

U.S. COURTS
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Attorney for Land View Fertilizer, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

| | | |
|----------------|---|----------------------------|
| In re: |) | CASE NO. 96-02095 |
| |) | |
| HIPWELL, TERRY |) | AFFIDAVIT OF D. SAMUEL |
| |) | JOHNSON IN SUPPORT OF LAND |
| Debtor. |) | VIEW FERTILIZER'S MOTION |
| _____ |) | FOR RELIEF FROM AUTOMATIC |
| |) | STAY |

STATE OF IDAHO)
 : ss
County of Canyon)

D. SAMUEL JOHNSON, being first duly sworn, deposes and says:

AFFIDAVIT OF D. SAMUEL JOHNSON IN SUPPORT OF LAND VIEW
FERTILIZER'S MOTION FOR RELIEF FROM AUTOMATIC STAY ORIGINAL

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1. I am one of the attorneys for the plaintiff, Land View Fertilizer, Inc. (hereinafter "Land View"), in the above-entitled matter and have personal knowledge of all facts contained herein.

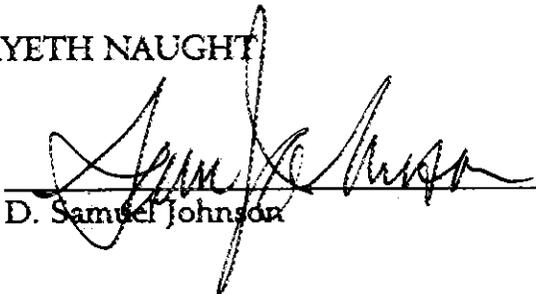
2. On May 28, 1998, an action was filed by Land View in the Third Judicial District, In and For the County of Idaho, styled *Land View Fertilizer, Inc., Plaintiff, vs. The Amalgamated Sugar Company, LLC, Defendant*, Case No. CV98-02828.

3. On June 29, 1998, The Amalgamated Sugar Company, LLC (hereinafter "Amalgamated") served its Answer to Plaintiff's Complaint upon Land View.

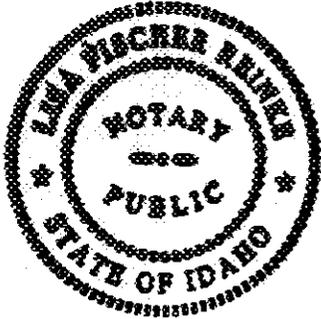
4. On or about July 20, 1998, Amalgamated filed a Motion for Summary Judgment and Land View filed its Counter Motion for Summary Judgment on September 18, 1998. Oral argument on both motions for summary judgment was heard on October 16, 1998.

5. On October 27, 1998, the district court issued an Order stating that the district court action would be stayed until such time as the bankruptcy court lifts the automatic stay in the bankruptcy proceeding. A true and correct copy of the district court Order is attached hereto as Exhibit "A" and incorporated herein by this reference.

FURTHER YOUR AFFIANT SAYETH NAUGHT


D. Samuel Johnson

SUBSCRIBED AND SWORN to before me this 13th day of November, 1998.



Lisa Fischer Reinke
Notary Public for Idaho
Commission Expires: 4/12/2001

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing AFFIDAVIT OF D. SAMUEL JOHNSON IN SUPPORT OF LAND VIEW FERTILIZER'S MOTION FOR RELIEF FROM AUTOMATIC STAY was served upon the following:

Office of the U.S. Trustee
Post Office Box 110
Boise, ID 83701

Mailed
 Faxed
 Hand delivered

Howard R. Foley
FOLEY & FREEMAN
Post Office Box 10
Meridian, ID 83680

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 Faxed
 Hand delivered

Ronald D. Schoen
Standing Chapter 12 Trustee
P. O. Box 216
Payette, ID 83661

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 Faxed
 Hand delivered

Ramona S. Neal
GIVENS, PURSLEY & HUNTLEY
Post Office Box 2720
Boise, ID 83701-2720

