, reported that as of December 31, 2020, EGT was holding 805,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

41. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of December 31, 2020 was 3,565,000 bushels of soybeans.

42. Debtor, as an officer of Borrowers, reported that as of January 31, 2021, EGT was holding 1,905,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

43. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of January 31, 2021 was 5,665,000 bushels.

44. Debtor, as an officer of Borrowers, reported that as of February 28, 2021, EGT was holding 2,105,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

45. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of February 28, 2021 was 5,765,000 bushels.

46. Debtor, as an officer of Borrowers, reported that as of March 31, 2021, EGT was holding 1,505,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

47. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of March 31, 2021 was 5,520,000 bushels.

48. Debtor, as an officer of Borrowers, reported that as of April 30, 2021, EGT was holding 1,505,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

49. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of April 30, 2021 was 5,220,000 bushels.

50. Debtor, as an officer of Borrowers, reported that as of May 31, 2021, EGT was holding 1,205,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

51. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of May 31, 2021 was 5,080,000 bushels.

52. Debtor, as an officer of Borrowers, reported that as of June 30, 2021, EGT was holding 905,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

53. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of June 30, 2021 was 4,780,000 bushels.

54. Debtor, as an officer of Borrowers, reported that as of July 31, 2021, EGT was holding 505,000 bushels of soybeans subject to Non-UMB Warehouse Receipts. This statement was false.

55. UMB later learned that the actual amount of Non-UMB Warehouse Receipts outstanding as of July 31, 2021 was 4,430,000 bushels.

56. On Wednesday, September 22, 2021, UMB was contacted by a corporate representative of the Borrowers, who informed UMB that there were inaccuracies with the reporting provided to UMB related to the Borrowers' warehouse receipts. This was the first time UMB knew of the Debtor's misrepresentations.

57. After UMB received this information, and that same day, UMB contacted Debtor and requested a warehouse receipt report. On September 22, 2021, Debtor emailed UMB and stated that the following warehouse receipts were outstanding:

UMB Bank, N.A.	1,285,000 bushels
FCStone Merchant Services, LLC	100,000 bushels
Macquarie Commodities (USA) Inc.	200,000 bushels

Both of the figures pertaining to FC Stone and Macquarie were false.

58. The actual warehouse receipts that were outstanding as of September 22, 2021, which Debtor later admitted in an e-mail on September 24, 2021, were as follows:

UMB Bank, N.A.	1,285,000 bushels
FCStone Merchant Services, LLC	2,780,000 bushels
Macquarie Commodities (USA) Inc.	850,000 bushels

59. Debtor, as an officer of Borrowers, misreported to UMB the amount of warehouse receipts Borrower had issued by 3,330,000 bushels, or a difference of over \$42 million as of September 23, 2021.

60. As a result of Debtor's misrepresentations about the amount of Non-UMB Warehouse Receipts, Debtor overstated the amount of the Borrower-owned commodities and eligible inventory. In other words, Debtor falsely represented to UMB that the commodities it sold and were subject to Non-UMB Warehouse Receipts were still owned by Borrowers. The company-owned inventory reported by Debtor, as an officer of Borrowers, in the borrowing base certificates was also therefore misstated, and the Borrowers' availability under the Revolving Loan was also therefore overstated on the Borrowing Base certificates.

61. Further, the company-owned inventory reported by Debtor, as an officer of Borrowers, in Borrowers' compliance certificates and financial statements were also misstated and materially false.

C. Audited Financial Statements

62. In addition to Borrowers' other periodic financial reporting, Borrowers provided copies of audited financial statements to UMB.

63. On December 20, 2021, the Mississippi Department of Agriculture and Commerce ("Department") filed a Motion for Relief from Automatic Stay in EGT's bankruptcy case (the "Stay Relief Motion").

64. In the Stay Relief Motion, the Department asserts that EGT submitted altered financial statements to the Department, noting the following differences between the financial statement for the years ending June 30, 2020 and 2019 that the Department obtained from Horne,

LLP (the “Auditor’s Copy”) and the financial statements EGT provided to the Department, including the following:

- a. Removal of “Emphasis of Matter Regarding Going Concern” on page 2;
- b. Alteration of Operating Income from a loss to positive income.
- c. Changing Horne, LLP’s letterhead by substituting a letterhead format that Horne, LLP no longer uses.

65. On January 19, 2022, the Department filed the Auditor’s Copy with the Court.

Upon review and comparison of the Auditor’s Copy to the copy of the financial statements for the same period that Debtor provided to UMB in February 2021 (“UMB’s Copy”), UMB notes several material differences. Among other things, the differences include:

- a. UMB’s Copy does not contain the “Emphasis of Matters Regarding Going Concern” that is on page 2 of Auditor’s Copy the Independent Auditor’s Report;
- b. The letterhead for Horne, LLP is different on the Auditor’s Copy than on UMB’s Copy;
- c. The Auditor’s Copy lists an operating loss of \$20,988,306 for the year ended June 30, 2020, and UMB’s Copy lists operating income of \$763,576 for the year ended June 30, 2020;
- d. The Auditor’s Copy lists a net loss of \$21,226.386 for the year ended June 30, 2020, and UMB’s Copy lists a net loss of \$1,318,354 for the year ended June 30, 2020;
- e. The first paragraph under “Plan of Operation” on the Notes to Combined Financial Statements in the Auditor’s Copy does not match the first paragraph of “Plan of Operation” in UMB’s Copy;
- f. The inventory amount listed on the Auditor’s Copy does not match the inventory amount on UMB’s Copy; and
- g. Note 4 on the Notes to Combined Financial Statements on the Auditor’s Copy does not match Note 4 on UMB’s Copy.

