

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

**In re: EXPRESS GRAIN TERMINALS, LLC
DEBTOR**

**CASE NO. 21-11832-SDM
CHAPTER: 11**

**MISSISSIPPI DEVELOPMENT AUTHORITY
PLAINTIFF**

v.

ADV. PROC. NO. _____

**EXPRESS GRAIN TERMINALS, LLC
DEFENDANT**

**MISSISSIPPI DEVELOPMENT AUTHORITY'S COMPLAINT TO
DETERMINE DISCHARGEABILITY OF DEBT**

COMES NOW, Mississippi Development Authority ("MDA"), a creditor and party-in-interest herein, and files this Complaint to determine the dischargeability of a certain debt of Express Grain Terminals, LLC (hereinafter "Debtor" or "Express Grain") under 11 U.S.C. § 1141(d)(6)(A) and/or (B) and would show unto the Court as follows:

PARTIES

1. On September 29, 2021 ("the Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Main Case"). The Debtor may be served with process pursuant to Fed. R. Bankr. P. 7004(b)(9) by mailing a copy of the Summons and Complaint to the address shown in its Chapter 11 Petition, with a copy served upon its counsel pursuant to Fed. R. Bankr. P. 7004(g).

2. MDA is governmental unit of the State of Mississippi and is a creditor and party-in-interest in the above captioned Chapter 11 bankruptcy proceeding.¹

JURISDICTION AND VENUE

3. This is an action to determine the dischargeability of a debt under 11 U.S.C. § 1141(d)(6)(A) and/or (B) and is brought as an adversary proceeding in accordance with Fed. R. Bankr. P. 4007 and 7001(6).

4. This Court has personal jurisdiction over the parties to this action and has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157(a) and the Standing Order of Reference signed by Chief District Judge L.T. Senter dated August 6, 1984. This matter constitutes a “core proceeding” under 28 U.S.C. § 157(b)(2)(I)(“determinations as to the dischargeability of particular debts”).

5. Venue is proper in this Court, including under 28 U.S.C. § § 1408 and 1409.

6. This Complaint is timely filed pursuant to Fed. R. Bank P. 4007, which allows a creditor to file a complaint to obtain a determination of the dischargeability of a debt “at any time.” FED. R. BANK P. 4007(b).

FACTS AND PROCEDURAL HISTORY

The Ace Fund Grant

7. Pursuant to the provisions of Miss. Code Ann. § 57-1-16 (“ACE Fund”), MDA is authorized to make grants to local economic development entities and businesses which will aid in the consummation of a project within the State to assist any new or expanding business of industry.

8. In February 2020, the Debtor, Express Grain, submitted an application to MDA to obtain an Ace Fund grant for an expansion project of its Leflore County facility.

¹ See Main Case, Proof of Claim [Claims Register #35-1 (Creditor 4154373)].

9. Miss. Code. § 57-1-16, requires grant applicants to submit financial statements for the three (3) years immediately prior to the application for the purpose of showing that the expanded business maintains a strong financial condition and minimal credit risk.

10. As part of its application, Express Grain submitted to MDA its Audited Combined Financial Statements for 2017-2018 and 2018-2019, which included Independent Auditor Reports issued by Horne, LLP (“Horne”), a public accounting firm. The Horne Audit Reports were dated January 8, 2019 and December 31, 2019. A true and correct copy of the Audited Combined Financial Statements submitted by Express Grain to MDA are being filed under seal as collective Exhibit “A.”

11. Based on Express Grain’s grant application and the Audited Combined Financial Statements and Internal Auditor Reports of Horne submitted with the application, MDA entered into a Grant Agreement with Express Grain, on or about February 27, 2020, in which MDA disbursed Ace Funds directly to Express Grain in the amount of \$750,000.00. The Grant Agreement was executed by John Coleman, who is the President of Express Grain. A true and correct copy of the Grant Agreement is submitted herewith as Exhibit “B.”

12. Pursuant to the terms and conditions of the Grant Agreement, Express Grain was required to invest \$18,017,250.00 and create 100 new full-time jobs by February 2023. The Grant Agreement and Miss. Code Ann. § 57-1-16(5)(c)(ii) require Express Grain to repay all, or a portion of, the grant funding back to the State for failure to satisfy these requirements. *See* Grant Agreement, Exhibit “B” at pp. 11-12. *See also* Commitment Letter from MDA to John Coleman dated November 5, 2019, attached hereto as Exhibit “C.”

The Bankruptcy Proceedings and Discovery of Falsified Financial Documents

13. On September 29, 2021, Express Grain filed in this Court its voluntary petition under Chapter 11 of the United States Bankruptcy Code.²

14. As of the Petition Date, Express Grain failed to satisfy the investiture and job creation requirements, among other terms and conditions of the Grant Agreement, and it has failed to repay any portion of the \$750,000.00 of Ace Grant funding back to the State.

