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APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 20-3207

In re: Turner Grain Merchandising, Inc.

Debtor

Oakley Grain, Inc.; Bruce Oakley, Inc.

Appellants

v.

M. Randy Rice; Travis Mears; Scott Mears; Travis Mears Farms, Inc.; Scott Mears Farms, Inc., doing business as Mears Brothers Farms; Turner Grain Merchandising, Inc.

Appellees

Agri-Petroleum Sales LLC; Agribusiness Properties LLC; Stanley Bartlett, doing business as Greenleaf Farms; Bell-Mo Seed; Benny Bollinger; Brinkley Truck Brokerage LLC; D. Faris Buchberger; CC&B Farms; Chris Zepponi Triple C Farms; Commodity Credit Corporation; Delta Grain Marketing Inc.; Does; Randle Foran, doing business as Foran Farming; Gavilon Grain LLC; Grace AG

Partnership; Gracewood Farms; Lance Gray, doing business as High Roads Farms; Harper Ross Farms; Ivory Rice LLC; Martin Walker Reality Partnership; Neauman Coleman & Co LLC; Doug O'Neal; Josh Oakes; Rabo AgriFinance; Rice America, Inc.; Rice Arkansas, Inc.; Harper Ross; Seepwater Farms; Clint Stephens; John Stephens; Phil Stephens; Shirley Crow Stephens; Gene Stock; Stokes Mayberry Gin Company, Inc.; Turner Commodities, Inc.; Turner North LLC; United States Department of Agriculture; United States of America; David Wilkinson, doing business as David and Lalain Wilkinson Farms; Donald Wilkinson, doing business as Donald Wilkinson Farms; Donnie Wilkinson, doing business as Donnie and Teresa Wilkinson Farms; Keith Wilkinson, doing business as Keith Wilkinson Farms; Roger Wilkinson, doing business as Roger Wilkinson Farms

Mark Randy Rice
Trustee

Appeal from United States District Court for the Eastern District of Arkansas - Delta

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Submitted: May 4, 2021
Filed: May 20, 2021 [Unpublished]

Before SHEPHERD, GRASZ, and KOBES, Circuit Judges.

PER CURIAM.

Oakley Grain, Inc. and its parent corporation Bruce Oakley, Inc. appeal the district court's[1] order affirming the bankruptcy court's orders in two related adversary proceedings. Having carefully reviewed the record and the parties' arguments on appeal, we find no basis for reversal. See Wilton v. Seven Falls Co., 515 U.S. 277, 289-90 (1995) (trial courts' decisions about propriety of hearing declaratory judgment actions are reviewed for abuse of discretion); Sears v. Sears, 863 F.3d 980, 983 (8th Cir. 2017) (bankruptcy court's conclusions of law are reviewed de novo); Moratzka v. Morris (In re Senior Cottages of Am., LLC), 482 F.3d 997, 1001 (8th Cir. 2007) (denial of leave to amend is reviewed for abuse of discretion; determination that amendment would be futile is reviewed de novo); United States v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 933-35 (8th Cir. 2006) (denial of Fed. R. Civ. P. 59(e) and 60(b) motions is reviewed for abuse of discretion).

The judgment is affirmed. See 8th Cir. R. 47B.

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[1] The Honorable Brian S. Miller, United States District Judge for the Eastern District of Arkansas.

APPENDIX B

Case 2:19-cv-00141-BSM Document 29 Filed 09/29/20

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION

Oakley Grain, Inc., et al. Appellants

v. Case No. 2:19-CV-00141-BSM

M. Randy Rice, et al. Appellees

ORDER

The bankruptcy court's orders AP Nos. 2:19-AP-01015, 2:15-AP-01009, 2:15-AP-01009 are affirmed.

I. BACKGROUND

Travis Mears Farms, Inc., and Scott Mears Farms, Inc. ("Mears Corporations") supplied corn and wheat to Turner Grain but were never paid. Oakley Grain was the ultimate buyer of the corn and wheat. Upon its belief that Turner had not paid several of its grain suppliers, and to avoid competing claims, Oakley deposited $368,334.38 by interpleader action into this court and named Turner as one of the defendants. This court enjoined all actions against Oakley related to the deposited funds. Turner was sued for nonpayment by several of the companies that supplied its grain, and Turner then filed for bankruptcy.

The Mears Corporations, along with Travis Mears and Scott Mears, individually, ("Mears"), filed a claim in bankruptcy for $910,033.67 against Turner. Randy Rice was appointed Chapter 7 trustee. Oakley's interpleader action was then referred to the bankruptcy court. This court held that the interpleader funds were property of Turner's bankruptcy estate and ordered the funds turned over to the trustee.

Mears Farms filed a proof of claim for $910,033.67 in the bankruptcy case. The trustee then filed a preference action against Mears Farms and Heritage Bank, N.A. (later known as Bear State Bank) arguing that a $141,028.90 preference payment must be payed before Mears Farm's proof of claim could be allowed. A settlement was reached in the preference action which: (1) provided that Mears Farms would pay $23,500 to the bankruptcy estate; (2) allowed Mears Farm's proof of claim; and (3) held that those parties waived and released all other claims against the trustee and estate.

The Mears Corporations sued Oakley in state court for $533,164, claiming that Oakley was Turner's undisclosed principal and alleging that Oakley was jointly and severally liable for Turner's debts. The bankruptcy court denied a motion to void the lawsuit, finding that it did not violate the automatic stay. Oakley moved for a new trial or amendment of the judgment, and that was denied. Oakley then filed a declaratory judgment request in the bankruptcy court against the trustee and Mears. Oakley's motion to amend its complaint was denied, and its request for declaratory judgment was denied.

Oakley is now appealing those three rulings of the bankruptcy court.

II. LEGAL STANDARD

There is jurisdiction over the appeal from the final orders of the bankruptcy court pursuant to 28 U.S.C. section 158(a)(1). Oakley has standing to bring this appeal as a "party aggrieved," notwithstanding the pendency of the state court case because there are different parties in this action. AP No. 15-1009. Oakley's rights are impaired by the bankruptcy court order. *See Trucking, Inc. v. Mercedes Benz Fin. Servs. USA*, 811 F.3d 1020 (8th Cir. 2016).

In reviewing an appeal of a bankruptcy court decision, all conclusions of law are reviewed *de novo*, and all findings of fact are reviewed under the clear error standard. *In re Popkin & Stern*, 223 F.3d 764, 765 (8th Cir. 2000). The standard for the issues in this appeal of the bankruptcy court's decisions is *de novo* review.

III. DISCUSSION

A. Dismissal of the Declaratory Judgment Complaint

The bankruptcy court's dismissal of Oakley's complaint for declaratory judgment is affirmed because the bankruptcy court did not abuse its discretion. *See In re Paulson*, 477 B.R. 740, 744 (B.A.P. 8th Cir. 2012) (abuse of discretion occurs when the bankruptcy court's decision is clearly

erroneous). Indeed, the bankruptcy court may abstain from hearing a declaratory judgment action when there are exceptional circumstances such as those presented here. *Scottsdale Ins. Co. v. Detco Indus., Inc.,* 426 F.3d 994 (8th Cir. 2005). The bankruptcy court properly exercised its discretion to abstain from hearing the declaratory judgment action because the state court lawsuit is a parallel proceeding, and it involves substantially the same parties and issues. Moreover, the bankruptcy court lacked jurisdiction over the declarations in paragraphs 31(f) and (i) of the proposed amended complaint and the remaining declarations are better decided in the state court lawsuit.

B. Denial of Motion for Leave to Amend

The bankruptcy court's denial of Oakley's proposed amendments "add nothing of substance to this action." Doc. No. 1-7 at 41. The declarations in the proposed amended complaint are largely identical to the original complaint, and the proposed changes in paragraph 31(f)-(h) do not alter the court's analysis of its jurisdiction and discretion to abstain from hearing the declaratory judgment action. Oakley's argument that its amended complaint is an objection to Mear's proof of claim is not compelling because paragraph 31(h) of the proposed amended complaint clearly asks the court to find that Mear's proof of claim is its exclusive remedy, which would disallow the state case to proceed.

C. The State Case Does Not Violate Bankruptcy Stay or District Court Injunction

The bankruptcy court's ruling that the state court lawsuit did not violate the automatic stay or the injunction is affirmed for three reasons. First, the bankruptcy court did not abuse its discretion in finding that the automatic stay was not violated because Mears is not seeking to recover money or property from the bankruptcy estate. The bankruptcy court based this finding on the fact that the state court lawsuit names Jason and Neauman Coleman as defendants, and does not name Turner or the trustee. Second, the bankruptcy court found that it lacked evidence to determine that the state court lawsuit seeks to recover the interpleader funds. In the state court lawsuit, Mears seeks $544,164 from Oakley, although there is only $368,344.38 in interpleader funds being held. Moreover, the state court lawsuit seeks damages that Mears claims Oakley owes, as a result of being Turner's undisclosed principal, and this has nothing to do with the interpleader funds. Third, the bankruptcy court denied the motion to enforce the automatic stay without prejudice so that the stay may be enforced later if new evidence is provided.

D. Denial of Motion for New Trial on Basis of Oral Disclaimer

Finally, the bankruptcy court did not abuse its discretion in denying Oakley's motion for a new trial based on its determinations that: (1) the trustee's admission to some declarations is not

sufficient to require enforcement of the stay; and (2) it was not necessary for it to decide the enforceability and validity of Mears' disclaimer of interest in the interpleader funds. The bankruptcy court has discretion in determining whether to grant a new trial or amend its judgment, *In re Paulson*, 477 B.R. at 744, and the bankruptcy court did not abuse its discretion. Oakley argues that the enforceability and validity of Mear's disclaimer was brought before the bankruptcy court. Oakley's only reference to the disclaimer was in the context of distribution to creditors, which the court determined would be decided later, if necessary. Further, as stated above, the state court action did not violate the automatic stay because neither the debtor nor trustee are parties to the state court lawsuit.

IV. CONCLUSION

For the foregoing reasons, the decision of the bankruptcy court is affirmed.

IT IS SO ORDERED this 29th day of September, 2020.

/s/ Brian S. Miller
United States District Judge

APPENDIX C

2:15-ap-01009 Doc#: 272 Filed 02/28/19 Entered: 02/28/19

IN THE UNITED STATES
BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION

IN RE: TURNER GRAIN MERCHANDISING, INC. Case No. 2:14-bk-15687J
(Chapter 7)
Debtor.

OAKLEY GRAIN, INC., ET AL. PLAINTIFFS

v. AP No. 2:15-ap-01009

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL. DEFENDANTS

ORDER

On February 21, 2019, the *Motion to Enforce the Automatic Stay and Incorporated Brief in Support* (D.E. #218, lead case #887) (the "*Motion*") filed on behalf of Oakley Grain, Inc., and Bruce Oakley, Inc. ("Oakley"); the *Response to and Joinder in Motion to Enforce Automatic Stay Filed by Oakley Grain, Inc., and Bruce Oakley, Inc.,* (the "*Joinder in Motion*") filed on behalf of Gavilon Grain, LLC, (D.E. #232) ("Gavilon"); the *Response to Motion to Enforce Automatic Stay and Incorporated Brief in Support*

filed on behalf of M. Randy Rice, Trustee (D.E. #893 of the lead case) ("Trustee"); the *Response and Incorporated Brief in Support of Response to Oakley Grain, Inc.'s, and Bruce Oakley, Inc.'s, Motion to Enforce Automatic Stay* filed on behalf of Scott Mears Farms, Inc., and Travis Mears Farms, Inc., (D.E. #233) ("Mears Farms"); the *Reply to Trustee's Response to Motion to Enforce Automatic Stay* filed on behalf of Oakley (D.E. #234, lead case #896); the *Supplement to Motion to Enforce the Automatic Stay and Incorporated Brief* (the "*Supplemental Motion*") filed on behalf of Oakley (D.E. #235, lead case #897); the *Amended Response and Incorporated Brief in Support of Response to Oakley Grain, Inc.'s, and Bruce Oakley, Inc.'s, Motion to Enforce Automatic Stay* filed on behalf of Mears Farms (D.E. # 236); and the *Reply to Mears Brothers Farms' Amended Response and Incorporated Brief in Support of Response to Oakley Grain, Inc.'s, and Bruce Oakley, Inc.'s, Motion to Enforce Automatic Stay* filed on behalf of Oakley (D.E. # 237, lead case #898) came for hearing before this Court. The Motion, Joinder in Motion, and Supplemental Motion are referred to collectively hereinafter as the "*Motions.*" Appearing were Stuart W. Hankins, attorney, on behalf of Oakley; Stan Smith, attorney, on behalf of Gavilon; Hamilton Moses Mitchell, attorney, on behalf of the Trustee; and Barrett Moore, attorney, on behalf of Mears Farms.

After considering the pleadings and the arguments of counsel, the Court made its findings of fact and conclusions of law on the record pursuant to Bankruptcy Rule 7052, made applicable to contested matters by Bankruptcy Rule 9014, which findings

and conclusions are hereby incorporated by reference. For the reasons stated in open Court, the *Motions* should be and hereby are DENIED, but the denial is without prejudice to the determination of the applicability of the Automatic Stay or the District Court Injunction, at a later evidentiary hearing, whether before this Court, a court of the State of Arkansas, or other tribunal.

IT IS THEREFORE ORDERED that the *Motions* are **DENIED** without prejudice as stated on the record.

IT IS SO ORDERED.

/s/ Phyllis M. Jones
Phyllis M. Jones
United States Bankruptcy Judge
Dated: Feb 28, 2019

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APPENDIX D

2:14-bk-15687 Doc#: 960 Filed 10/11/19 Entered: 10/11/19

IN THE UNITED STATES
BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION

IN RE: TURNER GRAIN MERCHANDISING, INC. Case No. 2:14-bk-15687J
(Chapter 7)
(Previous Chapter 11)
Debtor.

OAKLEY GRAIN, INC., ET AL. PLAINTIFFS

v. AP No. 2:15-ap-01009

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL. DEFENDANTS

ORDER DENYING MOTION FOR NEW TRIAL OR TO ALTER OR AMEND JUDGMENT

Pending before the Court is *Oakley Grain, Inc.'s and Bruce Oakley, Inc.'s Motion for New Trial and to Alter or Amend Judgment and Incorporated Brief in Support* (the "**Oakley Motion**") (AP No. 15-1009, Doc. No. 278; Case No. 14-15687, Doc. No. 915) filed by Oakley Grain, Inc. and Bruce Oakley, Inc. (collectively, "**Oakley**"), along with the response to same filed by M. Randy Rice, Trustee (the

"**Trustee**") of the bankruptcy estate of Turner Grain Merchandising, Inc. (the "**Debtor**") (AP No. 15-1009, Doc. No. 279; Case No. 14-15687, Doc. No. 916); the reply filed by Oakley (AP No. 15-1009, Doc. No. 283; Case No. 14-15687, Doc. No. 921); the response filed by Travis Mears Farms, Inc. and Scott Mears Farms, Inc. (collectively, "**Mears Farms**") (AP No. 15-1009, Doc. No. 294); and the reply filed by Oakley (AP No. 15-1009, Doc. No. 295). By agreement of the parties, the Court is deciding the Oakley Motion on the pleadings without further arguments.[1]

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[1] In an e-mail communication to the parties, this Court announced that in ruling on the Oakley Motion, as well as other matters pending before this Court in AP Nos. 2:19-ap-01015 and 2:18-ap-01112, it would take judicial notice of several pleadings and filings made in the Debtor's underlying bankruptcy case, Case No. 2:14-bk-15687, as well as several pleadings and filings made in various adversary proceedings filed in connection with the Debtor's underlying bankruptcy case. The Court has taken judicial notice of the following: (1) all the pleadings heard by this Court on February 21, 2019, in AP No. 2:15-ap-01009 and the Debtor's main bankruptcy case, and this Court's oral rulings on those pleadings; (2) to the extent not already covered, all the pleadings, filings, hearings, and rulings in AP No. 2:15-ap-01009, including any and all filings made with or by the United States District Court for the Eastern District of Arkansas or Eighth Circuit Court of Appeals in connection with the matter, and also including the pleadings in the state court action (defined later herein as the State Court Action) that was removed into AP No. 2:15-ap-01009; (3) all the pleadings, filings, hearings, and rulings in AP No. 2:18-ap-01112; (4) all the pleadings, filings, hearings, and rulings in AP No. 2:19-ap-01015; (5) all the pleadings and filings in AP No. 2:16-ap-01123, including the motion to confirm compromise settlement and the order approving the settlement; (6) the notice of opportunity to object to the

I. Background

The subject of the Oakley Motion is this Court's order entered on February 28, 2019 (the "**Order**") (AP No. 15-1009, Doc. No. 272; Case No. 14-15687, Doc. No. 912). The Order addressed the following pleadings: the *Motion to Enforce the Automatic Stay and Incorporated Brief in Support* (the "**Motion to Enforce Stay**") (AP No. 15-1009, Doc. No. 218; Case No. 14-15687, Doc. No. 887) filed by Oakley; the response and joinder in the Motion to Enforce Stay filed by Gavilon Grain, LLC (AP No. 15-1009, Doc No. 232); the response filed by the Trustee (Case No. 14-15687, Doc. No. 893); the response filed by Mears Farms (AP No. 15-1009, Doc. No. 233); the reply filed by Oakley (AP No. 15-1009, Doc. No. 234; Case No. 14-15687, Doc. No. 896); the supplemental motion to enforce stay (the "**Supplemental Motion**") filed by Oakley (AP No. 15-1009, Doc. No. 235; Case No. 14-15687, Doc. No. 897); the amended response filed by Mears Farms (AP No. 15-1009, Doc. No. 236); and the reply filed by Oakley (AP No. 15-1009, Doc. No. 237; Case No. 14-15687, Doc. No. 898).

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settlement in AP No. 2:16-ap-01123, which notice was filed in the Debtor's underlying bankruptcy case at Doc. No. 661; (7) the claims register in the Debtor's underlying bankruptcy case; (8) Claim No. 7 filed by Mears Farms in the Debtor's underlying bankruptcy case; (9) Claim No. 125 filed by Oakley in the Debtor's main bankruptcy case; and (10) Claim No. 28 filed by Mears Farms in the bankruptcy case of Dale Bartlett, Case No. 2:14-bk-14794, pending before the Bankruptcy Court for the Eastern District of Arkansas.

The above matters were initially heard on February 21, 2019, out of division in Little Rock, Arkansas, by agreement of the parties. At the hearing, Mr. Stuart W. Hankins of Hankins Law Firm, P.A. appeared on behalf of Oakley; Mr. Stan D. Smith of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. appeared on behalf of Gavilon Grain, LLC; Mr. Hamilton Moses Mitchell of Rice & Associates, P.A.[2] appeared on behalf of the Trustee; and Mr. Barrett S. Moore of Blair & Stroud appeared on behalf of Mears Farms. After considering the pleadings and the arguments of counsel, the Court made its findings of fact and conclusions of law on the record pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, made applicable to contested matters by Rule 9014 of the Federal Rules of Bankruptcy Procedure.