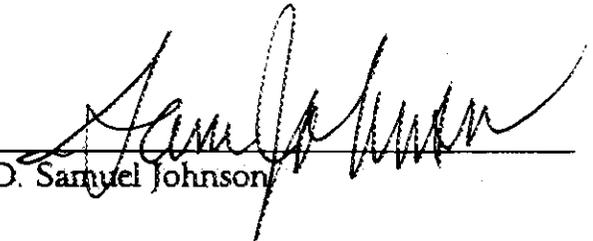
Mailed
 Faxed
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AFFIDAVIT OF D. SAMUEL JOHNSON IN SUPPORT OF LAND VIEW FERTILIZER'S MOTION FOR RELIEF FROM AUTOMATIC STAY - 3

Richard C. Boardman
PENLAND MUNTHER BOARDMAN
Post Office Box 199
Boise, ID 83701

Mailed
 Faxed
 Hand delivered

this 13 day of November, 1998.


D. Samuel Johnson

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FILED
8:00 A.M. P.M.
OCT 27 1998
NED J. KERR, CLERK
T. LEE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

LAND VIEW FERTILIZER, INC.,
an Idaho corporation,

Plaintiff,

-vs-

THE AMALGAMATED SUGAR
COMPANY LLC, a Delaware limited
liability company,

Defendant.

Case No. 98-02828

ORDER

The above entitled matter is before this Court on motions for summary judgment urged by both parties. The dispute centers on two sugar beet crops raised by Terry Hipwell during the 1995 crop year on two separate parcels— located in Payette and Owyhee counties. Each of the parties claim a security interest in the crops and prior to the raising of the crops, Land View, subordinated a portion of its claim in favor of

Order

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EXHIBIT A

Amalgamated. Plaintiff, Land View, is seeking a direct personal judgment against Amalgamated on the ground that Amalgamated has failed to recognize and pay over certain crop proceeds to Land View. Amalgamated claims that it is entitled to the proceeds because of provisions in the subordination agreement, and also because an order of the Bankruptcy Court allowing it to exercise its common-law, unsecured, right of setoff against the debtor (and lifting the automatic stay for that purpose) was a final judgment that now precludes Land View's action.

Terry Hipwell is presently in bankruptcy under a Chapter 12 proceeding. Inexplicably, neither party has raised or addressed the question of this Court's ability to proceed in this matter without violating the automatic stay in bankruptcy. In the memorandum decision issued by the Bankruptcy Court which decided the right of Amalgamated to exercise its right of setoff or recoupment against the debtor, Judge Pappas noted that "the Court was informed that [Amalgamated] and Landview Fertilizer entered into certain subordination or similar agreements regarding the parties' respective rights in Debtor's crops. *Any disputes arising from those agreement are likewise matters saved for another day.*"

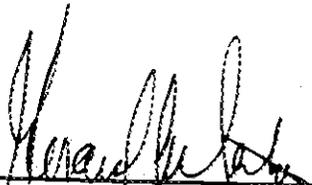
In spite of the fact that the Complaint against Amalgamated sounds in contract, the Court finds that the interpretation of the subordination agreements between two competing competitors is at the heart of this case and is within the automatic stay and has been specifically reserved for decision by the Bankruptcy Court. Moreover, the Bankruptcy Court is in a better position than this Court to determine the effect of the setoff order on the claims secured creditors having a prior right to the proceeds. Thus, the Court concludes that any further activity in this matter should be stayed until

Order

such time as the Bankruptcy Court lifts the automatic stay to permit this Court to proceed.

NOW, THEREFORE, IT IS HEREBY ORDERED that this action is stayed until such time as the United States Bankruptcy Court for the District of Idaho lifts the automatic stay and a certified copy thereof is filed in these proceedings.

Dated this 26th day of October, 1998.



Gerald L. Weston
District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO)
) ss
COUNTY OF CANYON)

I hereby certify that I served true and correct copies of the foregoing document upon the following:

Samuel Johnson
Attorney at Law
P.O. Box 247
Nampa, Idaho 83653

Richard Boardman
Attorney at Law
P.O. Box 199
Boise, Idaho 83701

either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

Dated this 27 day of October, 1998.

Ned Kerr, Clerk
Clerk of District Court

T. J. Lee
Deputy Clerk