15. On December 20, 2021, the Mississippi Department of Agriculture and Commerce filed a Motion in this Court seeking relief from the bankruptcy court to lift the automatic stay so that the Department of Agriculture and Commerce could continue/commence administrative hearings and exercise its regulatory and judicial powers to revoke all grain warehouse licenses issued to Express Grain and John Coleman because it was believed that Express Grain secured renewal of the licenses by materially altering its financial statements and the original Internal Audit Report of Horne. [Main Case Dkt # 1526].

16. The Mississippi Department of Agriculture and Commerce continued its administrative investigations/proceedings, and on February 7, 2022, the Commissioner testified before this Court and submitted its evidence and findings related to the falsified financial documents.

17. On April 7, 2022, this Court issued an Order stating it would not prohibit the issuance of an order by The Mississippi Department of Agriculture and Commerce revoking all of Express Grain's licenses to operate a grain warehouse in this State finding that "significant and material alterations were made to the original audit report issued to [Express Grain] by Horne. And

² John Coleman also filed for bankruptcy in this Court under Chapter 11 on September 29, 2021. John Coleman's Chapter 11 bankruptcy case is captioned *In re John Coleman*, Case No. 21-11833-SDM (Bankr. Northern Dist. Miss.)

[i]t is clear to the Court that the purpose of those alterations was to mislead the State of Mississippi as to the true condition of [Express Grain]’s finances.” [Main Case Dkt # 2695 at p. 14].

18. After reviewing the Commissioner’s findings and the evidence and testimony presented to this Court, MDA became aware that Express Grain and John Coleman similarly secured the Ace Fund grant in the amount of \$750,000.00 by materially altering its Audited Combined Financial Statements and the original Internal Audit Reports of Horne that were submitted with its grant application.

19. The Debtor is indebted to MDA in the sum of \$750,000.00 and said debt is founded upon a claim which is excepted from a discharge in bankruptcy pursuant to 11 U.S.C. § 1141(d)(6)(A) and/or (B).

COUNT ONE: Violation of 11 U.S.C. § 1141(d)(6)(A) and/or (B)

20. MDA incorporates herein all preceding paragraphs of this Complaint.

21. In obtaining the ACE Fund grant in the amount of \$750,000.00, the Debtor provided MDA with its application that contained the Debtor’s Audited Financial Statements for fiscal years 2017, 2018 and 2019, along with Internal Auditor Reports of Horne dated January 8, 2019 and December 31, 2019, and represented and warranted therein that all of the financial information was a true and accurate representation of its financial condition.

22. In selecting the Debtor as a recipient of the ACE Fund grant, which the Debtor guaranteed, MDA reasonably relied upon the warranties and representations within the Debtor’s application, including the Audited Financial Statements and Internal Auditor Reports of Horne submitted with the application.

23. As set forth above, the Debtor may have materially altered the Audited Financial Statements and Internal Auditor Reports of Horne that were submitted with its grant application with the intent to deceive MDA as to Express Grain's true financial condition and credit risk.

24. The Debtor's conduct in this regard may have violated 11 U.S.C. § 1141(d)(6)(A) and/or (B), which excepts from discharge money owed to a domestic governmental unit that was obtained by false pretenses, a false representation, or actual fraud. If so, the Debtor's indebtedness to MDA in connection with the Ace Fund grant in the amount of \$750,000.00 constitutes a nondischargeable debt.

WHEREFORE, MDA respectfully requests that this Court enter a judgment against the Debtor determining that the Debtor's indebtedness to MDA in connection with the ACE Fund grant in the amount of \$750,000.00, as of the Petition Date, plus interest accrued on said amount to the date of payment, constitutes a nondischargeable debt pursuant to 11 U.S.C. § 1141(d)(6)(A) and/or (B), and grant MDA any such other relief as the Court may consider appropriate.

RESPECTFULLY SUBMITTED, this the 2nd day of June 2022.

MISSISSIPPI DEVELOPMENT AUTHORITY

BY: *s/Cory L. Radicioni*
CORY L. RADICIONI, MSB NO.101761
WILLIAM H. LEECH, MSB NO.1175
C. PATRICK ROBERTS, MSB NO. 102002
KAITLYN J. MCMELLON MSB. NO. 105704
Its Attorneys

OF COUNSEL:

C. PATRICK ROBERTS (MSB NO. 102002)
Special Assistant Attorney General
Mississippi Development Authority
P.O. BOX 849
Jackson, Mississippi 39205-0849
T: 601.359.2850
F: 601.359.3619
patrick.roberts@ago.ms.gov

WISE CARTER CHILD & CARAWAY, P.A.
WILLIAM H. LEECH (MSB NO.1175)
CORY L. RADICIONI (MSB NO. 101761)
KAITLYN J. MCMELLON (MSB. NO. 105704)
Post Office Box 651
Jackson, Mississippi 39205
T: 601.968.5500
F: 601.968.5519
whl@wisecarter.com
clr@wisecarter.com
kjm@wisecarter.com

CERTIFICATE OF SERVICE

I, CORY L. RADICIONI, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the parties set forth in the Electronic Mail Notice List as of the date hereof.

THIS, the 2nd day of June 2022.

s/Cory L. Radicioni
CORY L. RADICIONI