The Order incorporated by reference the Court's oral findings of fact and conclusions of law. The Court denied Oakley's Motion to Enforce Stay, finding the state court action filed by Mears Farms against Oakley and other defendants (the "**State Court Action**") did not violate the automatic stay.[3] Pertinent portions of the ruling are as follows:

> I want to start with the complaint and just kind of go over what -- what is in the complaint. The [State Court Action] was filed by Mears plaintiffs in June of 2017. It

[2] Now of H.M. Mitchell & Co., P.L.L.C.

[3] A more detailed history of the State Court Action, as well as other actions involving Oakley and Mears Farms, is found in an opinion entered simultaneously with this order in AP No. 2:19-ap-01015.

is against Oakley Grain, Bruce Oakley, Gavilon Grain, Jason Coleman, Neauman Coleman, and John Does. The debtor is not a party to the [State Court Action].

In the [State Court Action], the Mears plaintiffs allege that Turner Grain, Inc. and Turner Grain are pseudonyms for a partnership, joint venture, or a joint enterprise, between the debtor, Turner Grain Merchandising, Inc., Jason Coleman, Neauman Coleman, Dale Bartlett, and many other alter egos that are named in paragraph 9, which Mears defines in the complaint as Turner. And, but of all of those Turner groups, only Jason Coleman and Neauman Coleman are named as defendants.

The Mears plaintiffs allege that Oakley and Gavilon entered into contracts or agreements with, quote, "Turner," pursuant to which Turner agreed to and did solicit offer -- offers from farmers for the sale of their grains. Upon completion of the sale between the farmer to Oakley or to Gavilon, Oakley or Gavilon would transmit the purchase to Turner, with directions or understandings that Turner would transfer the proceeds to each farmer. That's in paragraph 16 of the complaint.

The Mears plaintiffs further allege that Turner acted as an agent for Oakley and Gavilon in the sale transactions. They

allege that in June 2014, they executed a written offer to sell to Turner's principals, through Turner, 200,000 bushels of yellow corn. They attached the contract as Exhibit A. They allege that pursuant to the contract, attached as Exhibit A, they sold approximately 71,929 bushels of yellow corn to Oakley, which remains unpaid, and they sold approximately 62,829 bushels of yellow corn to Gavilon, which remains unpaid.

The Mears plaintiffs further allege that in July 2014 they extended an oral offer to sell to Turner's principals, through Turner, 20,298 bushels of wheat. They allege they sold approximately 20,288 bushels of wheat to Oakley, which remains unpaid.

And then, there are six different counts to the complaint.

In Count 1, the Mears plaintiffs allege that Oakley and Gavilon accepted and exercised dominion and control over these grains, and, by doing so, Oakley and Gavilon impliedly promised to pay the purchase price for the grain. In addition, they state that by the execution of the contract, attached as Exhibit A, Oakley and Gavilon expressly promised to pay the purchase price. The Mears plaintiffs state that the failure of Oakley and Gavilon to pay to Mears the purchase price of those grains constitutes a breach of their implied and express promises

to pay, which proximately caused Mears' damage.

In Count 2, they bring a cause of action for unjust enrichment against Oakley and Gavilon for the same actions.

In Count 3, they bring a cause of action for conversion against Oakley and Gavilon for the same actions and for Oakley and Gavilon allegedly selling the same grain to other entities who were bona fide purchasers for value.

In Count 5 [sic], the Mears plaintiffs bring an action for negligence against Oakley and Gavilon. They allege that Oakley and Gavilon knew, or should have known, that Turner was in financial distress, that they knew Mears' identity as the owners of the corn and wheat, and they failed to exercise ordinary care by entrusting to their agent, Turner, with the duty to transmit the purchase price.

Then, in Count 5, which was discussed today at length, the Mears plaintiffs bring an action against Jason and Neauman Coleman -- Jason Coleman and Neauman Coleman, in the alternative, for conversion. They allege that Turner received payments with respect to the sale of Mears' grain from Oakley and Gavilon, these payments were made to Turner as an agent for Oakley and Gavilon, with direction to pay

Mears. Turner, however, failed to transmit payments to Mears, but, instead, converted the funds to their own use. They allege that Turner is liable to Mears for the amount of the funds received and converted, and they seek judgment against Jason Coleman and Neauman Coleman, as partners of Turner, for the funds belonging to Mears that were converted by Turner.

In Count 6, the Mears plaintiffs bring all of the actions alleged in the complaint then against John Does 1 through 10.

The Mears request judgment against Oakley in the amount of 533,164 dollars and a judgment against Gavilon in the total amount of 376,968 dollars; alternatively, it requests judgment against Jason Coleman and Neauman Coleman, jointly and severally, for the total amount of 910,132 dollars.

So, the question before the Court is whether this removed complaint, this cause of action, violated the automatic stay. The parties referenced Section 362(a)(3) -- also, you could look at Section 362(a)(1) -- as to whether the action is an action against the debtor that could have been brought prepetition, as well as whether these are acts to obtain or exert control over property of the estate. And property of the estate is defined in Section 541(a) as being:

> "All property of the debtor that the debtor had a legal or equitable interest to at the time the petition was filed."

As to Oakley's [Motion to Enforce Stay], Oakley argues that Mears seeks to recover 910,132 dollars, the exact same amount as the proof of claim filed by Mears in the bankruptcy case, part from Oakley and part from Gavilon, and also seeks to recover the entire amount against the – the entire amount against the Turner entities named in the interpleader complaint, without them being named as defendants.

The focus of Oakleys' argument is that Count 5 seeks to recover property of the debtor's estate for the sole purpose of the Mears Brothers Farms. The Oakleys argue that the Mears seek to recover the same 910,000 dollars sought in the proof of claim, but now the funds are being sought from Jason Coleman and Neauman Coleman as partners or members of Turner, and that if this money is recovered from the Colemans, that money would be property of the estate.

. . . .

The [State Court Action], however, only names Jason Coleman and Neauman Coleman as defendants. And so, if I go back to Count 5, Count 5 is seeking judgment against the Colemans based on this alternative theory, that if Oakley and

Gavilon paid Turner, it was supposed to pay Mears and didn't, therefore, Turner converted the funds, and as partners or members of Turner, the Colemans are liable for Turner's alleged conversion. None of the parties have articulated how this conversion cause of action would be available to the Trustee to bring against Jason Coleman and Neauman Coleman. In addition, Count 5 does not attempt, currently, to obtain possession or control of property of the estate; rather, Count 5 asserts that Jason Coleman and Neauman Coleman should be jointly and severally liable to Mears for this money.

If Count 5 were seeking to recover money or property payable to the estate, as in a 542 or 550 type action, that would be different. But the -- but in either the state case, the state court complaint does not indicate that Jason Coleman or Neauman Coleman either one is presently in possession of allegedly converted property. They're just seeking a judgment for that.

So, for all of these reasons, the Court finds that the automatic stay does not apply to Count 5 at this juncture. To the extent that things change along the way, the -- the -- it could be that a motion to enforce the stay or for a violation of the automatic stay could come later, or a motion for relief from stay could come from a party to pursue a turnover action if it is found that, in fact, there is

money in the possession of Jason -- well, Jason Coleman's estate or Neauman Coleman. So, if that's later determined to be the case, the Trustee could raise appropriate issues at that time. But, the automatic stay is found not to apply to Count 5.

. . . .

In the [State Court Action], the Mears Brothers Farms has made allegations of this agent/broker theory. Mears alleges that the -- that Oakley and Gavilon made implied-in-law and express promises to pay the Mears plaintiffs and have breached these promises.

So, again, the issue for me, under 541(a), is whether this cause of action, this agency and broker action, is whether that's a cause of action that the Trustee can bring. Said another way, is this count, Count 1, a cause of action that would be deemed property of the estate? The Mears Brothers Farms appear to be seeking recovery from Oakley, under Arkansas law, on a theory of where an agent makes a contract for an undisclosed principal, both the principal and agent may be held liable at the election of the party who dealt with the agent. Again, I've already discussed the inconsistencies with the proof of claim. Of course, the – I think some of the issues being raised are whether the proof of claim is an election of remedy to pursue the debtor, instead of another party, under this theory. But, I

believe that these issues are issues that would be dealt with at trial on the merits, instead of in a motion to determine whether the automatic stay is violated.

But, I've been unable to locate any cases or agency law, and the parties haven't provided any to the Court, which would give me -- which would give the Trustee, standing in the shoes of the alleged broker or agent, the right to sue the alleged principal for breach of contract, negotiated by Turner Grain, for the benefit of Oakley, even if Oakley were a disclosed principal. So, I find that Mears is asserting an independent cause of action against Oakley and Gavilon and is asserting a cause of action that is not property of the estate and is not an action the Trustee could bring, but is personal to the Mears Brothers Farms, and that action did not violate the automatic stay.

As to the remaining actions, the Trustee has responded in Oakley's motion -- responded to Oakley's motion, and paragraph 19 states the Trustee's position that Counts 1 through 4 and 6 do not appear to assert causes of action that are property of the bankruptcy estate. And that is significant to the Court, that the Trustee is not of the position that those are property of the estate.

. . . .

> Both Gavilon and Oakley make the argument about double payment. They both deny the agency relationship existed. These are arguments to be made on the merits of the cause of action themselves. Oakley is making argument that if the removed state court action is dismissed and re-filed, that the AP should be stayed indefinitely, because it's not ripe until the Trustee makes his final distribution. If dismissed, if re-filed, I'll take up those issues at that time.
>
> . . . .
>
> So, for all the reasons stated, the requests of Oakley and Gavilon to enforce a stay or find that there's a violation of the stay by the removed [State Court Action] being filed, that motion is denied. I don't believe the stay does apply and I'm not going to enjoin any action as a stay violation.

(AP No. 15-1009, Doc. No. 280 at 67–77).[4]

At the February 21, 2019 hearings, the Court also addressed Oakley's Supplemental Motion. (AP No. 15-1009, Doc. No. 235; Case No. 14-15687, Doc. No. 897). In the Supplemental Motion, Oakley requested a finding that the State Court Action violated an injunction issued by the District Court (the "**District Court Injunction**"), enjoining suit

[4] The transcript of the February 21, 2019 hearings can also be found in the Debtor's main bankruptcy case, Case No. 2:14-bk-15687, at Doc. No. 917.

against Oakley for funds it deposited into the court's registry in connection with this case (the "**Interpleader Funds**").[5] As further explained below, the Court denied Oakley's Supplemental Motion without prejudice to the parties to pursue the matter later either before this Court or in another forum.

II. Discussion

Oakley requests this Court to grant it a new trial or amend its judgment "on the grounds of newly discovered evidence and an error of law" pursuant to Rule 59(a)(2) of the Federal Rules of Civil Procedure, made applicable to this matter by Rule 9023 of the Federal Rules of Bankruptcy Procedure. (AP No. 15-1009, Doc. No. 278 at 2; Case No. 14-15687, Doc. No. 915 at 2). The Oakley Motion was timely filed. FED. R. BANKR. P. 9023. Mears Farms questions Oakley's choice of Rule 59(a)(2) for its relief. Although Oakley seeks relief under Rule 59(a)(2), "'[t]he standards for relief from judgment under Rules 59(e) and 60(b) . . . require the court ultimately to consider how justice can best be served, not whether . . . the attorneys for the losing side have

[5] The instant adversary proceeding was initiated by Oakley in the District Court for the Eastern District of Arkansas, Case No. 4:14-cv-483. It was later referred to this Court after the Debtor's bankruptcy filing. Before it was referred to this Court, the District Court entered an order on January 21, 2015, enjoining "all Defendants, both named and those not yet specifically identified but pled generically as 'John Doe and Jane Doe' …from instituting or prosecuting any action against [Oakley] in any state or United States court arising out of, relating to or otherwise affecting the funds at issue in this case." (AP No. 15-1009, Doc. No. 127).

done their job in identifying the basis for the relief the *party* may wish to obtain.'" *Crystalin, L.L.C. v. Selma Props., Inc. (In re Crystalin, L.L.C.)*, 293 B.R. 455, 466 (B.A.P. 8th Cir. 2003) (quoting *DeWit v. Firstar Corp.*, 904 F. Supp. 1476, 1506 (N.D. Iowa 1995)). The Court will review the Oakley Motion under both standards, affording Oakley the most generous consideration available.

Rule 59(a)(2) provides, "After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment." FED. R. CIV. P. 59(a)(2). A motion filed under this rule "serves 'to correct manifest errors of law or fact or to present newly discovered evidence.'" *Littleton v. Pilot Travel Ctrs., LLC*, No. 3:04CV00224JMM, 2008 WL 53122, at *1 (E.D. Ark. 2008) (quoting *Tolerson v. Auburn Steel Co.*, 987 F. Supp. 700, 712 (E.D. Ark.), *aff'd per curiam*, 131 F.3d 1255 (8th Cir. 1997)), *aff'd*, 568 F.3d 641 (8th Cir. 2009). "The key question in determining whether a new trial is warranted is whether it is necessary to prevent a miscarriage of justice." *Haigh v. Gelita USA, Inc.*, 632 F.3d 464, 471 (8th Cir. 2011) (citing *Maxfield v. Cintas Corp., No. 2*, 563 F.3d 691, 694 (8th Cir. 2009)). The determination of a Rule 59 motion is "within the sound discretion" of the bankruptcy court. *Howard v. Mo. Bone & Joint Ctr., Inc.*, 615 F.3d 991, 995 (8th Cir. 2010).

Rule 60(b) is made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 9024. Rule 60(b) provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). "Rule 60(b) 'provides for extraordinary relief which may be granted only upon an adequate showing of exceptional circumstances.'" *Atkinson v. Prudential Prop. Co.*, 43 F.3d 367, 371 (8th Cir. 1994) (quoting *United States v. Young*, 806 F.2d 805, 806 (8th Cir. 1986) (per curiam)).

Oakley advances two grounds in support of the Oakley Motion: (1) the Trustee's statements in

an answer filed the day after the February 21, 2019 hearings in another adversary proceeding were a surprise to Oakley and the Trustee's admissions should be incorporated into this Court's Order; and (2) this Court erred in denying the Motion to Enforce Stay and Supplemental Motion without first ruling on the validity and enforceability of Mears Farms purported disclaimer of any interest in the Interpleader Funds. For the reasons stated below, under the standards of both Rule 59 and Rule 60, the Oakley Motion is denied.

A. Trustee's Answer to Declaratory Judgment Action

As discussed in the Oakley Motion, Oakley filed a declaratory judgment action in this Court on February 14, 2019, AP No. 2:19-ap-01015. In the declaratory judgment action, Oakley requests this Court to make various declarations, which it organizes into nine subparagraphs of Paragraph 31 of the complaint.[6] Six of the subparagraphs are relevant to the Oakley Motion. The declarations sought in these six subparagraphs are basically the mirror images of allegations made against Oakley in

[6] In the declaratory judgment action, Oakley has filed a motion for leave to amend its original complaint. As stated more fully in the opinion issued simultaneously with this order in AP No. 2:19-ap-01015, the declarations Oakley seeks in the proposed amended complaint are basically the same as the declarations it seeks in its original complaint. For purposes of this order, all references to the complaint in the declaratory judgment action will be to the original complaint, found at Doc. No. 1 of AP No. 2:19-ap-01015.

the State Court Action.[7] The Trustee, as a named defendant, filed his answer to the declaratory judgment action on February 22, 2019. (AP No. 19-1015, Doc. No. 16). Part of the basis for the Oakley Motion is that the Trustee stated in his answer that "the Trustee admits or does not dispute the underlying facts" set forth in the following subparagraphs of Paragraph 31 of the complaint:

> (a) Turner Grain, Inc. and Turner Grain are the registered fictitious names of the Debtor and the Debtor did business under those fictitious names in 2013 and 2014 before those fictitious names were registered with the Arkansas Secretary of State on August 2, 2016.
>
> (b) There is nothing in the Debtor's Statement of Financial Affairs, other Schedules or the Debtor's business records which reflect that the Debtor was a member of a partnership, joint venture or joint enterprise with the Turner Entities that operated under the name Turner Grain, Inc. or

[7] For example, the State Court action includes allegations that a certain partnership or joint venture defined as "Turner" acted as the agent for Oakley and the sale of grain at issue was a sale from Mears Farms to *Oakley*, not Turner. (AP No. 19-1015, Doc. No. 1-4) (emphasis added). In the declaratory judgment action Oakley seeks a declaration that the "Debtor did *not* act as an agent for Oakley with regard to the [Mears Farms] grain sales that are the subject of the Removed Complaint." (AP No. 19-1015, Doc. No. 1) (emphasis added).

Turner Grain or that this alleged partnership had any assets or liabilities in which the Debtor had an interest.

(c) At all times relevant to the Removed Complaint,[8] the Debtor operated in the grain merchandising industry and purchased grain from farmers for re-sale to merchandisers and other grain buyers.

(d) The Debtor did not act as a broker, escrow agent or fiduciary with regard to the [Mears Farms] grain sales that are the subject of the Removed Complaint.

(e) The Debtor did not act as an agent for Oakley with regard to the [Mears Farms] grain sales that are the subject of the Removed Complaint and the Debtor did not disclose to Oakley that [Mears Farms] was the owner/seller of the grain sales that are the subject of the Removed Complaint.

(f) The Debtor was the lawful owner of the grain which it purchased from [Mears Farms] and which the Debtor in turn sold to Oakley and the funds paid by Oakley to the Debtor for the grain which is the subject of the

[8] The "Removed Complaint" is the complaint filed by Mears Farms against Oakley and others in the State Court Action.

> Removed Complaint became the property of the Debtor and to the extent any funds from such sales remained in or came into the Debtor's possession on or after October 23, 2014 or were part of the Interpleader Funds, they became property of the Debtor's estate pursuant to 11 U.S.C. § 541.

(AP No. 19-1015, Doc. No 1).

Oakley states that the Trustee's admissions "came as a complete surprise." (AP No. 15-1009, Doc. No. 278 at 4; Case No. 14-15687, Doc. No. 915 at 4). Oakley's reaction is mystifying to this Court. In fact, this Court cannot conceive of a reason for the Trustee to *disagree* with the declarations quoted above.

Undeniably, the Trustee has aggressively pursued various matters to have the Interpleader Funds deemed property of the estate, and this Court has, in fact, determined that all the Interpleader Funds are property of this bankruptcy estate. (AP No. 15-1009, Doc. Nos. 154-1, 259). By pursuing the funds as property of the estate, the logical implication is that the Debtor was owed the funds as a buyer and seller of grain, not as a broker.

Further, the Trustee sued Oakley on December 24, 2018, seeking judgment and turnover of amounts the Trustee alleges Oakley owes the Debtor pursuant to certain written contracts. (AP No. 18-1112, Doc. No. 1). The general allegations of the Trustee's complaint against Oakley include that

the Debtor "purchased, sold, and traded farm products." (AP No. 18-1112, Doc. No. 1 ¶ 6). The complaint also alleges Oakley owes the Debtor for "farm products supplied by the Debtor to or for Oakley's account" based on certain contracts that may include "*Oakley Grain Confirmations of Purchase*." (AP No. 18-1112, Doc. No. 1 ¶ 13). These allegations are completely consistent with the Trustee not disputing the above declarations sought in Oakley's declaratory judgment action.