D. Bankruptcy Filing and Current Amounts Owing to UMB

66. On Friday, September 24, 2021, UMB confronted Debtor about the misreporting of warehouse receipts, and thereafter declared a default under its loan documents.

67. On Monday, September 27, 2021, UMB provided the required advance notice letter to the Debtor that it was going to seek an appointment of a receiver over the Borrowers and other injunctive relief on September 28, 2021. The advance notice letter contained a copy of the verified complaint and proposed receivership order.

68. On Tuesday, September 28, 2021, UMB petitioned the Chancery Court on an expedited basis for the appointment of a receiver to bring the Borrowers under immediate court supervision.

69. Before the Chancery Court could hear UMB's petition, however, Debtor and Borrowers filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on Wednesday, September 29, 2021 (the "Filing Date").

70. As of the Filing Date, Borrowers owed UMB \$70,589,128.70. Debtor owes this amount as well pursuant to the Guaranty and based upon additional claims arising from his false representations to and/or actual fraud upon UMB. To the extent Debtor's obligations to UMB are determined to be nondischargeable, UMB is also entitled to additional interest and fees, including attorneys' fees, provided for under the Guaranty.

CAUSES OF ACTION
Count I – 11 U.S.C. § 523(a)(2)(A)
(Actual Fraud)

71. UMB incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

72. The Borrowers obtained money, property, services, or an extension, renewal, or refinancing of credit from UMB by Debtor employing false pretenses, false representations of

material facts that Debtor knew to be false at the time the representations were made, and/or actual fraud other than by a statement representing the financial condition of Debtor including, without limitation, to making misrepresentations as to the nature, value, and amount of the grain owned by Borrowers.

73. Upon information and belief, the misrepresentations made by Debtor were made with the intention and purpose of deceiving UMB.

74. UMB actually and justifiably relied on Debtor's misrepresentations, including, without limitation, by entering into and amending the Loan Agreement, permitting advances on the Revolving Loan, and otherwise forbearing from enforcing its rights under the Loan Documents.

75. UMB was damaged as a result of Debtor's misrepresentations.

76. The foregoing constitutes obtaining money, services, or an extension, renewal, or refinancing of credit through the use of false pretenses, false representations, or actual fraud under 11 U.S.C. § 523(a)(2)(A).

WHEREFORE, UMB prays for entry of a judgment finding that UMB's claims against Debtor are excepted from any discharge received by Debtor in his bankruptcy pursuant to the provisions of 11 U.S.C. § 523(a)(2)(A) and for such other and further relief as the Court deems just and equitable.

Count II – 11 U.S.C. § 523(a)(2)(B)
(Materially False Financial Statements)

77. UMB incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

78. Debtor, in his capacity as an officer of Borrowers, used statements in writing that were materially false respecting Borrowers' financial condition, including providing false and inaccurate borrowing base certificates, compliance certificates, and financial statements.

79. The Debtor is an insider of the Borrowers.

80. Upon information and belief, Debtor caused the statements in writing described above to be made or published with the intent to deceive UMB.

81. UMB, to whom Debtor is liable for such money, property, services, or credit, actually and reasonably relied on the statements described above to UMB's detriment including, without limitation, by entering into and amending the Loan Agreement, permitting advances on the Revolving Loan, and otherwise forbearing from enforcing its rights under the Loan Documents.

82. The foregoing constitutes use of a materially false statement in writing respecting the Borrowers' financial condition on which UMB reasonably relied and Debtor made such statements with an intent to deceive UMB under 11 U.S.C. § 523(a)(2)(B).

WHEREFORE, UMB prays for entry of a judgment finding that UMB's claims against Debtor are excepted from any discharge received by Debtor in his bankruptcy pursuant to the provisions of 11 U.S.C. § 523(a)(2)(B) and for such other and further relief as the Court deems just and equitable.

Count III – 11 U.S.C. § 523(a)(6)
(Willful & Malicious Injury)

83. UMB incorporates by reference the allegations contained in the preceding paragraphs of the Complaint.

84. Upon information and belief, Debtor, or Borrowers' representatives at Debtor's direction, submitted false Borrowing Base Certificates and financial statements to UMB for the purpose of obtaining additional borrowing, including borrowing on the Revolving Loan, under false pretenses.

85. Upon information and belief, Debtor knew the financial information being provided to UMB was false. Upon information and belief, Debtor also knew that Borrowers would not be

entitled to additional loans had he provided accurate Borrowing Base Certificates and financial statements to UMB.

86. The Debtor willfully and maliciously injured UMB and/or the property of UMB, by his conduct, and that of others acting under his direction and control, in the misrepresentations, and in the absence of said willful and malicious injury to UMB and/or the property of UMB, UMB would not have incurred the losses attributable to the Debtor.

87. Debtor's actions injured the property interests of UMB. As of September 29, 2021, UMB is owed at least \$70,589,128.70 and there are multiple claims pending in the Borrowers' bankruptcy case related to the grain.

88. Debtor's actions in injuring UMB's property interests were planned in advance, were willful, and upon information and belief, were malicious. By transmitting fraudulent information, or causing fraudulent information to be transmitted to UMB, there was an objective certainty that UMB would be harmed.

WHEREFORE, UMB prays for entry of a judgment finding that UMB's claims against Debtor are excepted from any discharge received by Debtor in his bankruptcy pursuant to the provisions of 11 U.S.C. § 523(a)(6) and for such other and further relief as the Court deems just and equitable.

Dated: January 24, 2022

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

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