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SO ORDERED,



A handwritten signature in black ink that reads "Selene D. Maddox".

Judge Selene D. Maddox

United States Bankruptcy Judge

The Order of the Court is set forth below. The case docket reflects the date entered.

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

**IN RE: EXPRESS GRAIN TERMINALS, LLC<sup>1</sup>**

**CASE NO.: 21-11832-SDM**

**DEBTOR**

**CHAPTER 11**

**ORDER STRIKING JOINT MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on *UMB Bank, N.A., StoneX, and Macquarie's Motion to Toll the Deadline to Respond to All Moving Farmers' Motion for Summary Judgment or, in the alternative, to Strike* (Dkt. #2046) (the "Motion to Strike"), the *Motion to Expedite Determination on Motion to Toll Deadline to Respond to All Moving Farmers' Motion for Summary Judgment or, in the alternative, to Strike* (Dkt. #2042), and the *Response* (Dkt. #2062) filed by the Farm Group, Farm Group I, Farm Group II, and Farm Group III (collectively, the "Farm Groups"). After considering the arguments made in the parties' pleadings, the Court is of the opinion that the *Joint Motion for Summary Judgment* ("Joint Motion for Summary Judgment") (Dkt. #1798) filed by the Farm Groups should be stricken for at least two reasons. First, 11 U.S.C. § 105(a) gives the Court authority to enter any order that is necessary to carry out the provisions of the Bankruptcy Code or to implement the Court's orders. Second, while not procedurally prohibited by the Federal Rules

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<sup>1</sup> The above styled case is being jointly administered with *In re Express Biodiesel, LLC*, Case No. 21-11834-SDM and *In re Express Processing, LLC*, Case No. 21-11835-SDM.

of Bankruptcy Procedure, the Joint Motion for Summary Judgment runs afoul of the Court's previous orders establishing discovery rules and providing for the expedited determination of common legal issues under 11 U.S.C. § 557.<sup>2</sup>

On November 8, 2021, this Court entered an *Order Establishing Procedures for Determination of Rights, Ownership Interests, Liens, Security Interest, and All Other Interests in and to Grain and Proceeds of Grain* (Dkt. #1070) (the "557 Procedures Order"). Consistent with §§ 557(c)(1) and 557(d), the 557 Procedures Order outlined the procedures to be expedited and completed in this bankruptcy case for the Court to determine the interests in and disposition of grain and the proceeds of grain. As a part of these § 557 procedures, the Court instructed the parties to brief "Common Legal Issues" as identified in the 557 Procedures Order, and the participating parties did just that. On January 20, 2022, after the Court's Preliminary Determination Hearing, the Court issued its Order (Dkt. #1709), which found that the Court could not make a definitive ruling on any Common Legal Issue or sub-issue without further factual development.

Later, the Court entered its Amended Section 557 Procedures – Phase 2 Scheduling Order (Dkt. #1800), which provided a timeline for discovery and the factual development the Court intended in its prior Order. Despite the Court's previous orders, the Farm Groups filed their Joint Motion for Summary Judgment seeking a determination as to the sub-issue of whether certain Creditors of the Debtor held valid warehouse receipts due to the failure of the Creditors to deliver grain to the Debtors. Again, this is the same sub-issue that the Court previously held should be subject to further factual development and determined at the final determination hearing scheduled for March 4, 2022.

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<sup>2</sup> Unless indicated otherwise, all statutory references will be to Title 11 of the United States Code.

While the Movants request tolling the time to respond to the Joint Motion for Summary Judgment, the Court finds those arguments without merit. And while the Movants request the Joint Motion for Summary Judgment be stricken based on non-compliance with Local Rule 7056-1, the Court finds that the Farm Groups are in compliance with the Local Rules and, therefore, that argument is without merit. The Court, however, believes that striking the pleading by its powers given under § 105(a) is more appropriate in this bankruptcy case.

Section 105(a) provides that a court may issue any order that is necessary to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). Further, the Court may, *sua sponte*, take any action necessary to enforce or implement its own orders. *Id.* The Supreme Court has held that § 105(a) grants bankruptcy judges “broad authority . . . to take any action that is necessary or appropriate ‘to prevent an abuse of process.’” *In re Sanchez*, 372 B.R. 289, 309 (Bankr. S.D. Tex. 2007) (citing *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007)). The Fifth Circuit has held that § 105(a) is to be “interpret[ed] liberally,” so long as any action taken pursuant to § 105(a) is “consistent with the rest of the Bankruptcy Code.” *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir.1995). Therefore, § 105(a) permits bankruptcy courts to “fashion such orders as are necessary to further the substantive provisions of the Bankruptcy Code.” *Sanchez*, 372 B.R. at 309 (citing *Perkins Coie v. Sadkin (In re Sadkin)*, 36 F.3d 473, 478 (5th Cir.1994)).

The Court’s authority is also circumscribed by the plain language of § 105(a), which requires a link between its exercise of power and one or more provisions of the Bankruptcy Code. *Sanchez*, 372 B.R. at 309. Section 105(a) does not “authorize the bankruptcy courts to create substantive rights otherwise unavailable under applicable law, or constitute a roving commission to do equity.” *Id.* (quoting *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986)). The Supreme Court, amplifying this point, has held that “[u]nder this section, a court may exercise its

equitable power only as a means to fulfill some specific Code provision.” *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). To state it differently, § 105(a) “may be invoked only if, and to the extent that, the equitable remedy dispensed by the court is necessary to preserve an identifiable right conferred elsewhere in the Bankruptcy Code.” *In re Wojtkun*, 596 B.R. 74, (D. Mass. 2019) (quoting *In re Jamo*, 283 F.3d 392, 403 (1st Cir. 2002)); see also *In re Nosek*, 544 F.3d 34, 43 (1st Cir. 2008) (noting that a bankruptcy court may only use its § 105 authority to enforce a specific code provision).

The Court finds that to effectively enforce § 557, it must strike the Joint Motion for Summary Judgment. As previously stated, the Court entered the 557 Procedures Order to outline and expedite those procedures under §§ 557(c)(1) and 557(d) in order for the Court to make a determination of interests in and disposition of grain and the proceeds of grain in this case. As the parties are aware, § 557(c)(1) contains a strict 120-day timeframe for the completion of the § 557 procedures, and that timeframe will run on March 8, 2022. And, as the Court has stated, factual development of the identified Common Legal Issues or sub-issues is necessary—and currently ongoing—so the Court can make definitive legal rulings. The Joint Motion for Summary Judgment thwarts the purpose of the Court’s previous 557 Procedures Order and Phase 2 Scheduling Order and, in effect, thwarts the purpose of § 557(c)(1) – that the procedures to determine the interests in and disposition of grain and grain proceeds are expedited and to be completed no later than 120 days after the implementation of the order establishing the timeframe. Allowing such a motion to proceed at this juncture of the case will effectively delay the procedures contemplated by § 557 and impact the substantive rights afforded to all parties under § 557—a result that the Court will not allow.

It is therefore **ORDERED** that *Motion to Expedite Determination on Motion to Toll Deadline to Respond to All Moving Farmers' Motion for Summary Judgment or, in the alternative, to Strike* (Dkt. #2042) is **GRANTED** on the pleadings of the parties and the *UMB Bank, N.A., StoneX, and Macquarie's Motion to Toll the Deadline to Respond to All Moving Farmers' Motion for Summary Judgment or, in the alternative, to Strike* (Dkt. #2046) is **GRANTED IN PART**. It is further **ORDERED** that the *Joint Motion for Summary Judgment* (Dkt. #1798) is **STRICKEN** without prejudice.

##END OF ORDER##