Finally, as Oakley is aware, the Trustee has pursued numerous preference actions in connection with the Debtor's bankruptcy case, one of which was against Mears Farms. (AP No. 16-1123). In pursuing preference actions, one of the elements for the Trustee to prove is that the property to be recovered is property in which the Debtor has an interest. *See* 11 U.S.C. § 547(b) (2012) (providing in part, "the trustee may avoid any transfer of an interest of the debtor in property").

Clearly, the position taken by the Trustee in his answer to the declaratory judgment action is consistent with all the positions he has taken throughout this bankruptcy case. The Trustee's statements should be of no surprise to Oakley.

In addition, while Oakley argues the Trustee's admissions "are central" to the Oakley Motion, this Court simply disagrees. (AP No. 15-1009, Doc. No. 283 at 4–5; Case No. 14-15687, Doc. No. 921 at 4–5). The fact that the Trustee does not dispute some of the declarations sought by Oakley (implying that he *does* dispute some of the

allegations of the State Court Action) does not warrant granting the Oakley Motion to amend the February 28, 2019 Order to find the automatic stay should be enforced.

In deciding Oakley's Motion to Enforce Stay, this Court examined each count of the State Court Action to determine whether the State Court Action violated the automatic stay. This Court evaluated whether Mears Farms was pursuing any causes of action that the Trustee could bring on behalf of the bankruptcy estate; whether any of the causes of action were against the Debtor or to recover a claim against the Debtor that could have been brought prior to the bankruptcy case filing; whether any of the causes of action sought to obtain possession of property of the estate; or whether any of the causes of action sought to exercise control over property of the estate. (AP No. 15-1009, Doc. No. 280 at 70–77). The Trustee's statements in his answer to the declaratory judgment action do not alter the causes of action examined by this Court or change this Court's analysis of whether the causes of action brought by Mears Farms in the State Court Action violated the stay.

In short, the Court does not find sufficient grounds to grant a new trial, take additional testimony, or amend its findings of fact and conclusions of law. Nor does the Court find sufficient grounds for relief from the Order for mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or any other reason that justifies relief under Rule 60(b). Therefore, for the foregoing reasons, the Oakley

Motion is denied as to Oakley's request to incorporate the Trustee's admissions into the Order.

B. Mears Farms' Purported Disclaimer of the Interpleader Funds

Oakley's second argument in support of the Oakley Motion is that it was a manifest error of law for this Court to deny its Motion to Enforce Stay and Supplemental Motion without ruling on issues it raised related to Mears Farms' purported disclaimer of any interest in the Interpleader Funds. (AP No. 15-1009, Doc. No. 295).[9] This Court disagrees.

Oakley appears to believe that if this Court would rule that Mears Farms cannot disclaim an interest in the Interpleader Funds, that Mears Farms would be barred from pursuing the State Court Action because the State Court Action would be in violation of the automatic stay and/or the District Court Injunction. Oakley states that all the Interpleader Funds have now been determined to be property of this bankruptcy estate. Oakley argues

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[9] Oakley made this argument for the first time in its reply to Mears Farms' response to the Oakley Motion. In the Oakley Motion, Oakley originally argued the manifest error of law was "[t]o *allow* [Mears Farms] to disclaim any interest in the Interpleader Funds." (AP No. 15-1009, Doc. No. 278 at 11; Case No. 14-15687, Doc. No. 915 at 11) (emphasis added). It was not until the very last pleading filed with this Court on this matter that Oakley changed its argument to state that the error was denying Oakley's motions *without ruling on* the purported disclaimer. Accordingly, the Trustee and Mears Farms did not have an opportunity to respond to this argument by Oakley, but because the Court finds no merit in Oakley's argument, no prejudice results to the parties.

that Mears Farms cannot disclaim an interest in those Interpleader Funds or require the Trustee to make a separate calculation when he makes distributions, and so Mears Farms will share in the Interpleader Funds when it receives a distribution on its proof of claim. Therefore, according to Oakley, Mears Farms cannot seek "the same monetary relief" in the State Court Action. (AP No. 15-1009, Doc. No. 295 at 7). Oakley's argument is flawed for several reasons.

First, Oakley's argument is flawed because the issue of the validity or enforceability of Mears Farms' purported disclaimer of any interest in the Interpleader Funds was not before this Court at the February 21, 2019 hearings. This Court acknowledges that Mears Farms has indicated it disclaims any interest in the Interpleader Funds, funds this Court has determined are property of the estate, and that the disclaimer was mentioned at the February 21, 2019 hearings. However, while the purported disclaimer was mentioned at the hearings, whether the disclaimer is valid and/or enforceable was not an issue presented to this Court to decide at the hearings. The issues presented by the Motion to Enforce Stay and Supplemental Motion were whether the State Court Action violated the automatic stay and/or the District Court Injunction. In determining those issues, this Court's proper focus was on the allegations and causes of action in the state court complaint. There was nothing before this Court at the February 21, 2019 hearings for the Court to decide the validity or enforceability of the purported disclaimer, nor is there today.

In addition, the issue of whether Mears Farms will share in the Interpleader Funds when it receives a distribution on its proof of claim is not yet properly before this Court, as indicated by this Court at the February 21, 2019 hearings. The Debtor's bankruptcy case has involved a substantial number of proceedings and matters that have been resolved; however, there are still proceedings and matters that must be decided before the Trustee can determine what amount, if any, will be distributed to unsecured creditors, including Mears Farms.[10] When the Trustee makes that determination, he will make proposed distributions if funds are available. It is at that point in time that the issue of Mears Farms' proposed distribution should be addressed.

Second, Oakley's argument is flawed because the purported disclaimer would not change the Court's analysis of whether the State Court Action violated the automatic stay. As stated in the oral ruling on February 21, 2019, the causes of action against Oakley include an implied promise by Oakley to pay Mears Farms, unjust enrichment, conversion, and negligence. (AP No. 15-1009, Doc. No. 280 at 68–70). Although not described as such in the complaint, counsel for Mears Farms stated it

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[10] The Court notes that at this point in time, Mears Farms' proof of claim is "deemed allowed" as stated in the order approving the compromise settlement of the Trustee's preference action against Mears Farms. (AP No. 16-1123, Doc. No. 31; Case No. 14-15687, Doc. No. 677). The compromise settlement was properly noticed to interested parties, including Oakley Grain, Inc. and Oakley's attorneys, and it did not contain any mention of a disclaimer. (Case No. 14-15687, Doc. No. 661).

is pursuing an "undisclosed principal" theory in state court. (AP No. 15-1009, Doc. 280 at 45–46). These are actions that may lie and be defended in the State Court Action without regard to the proof of claim filing or possible distributions to be made to Mears Farms in the future. As found at the February 21, 2019 hearings, these are actions against Oakley on alternative theories that are not theories that the Trustee can bring as property of the estate.

Oakley relies on the case of *Sterling Vision, Inc. v. Sterling Optical Corp. (In re Sterling Optical Corp.)*, 302 B.R. 792 (Bankr. S.D.N.Y. 2003) for the proposition that if Mears Farms cannot disclaim any interest in the Interpleader Funds, their proof of claim filing subjects them to bankruptcy court jurisdiction and bars them from pursuing the State Court Action.[11] The *Sterling Optical* case, however, is inapposite to the case at hand. The matter before the court in *Sterling Optical* was a motion to dismiss an adversary proceeding for lack of subject matter jurisdiction, not a motion to enforce the automatic stay; the facts of the *Sterling Optical* case (involving a Section 363 sale) were substantially different from the facts in the case before this Court; and all the issues in *Sterling Optical* related to what was sold in the Section 363 sale approved by the bankruptcy court and the effect of the sale on the claimant's claim *against the estate*. Unlike the *Sterling Optical* case, the issues in the State Court Action are not

[11] Although Oakley refers to the *Sterling Optical* case as involving a "purported disclaimer" of distributions on a proof of claim, in *Sterling Optical* the disclaimer (or waiver) was not a factor the court considered in its ruling. *In re Sterling Optical*, 301 B.R. at 799 n. 11.

issues related the allowance or disallowance of Mears Farms' proof of claim.

In sum, the Debtor is not a defendant to the State Court Action. The Trustee is not a defendant to the State Court Action. Mears Farms is not pursuing any causes of action that the Trustee could bring on behalf of the bankruptcy estate in the State Court Action. None of the causes of action are seeking to recover a claim against the Debtor that could have been brought prior to the bankruptcy case filing. None of the allegations identify property of the bankruptcy estate over which Mears Farms seeks to obtain possession or control. Therefore, the automatic stay does not apply to the State Court Action, and nothing about the purported disclaimer changes this analysis.

Finally, Oakley's argument is flawed because Mears Farms' purported disclaimer of the Interpleader Funds relates to the amount of their distribution from the bankruptcy estate, not to the protections for Oakley under the District Court Injunction. The District Court clearly enjoined any action against Oakley "arising out of, relating to or otherwise affecting the [Interpleader Funds]." (AP No. 15-1009, Doc. No. 127). Whether or not Mears Farms disclaims an interest in the Interpleader Funds, the District Court Injunction continues to be in full force and effect to prohibit a lawsuit against those funds. Whether the State Court Action violates the District Court Injunction (as a suit against those funds) was not decided by this Court at the February 21, 2019 hearings.

At the February 21, 2019 hearings, Oakley presented *no* evidence to the Court in support of its Supplemental Motion in which it alleged that the State Court Action violated the District Court Injunction. This Court, therefore, could not decide that issue at the February 21, 2019 hearings. In fact, this Court stated the following in its oral ruling on the Supplemental Motion:

> [T]he [District Court Injunction] clearly does not permit [Mears Farms] to pursue a claim for funds interpled by Oakley under any theory of recovery. However, the Court notes that . . . in the November 7th, 2018 hearing before Judge Moody, Judge Moody stated that he enjoined the actual actions against the funds that were interpled, not all actions against Oakley. So, Judge Moody, in interpreting his own order, is saying that he's not saying that Oakley can't be sued, just not against the funds that were interpled.
>
> The only way for this Court to know whether the claims in the [State Court Action] violate the [District Court Injunction] is to know what funds were contained in the interpleader and what funds are at issue in the state court complaint. This determination requires an evidentiary hearing. And presently, there's no evidence that's been submitted to the Court sufficient for me to make that determination; therefore, I find that there is not sufficient evidence to find that the

> [District Court Injunction] applies to the claims in the removed [State Court Action]. I certainly find that that injunction is there and it does apply, and Oakley's request to enjoin the [State Court Action] on that basis is denied at this time, only without prejudice for a determination being made after an evidentiary hearing, whether it's this Court or another court, to determine if, in fact, the funds that [Mears Farms] seeks to -- is seeking are the same funds that are in the [Interpleader Funds].
>
> So, that part of the motion to enjoin is denied without prejudice to be refiled and be heard at an evidentiary hearing at a later time.

(AP No. 15-1009, Doc. No. 280 at 78–79).

To decide whether the State Court Action violates the District Court Injunction (and the effect, if any, of Mears Farms' purported disclaimer of any interest in the Interpleader Funds), the Court must have sufficient evidence to show what claims were presented by the funds deposited into this interpleader action and what claims are being pursued in the State Court Action. Oakley has presented no evidence for this Court to make the determination; however, this Court denied Oakley's Supplemental Motion without prejudice for a determination to be made after an evidentiary hearing, whether in this Court or another, regarding whether the funds Mears Farms seeks in the State Court Action are the same as the Interpleader

Funds. For all of these reasons, the Court does not find sufficient grounds to grant a new trial, take additional testimony, or amend the findings of fact and conclusions of law. Nor does the Court find sufficient grounds for relief from the Order for mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or any other reason that justifies relief under Rule 60(b). Therefore, for the foregoing reasons, the Oakley Motion is denied as to Oakley's argument that it was an error of law for this Court to deny its Motion to Enforce Stay and Supplemental Motion without first ruling on the validity or enforceability of Mears Farms' purported disclaimer.

III. Conclusion

For all the foregoing reasons, *Oakley Grain, Inc.'s and Bruce Oakley, Inc.'s Motion for New Trial and to Alter or Amend Judgment and Incorporated Brief in Support* is **DENIED**. The Clerk is directed to docket this Order in the main bankruptcy case of Turner Grain Merchandising, Inc., Case No. 2:14-bk-15687, as well as in this adversary proceeding.

IT IS SO ORDERED.

/s/ Phyllis M. Jones
Phyllis M. Jones
United States Bankruptcy Judge
Dated: 10/11/2019

cc: Mr. M. Randy Rice, Trustee
Mr. Hamilton Moses Mitchell
Mr. H. David Blair
Mr. Barrett S. Moore

Mr. Allen Vaughan Hankins

APPENDIX E

2:19-ap-01015 Doc#: 62 Filed 10/11/19 Entered: 10/11/19

IN THE UNITED STATES
BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION

IN RE: TURNER GRAIN MERCHANDISING, INC. Case No. 2:14-bk-15687J
(Chapter 7)
(Previous Chapter 11)
Debtor.

OAKLEY GRAIN, INC., ET AL. PLAINTIFFS

v. AP No. 2:19-ap-01015

UNITED STATES DEPARTMENT OF AGRICULTURE, ET AL. DEFENDANTS

ORDER

Pending before the Court is the *Motion to Dismiss and Incorporated Brief in Support* (the "**Motion to Dismiss**") (AP No. 19-1015, Doc. No. 17) filed by M. Randy Rice, Chapter 7 Trustee (the "**Trustee**"), along with the response to same filed by Oakley Grain, Inc. and Bruce Oakley, Inc. (collectively, "**Oakley**") (AP No. 19-1015, Doc. No. 25); the reply filed by the Trustee (AP No. 19-1015, Doc. No. 26); the supplement to response filed by

Oakley (AP No. 19-1015, Doc. No. 37); and the adoption of and response in support of the Motion to Dismiss filed by Travis Mears, Travis Mears Farms, Inc., Scott Mears, and Scott Mears Farms, Inc. (collectively referred to hereinafter as, "**Mears Farms**," whether referring to one or more) (AP No. 19-1015, Doc. No. 50). Also pending before the Court is the *Motion for Leave to File Amended Complaint and for a Stay of Scheduled Hearing* (the "**Motion for Leave to Amend**") (AP No. 19-1015, Doc. No. 38) filed by Oakley; the response to same filed by the Trustee (AP No. 19-1015, Doc. No. 39); the reply filed by Oakley (AP No. 19-1015, Doc. No. 40); and the response filed by Mears Farms (AP No. 19-1015, Doc. No. 49).

In brief, the Trustee argues that this Court lacks subject matter jurisdiction over this declaratory judgment action brought by Oakley. Mears Farms agrees. Oakley disagrees and asserts that this Court does have subject matter jurisdiction over its declaratory judgment action, but also requests leave to amend its original complaint "to expand upon and better explain [its] basis for subject matter jurisdiction." (AP No. 19-1015, Doc. No. 38 ¶ 5). Oakley attaches its proposed amended complaint to its Motion for Leave to Amend. (AP No. 19-1015, Doc. Nos. 38-1, 38-2). The Trustee contends that the proposed amended complaint does not remedy the jurisdictional issues that plague the original complaint, and, accordingly, leave to amend should be denied as futile. Mears Farms again agrees.

A hearing on these matters was held on April 18, 2019,[1] out of division in Little Rock, Arkansas, by agreement of the parties. At the hearing, Mr. Hamilton Moses Mitchell of Rice & Associates, P.A.[2] appeared on behalf of the Trustee; Mr. Barrett S. Moore of Blair & Stroud appeared on behalf of Mears Farms; and Messrs. Stuart W. Hankins and Allen Vaughan Hankins of Hankins Law Firm, P.A., and Mr. Fletcher C. Lewis, attorney at law, appeared on behalf of Oakley. After hearing the arguments of counsel, the Court took judicial notice of several items[3] and then took the matters under advisement.

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[1] In its Motion for Leave to Amend, Oakley also requested that the hearing on the Trustee's Motion to Dismiss be stayed, arguing that the Trustee could "easily assert" a motion to dismiss against the amended complaint. (AP No. 19-1015, Doc. No. 38 ¶ 7). This Court declined to stay the hearing and instead elected to hear both the Motion to Dismiss and the Motion for Leave to Amend at the same time on April 18, 2019.

[2] Now of H.M. Mitchell & Co., P.L.L.C.

[3] At the conclusion of the hearing, and later in an e-mail communication to the parties, the Court announced it would take judicial notice of several pleadings and filings made in the Debtor's underlying bankruptcy case, Case No. 2:14-bk-15687, as well as several pleadings and filings made in various adversary proceedings filed in connection with the Debtor's underlying bankruptcy case. The Court has taken judicial notice of the following: (1) all the pleadings heard by this Court on February 21, 2019, in AP No. 2:15-ap-01009 and the Debtor's main bankruptcy case, and this Court's oral rulings on those pleadings; (2) to the extent not already covered, all the pleadings, filings, hearings, and rulings in AP No. 2:15-ap-01009, including any and all filings made with or by the United States District Court for the Eastern District of Arkansas or Eighth Circuit Court of Appeals in connection with the matter, and also including the pleadings in the state court action (defined later herein as the State Court Action) that was

Although the Court's jurisdiction to hear this declaratory judgment action is questioned, this Court "has jurisdiction to determine whether it in fact has subject-matter jurisdiction" of this action. *Bavelis v. Doukas (In re Bavelis)*, 453 B.R. 832, 844 (Bankr. S.D. Ohio 2011). For the following reasons, the Motion for Leave to Amend is denied and the Motion to Dismiss is granted.

I. Background

This declaratory judgment action represents the most recent litigation in a series of continued and protracted disputes involving Oakley and other parties stemming from the bankruptcy filing of Turner Grain Merchandising, Inc. (the "**Debtor**"). A brief history of the various actions and lawsuits between the parties is necessary for an understanding of this current dispute.

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removed into AP No. 2:15-ap-01009; (3) all the pleadings, filings, hearings, and rulings in AP No. 2:18-ap-01112; (4) all the pleadings, filings, hearings, and rulings in AP No. 2:19-ap-01015; (5) all pleadings and filings in AP No. 2:16-ap-01123, including the motion to confirm compromise settlement and the order approving the settlement; (6) the notice of opportunity to object to the settlement in AP No. 2:16-ap-01123, which notice was filed in the Debtor's underlying bankruptcy case at Doc. No. 661; (7) the claims register in the Debtor's underlying bankruptcy case; (8) Claim No. 7 filed by Mears Farms in the Debtor's underlying bankruptcy case; (9) Claim No. 125 filed by Oakley in the Debtor's main bankruptcy case; and (10) Claim No. 28 filed by Mears Farms in the bankruptcy case of Dale Bartlett, Case No. 2:14-bk-14794, pending before the Bankruptcy Court for the Eastern District of Arkansas.

A. Prior Litigation and Filings

(1) The Interpleader Action (AP No. 2:15-ap-01009)

On August 19, 2014, prior to the Debtor's bankruptcy filing, Oakley filed an interpleader action (the "**Interpleader Action**") in the United States District Court for the Eastern District of Arkansas, naming the Debtor as one of many defendants. (AP No. 15-1009, Doc. No. 3).[4] Oakley deposited $368,334.38 (the "**Interpleader Funds**") with the District Court and the District Court entered an order enjoining all defendants, including those named and those identified as John and Jane Doe, from instituting or prosecuting any action against Oakley relating to the Interpleader Funds, and also dismissing Oakley as a party to the case. (AP No. 15-1009, Doc. Nos. 77, 127).

After the Debtor filed for bankruptcy protection, the Interpleader Action was referred to this Court as an adversary proceeding related to the Debtor's bankruptcy case and assigned AP No. 2:15-ap-01009. (AP No. 15-1009, Doc. No. 1). Oakley originally opposed the referral of the Interpleader Action to this Court but withdrew its opposition after the District Court issued the injunction and dismissed Oakley from the case. (AP No. 15-1009, Doc. Nos. 122, 123, 127, 129 at 15).

On September 29, 2015, this Court entered an order finding $240,059.30 of the Interpleader Funds

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[4] The case was assigned Case No. 4:14-cv-483 in District Court.

are property of the Debtor's bankruptcy estate and ordering turnover of those funds to the bankruptcy trustee.[5] (Case No. 14-15687, Doc. No. 362; *see also* AP No. 15-1009, Doc. No. 154-1). After resolving issues with the only creditor asserting an interest in the balance of the Interpleader Funds, Helena National Bank, the Trustee sought turnover of the balance of the Interpleader Funds by submitting a proposed precedent to this Court. Oakley filed a limited objection to the language in the proposed precedent and the Trustee filed a response. (AP No. 15-1009, Doc. Nos. 225, 227). On February 21, 2019, the Court heard the matter and overruled Oakley's limited objection. (AP No. 15-1009, Doc. No. 267). The Court entered an order finding that the remaining $128,275.18 of the Interpleader Funds are property of the bankruptcy estate and ordering release of those funds to the Trustee. (AP No. 15-1009, Doc. No. 259).

(2) Mears Farms' Proof of Claim (Case No. 2:14-bk-15687, Claim No. 7)

On December 11, 2014, Mears Farms filed a proof of claim in the Debtor's bankruptcy case in the amount of $910,033.67, Claim No. 7. The claim was filed as a secured claim, secured by a "Contract for Sale of grain," and the basis of the claim was listed as "Mears Corn and Wheat Sales through Turner Grain." (Case No. 14-15687, Claim No. 7).

[5] Richard L. Cox served as Chapter 7 Trustee at the time.

(3) The Mears Preference Action (AP No. 2:16-ap-01123)

On October 10, 2016, the Trustee filed a preference action in this Court against Mears Farms and Heritage Bank, N.A. (later known as Bear State Bank), AP No. 2:16-ap-01123 (the "**Mears Preference Action**"). (AP No. 16-1123, Doc. No. 1). In the Mears Preference Action, the Trustee alleged, among other things, that a prepetition payment made by the Debtor in the amount of $141,028.90 was a preferential transfer, and that the proof of claim filed by Mears Farms in the amount of $910,033.67 should be disallowed until the preference is paid. (AP No. 16-1123, Doc. No. 1).

On October 4, 2017, a motion to confirm proposed compromise settlement was filed in the Mears Preference Action and the Debtor's main bankruptcy case, along with a notice of opportunity to object. (AP No. 16-1123, Doc. Nos. 28, 29; Case No. 14-15687, Doc. Nos. 660, 661). Oakley Grain, Inc. was listed as receiving notice of the opportunity to object to the proposed compromise settlement. (AP No. 16-1123, Doc. No. 29; Case No. 14-15687, Doc. No. 661). No objections were filed and on November 2, 2017, an order confirming the compromise settlement was entered in the Mears Preference Action and the Debtor's main bankruptcy case. (AP No. 16-1123, Doc. No. 31; Case No. 14-15687, Doc. No. 677). Pursuant to the settlement, Mears Farms paid $23,500.00 to the bankruptcy estate to settle the claims against it. (AP No. 16-1123, Doc. No. 31; Case No. 14-15687, Doc. No. 677). As part of the settlement, the parties agreed that the

proof of claim filed by Mears Farms would be "deemed allowed" as a general unsecured claim in amount of $910,033.67, and Mears Farms waived and released any and all claims it may have against the Trustee or the bankruptcy estate. (AP No. 16-1123, Doc. No. 31; Case No. 14-15687, Doc. No. 677).

(4) The Mears Farms State Court Action (removed into the Interpleader Action, AP No. 15-1009)

On June 23, 2017, Mears Farms filed a lawsuit in the Circuit Court of Jackson County, Arkansas, against Oakley and others (the "**State Court Action**"). The State Court Action is styled *Travis Mears Farms, Inc. and Scott Mears Farms, Inc. v. Oakley Grain, Inc., Bruce Oakley, Inc., Gavilon Grain, LLC, Jason Coleman, Neauman Coleman, and John Does 1 through 10.* (AP No. 15-1009, Doc. No. 168). Neither the Debtor nor the Trustee were named as defendants to the State Court Action.

In the State Court Action, Mears Farms alleges that "Turner Grain, Inc. and Turner Grain are pseudonyms for a partnership, joint venture, [or] joint enterprise" between the Debtor, Jason Coleman, Neauman Coleman, Dale Bartlett, and their many "alter egos," which Mears Farms defines in the complaint as "Turner." (AP No. 15-1009, Doc. No. 168 at 14). Mears Farms alleges that "Turner" acted as an agent for Oakley and Gavilon Grain, LLC ("**Gavilon**") in various grain sale transactions with Mears Farms. Mears Farms alleges that in the

summer of 2014, it sold grain *to* Oakley and Gavilon *through* "Turner" but was never paid for the grain.

In Count I of the State Court Action, Mears Farms alleges that Oakley and Gavilon impliedly and/or expressly promised to pay the purchase price for the grain, and by not paying Mears Farms for the grain, they breached these implied and expressed promises to pay. (AP No. 15-1009, Doc. No. 168 at 20–21). In Count II, Mears Farms brings a claim for unjust enrichment against Oakley and Gavilon for the same actions. (AP No. 15-1009, Doc. No. 168 at 22). In Count III, Mears Farms brings a cause of action for conversion against Oakley and Gavilon for the same actions. (AP No. 15-1009, Doc. No. 168 at 22–23). In Count IV, Mears Farms brings an action for negligence against Oakley and Gavilon, alleging that Oakley and Gavilon knew or should have known that "Turner" was in financial distress, that Oakley and Gavilon knew Mears Farms owned the grain at issue, and that Oakley and Gavilon failed to exercise ordinary care by entrusting their agent, "Turner," with the duty to transmit the purchase price for the grain to Mears Farms. (AP No. 15-1009, Doc. No. 168 at 23–25).

In Count V, Mears Farms brings an alternative action against Jason Coleman and Neauman Coleman for conversion. Mears Farms alleges that "Turner" received payments from Oakley and Gavilon for the grain at issue; that the payments were made to "Turner" as an *agent* for Oakley and Gavilon with direction to pay Mears Farms; that "Turner" failed to transmit payments to Mears Farms and instead converted the funds to its

own use; and Mears Farms should have judgment against Jason Coleman and Neauman Coleman as partners or members of "Turner" for this conversion. (AP No. 15-1009, Doc. No. 168 at 25–26).

Finally, in Count VI, Mears Farms brings all allegations alleged in the complaint against John Does 1 through 10. (AP No. 15-1009, Doc. No. 168 at 26–27).

Mears Farms requests judgment against Oakley in the amount of $533,164.00 and judgment against Gavilon in the amount of $376,968.00. (AP No. 15-1009, Doc. No. 168 at 27). Alternatively, it requests judgment against Jason Coleman and Neauman Coleman for the total amount of $910,132.00. (AP No. 15-1009, Doc. No. 168 at 27). Mears Farms does not seek judgment against the Debtor or the bankruptcy estate.

On August 2, 2017, Oakley removed the State Court Action *into* the Interpleader Action by filing a notice of removal. (AP No. 15-1009, Doc. No. 166). To maintain consistency with the parties' arguments, the complaint filed in the State Court Action is referred to hereinafter as the "**Removed Complaint**."

In its amended notice of removal filed on August 3, 2017, Oakley specifically asserted that it did not consent to this Court entering final orders or judgment in the removed State Court Action. (AP No. 15-1009, Doc. No. 168 at 7). On August 23, 2017, Oakley filed a motion to withdraw the reference, asking the District Court to withdraw the reference

as to the entire adversary proceeding, which included both the original Interpleader Action and the newly removed State Court Action. (AP No. 15-1009, Doc. No. 179).

While the motion to withdraw the reference was pending before the District Court, Mears Farms filed a motion to abstain and remand, asking this Court to remand the State Court Action to the Circuit Court of Jackson County, Arkansas. (AP No. 15-1009, Doc. No. 185). Oakley filed a response in opposition to the motion for abstention and remand. (AP No. 15-1009, Doc. No. 192). On September 12, 2017, this Court entered an order staying all proceedings within the entire adversary proceeding pending the District Court's ruling on Oakley's motion to withdraw the reference. (AP No. 15-1009, Doc. No. 200).

On November 7, 2018, the District Court entered an order denying Oakley's motion to withdraw the reference. (AP No. 15-1009, Doc. No. 208). Oakley appealed the District Court order to the Eighth Circuit Court of Appeals, but its appeal was dismissed on January 2, 2019, on motion of the Trustee. (Case No. 14-15687, Doc. No. 893-1 at 51).

On February 21, 2019, this Court heard the motion for abstention and remand, and the various responses and replies filed by the parties. At the conclusion of the hearing, this Court granted the motion for abstention and remanded the State Court Action to the Circuit Court of Jackson County, Arkansas. In making its ruling from the bench, this Court found that it was required to abstain from

hearing the State Court Action under the mandatory abstention provisions of 28 U.S.C. § 1334(c)(2), but even if it were not, that it would exercise its discretion to abstain under the permissive abstention provisions of 28 U.S.C. § 1334(c)(1).

This Court specifically found that the State Court Action was based solely on state law; that the State Court Action involved only non-debtor parties; that the claims existed prior to the bankruptcy filing and were not based on or dependent on the Bankruptcy Code, and therefore, the State Court Action was not a core proceeding; that, at most, this Court had "related to" jurisdiction of the State Court Action, but did not have "arising under" or "arising in" jurisdiction; that the State Court Action could not have been brought before this Court absent 28 U.S.C. § 1334; and that the state court was the better forum to adjudicate the state law issues raised in the State Court Action. (AP No. 15-1009, Doc. No. 280 at 107, 110–12, 115–16).[6]

In addition, this Court stated that it appeared the removing party, Oakley, could have been engaged in forum shopping, noting Oakley initially opposed referral of the Interpleader Action to this Court, but later removed the State Court Action, not just to this Court, but *into* the Interpleader Action, and then immediately filed the motion to withdraw the reference back to the District Court, then opposed the motion to abstain and remand, all while

[6] The transcript of the February 21, 2019 hearings can also be found in the Debtor's main bankruptcy case, Case No. 2:14-bk-15687, at Doc. No. 917.

stating that it did not consent to this Court entering final orders or judgment on the Removed Complaint. (AP No. 15-1009, Doc. No. 280 at 115–16).

An order memorializing this Court's oral ruling was entered on February 28, 2019. (AP No. 15-1009, Doc. No. 274).

(5) Oakley's Motion to Enforce Stay (filed in the Interpleader Action, AP No. 15-1009)

In December 2018, while Mears Farms' motion to abstain and remand the State Court Action was pending, Oakley filed a motion to enforce the automatic stay (the "**Motion to Enforce Stay**") in the Interpleader Action and in the Debtor's main bankruptcy case, alleging the State Court Action violated the automatic stay and should be dismissed as void ab initio. (AP No. 15-1009, Doc. No. 218; Case No. 14-15687, Doc. No. 887). In the Motion to Enforce Stay, Oakley asserted that the funds sought in the State Court Action were the same funds covered by Mears Farms' proof of claim filed in the Debtor's bankruptcy case, and Mears Farms was improperly seeking to recover property of the estate in the State Court Action. Oakley supplemented its motion on January 11, 2019, and asserted that the State Court Action not only violated the automatic stay, but also violated the District Court injunction issued in the Interpleader Action. (AP No. 15-1009, Doc. No. 235; Case No. 14-15687, Doc. No. 897).

On February 21, 2019, this Court heard the Motion to Enforce Stay, the supplemental motion,

and the various responses and replies filed thereto. This Court denied Oakley's motions and found Mears Farms did not violate the automatic stay in filing the State Court Action. As to Oakley's arguments regarding Count V of the State Court Action in particular, in which Mears Farms seeks a judgment against Jason Coleman and Neuman Coleman as members of "Turner," the Court specifically found that the automatic stay did not apply to Count V at the time of the hearing.[7] (AP No. 15-1009, Doc. No. 280 at 73). This Court found further that the remaining counts of the Removed Complaint did not violate the automatic stay, as they were actions on claims that were personal to Mears Farms and not ones that could be pursued by the Trustee standing in the shoes of the Debtor. (AP No. 15-1009, Doc. No. 280 at 73–77). The Court also found that no evidence was presented to show that the funds sought in the State Court Action were the same as the Interpleader Funds, and Oakley's supplemental motion was also denied.[8] (AP No. 15-1009, Doc. No. 280 at 77–78).

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[7] The Court denied the Motion to Enforce Stay as to Count V, but the denial was without prejudice to refiling if new information became available that Jason Coleman's estate or Neauman Coleman did have possession of money that the Debtor allegedly converted, and if Mears Farms were seeking *those* funds, which would be properly sought by the Trustee instead. (AP No. 15-1009, Doc. No. 280 at 73).

[8] The Court denied the motion, but again, without prejudice for a determination to be made after an evidentiary hearing to determine whether the funds sought in the State Court Action were the same funds as the Interpleader Funds, a determination this Court stated could be made by this Court or in another forum. (AP No. 15-1009, Doc. No. 280 at 78-79).

An order memorializing the Court's ruling on the Motion to Enforce Stay and supplemental motion was entered on February 28, 2019. (AP No. 15-1009, Doc. No. 272; Case No. 14-15687, Doc. No. 912).

On March 7, 2019, Oakley moved for a new trial, or for this Court to alter or amend the judgment on the Motion to Enforce Stay and supplemental motion. (AP No. 15-1009, Doc. No. 278; Case No. 14-15687, Doc. No. 915). The Trustee and Mears Farms filed responses and Oakley filed replies to the responses. (AP No. 15-1009, Doc. Nos. 279, 294, 283, 295; Case No. 14-15687, Doc. Nos. 916, 921). The parties agreed that the Court should decide the matter on the pleadings and that no hearing was necessary. An order has been entered simultaneously with the entry of this order denying Oakley's motion.

(6) Trustee Turnover Action (AP No. 2:18-ap-01112)

On December 24, 2018, the Trustee filed an action against Oakley seeking a judgment and turnover of amounts the Trustee alleges Oakley owes the Debtor pursuant to certain written contracts, AP No. 2:18-ap-01112 (the "**Trustee Turnover Action**"). (AP No. 18-1112, Doc. No. 1). The Trustee requests judgment against Oakley in the total amount of $235,730.00. (AP No. 18-1112, Doc. No. 1). The Trustee alleges the amount owed to the estate is *in excess* of the amount deposited by Oakley in the Interpleader Action. (AP No. 18-1112, Doc. No. 1).

On January 9, 2019, Oakley filed a motion to dismiss the complaint and compel arbitration, stating the contracts at issue contain valid arbitration clauses. (AP No. 18-1112, Doc. No. 7). This Court held a hearing on the motion and related filings on May 9, 2019. Following the hearing, the Court took the matter under advisement and it remains pending before this Court.

B. This Declaratory Judgment Action (AP No. 2:19-ap-01015)

With the preceding background in mind, the Court turns to the declaratory judgment action at hand. On February 14, 2019, Oakley filed this declaratory judgment action against Mears Farms and the Trustee. In its original complaint, Oakley asks this Court to make various declarations, which it organizes into nine subparagraphs of Paragraph 31, labeled 31(a) through (i). (AP No. 19-1015, Doc. No. 1). On March 12, 2019, the Trustee filed his Motion to Dismiss alleging this Court does not have subject matter jurisdiction. (AP No. 19-1015, Doc. No. 17). Oakley filed its response on March 25, 2019, and the Trustee replied the next day. (AP No. 19-1015, Doc. Nos. 25, 26).

On March 28, 2019,[9] Oakley filed a proof of claim in the Debtor's bankruptcy case, Claim No.

[9] On March 28, 2019, Oakley also filed a motion for summary judgment. (AP No. 19-1015, Doc. No. 29). The Trustee moved for an order staying the motion for summary judgment pending this Court's ruling on his Motion to Dismiss, which this Court granted by order entered on April 12, 2019. (AP No. 19-1015, Doc. No. 44).

125. (Case No. 14-15687, Claim No. 125). The claim is for an "unknown" amount and the "basis of the claim" is listed as a "contingent claim for attorneys [sic] fees incurred in defending written contract claims asserted by M. Randy Rice, Trustee in Case No. 2:18-ap-01112. See attached contracts." (Case No. 14-15687, Claim No. 125).

Five days later, on April 2, 2019, Oakley filed its Motion for Leave to Amend, seeking permission to amend its original complaint "to expand upon and better explain [its] basis for subject matter jurisdiction." (AP No. 19-1015, Doc. No. 38 ¶ 5). Oakley attached its proposed amended complaint to the Motion for Leave to Amend. (AP No. 19-1015, Doc. Nos. 38-1, 38-2). In its proposed amended complaint, Oakley asks this Court to make various declarations, which it again organizes into nine subparagraphs of Paragraph 31, labeled 31(a) through (i). (AP No. 19-1015, Doc. No. 38-2 ¶ 31).

The declarations Oakley seeks in the proposed amended complaint are basically the same as the declarations it seeks in its original complaint. The declarations, as edited to show the difference between the original complaint and the proposed amended complaint,[10] are as follows:

> 31. Based on the foregoing, Oakley is entitled to the entry of a declaratory judgment finding that:

[10] The underlined portions are added by the proposed amended complaint and the struck-through portions are deleted by the proposed amended complaint.

(a) Turner Grain, Inc. and Turner Grain are the registered fictitious names of the Debtor and the Debtor did business under those fictitious names in 2013 and 2014 before those fictitious names were registered with the Arkansas Secretary of State on August 2, 2016.

(b) There is nothing in the Debtor's Statement of Financial Affairs, other Schedules or the Debtor's business records which reflect that the Debtor was a member of a partnership, joint venture or joint enterprise with the Turner Entities that operated under the name Turner Grain, Inc. or Turner Grain or that this alleged partnership had any assets or liabilities in which the Debtor had an interest.

(c) At all times relevant to the Removed Complaint, the Debtor operated in the grain merchandising industry and purchased grain from farmers for re-sale to merchandisers and other grain buyers.

(d) The Debtor did not act as a broker, escrow agent or fiduciary with regard to the [Mears Farms] grain sales that are the subject of the Removed Complaint.

(e) The Debtor did not act as an agent for Oakley with regard to the [Mears Farms] grain sales that are the subject of the Removed Complaint and the Debtor did not disclose to Oakley that [Mears Farms] was

the owner/seller of the grain sales that are the subject of the Removed Complaint.

(f) The Debtor was the lawful owner of the grain which it purchased from [Mears Farms] and which the Debtor in turn sold to Oakley and the funds paid by Oakley to the Debtor for the grain which is the subject of the Removed Complaint and the [Mears Farms] Proof of Claim became the property of the Debtor and to the extent any funds from such sales remained in or came into the Debtor's possession on or after October 23, 2014 or were part of the Interpleader Funds, they became property of the Debtor's estate pursuant to 11 U.S.C. § 541.

(g) The Debtor's sales of the grain to Oakley which are the subject of the Removed Complaint and the [Mears Farms] Proof of Claim were done in the ordinary course of business and the Debtor vested good title to such grain in Oakley which was bona a [sic] fide purchaser for value without notice.

(h) The [Mears Farms] Proof of Claim which has been ~~approved~~ deemed allowed by the Trustee is based on the sale of ~~such~~ grain by [Mears Farms] to the Debtor ~~without any reference to the money claimed being held by the Debtor~~ ~~acting~~ and which the Debtor in turn sold to Oakley and the funds paid by Oakley to the Debtor became property of the Debtor and the Debtor did not act as a broker, escrow agent or fiduciary ~~and~~

~~without any reference to any broker's, escrow agent's or fiduciary's fees or commissions being owed to the Debtor's estate~~ with regard to such funds and the [Mears Farms] Proof of Claim represents [Mears Farms'] ~~their sole~~ election of the exclusive remedy for the money claimed to be due for the grain sales that are the subject of the Removed Complaint and the Proof of Claim.

(i) The automatic stay should be enforced with regard to the Removed Complaint to the extent that it seeks findings of fact or conclusions of law about the Debtor's pre-petition and post petition activities that are contrary to the above findings (a) through (h) above specifically including, without limitation, the allegations of paragraph 47 of the Removed Complaint that the Debtor "by reason of its conversion of Plaintiffs [sic] property, is liable to the Plaintiffs for the amount of funds it received and converted" and all allegations of the Debtor acting as an agent of Oakley, or as a broker, escrow agent or fiduciary with regard to the sales of grain that are the subject of the Removed Complaint.

(AP No. 19-1015, Doc. Nos. 1, 38-2). On April 2, 2019, the Trustee filed his response to the Motion for Leave to Amend. (AP No. 19-1015, Doc. No. 39). Oakley replied the next day. (AP No. 19-1015, Doc. No. 40). On April 16, 2019, Mears Farms filed a

response in support of the Trustee's Motion to Dismiss and a response in opposition to Oakley's Motion for Leave to Amend. (AP No. 19-1015, Doc. Nos. 50, 49).

The declarations sought by Oakley (in both the original and proposed amended complaints) are directly related to the allegations against it in the State Court Action. For example, in the State Court Action, Mears Farms alleges:

> Turner Grain, Inc. and Turner Grain are pseudonyms for a partnership, joint venture, joint enterprise the partners, or members of which were, at the times relevant herein, Turner Grain Merchandising, Inc., (TGM), Jason, Neauman, Dale Bartlett and, their many "alter egos" as identified in paragraph 8 [sic] below. This partnership, joint venture, or joint enterprise is hereinafter referred to herein as "Turner."

(AP No. 19-1015, Doc. No. 1-4 ¶ 8). In this declaratory judgment action (in both the original complaint and the proposed amended complaint), Oakley seeks declarations that "Turner Grain, Inc. and Turner Grain are the registered fictitious names of the Debtor and the Debtor did business under those fictitious names in 2013 and 2014 before those fictitious names were registered with the Arkansas Secretary of State on August 2, 2016." (AP No. 19-1015, Doc. Nos. 1 ¶ 31(a), 38-2 ¶ 31(a)).

As another example, in the State Court Action, Mears Farms alleges this "partnership" or

"joint venture" it defined as "Turner" acted as the *agent* for Oakley and the sale of grain was a sale *from Mears Farms to Oakley*. (AP No. 19-1015, Doc. No. 1-4 ¶¶ 16–25) (emphasis added). In this declaratory judgment action (in both the original complaint and the proposed amended complaint), Oakley seeks declarations that the "Debtor did *not* act as an agent for Oakley with regard to the [Mears Farms] grain sales that are the subject of the Removed Complaint" and that the "Debtor was the lawful owner of the grain which it purchased from [Mears Farms] and which the *Debtor in turn sold to Oakley*." (AP No. 19-1015, Doc. Nos. 1 ¶ 31(e)–(f), 38-2 ¶ 31(e)–(f)) (emphasis added).

With only two exceptions, the declarations Oakley seeks in both the original complaint and the proposed amended complaint are the mirror images of, or Oakley's defenses to, the allegations made against it in the State Court Action.[11] The two

[11] In fact, Oakley admits the declaratory judgment action and State Court Action are directly, and inversely, related. In its response to the Motion to Dismiss, Oakley characterizes certain declarations as "100% controverted by the allegations in the Removed Complaint" and further states the complaint in the State Court Action "seeks the opposite determination" as certain declarations. (AP No. 19-1015, Doc. No. 25 at 7, 9). Moreover, counsel for Oakley stated at the February 21, 2019 hearings, in arguing against abstention and remand of the State Court Action, that "there is a substantial risk of inconsistent results if the case is remanded, since Oakley has the pending adversary proceeding for declaratory judgment in 2:19-ap-01015, *in which the issues sought to be declared are completely contrary to the pleadings in the restated – or the [R]emoved [C]omplaint*." (AP No. 15-1009, Doc. No. 280 at 82) (emphasis added).

exceptions are contained in the declarations sought in subparagraphs 31(f) and (i), but as will be explained in greater detail below, the Court has previously ruled on the issues raised by these declarations.

II. Arguments

As more fully discussed below, the Trustee argues that this Court lacks subject matter jurisdiction over this declaratory judgment action because there is not an actual controversy between all the parties, or, alternatively, because this Court lacks subject matter jurisdiction under 28 U.S.C. § 1334. (AP No. 19-1015, Doc. No. 17). The Trustee also argues this action is an inappropriate use of the Declaratory Judgment Act and this Court should abstain from hearing the action. *Id*. Mears Farms agrees. (AP No. 19-1015, Doc. No. 50). Oakley disagrees and asserts that there is an actual controversy involving all the parties, including the Trustee; that this Court has jurisdiction because certain declarations are based on provisions of the Bankruptcy Code; and that this action is an appropriate use of the Declaratory Judgment Act. (AP No. 19-1015, Doc. No. 25).

Oakley further requests the Court to grant its Motion for Leave to Amend so it may "expand upon and better explain [its] basis for subject matter jurisdiction." (AP No. 19-1015, Doc. No. 38 ¶ 5). The Trustee responds that leave to amend should be denied as futile because the proposed amended complaint is "virtually identical" to the original complaint and does not remedy the jurisdictional

deficiencies of the original complaint. (AP No. 19-1015, Doc. No. 39 ¶ 5). Mears Farms again agrees with the Trustee. (AP No. 19-1015, Doc. No. 49).

In ruling on the Motion to Dismiss and Motion for Leave to Amend, this Court will consider both the declarations sought in the original complaint and the declarations sought in the proposed amended complaint. Again, the declarations sought in the two pleadings are substantially similar.

III. Discussion

In evaluating its jurisdiction, the Court looks to the Declaratory Judgment Act, which provides in relevant part:

> In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

28 U.S.C. § 2201(a) (2012). Although there is a split among the circuits,[12] the law is clear in the Eighth Circuit that bankruptcy courts have "the power to issue declaratory judgments" under the Declaratory Judgment Act "when the matter in controversy regards the administration of a pending bankruptcy estate." *Sears, Roebuck & Co. v. O'Brien*, 178 F.3d 962, 964 (8th Cir. 1999) (citing *Nat'l Union Fire Ins.*

[12] See *Olsen v. Reuter (In re Reuter)*, 499 B.R. 655, 663 (Bankr. W.D. Mo. 2013) (discussing split among circuits).

Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.), 837 F.2d 325, 329–30 (8th Cir. 1988)).

The Declaratory Judgment Act is a procedural statute, not a jurisdictional statute. *See, e.g.*, *Skelly Oil Co. v. Phillips Petrol. Co.*, 339 U.S. 667, 671 (1950) ("Congress enlarged the range of remedies available in the federal courts [with the Declaratory Judgment Act] but did not extend their jurisdiction."); *Missouri ex rel. Mo. Highway & Transp. Comm'n v. Cuffley*, 112 F.3d 1332, 1334 (8th Cir. 1997) ("It has long been understood that the federal Declaratory Judgment Act . . . is a procedural statute, not a jurisdictional statute.").

To determine whether the Court has jurisdiction over the declarations sought, this Court will begin with an analysis of whether this declaratory judgment action involves an actual controversy.

A. Actual Controversy

As stated in the Declaratory Judgment Act, itself, the case must be one of "actual controversy." 28 U.S.C. § 2201(a) (2012). "The distinction is between a case appropriate for judicial determination on the one hand, and a difference or dispute of a hypothetical or abstract character on the other." *FL Receivables Tr. 2002-A v. Gilbertson Rests. LLC (In re Gilbertson Rests. LLC)*, No. 04-9061, 2004 WL 2357985, at *3 (Bankr. N.D. Iowa Oct. 12, 2004) (citing *Sherwood Med. Indus., Inc. v. Deknatel, Inc.*, 512 F.2d 724, 726 (8th Cir. 1975)). Put another way, "[t]he basic inquiry is whether the

'conflicting contentions of the parties . . . present a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract.'" *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (quoting *Ry. Mail Ass'n v. Corsi*, 326 U.S. 88, 93 (1945)).

In *Sears, Roebuck & Co. v. O'Brien*, 178 F.3d 962 (8th Cir. 1999), the Eighth Circuit discussed actual controversy. In *Sears*, after being threatened with legal action for mailing letters directly to debtors in violation of a state statute, Sears filed adversary proceedings for declaratory judgments that: (1) bankruptcy law preempted the state statute; (2) Sears did not violate the state statute by sending the letters; and (3) Sears did not violate bankruptcy law by sending the letters. *Sears*, 178 F.3d at 964–65. The Eighth Circuit affirmed the rulings as to the first two issues but agreed with the district court on the third issue that it was unnecessary for the court to decide whether Sears violated bankruptcy law because there was no "real controversy" about the issue. *Id.* at 967–68. The letters threatening legal action against Sears, which motivated Sears to file the declaratory judgment actions, alleged only a violation of state law. Therefore, there was no actual controversy regarding whether Sears violated bankruptcy law. *Id.* at 968.

Here, as previously stated, almost every declaration sought by Oakley in its original complaint and proposed amended complaint is the mirror image of, or its defense to, the allegations

brought against it in the State Court Action. The two exceptions are the declarations found in subparagraphs 31(f) and 31(i). The Court will address these two exceptions before addressing the remaining declarations.

(1) Subparagraph 31(f)

> In subparagraph 31(f), Oakley seeks a declaration that:
>
> > (f) The Debtor was the lawful owner of the grain which it purchased from [Mears Farms] and which the Debtor in turn sold to Oakley and the funds paid by Oakley to the Debtor for the grain which is the subject of the Removed Complaint and the [Mears Farms] Proof of Claim became the property of the Debtor and to the extent any funds from such sales remained in or came into the Debtor's possession on or after October 23, 2014 or were part of the Interpleader Funds, they became property of the Debtor's estate pursuant to 11 U.S.C. § 541.

(AP No. 19-1015, Doc. Nos. 1, 38-2).[13]

This Court will focus on the portion of subparagraph 31(f) seeking declarations regarding funds Oakley has paid the Debtor for grain which Oakley describes as being the subject of the Removed Complaint and the proof of claim filed by Mears Farms. Oakley requests this Court to find

[13] As provided above, the underlined portion was added by the proposed amended complaint.

that any funds it paid to the Debtor remaining on hand on the petition date or that were paid into the Interpleader Action are property of the estate. This Court has already ruled on both issues.

First, as to the funds the Debtor held on the petition date, the Debtor's schedules reflect no cash on hand and only one open bank account with Helena National Bank. This Court has already determined that the funds in the Debtor's Helena National Bank account on the petition date are property of the estate and ordered turnover of those funds to the bankruptcy trustee.[14] (AP No. 14-1110, Doc. Nos. 26, 28). To the extent any funds held in the Debtor's bank account on the petition date were funds paid by Oakley to the Debtor for grain, this Court has already determined the funds are property of the estate.

Similarly, this Court has already determined that all the Interpleader Funds are property of the Debtor's estate. On September 29, 2015, the Court entered an order finding that $240,059.30 of the Interpleader Funds are property of the bankruptcy estate and ordered turnover of those funds to the bankruptcy trustee.[15] (Case No. 14-15687, Doc. No. 362; *see also* AP No. 15-1009, Doc. No. 154-1). Later, at the February 21, 2019 hearings, the Court overruled Oakley's limited objection to the language in an order submitted to the Court by the Trustee concerning the remaining Interpleader Funds. The Court then entered an order finding that the

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[14] Richard L. Cox served as Chapter 7 Trustee at the time.
[15] Richard L. Cox served as Chapter 7 Trustee at the time.

remaining $128,275.18 of the Interpleader Funds are property of the bankruptcy estate and ordered release of those funds to the Trustee. (AP No. 15-1009, Doc. Nos. 259 (determining funds were property of the estate) and 267 (overruling Oakley's objection to the proposed order)).

Accordingly, this Court has already decided that the funds on hand with the Debtor as of the petition date and the Interpleader Funds are property of the Debtor's bankruptcy estate. Therefore, there is no actual controversy regarding these issues. Because there is no actual controversy regarding these issues, the Court lacks jurisdiction to consider the declarations in subparagraph 31(f) of the original complaint and proposed amended complaint regarding property of the estate.[16]

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[16] The Court's finding that it lacks jurisdiction to determine these issues is based only on the lack of actual controversy between the parties. Bankruptcy courts have exclusive jurisdiction to resolve disputes regarding whether property is property of the estate. *See, e.g., Brown v. Fox Broad. Co. (In re Cox)*, 433 B.R. 911, 920 (Bankr. N.D. Ga. 2010) ("it is generally recognized that '[a] proceeding to determine what constitutes property of the estate pursuant to 11 U.S.C. § 541 is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (E),' and that, '[w]henever there is a dispute regarding whether property is property of the bankruptcy estate, exclusive jurisdiction is in the bankruptcy court.'" (citation omitted) (quoting *Manges v. Atlas (In re Duval Cty. Ranch Co.)*, 167 B.R. 848, 849 (Bankr. S.C. Tex. 1994))).

(2) Subparagraph 31(i)

Subparagraph 31(i) of the original complaint and the proposed amended complaint are identical in their language and seek declarations that:

> (i) The automatic stay should be enforced with regard to the Removed Complaint to the extent that it seeks findings of fact or conclusions of law about the Debtor's pre-petition and post petition activities that are contrary to the above findings (a) through (h) above specifically including, without limitation, the allegations of paragraph 47 of the Removed Complaint that the Debtor "by reason of its conversion of Plaintiffs [sic] property, is liable to the Plaintiffs for the amount of funds it received and converted" and all allegations of the Debtor acting as an agent of Oakley, or as a broker, escrow agent or fiduciary with regard to the sales of grain that are the subject of the Removed Complaint.

(AP No. 19-1015, Doc. Nos. 1, 38-2).

Oakley raised this *exact* issue in its Motion to Enforce Stay filed in the Interpleader Action, which this Court heard and decided on February 21, 2019. (AP No. 15-1009, Doc. No. 272; Case No. 14-15687, Doc. No. 912.) This Court ruled against Oakley and found that Mears Farms did not violate the automatic stay in filing the State Court Action. This Court even made specific findings concerning Count

V, including paragraph 47, of the Removed Complaint in the State Court Action. After this Court denied[17] Oakley's Motion to Enforce Stay, Oakley moved for a new trial or to alter or amend the judgment. (AP No. 15-1009, Doc. No. 278; Case No. 14-15687, Doc. No. 915). The Court has denied that motion as well in an order entered simultaneously with this Order.

Accordingly, this Court has already determined that the automatic stay did not apply to the State Court Action. Therefore, there is not an actual controversy as it concerns the declarations sought in subparagraph 31(i) of the original complaint nor the identical declarations in the proposed amended complaint, and this Court lacks jurisdiction to consider them.

(3) Remaining Declarations

Next, the Court will consider the relief sought by Oakley in subparagraphs 31(a) through (h) of the original complaint and the proposed amended complaint, except those portions of subparagraph 31(f) discussed above regarding funds being property of the estate (these remaining declarations

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[17] The motion was denied without prejudice to refiling, if new information became available that Jason Coleman's estate or Neauman Coleman did have possession of money that the Debtor allegedly converted, and if Mears Farms were seeking *those* funds, which would be properly sought by the Trustee instead. (AP No. 15-1009, Doc. 280 at 73). There is no new allegation in this declaratory judgment action that a member of the Debtor is in actual possession of money that the Debtor allegedly converted or that Mears Farms is seeking *those* funds.

are hereinafter referred to as the "**Remaining Declarations**").

It is the Remaining Declarations that the Court has found are the mirror images of, or Oakley's defenses to, the allegations against it in the State Court Action. Indeed, no one disputes that an actual controversy exists between Oakley and Mears Farms as it concerns the Remaining Declarations. The same is not true, however, between Oakley and the Trustee and/or the bankruptcy estate.

The Trustee argues there is no actual controversy involving the Trustee and/or the bankruptcy estate because Oakley does not assert a claim for relief against the Debtor, property of the estate, or the Trustee. In addition, in his answer to the original complaint in this declaratory judgment action, the Trustee admits or does not dispute many of the underlying facts set forth in the declarations sought by Oakley. (AP No. 19-1015, Doc. No. 16 ¶ 19).

Oakley advances several arguments as to why there is an actual controversy involving the Trustee and/or the bankruptcy estate. First, Oakley argues that *if* Mears Farms is successful in state court in proving the Debtor received money from Oakley as its broker or agent, *then* Oakley will pursue a claim against the Trustee for fraudulent concealment exposing the Trustee and/or the bankruptcy estate to liability for such concealment. At this juncture, however, there is no such ruling in the State Court Action. Oakley's threat of possible legal action in the future, contingent on the results of the State Court

Action, is not a live dispute between the parties equating to an actual controversy between Oakley and the Trustee and/or the bankruptcy estate or even Mears Farms, Oakley, and the Trustee and/or the bankruptcy estate.

Second, Oakley argues there is an actual controversy involving Oakley and the Trustee and/or the bankruptcy estate because a determination by the state court adverse to Oakley could expose the Trustee and/or the bankruptcy estate to claims for disgorgement and turnover of property held by the Debtor in constructive trust for Mears Farms. This Court simply disagrees.

There has been no evidence suggesting that a constructive trust was created prepetition in favor of Mears Farms, and this Court has not imposed a constructive trust in connection with the Debtor's bankruptcy estate. In addition, it does not appear that Mears Farms is asking the state court to impose a constructive trust in the State Court Action,[18] nor is Oakley asking this Court to impose such a trust in this declaratory judgment action. Moreover, as stated above, in the context of this bankruptcy proceeding, this Court has previously determined that *all funds* paid by Oakley to the Debtor that (1) were in the Helena National Bank account on or after the petition date, or (2) were deposited into the registry of the Court in the Interpleader Action are

[18] Indeed, Mears Farms has waived and released any and all claims it may have against the Trustee and/or the bankruptcy estate. (AP No. 16-1123, Doc. No. 31; Case No. 14-15687, Doc. No. 677).

property of the estate. The Court finds Oakley's constructive trust argument to be without merit.

Finally, Oakley argues there is an actual controversy between it and the Trustee because there is a mutually exclusive, contradictory set of facts in the Removed Complaint in the State Court Action and in the Trustee's answer to the original complaint in this declaratory judgment action. The differences in these two pleadings may show a difference of opinion as to the facts between Mears Farms and the Trustee, but not as between *Oakley* and the Trustee.

Oakley has not shown that it has any adverse legal interests with the Trustee concerning the Remaining Declarations. The Remaining Declarations Oakley seeks are clearly in response to the allegations brought against it by Mears Farms in the State Court Action and do not involve an actual controversy between Oakley and the Trustee or Oakley and the bankruptcy estate. Oakley simply has not shown there is an actual, live dispute between it and the Trustee and/or the bankruptcy estate that caused it to file this declaratory judgment action. In addition, a portion of the declarations (i.e., "the funds paid by Oakley to the Debtor became property of the Debtor") has already been decided as discussed above in connection with subparagraph 31(f).

Based on the foregoing discussion, the Court finds there *is* an actual controversy as to the Remaining Declarations between Oakley and Mears Farms, but there is *not* an actual controversy

between Oakley and the Trustee and/or the bankruptcy estate as it concerns the Remaining Declarations.

Although the Court has found no actual controversy between Oakley and the Trustee and/or the bankruptcy estate, the Court must still consider whether it has jurisdiction as it relates to the actual controversy between Oakley and Mears Farms. In other words, the Court must determine whether it has jurisdiction over the Remaining Declarations as it concerns the actual controversy between two non-debtors, Oakley and Mears Farms.

B. Bankruptcy Court Jurisdiction

As previously stated, the case law is clear that the Declaratory Judgment Act is a procedural statute; it does not expand the Court's jurisdiction. *See, e.g.*, *Skelly Oil Co. v. Phillips Petrol. Co.*, 339 U.S. 667, 671 (1950). This Court has jurisdiction of "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §§ 1334(b) (2012), 157(a); E.D., W.D. Ark. Local R. 83.1 ¶ I. Proceedings "arising under" title 11 of the United States Code are those "'that involve a cause of action created or determined by a statutory provision of title 11.'" *GAF Holdings, LLC v. Rinaldi (In re Farmland Indus., Inc.)*, 567 F.3d 1010, 1018 (8th Cir. 2009) (quoting *Wood v. Wood (In re Wood)*, 825 F.2d 90, 96 (5th Cir. 1987)). Proceedings "arising in" a case under title 11 of the United States Code "'are those that are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the

bankruptcy.'" *Id.* (quoting *In re Wood*, 825 F.2d at 97).

Proceedings are "related to" a case under title 11 of the United States Code if they meet the "conceivable effect" test adopted by the Eighth Circuit. *Id.* at 1019. Under this test, a proceeding is "related to" a bankruptcy case "'[where] the outcome of that proceeding could *conceivably have any effect on the estate* being administered in the bankruptcy.'" *Id.* (quoting *Specialty Mills, Inc. v. Citizens State Bank*, 51 F.3d 770, 774 (8th Cir. 1995)). "'An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate.'" *Id.* (quoting *Specialty Mills*, 51 F.3d at 774). As recognized by the Trustee, the Eighth Circuit has also explained that "even a proceeding which portends a mere contingent or tangential effect on a debtor's estate meets the broad jurisdictional test" for "related to" jurisdiction. *Nat'l Union Fire Ins. Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.)*, 837 F.2d 325, 330 (8th Cir. 1988).

Proceedings that "arise under" the Bankruptcy Code or "arise in" a bankruptcy case are classified as core proceedings, and proceedings that are merely "related to" the bankruptcy case are classified as noncore proceedings. 28 U.S.C. § 157(b)–(c) (2012).

Oakley argues this declaratory judgment action constitutes a core proceeding because the declarations it seeks in subparagraphs 31(f) and (h)

of the proposed amended complaint are based on the Bankruptcy Code. It further argues the proposed amended complaint is a core proceeding because it contains an objection to the proof of claim filed by Mears Farms.[19] The Court will address these two subparagraphs first.

As stated previously, this Court lacks jurisdiction to consider the portions of subparagraph 31(f), as stated in both the original complaint and the proposed amended complaint, concerning funds being property of the estate because there is no actual controversy regarding these declarations.

In the remainder of subparagraph 31(f), Oakley seeks declarations that the Debtor was the lawful owner of the grain it purchased from Mears Farms and in turn sold to Oakley. What remains of subparagraph 31(f) is not based on the Bankruptcy Code but is instead based on state property law and an interpretation of the transactions between the parties. These are not core proceedings.

As to subparagraph 31(h), the Court first recognizes that the declarations sought in subparagraph 31(h) of the proposed amended complaint have more revisions from the original

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[19] At the hearing, Oakley informed the Court that since the filing of this declaratory judgment action, Oakley filed its own proof of claim in the Debtor's bankruptcy case. Its proof of claim is a contingent claim for attorney fees yet to be awarded in the Trustee Turnover Action (Case No. 14-15687, Claim No. 125). Oakley argued that filing this proof of claim made it a creditor of the estate with standing to object to the proof of claim filed by Mears Farms.

complaint than the other declarations. The subparagraph, reflecting both the original declarations and proposed amended declarations, reads as follows:

> (h) The [Mears Farms] Proof of Claim which has been ~~approved~~ deemed allowed by the Trustee is based on the sale of ~~such~~ grain by [Mears Farms] to the Debtor ~~without any reference to the money claimed being held by the Debtor~~ ~~acting~~ and which the Debtor in turn sold to Oakley and the funds paid by Oakley to the Debtor became property of the Debtor and the Debtor did not act as a broker, escrow agent or fiduciary ~~and without any reference to any broker's, escrow agent's or fiduciary's fees or commissions being owed to the Debtor's estate~~ with regard to such funds and the [Mears Farms] Proof of Claim represents [Mears Farms'] ~~their sole~~ election of the exclusive remedy for the money claimed to be due for the grain sales that are the subject of the Removed Complaint and the Proof of Claim.

(AP No. 19-1015, Doc. Nos. 1, 38-2).[20]

A close reading of the original and amended versions of subparagraph 31(h) reveals that the change in wording does not alter the relief sought nor does either version present a core proceeding.

[20] As provided above, the underlined portions are added by the proposed amended complaint and the struck-through portions are deleted by the proposed amended complaint.

Although inartfully drafted, Oakley seeks declarations regarding the nature of the transactions between the Debtor and Mears Farms and the Debtor and Oakley (i.e., purchase and sale versus broker or agent) and seeks a declaration that Mears Farms is barred from suing it in state court because the filing of Mears Farms' proof of claim should be declared Mears Farms' exclusive remedy. All these declarations involve state law interpretations of the transactions at issue, not interpretations of bankruptcy law. Therefore, the Court finds that the declarations sought in subparagraph 31(h) of the original complaint and the proposed amended complaint are not based on the Bankruptcy Code.

Oakley raises an additional argument related to the proof of claim declaration found in subparagraph 31(h) being a core proceeding, asserting that the declaration is an objection to Mears Farms' proof of claim. The Court disagrees with this characterization. Asking this Court to decide whether the filing of the proof of claim should be declared Mears Farms' exclusive remedy as to the transactions involved is *not* an objection to claim. It, instead, raises the issue of whether Oakley has a viable defense to the State Court Action, a state law question, not an issue to be decided under the Bankruptcy Code.

To be clear, this Court disagrees with Oakley that the proposed amended complaint in any way constitutes an objection to the proof of claim filed by Mears Farms. In fact, it appears that Oakley, instead of objecting to the proof of claim, is asking

this Court to determine that the proof of claim filed by Mears Farms represents its *exclusive* remedy.

As to the other declarations not already discussed in this section,[21] this Court finds that they are not created by or based on provisions of the Bankruptcy Code, nor are they dependent upon the existence of the bankruptcy case. Rather, they seek determinations of the same issues involved in the State Court Action. In ruling on whether to abstain and remand the State Court Action at the February 21, 2019 hearings, this Court analyzed whether it had subject matter jurisdiction of that action. The Court found that the State Court Action was based solely on state law, not the Bankruptcy Code, and that the claims existed prior to the bankruptcy case and could continue to exist outside of the bankruptcy. (AP No. 15-1009, Doc. No. 280 at 110–111). Therefore, this Court found that it did not have "arising under" or "arising in" jurisdiction of the State Court Action but, at most, had "related to" jurisdiction of the action because the outcome of that action could conceivably have an effect on the Debtor's bankruptcy estate. (AP No. 15-1009, Doc. No. 280 at 110–111).

The Trustee argues that this Court does not have "related to" jurisdiction of this declaratory judgment action, but at the same time acknowledges the possibility of some effect on the bankruptcy estate, even if small, because the outcome of the

[21] Subparagraphs 31(a) through 31(e) and 31(g). As previously stated, this Court lacks jurisdiction to consider the declarations sought in subparagraph 31(i) because there is no actual controversy regarding those declarations.

dispute could possibly affect the amounts of claims in this bankruptcy case. In *National Union Fire Insurance Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.)*, 837 F.2d 325 (8th Cir. 1988), the Eighth Circuit evaluated a party's request for declaratory relief regarding the scope of certain insurance policies. The Eighth Circuit found a proceeding to determine the insurer's rights and obligations under the policies could conceivably have an effect on the estate, and so it was "related to" the bankruptcy case even though "it remain[ed] to be seen whether, and to what extent, National Union's action [would] affect [the debtor's] estate." *In re Titan Energy*, 837 F.2d at 330. In *Titan Energy*, the court recognized that the action was brought by a non-debtor against another non-debtor and would only have an effect on the bankruptcy estate if certain contingencies occurred, but nevertheless found that the bankruptcy court had "related to" jurisdiction. *Id*. at 330, 332.

Here, the Trustee recognized the language in *Titan Energy* that "related to" jurisdiction exists even if the proceeding "portends a mere contingent or tangential effect on a debtor's estate." (AP No. 19-1015, Doc. No. 17 ¶ 14).[22] For the same reasons

[22] While acknowledging this standard, the Trustee also argued that the effect of the dispute between Mears Farms and Oakley is "simply too attenuated and insufficiently significant to confer jurisdiction on this Court," citing the cases of *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804 (1986); *Fabrique, Inc. v. Corman*, 813 F.2d 725 (5th Cir. 1987); *Jones v. Mayhone (In re Mayhone),* 165 B.R. 264 (Bankr. W.D. Ark. 1994); and *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910 F.2d 784 (11th Cir. 1990), in support of this proposition. (AP

stated in the Court's ruling on abstention and remand of the State Court Action, the Court finds it has "related to" jurisdiction over the Remaining Declarations in this declaratory judgment action because although contingent and tangential, the outcome could conceivably have an effect on, or could peripherally impact the administration of the bankruptcy estate.

Even though the Court has found an actual case and controversy and "related to" jurisdiction as to the Remaining Declarations, its analysis does not end here.

C. Court's Discretion

In his Motion to Dismiss, the Trustee requests, in the alternative to dismissal for lack of subject matter jurisdiction, that this Court exercise

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No. 19-1015, Doc. No. 17 ¶ 14). This Court simply disagrees. The Court finds the cases cited by the Trustee distinguishable. The first two cases concerned federal question jurisdiction under 28 U.S.C. § 1331 and the "substantiality" element of such jurisdiction. *Merrell Dow*, 478 U.S. at 805, 814; *Fabrique, Inc.*, 813 F.2d at 725– 26. This case, however, involves bankruptcy "related to" jurisdiction under 28 U.S.C. § 1334. The next two cases cited by the Trustee involved situations where the outcome was found to have no effect on the administration of the estate and therefore "related to" jurisdiction was lacking. *In re Mayhone*, 165 B.R. at 266 (concerning postpetition actions that would have no impact on the "handling and administration of the bankruptcy estate" or the "allocation of assets"); *In re Lemco Gypsum, Inc.*, 910 F.2d at 789 (concerning a dispute between two non-debtors following a final sale of property from the chapter 7 estate that would have no effect on the "bankrupt's estate or the allocation of assets among creditors").

its discretion to abstain from hearing this declaratory judgment action. Even where a court has jurisdiction of an action brought under the Declaratory Judgment Act, it may refrain from exercising that jurisdiction. This is an exception to the general rule that a court "must exercise its jurisdiction over a claim unless there are 'exceptional circumstances' for not doing so." *Scottsdale Ins. Co. v. Detco Indus., Inc.*, 426 F.3d 994, 996 (8th Cir. 2005) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16–19 (1983) and *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976)).

Where there is a related state court action that "sounds in state law and bears a limited connection to debtor's bankruptcy case, abstention is particularly compelling." *Nat'l Union Fire Ins. Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.)*, 837 F.2d 325, 332 (8th Cir. 1988). In addition, abstention is proper if the resolution of the claims "may have only a peripheral impact on [the debtor's] estate" or have an effect on the bankruptcy estate only if certain contingencies occur. *Id.*

Under the standards set forth by the Supreme Court in *Brillhart v. Excess Insurance Co. of America*, 316 U.S. 491 (1942) and *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), it is clear that courts "possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites." *Wilton*, 515 U.S. at 282. As explained by the Supreme Court in *Wilton*:

> By the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court's quiver; it created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants. Consistent with the nonobligatory nature of the remedy, a district court is authorized, in the sound exercise of its discretion, to stay or to dismiss an action seeking a declaratory judgment before trial or after all arguments have drawn to a close.

Id. at 288.

As explained by the Eighth Circuit, "[t]he full scope of a . . . court's discretion to grant a stay or abstain from exercising jurisdiction under the Declaratory Judgment Act differs depending upon whether a 'parallel' state court action involving questions of state law is pending." *Lexington Ins. Co. v. Integrity Land Title Co.*, 721 F.3d 958, 967 (8th Cir. 2013) (citing *Scottsdale Ins. Co.*, 426 F.3d at 999). "Suits are parallel if 'substantially the same parties litigate substantially the same issues in different forums.'" *Scottsdale Ins. Co.*, 426 F.3d at 997 (quoting *New Beckley Mining Corp. v. Int'l Union, United Mine Workers*, 946 F.2d 1072, 1073 (4th Cir. 1991)). While the definition is "imprecise" the Eighth Circuit has explained:

> As a functional matter . . . state proceedings are parallel if they involve the same parties or if the same parties may be subject to the state action and if the state action is likely to fully and "satisfactorily" resolve the

> dispute or uncertainty at the heart of the federal declaratory judgment action.

Lexington Ins. Co., 721 F.3d at 968 (quoting *Brillhart*, 316 U.S. at 495); *see also Royal Indem. Co. v. Apex Oil Co.*, 511 F.3d 788, 796 (8th Cir. 2008) (federal court has discretion to abstain when state court proceeding "present[s] 'the same issues, not governed by federal law, between the same parties,' and the [federal] court . . . evaluate[s] 'whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process in that proceeding, etc.'" (quoting *Brillhart*, 316 U.S. at 495)).

When a parallel proceeding is involved, "a federal court may abstain from the proceeding because '[o]rdinarily it would be uneconomical as well as vexatious for a federal court to proceed in [the] declaratory judgment suit.'" *Royal Indem. Co.*, 511 F.3d at 793 (quoting *Brillhart*, 316 U.S. at 495). The federal court enjoys "broad discretion" in determining whether to exercise its jurisdiction when there is a parallel state court action involved. *Lexington Ins. Co.,* 721 F.3d at 967 (citing *Scottsdale Ins. Co.*, 426 F.3d at 997). "This broad discretion is to be guided by considerations of judicial economy, by 'considerations of practicality and wise judicial administration,' and with attention to avoiding '[g]ratuitous interference' with state proceedings." *Id*. at 967–68 (internal citations omitted).

Where there is not a parallel action pending in state court, the federal court still enjoys discretion

to abstain from hearing the declaratory judgment action, but its discretion is "less broad" and is governed by a six-factor test adopted by the Eighth Circuit in *Scottsdale Insurance Co. v. Detco Industries, Inc.*, 426 F.3d 994 (8th Cir. 2005). Under this test, the court should consider:

> (1) whether the declaratory judgment sought "will serve a useful purpose in clarifying and settling the legal relations in issue";
>
> (2) whether the declaratory judgment "will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the [federal] proceeding";
>
> (3) "the strength of the state's interest in having the issues raised in the federal declaratory judgment action decided in the state courts";
>
> (4) "whether the issues raised in the federal action can more efficiently be resolved in the court in which the state action is pending";
>
> (5) "whether permitting the federal action to go forward would result in unnecessary 'entanglement' between the federal and state court systems, because of the presence of 'overlapping issues of fact or law'"; and
>
> (6) "whether the declaratory judgment action is being used merely as a device for 'procedural fencing'—that is, 'to provide

> another forum in a race for res judicata' or 'to achiev[e] a federal hearing in a case otherwise not removable.'"

Scottsdale Ins. Co., 426 F.3d at 998 (quoting *Aetna Cas. & Sur. Co. v. Ind-Com Elec. Co.*, 139 F.3d 419, 422 (4th Cir. 1998)).

While courts enjoy discretion, the "discretion must be reasonably exercised and cannot be made 'as a matter of whim or personal disinclination.'" *Diego, Inc. v. Chang (In re IPDN Corp.)*, 352 B.R. 870, 878 (Bankr. E.D. Mo. 2006) (quoting *Pub. Affairs Assocs., Inc. v. Rickover*, 369 U.S. 111, 112 (1962)).

In considering the declaratory judgment action before this Court in relation to the State Court Action, it is clear this Court should abstain from hearing the declaratory judgment action in favor of the state court forum for a number of reasons.

First, although this Court has found it has "related to" jurisdiction of the Remaining Declarations, that is only because of the broad scope of "related to" jurisdiction. The effect of this declaratory judgment action on the administration of the Debtor's bankruptcy estate, while conceivable, is contingent and tangential. Although this Court believes there is a sufficient relationship between the two actions to give this Court "related to" jurisdiction, clearly the declaratory judgment action is on the outer bounds of this Court's jurisdiction and this Court believes it will have a minimal, if any,

impact on the administration of the Debtor's estate. In addition, this minimal impact is only possible if certain contingencies occur. Therefore, this declaratory judgment action is precisely the type of case in which this Court should exercise its discretion to abstain in favor of another forum. *See, In re Titan Energy*, 837 F.2d at 332–33.

Abstention is also warranted because the declaratory judgment action and the State Court Actions are "parallel" actions. Although the parties to this declaratory judgment action are slightly different than the parties to the State Court Action,[23] case law only requires the parties to be *substantially* the same. *Atain Specialty Ins. Co. v. Frank*, No. 4:12-CV-01290-NKL, 2013 WL 12145863, at *4 (W.D. Mo. March 25, 2013) ("[T]wo cases can involve substantially the same parties 'even if the named parties [are] not identical.'" (quoting *W. Heritage Ins. Co. v. Sunset Sec., Inc.*, 63 F. App'x 965, 967 (8th Cir. 2003))); *see also Scottsdale Ins. Co.*, 426 F.3d at 997. With the exception of the Trustee, all the parties to this declaratory judgment action (or their entities)[24] are

[23] The State Court Action was filed by Travis Mears Farms, Inc. and Scott Mears Farms, Inc., against Oakley Grain, Inc., Bruce Oakley, Inc., Gavilon Grain, LLC, Jason Coleman, Neauman Coleman, and John Does 1 through 10. (AP No. 19-1015, Doc. No. 1-4). This declaratory judgment action was filed by Oakley Grain, Inc. and Bruce Oakley, Inc. against Travis Mears, Travis Mears Farms, Inc., Scott Mears, Scott Mears Farms, Inc. and M. Randy Rice, Trustee (AP 19-1015, Doc. No. 1).

[24] Travis Mears and Scott Mears are each named individually as defendants to this declaratory judgment action, along with

involved in the State Court Action. As previously stated, however, there is not an actual controversy between the Trustee and/or the bankruptcy estate and Oakley as it concerns the Remaining Declarations. Further, it should be noted that one of the provisions of the compromise settlement between the Trustee and Mears Farms was that Mears Farms "waives and releases any and all claims it may hold or assert against the [T]rustee [and] the [bankruptcy] estate. . . ." (AP No. 16-1123, Doc. No. 31). Therefore, this Court does not believe that the addition of the Trustee to the declaratory judgment action brought by Oakley precludes a finding of parallel cases.

In addition to the substantial similarity of the parties, the issues in the two actions are also substantially the same. As already stated herein, the Remaining Declarations are basically the mirror image of the allegations against Oakley in the State Court Action. In fact, the Remaining Declarations can be fairly characterized as Oakley's *defense* to the State Court Action. Indeed, as stated by this Court in its February 21, 2019 oral ruling, granting Mears Farms' motion to abstain and remand, the State Court Action is based on state law, not federal law. (AP No. 15-1009, Doc. No. 280 at 106-07). If this Court were to rule on the Remaining Declarations, it would be required to consider and evaluate the same state laws. Finally, this Court finds the State Court Action is "likely to . . . resolve the dispute or uncertainty at the heart of the federal declaratory

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Travis Mears Farms, Inc. and Scott Mears Farms, Inc. Only the two corporations are plaintiffs in the State Court Action.

judgment action." *Lexington Ins. Co.*, 721 F.3d at 968.

For the foregoing reasons, this Court finds that the State Court Action is a parallel action to this declaratory judgment action. The two actions involve substantially the same parties, the same issues, and the same arguments. The Court finds that judicial economy, practicality, and wise judicial administration all weigh in favor of this Court exercising its discretion under the Declaratory Judgment Act to abstain from hearing this case.

Even if the two actions were not "parallel," this Court finds that the result would be the same. Under the six-factor test in *Scottsdale*, although the Court's discretion is less broad, application of the factors weighs in favor of abstention.

As to the first and second factors, the declaratory judgment action will not serve a useful purpose in clarifying and settling the legal relations, or in affording relief from the uncertainty giving rise to this action. Rather, the Court finds that this action would further complicate the matters between the parties. Neither the Debtor nor the Trustee are parties to the State Court Action; however, Oakley has named the Trustee in the declaratory judgment action to have this Court make declarations on issues subject to the State Court Action. This unnecessarily entangles the Trustee and the bankruptcy estate into the dispute between Oakley and Mears Farms.

As to the third, fourth, and fifth factors, in granting Mears Farms' motion to abstain and remand, the Court has already found that the State Court Action is based on state law; that, at most, the State Court Action was "related to" the bankruptcy but did not arise in or under the Bankruptcy Code; that the State Court Action could not have been brought before this Court absent the "related to" jurisdiction of 28 U.S.C. § 1334; and that the state court was the better forum to adjudicate the state law issues raised in the State Court Action. (AP No. 15-1009, Doc. No. 280 at 106–115). In so ruling, the Court has already found that the state court has an interest in hearing the issues involved in the State Court Action. This Court abstained from hearing the State Court Action and remanded the action to the Jackson County Circuit Court. For this Court to now decide the very issues that are the subject of that remanded action would undoubtedly result in unnecessary entanglement between the federal and state forums and be a waste of judicial economy.

Finally, and importantly, the sixth element also supports this Court's decision to abstain. The Court is to evaluate "whether the declaratory judgment action is being used merely as a device for 'procedural fencing'—that is, 'to provide another forum in a race for res judicata' or 'to achiev[e] a federal hearing in a case otherwise not removable.'" *Scottsdale Ins. Co.*, 426 F.3d at 998 (quoting *Aetna Cas. & Sur. Co.*, 139 F.3d at 422). The Declaratory Judgment Act "is not to be used either for tactical advantage by litigants or to open a new portal of entry to federal court for suits that are essentially defensive or reactive to state actions." *Int'l Ass'n of*

Entrepreneurs of Am. v. Angoff, 58 F.3d 1266, 1270 (8th Cir. 1995) (citing, among other cases, *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 18 n.20).

In *Angoff*, the Eighth Circuit upheld the lower court's refusal to hear a declaratory judgment action that was filed by IAEA "only after it had been sued in state court and its removal petition had been denied as untimely." *Id*. The Eighth Circuit stated, "There is no need to allow state court defendants like IAEA to circumvent the removal statute's deadline by using the Declaratory Judgment Act as a convenient and temporally unlimited back door into federal court." *Id*. (citing *Cont'l Airlines, Inc. v. Goodyear Tire & Rubber Co.*, 819 F.2d 1519, 1524 (9th Cir. 1987)).

At the February 21, 2019 hearings, this Court recognized the many litigation tactics Oakley has used in this bankruptcy proceeding and even stated it appeared Oakley could have been engaged in forum shopping. (AP No. 15-1009, Doc. No. 280 at 115–16). The history of Oakley's actions in connection with the Debtor's bankruptcy proceeding includes the following:

- First, Oakley initiated the Interpleader Action in federal district court;

- After the Debtor filed for bankruptcy, Oakley opposed referral of the Interpleader Action to this Court but later withdrew its opposition;

- After being sued in state court by Mears Farms, Oakley attempted to remove the State Court Action *into the pending Interpleader Action* even though Oakley had previously been dismissed from the Interpleader Action;

- Although it attempted to remove the State Court Action to this Court, Oakley stated in its amended notice of removal that it did not consent to this Court entering final orders or judgment in the case;

- Almost immediately after attempting to remove the State Court Action into the pending Interpleader Action, Oakley filed a motion for the District Court to withdraw the reference of the entire adversary proceeding, which included the Interpleader Action and the removed State Court Action;

- While the motion to withdraw the reference was pending, Oakley filed a response in opposition to abstention and remand of the State Court Action;

- After the District Court denied Oakley's motion to withdraw the reference, Oakley appealed the District Court's decision, but the appeal was dismissed on motion of the Trustee;

- After being unsuccessful in its attempts to have the District Court hear the State

Court Action, and despite stating that it did not consent to this Court entering final orders or judgment in the case, Oakley continued to oppose abstention and remand of the State Court Action;

- In addition, after its motion to withdraw the reference was denied, Oakley filed the Motion to Enforce Stay and supplemental motion to enforce the stay in the Interpleader Action, arguing the State Court Action violated the automatic stay and was void ab initio;

- Despite arguing that it did not consent to this Court entering final orders or judgment in the State Court Action, Oakley filed this declaratory judgment action, asking this Court to make declarations that are basically the mirror images of the allegations against it in the State Court Action;

- After this Court ruled against Oakley at the February 21, 2019 hearings, remanding the State Court Action to Jackson County Circuit Court, and also finding that the State Court Action did not violate the automatic stay, Oakley asked this Court to reconsider its rulings on the Motion to Enforce Stay and supplemental motion based primarily on the Trustee's answer to this declaratory judgment action agreeing with Oakley as to many of the underlying facts (and this Court has

denied Oakley's motion in an order entered simultaneously with this order); and

- Finally, in this declaratory judgment action, Oakley has not only opposed dismissal, but after receiving the Trustee's Motion to Dismiss, moved for summary judgment, filed its own proof of claim based on a contingent debt for attorney fees that are yet to be incurred in another case, and then moved to amend its complaint.

To say that Oakley has engaged in procedural litigation tactics is an understatement. Since being named as a defendant to the State Court Action—that was filed over two years ago—Oakley has filed numerous pleadings in this Court, the United States District Court for the Eastern District of Arkansas, and the Eighth Circuit Court of Appeals. Oakley removed the State Court Action to this Court (improperly into the Interpleader Action) and then filed a motion to have the District Court withdraw the reference. After losing on the motion to withdraw the reference, it then opposed Mears Farms' motion for abstention and remand. While the motion for abstention and remand was pending, Oakley filed this declaratory judgment action seeking declarations directly related to the allegations brought in the State Court Action. It is clear to this Court that Oakley's sole purpose in filing and pursuing this declaratory judgment action is to achieve a federal hearing on state law issues pending in the State Court Action, an action this

Court has abstained from hearing and remanded to state court.

Based on the foregoing discussion, the Court finds that the declaratory judgment action would have little or no effect on the administration of the bankruptcy estate; the nexus between the declaratory judgment action and the bankruptcy estate is very attenuated; the pending State Court Action is a parallel action to the declaratory judgment action; the issues in the declaratory judgment action require this Court to consider and rule on the same state law issues the state court will consider in the State Court Action; and ruling on the declaratory judgment action would have this Court unnecessarily interfere with the State Court Action. For these reasons, the Court exercises its discretion to abstain from hearing this declaratory judgment action.

D. Motion for Leave to Amend

Before discussing the Trustee's alternative request for dismissal, the Court will address Oakley's Motion for Leave to Amend. Pursuant to Rule 15 of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7015 of the Federal Rules of Bankruptcy Procedure, "[t]he court should freely give leave [to amend] when justice so requires." FED. R. CIV. P. 15(a)(2). While leave to amend should be given "freely," parties "do not have an absolute or automatic right to amend." *United States ex rel. Lee v. Fairview Health Sys.*, 413 F.3d 748, 749 (8th Cir. 2005) (citing *Meehan v. United Consumers Club*

Franchising Corp., 312 F.3d 909, 913 (8th Cir. 2002)). This Court need not grant leave to amend when the amendment would be futile. *Id.* ("Futility is a valid basis for denying leave to amend." (citing *Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc.*, 406 F.3d 1052, 1065 (8th Cir. 2005))).

The Court first observes that Oakley's stated purpose in seeking leave to amend its complaint is "to expand upon and better explain [its] basis for subject matter jurisdiction." (AP No. 19-1015, Doc. No. 38 ¶ 5). Oakley's purpose, however, is not met by the proposed amended complaint. As previously stated, the declarations Oakley seeks in the proposed amended complaint are basically the same as the declarations it seeks in its original complaint. Despite Oakley's contentions to the contrary, the proposed amendments add nothing of substance to this action. Neither the original complaint nor proposed amended complaint involves a core proceeding, nor does the proposed amended complaint include an objection to claim under Section 502 of the Bankruptcy Code.

Further, in ruling on the issues before the Court, this Court *has* considered both the original complaint and the proposed amendments. Even considering the allegations and relief sought in the proposed amended complaint, this Court has concluded that it should not hear this action because: (1) there is no actual controversy regarding a portion of the declarations in subparagraph 31(f) and all of the declarations in subparagraph 31(i); (2) this Court has only "related to" jurisdiction over the

Remaining Declarations; and (3) for the myriad of reasons given above, abstention is warranted.

Accordingly, Oakley's Motion for Leave to Amend is denied as futile.

E. Motion to Dismiss

Next, the Court will consider the Trustee's and Mears Farms' alternative request for this Court to refrain from exercising its jurisdiction and dismiss this action. This Court has discretion when deciding whether "to hear, stay, or dismiss declaratory judgment actions brought before it." *Creative Compounds, LLC v. Sabinsa Corp.*, No. 1:04CV114CDP, 2004 WL 2601203, at *1 (E.D. Mo. Nov. 9, 2004). The Trustee argues that this declaratory judgment action fails to fulfill the purposes of declaratory judgment actions. This Court agrees and grants the Trustee's and Mears Farms' request for dismissal for the reasons stated below.

First, this Court has already found that no controversy exists, and this Court lacks jurisdiction to hear, the property of the estate declarations sought by Oakley in subparagraph 31(f) and the declarations sought by Oakley in subparagraph 31(i). Because this Court lacks jurisdiction over these issues, dismissal is warranted as to these declarations.

As to the Remaining Declarations, this Court has already found that they are the mirror images of, or Oakley's defenses to, the allegations against it

in the State Court Action. This Court recognizes that courts often prefer to stay federal declaratory judgment actions when there are parallel state court proceedings, especially where the issues may return to the federal action. *See, e.g., Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 n.2 (1995). The declaratory judgment action before the Court, however, is not a case where a return of any of the issues to federal court is likely. *Cf. Int'l Ass'n of Entrepreneurs of Am. v. Angoff*, 58 F.3d 1266, 1271 (8th Cir. 1995).[25] Nor is this a case where the Court can conceive of an actual controversy remaining between the parties after the State Court Action is resolved. *Cf. Royal Indem. Co. v. Apex Oil Co.*, 511 F.3d 788, 797 (8th Cir. 2008). Rather, this Court finds that resolution of the State Court Action should resolve the issues between the parties, and "will honor the choice of forum of the real plaintiff in this dispute," Mears Farms. *Creative Compounds*, 2004 WL 2601203, at *3.

In addition, the Court has also found that Oakley's actions do not serve the purpose of the Declaratory Judgment Act, further supporting dismissal of this case. *See, Creative Compounds*, 2004 WL 2601203, at *2 (granting motion to dismiss partly because the action would not further the purpose of the Declaratory Judgment Act to provide a remedy to minimize damages and give an early adjudication to a party threatened with suit).

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[25] As previously noted, in its settlement of the Mears Preference Action, Mears Farms waived and released all claims against the Trustee and the Bankruptcy estate.

For all of these reasons, the Court finds that dismissal is warranted.

F. Attorney Fees

The final issue before the Court is the Trustee's request for sanctions against Oakley. In his Motion to Dismiss, the Trustee argues that Oakley's actions are an "attempt at re-litigating issues that have previously been decided against it." (AP No. 19-1015, Doc. No. 17 ¶ 18). The Trustee requests his attorney's fees and costs incurred in bringing the Motion to Dismiss. In support of his request, the Trustee cites the cases of *Brown v. Mitchell (In re Arkansas Communities, Inc.)*, 827 F.2d 1219 (8th Cir. 1987) and *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991).

This Court understands the Trustee's frustration in responding to and defending this declaratory judgment action as well as the various pleadings filed by Oakley in the Interpleader Action. As stated earlier, this Court has found that two of the declarations sought by Oakley do in fact involve issues previously decided by this Court (i.e., the property of the estate issues in subparagraph 31(f) and the issues regarding enforcement of the automatic stay in subparagraph 31(i)). However, the Remaining Declarations involve an actual controversy, at least between Oakley and Mears Farms. In addition, Oakley's actions, while involving multiple procedural maneuvers, do not rise to the level of being sanctionable. Unlike the cases cited by the Trustee, the Court does not find that Oakley's conduct warrants a finding of bad faith or fraud on

the Court. Accordingly, the Court denies the Trustee's request for sanctions against Oakley in the form of attorney's fees and costs.

IV. Conclusion

Dismissal is appropriate as to the declarations sought in subparagraph 31(f) regarding property of the estate and the declarations sought in subparagraph 31(i), as these issues have already been decided by this Court, and there is no actual controversy regarding these issues.

Dismissal of the Remaining Declarations is also appropriate as this Court has found it has only "related to" jurisdiction over the action, abstention in favor of the State Court Action is proper for the many reasons given, and the unique facts of this case support dismissal.

The Trustee's request for sanctions against Oakley in the form of attorney's fees and costs is denied as not warranted.

Accordingly, it is hereby ORDERED that Oakley's Motion for Leave to Amend is DENIED as futile, the Trustee's Motion to Dismiss this declaratory judgment action is GRANTED, and the Trustee's request for sanctions is DENIED.

IT IS SO ORDERED.

/s/ Phyllis M. Jones
Phyllis M. Jones
United States Bankruptcy Judge
Dated: 10/11/2019

cc: Mr. Hamilton Moses Mitchell
Mr. M. Randy Rice, Trustee
Mr. Barrett S. Moore
Mr. Stuart W. Hankins
Mr. Allen Vaughan Hankins
Mr. Fletcher C. Lewis

APPENDIX F

UNITED STATES COURT OF APPEAL FOR THE EIGHTH CIRCUIT

No: 20-3207

In re: Turner Grain Merchandising, Inc.

Oakley Grain, Inc. and Bruce Oakley, Inc.

Appellants

v.

M. Randy Rice, et al.

Appellees

Agri-Petroleum Sales LLC, et al.

Appeal from U.S. District court for the Eastern District of Arkansas – Delta (2:19-cv-00141-BSM)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 23, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eight Circuit.

/s/ Michael E. Gans

APPENDIX G

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

OAKLEY GRAIN, INC., et al., PLAINTIFFS

vs. No. 4:14-CV 483 JM

THOMAS JAMES VILSACK, SECRETARY OF AGRICULTURE, et al., DEFENDANTS

ORDER

Pending before the Court is Plaintiffs Oakley Grain, Inc. and Bruce Oakley, Inc.'s Motion for Injunctive Relief Pursuant to 28 U.S.C. § 2361 (Document 81) and based upon the motion and arguments of counsel, the Motion for Injunctive Relief Pursuant to 28 U.S.C. § 2361 is GRANTED. It is hereby ORDERED that all Defendants, both named and those not yet specifically identified but pled generically as "John Doe and Jane Doe" are enjoined from instituting or prosecuting any action against Plaintiffs in any state or United States court arising out of, relating to or otherwise affecting the funds at issue in this case. It is further ORDERED that Bruce Oakley, Inc. and Oakley Grain, Inc. are dismissed from this case.

IT IS SO ORDERED this 21st day of January, 2015.

/s/ James M. Moody, Jr.
United States District Court Judge

Entered on Docket: 01/28/2015

APPENDIX H

IN THE CIRCUIT COURT OF JACKSON COUNTY, ARKANSAS
CIVIL DIVISION

Travis Mears Farms, Inc. and Scott Mears Farms, Inc. Plaintiffs; v. Oakley Grain, Inc. Bruce Oakley, Inc., Gavilon Grain, LLC, Jason Coleman, Neauman Coleman, and John Does 1 through 10 Defendants.	)	Case No. CV-2017-93

COMPLAINT

Comes Travis Mears Farms, Inc. (TMF) and Scott Mears Farms, Inc. (SMF), Plaintiffs herein, and for their claims against Oakley Grain, Inc., (Oakley) Bruce Oakley, Inc. (B. Oakley), Gavilon Grain, LLC, (Gavilon) Jason Coleman (Jason), Neauman Coleman (Neauman), and John Does 1 through 10, Defendants herein, state:

1. TMF and SMF are Arkansas corporations, in good standing. At all times relevant herein the principal place of business of each is located in Jackson County, Arkansas.

2. This Court has personal jurisdiction of all Defendants, and venue is conferred by Ark. Code Ann. § 16-60-101(a)(3)(B).

3. Oakley is an Arkansas corporation with its principal place of business in Pulaski County, Arkansas.

4. B. Oakley is an Arkansas corporation with its principal place of business in Pulaski County, Arkansas.

5. Gavilon is a limited liability company with its principal place of business in Omaha, Nebraska. Gavilon is and was at all times relevant herein qualified to do business in the state of Arkansas, and is subject to the service of process within the state of Arkansas.

6. Jason is, or was at the time of the events described herein, a resident of Monroe County, Arkansas.

7. Neauman is, or was at the time of the events described herein, a resident of Monroe County, Arkansas.

8. Turner Grain, Inc. and Turner Grain are pseudonyms for a partnership, joint venture, joint enterprise the partners, or members of which were, at the times relevant herein, Turner Grain Merchandising, Inc., (TGM), Jason, Neauman, Dale Bartlett and, their many "alter egos" as identified in paragraph 8 below. This partnership, joint venture, or joint enterprise is hereinafter referred to herein as "Turner."

9. The term "alter egos" as used herein includes, but is not limited to, the following limited

liability companies and corporations: Ivory Rice, LLC., Agribusiness Properties, LLC., Agri-Petroleum Sales, LLC., Brinkley Truck Brokerage, LLC., Turner North, LLC., Neauman Coleman & Co. LLC., Turner Commodities, Inc., Rice America, Inc., Rice Arkansas, Inc., and TMG. Jason, Neauman and Dale Bartlett, or one or more of them, were members of each of the aforesaid limited liability companies and shareholders/directors of the above named corporations. Even though their alter egos were separate legal entities, they in fact did not have a separate existence, but were rather alter egos of the members and shareholders.

10. The alter egos and Turner consistently comingled funds and contracts among each other and often the members/shareholders and would divert funds owned by, or in custody of, Turner, to one or more of the alter egos. As a consequence of this comingling of monies, the accounting records of Turner did not accurately reflect its status. The alter egos were used by the members/shareholders to defraud creditors, or potential creditors of Turner, by kiting checks with Turner so as to conceal the precarious financial position of Turner. Through the comingling of funds and the kiting of checks, the separate legal status of the alter egos were being abused by defrauding creditors or potential creditors, of the nature of extent of Turner's finances and debts. To prevent the separate legal existence of the alter egos; or any one or more of them from being used to aid and abet the defrauding and deceiving of those dealing with Turner, their corporate veils should be pierced and their separate legal existence should be disregarded by the Court.

11. Plaintiffs TMF is, and was at all times relevant herein, engaged in row crop farming operations in Jackson County, Arkansas.

12. Plaintiff SMF is, and was at all times relevant herein, engaged in row crop farming operations in Jackson County, Arkansas.

13. Although Plaintiffs' respective farming operations are separately owned by each, Plaintiffs have, at all times relevant herein, sold their crops jointly under the pseudonym Mears Brothers Farms, (MBF).

14. At all times relevant herein, Oakley and B. Oakley were regularly engaged in the business of buying and selling various grains including, but not limited to corn and wheat.

15. At all times relevant herein, Gavilon was regularly engaged in the business of buying and selling various grains including corn.

16. Oakley, B. Oakley and Gavilon each had customers who required, in their business operations, a constant flow of substantial quantities of agricultural grains. Oakley, B. Oakley and Gavilon were obligated, either by contract or course of dealing, to acquire sufficient grains to satisfy the requirements of their customers. In order to acquire grains necessary for their business operations, Oakley, B. Oakley and Gavilon entered into contracts or agreements with Turner, pursuant to which Turner agreed to, and did, solicit offers from farmers, producers or dealers for the sale of their grains. These sales would be consummated by Turner arranging transportation from the of site of

storage to Oakley, B. Oakley or Gavilon, as their respective needs required. Upon completion of the sale between the farmer, producer or other owner of the grain to Oakley, B. Oakley and Gavilon, the entity purchasing the grain would transmit the purchase to Turner with directions or understandings that Turner would transmit to each farmer or owner the proceeds from the sale of its grain.

17. Turner's soliciting of offers from farmers or owners to sell the grain, and arranging transportation from the farmer's storage facility to the purchasers to Oakley, B. Oakley or Gavilon, were acts done at the request of, and solely as agent for, Oakley, B. Oakley, or Gavilon. Turner was also engaged as an agent by Oakley, B. Oakley, and Gavilon respectively, for the purpose of computing the amount due the sellers of the grain and for remitting the purchase price to the sellers. In all transactions described herein, Turner was acting within the scope of its agency for Oakley, B. Oakley or Gavilon.

18. On or about June 26, 2014, Turner contacted Plaintiffs about potential purchase of certain grains that Plaintiffs had in storage. At the time, Plaintiffs had in storage approximately 200,000 bushels of No. 2 grade yellow corn, of which 52.4% was owned by TMF and 47.6% was owned by SMF.

19. On June 26, 2014, Plaintiffs executed a written offer to sell, through Turner, and to Turners principals, 200,000 bushels of No. 2 grade yellow corn at the price of $6.00 per bushel F.O.B.

Plaintiffs' storage facility near Newport, Arkansas. Attached hereto, marked Exhibit "A", and incorporated herein by reference thereto, is a true copy of this agreement.

20. In July, 2014, Plaintiffs extended an oral offer to sell to Turners principals through Turner, approximately 20,298 bushels of wheat at $5.00 per bushel, F.O.B. Plaintiffs' storage facility near Newport, Arkansas.

21. Pursuant to their agreement, (Exhibit "A"), between July 3, 2014 and July 9, 2014, Plaintiffs sold to Oakley and B. Oakley, or one of them, approximately 71,929 bushels of No. 2 grade yellow corn, purchase price of which was $431,574, which purchase price remains unpaid. All of this, or 52.4% (37,691 bushels) was sold by TMF and 47.6% (34,238 bushels) was sold by SMF. Of the total unpaid sales price, as aforesaid, TMF is owed by Oakley and B. Oakley, or one of them, $226,146 and SMF is owed $205,428.

22. Between July 9, 2014 and August 13, 2014, Plaintiffs sold, pursuant to their agreement (Exhibit A), 62,829 bushels of No. 2 grade yellow corn to Gavilon. Of this, TMF sold 32,922 bushels the purchase price of which was $197,532, and SMF sold to Gavilon 29,906 bushels the purchase price of which was $179,436. The aforesaid sums owed to TMF and SMF, respectively, by Gavilon, remain unpaid, due and owing.

23. Between July 24, 2014 and August 13, 2014, Plaintiffs sold to Oakley and B. Oakley, or one of them, approximately 20,288 bushel of wheat at the purchase price of $5.00 per bushel. The purchase

price of this wheat sold to Oakley and B. Oakley, or one of them was $101,490. The wheat sold to Oakley and B. Oakley, or one of them, was owned by TMF and SMF equally. The purchase price for this wheat remains unpaid and therefore there is due and owning from Oakley, B. Oakley, or one of them, to TMF the sum of $50,745.00 and to SMF the sum of $50,746.00.

24. All of the aforesaid sales by Plaintiffs to Oakley, B. Oakley, (or one of them) and Gavilon, were made through Turner acting as agent and within the scope of its agency, for Oakley, B. Oakley, and Gavilon respectively.

25. The total amounts owed to each Plaintiff by Oakley, B. Oakley and Gavilon, by reason of the aforesaid sales of corn and wheat, are as follows:

A. By Oakley and B. Oakley, or one of them to:

(i)	TMF	$ 276,991
(ii)	SMF	$ 256,173

B. By Gavilon to:

(i)	TMF	$197,532
(ii)	SMF	$179,436

COUNT I.

26. Plaintiffs incorporate herein as a Part of Count I, by reference thereto, the foregoing allegations of paragraph 1-25.

27. All corn and wheat, shipped to Oakley and B. Oakley, or one of them, and Gavilon as

described herein, was received, accepted, retained and sold by them, in the course of their respective businesses, to customers to whom they were contractually obligated or obtain and supply grain. By accepting, retaining and exercising dominion and control over the grains shipped to them by Plaintiffs, factually and as a matter of law impliedly promised to pay the purchase price for these goods.

28. Oakley, B. Oakley, or one of them, and Gavilon, are each indebted to TMF and SMF, for goods had and received in the amount of the sums stated is paragraph 25, above.

29. In addition, to their respective implied in law promises to pay, Oakley, B. Oakley and Gavilon, by the execution of Exhibit "A", expressly promised to pay the Plaintiffs the purchase price per bushel reflected in Exhibit "A" and the oral agreement with Turner for goods sold and shipped to them as hereinabove described.

30. The failure of Oakley, B. Oakley and Gavilon to pay to Plaintiffs the purchase price of those grains shipped to, accepted and retained by them, constitutes breach of the their implied and expressed promises to pay, which breach proximately caused damage to the Plaintiffs in the amounts stated above.

COUNT II.

31. Plaintiffs incorporate herein, by reference thereto as a part of Count II the foregoing allegations of paragraphs 1-25. Count II is stated in the alternative to Count I.

32. Oakley, B. Oakley, and Gavilon accepted, retained, and had the use and benefit of grains sold and shipped to them by Plaintiffs as described herein. If Oakley, B. Oakley and Gavilon are permitted to retain and enjoy benefits of these goods without paying for purchase price therefore, they will each be unjustly enriched to the detriment of Plaintiffs.

33. In order to prevent unjust enrichment to Plaintiffs detriment, Oakley, B. Oakley and Gavilon should be ordered to pay to Plaintiffs amounts due and owning as are described in paragraph 25, above.

COUNT III.

34. Plaintiffs incorporate herein, by reference thereto as a part of Count III, the foregoing allegations of paragraphs 1-25. Count III is stated in the alternative to Counts I and II.

35. Oakley, B. Oakley and Gavilon have each sold to their respective customers the grains provided to them by Plaintiffs. The sale of those products was done during the ordinary course of their respective businesses. Oakley, B. Oakley and Gavilon, being sellers of goods of that description, vested good title to their customers who were bona fide purchasers for value without notice.

36. By the sale of Plaintiffs property to bona fide purchasers for value without notice, Oakley, B. Oakley and Gavilon each have deprived Plaintiffs of their property and therefore have converted the same to their own use.

37. Plaintiffs have, by reason of Defendants conversion of their property, sustained damages in the amounts set forth in paragraph 25, above, for which Plaintiff should have judgment against Oakley, B. Oakley, or one of them, and Gavilon, for the amount of the respective damages caused by conversation of Plaintiffs' property.

COUNT IV.

38. Plaintiffs incorporate herein by reference thereto as a part of Count IV the foregoing allegations of paragraphs 1 through 25, above.

39. At all times relevant herein, Oakley, B. Oakley, and Gavilon knew, or reasonably should have known, that Turner was in financial distress, was misappropriating payments received by it to pay antecedent debts that it owed, was diverting funds to the alter egos, was kiting checks and was not credit worthy or trustworthy. Because of Turners financial distress, Oakley, B. Oakley, and Gavilon remitted on an expedited basis, the purchase price for grain acquired through Turner, which remittances were not through the ordinary course of business.

40. Oakley, B. Oakley, and Gavilon knew Plaintiffs' identity as the owners and suppliers of corn and wheat shipped to them, respectively, as described herein. They further knew that they were under a legal duty to pay purchase price for goods received or retained and converted to their own use.

41. In view of their knowledge of a precarious financial situation of Turner, their respective agent, Oakley, B. Oakley, and Gavilon

failed to exercise ordinary care by entrusting to Turner the duty to transmit purchase price for goods received and retained, and to pay to the lienholders. Such failure to exercise ordinary care constitutes a negligence on the part of Oakley, B. Oakley, and Gavilon respectively.

42. The aforesaid negligence of Oakley, B. Oakley and Gavilon is a proximate cause of the damages of Plaintiffs as set for in paragraph 25, above.

43. Plaintiffs are entitled to judgment from and against Oakley, B. Oakley and Gavilon, respectively, for their damages proximately caused by negligence of Oakley, B. Oakley and Gavilon as herein described.

COUNT V.

44. Plaintiffs incorporate herein as part of Count V the foregoing allegations of paragraphs 1-25. The allegations of Count V are stated in the alternative to the allegations of Counts I, II, III and IV.

45. Turner received from Oakley, B. Oakley, and Gavilon each, certain payments with respect to the sale of Plaintiff's grain as herein described. These payments were made to Turner as agent for Oakley, B. Oakley, and Gavilon, respectively, with directions to pay and remit them to Plaintiffs, owners of goods they had each received.

46. Turner, however, failed to transmit to Plaintiff payments it had received on their behalf. Rather than transmitting such payments to Plaintiffs, Turner converted the funds to its own use

and benefit, thereby permanently depriving Plaintiffs of their property.

47. Turner, by reason of its conversion of Plaintiffs property, is liable to Plaintiffs for the amount of funds it received and converted.

48. Turners conversion of Plaintiffs property was accomplished by diverting funds into accounts of one or more of the alter egos, or by paying antecedent creditors of Turner, by payment of funds to partners or members of Turner, or other larcenous payments.

49. Defendants Jason and Neauman, as partners in or members of Turner, are jointly and severally liable for all funds belonging to Plaintiffs which were received and converted by Turner, therefore depriving Plaintiffs of the use and enjoyment of their properties.

COUNT VI.

50. Plaintiff incorporates herein by reference herein as part of Count VI, the foregoing allegations of paragraphs 1-49.

51. Plaintiffs designate, as John Does 1 through 10, certain parties whose identity is unknown to Plaintiffs, John Does 1 through 10 are entities who purchased Plaintiffs' corn or wheat through Turner, who received any proceeds from the sale for Plaintiffs corn or wheat, who received, obtained, consumed, enjoyed or exercised in dominion and control over corn or wheat originating with Plaintiffs, or who were partners or members of Turner or are alter egos of entities presently named as Defendants herein.

52. Plaintiffs reassert and re-allege against John Does 1 through 10 all allegations alleged herein against the named Defendants.

53. When Plaintiff learns the identity of John Does 1 through 10, or anyone or more than, Plaintiff will amend their Complaint by substituting their identities for the present John Doe description.

54. Plaintiffs, through their attorney, are filing herewith an Affidavit in compliance with Ark. Code Ann. § 16-56-125 which Affidavit is incorporated herein by reference thereto.

WHEREFORE, Travis Mears Farms, Inc., Plaintiff herein, demands judgment from and against Defendant Oakley Grain, Inc. and Bruce Oakley, Inc., or one of them, in the amount of $276,991, and judgment form and against Defendant Gavilon Grain, LLC in the amount of $197,532; Plaintiff Scott Mears Farms, Inc., demands judgment from and against Defendants Oakley Grain, Inc. and Bruce Oakley, Inc., or one of them, in the amount of $256,173; and against Defendant Gavilon Grain, LLC in the amount of $179,436 that Plaintiffs each demands judgment for the foregoing amounts against John Does 1 through 10, or anyone or more than; that alternatively, Plaintiffs demand judgment from and against Jason Coleman and Neauman Coleman, jointly and severally, for the amounts demand above; that Plaintiffs further demand pre-judgment interest at the legal rate of 6% per annum from date of each shipment to date of judgment; Plaintiffs further demand recovery of attorney fees pursuant to Ark.

Code Ann. §16-22-308 together with all of the relief the Court deems legal, equitable and just.

Travis Mears Farms, Inc., and
Scott Mears Farms, Inc.
Plaintiffs

BY: /s/ H. David Blair
H. David Blair No. 65004
Blair & Stroud
P.O. Box 2135
Batesville, Arkansas 72503
870-793-8350 Phone
870-793-3989 Facsimile
hdb@blastlaw.com

DEMAND FOR JURY TRIAL

Comes Travis Mears Farms, Inc. and Scott Mears Farms, Inc., Plaintiffs herein, and, pursuant to Rule 38 of the Arkansas Rules of Civil Procedure, demand right of trial by jury as to all issues so triable.

BY: /s/ H. David Blair
H. David Blair No. 65004
Blair & Stroud
P.O. Box 2135
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Turner Grain, Inc. CT-07012014
411 N. Main Street Contract Number:
Brinkley, Arkansas 72021 GAV-890-PI

Grain Confirmation _____ 103060-103279

This agreement is entered into between Turner Grain, Inc. (Broker) and Seller of Grain (Seller).

The Seller is: Mears Brothers Farms (Travis & Scott Mears)

Address: 7057 Highway 384 City Newport State AR Zip 72112

Seller agrees to sell 200000 loads/bushels of Yellow Corn, based on a No. 2 Grade.

Purchaser agrees to pay $6.00 U.S. funds per bushel F.O.B. Bins – Newport.

Market Scale of discounts apply. (Posted and available upon request)

Shipment is expected to being: Buyers Call Must Start by September 1, 2014

P.O.B. Rates not equal to N/A /bushel to seller account. Special Conditions: 16% Mo. Max.

At time of delivery, any grain that does not meet the criteria continued herein is subject to rejection, delayed shipping periods, alternate destination, or adjustment at Purchasers option. Upton "Buyers Call" for the grain, any grain not shipped within the delivery period, starting on notified date of delivery, is subject to any and all cost associated with delayed shipping including but not limited to: port fees, grade fees, freight, barge merging, barge demurrage, loading and unloading. Purchaser reserves the right

to cancel, extend delivery time, alter shipping periods and destinations or fill at the above destination or elsewhere. Purchaser's performance under this confirmation is contingent upon conditions beyond Purchasers control such as, but not limited to, labor disputes or disturbances, embargo delays, accidents, fire, delay or non-performance of carriers, war and acts of God. Failure to meet contract agreements may result in "Market Price Difference" to sellers account and/or cancellation of contract at Purchasers option. A contract cancellation fee of .10 per bushel will apply to all undelivered bushels, plus any gain in the price on the date of cancellation from the price on the date of booking. Payment process from purchaser will begin upon completion of contract. Purchaser reserves the right to reject off-grade grain or to unload same without first notifying Seller. If corn: Maximum aflatoxin level is 20 ppb, 15% moisture and above equals a discount rate of 1.5% of price for every .5 tenths of moisture. Freight and associated costs for partial and rejected loads will be for the sellers account. Weights and grades will be determined by Purchaser. Grain Delivered for rail shipment will be settled on certified rail weights.

Over delivery (within one truck load:
approximately 55,000 lbs) shall be priced at Turner Grains option.

Seller has the following Agri-Lender: X_____

Seller has the following Liens: X_____

Seller has the following Landlords: X_____

As required by CCC regulations and in addition to the other terms and conditions of this agreement (including customary industry practices and terms applicable to such purchases), Purchaser and Seller(s) agree that the following provision applies to purchase. Notwithstanding any other provision of this option to purchase, title, risk of loss, and beneficial interest in the grain as specified in 7 C.F.R. part 1421, shall remain with the producer until the Purchaser exercises the option to purchase the grain. This option to purchase shall expire, notwithstanding any action or inaction by either the Seller or Purchaser at the earliest of (1) the maturity of any CCC price support loan which is secured by grain: (2) the date the CCC claims title to such grain; or (3) such other date as provided in this option.

Turner Grain, Inc. 411 N. Main Street Brinkley, Arkansas 72021	Seller: /s/ Scott Mears Farms By:_____
By: Christopher Taylor July 1 2014	Date: 6-26-14 agreement via text /s/ Chris Taylor

Exhibit "A"