

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

Case No.: 3:12-bk-00275-PMG
and Case No. 3:12-bk-00274-PMG

KOON'S FARMS, INC.,

Chapter 12 Debtor,

and

Jointly Administered Under
Case No. 3:12-bk-00275-PMG

SIDNEY CURTIS KOON and
JULIE SINGLETARY KOON,

Chapter 12 Debtors.

LAFAYETTE STATE BANK, a Florida
corporation,

Plaintiff,

v.

Adv. Case No. 3:12-ap-00098-PMG

RABO AGRIFINANCE, INC., a foreign
corporation, KOON'S FARMS INC., a
Florida corporation; SIDNEY KOON,
individually, and JULIE KOON,
individually,

Defendants.

**ORDER APPROVING INTERVENTION
AND FINAL CONSENT JUDGMENT**

THIS CAUSE came before the Court on March 27, 2012, for consideration of the *Joint Motion for Intervention of Mayo Fertilizer, Inc., and for Entry of Final Consent Judgment* (the "Joint Motion"), filed by the Debtors, Koon's Farms, Inc. ("Koon's Farms"), Sidney Curtis Koon and Julie Singletary Koon (collectively, the "Chapter 12 Debtors"), joined by secured creditors, Rabo Agrifinance, Inc. ("Rabo"), Mayo Fertilizer, Inc. ("Mayo Fertilizer") and Lafayette State

Bank ("Lafayette"), collectively referred to herein as the "Movants." The Court, having reviewed the Court's file in this adversary proceeding, including the Joint Motion, having considered the evidence relating to the respective secured claims of the secured creditors in the Escrow Funds (defined below), and being otherwise duly advised in the premises, finds that the Joint Motion is supported by competent evidence and is well-taken.

Based upon the evidence before the Court, the Court finds as follows:

1. This Court has jurisdiction over this adversary proceeding (this "Adversary Proceeding"), the parties to this Adversary Proceeding and over the claims asserted in this Adversary Proceeding, pursuant to 28 U.S.C. §§ 157 and 1334, and other applicable law. The subject matter of this adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On January 18, 2012 (the "Petition Date"), the Chapter 12 Debtors filed respective voluntary petitions for relief under Chapter 12 of the Bankruptcy Code, thereby initiating the above-captioned bankruptcy cases (the "Bankruptcy Cases").

3. The Bankruptcy Cases were administratively consolidated by order of this Court entered on February 8, 2012 [Doc. Nos. 17, 34].

4. Since the Petition Date, the Chapter 12 Debtors have continued in the ownership of their assets and operation of their businesses as debtors-in-possession, pursuant to Bankruptcy Code § 1203, and the orders of this Court.

5. Douglas W. Neway has been appointed in the Bankruptcy Cases as the Chapter 12 Trustee, pursuant to Bankruptcy Code §1202.

6. On or about November 23, 2011, and prior to the Petition Date, Lafayette filed an action in the Circuit Court of the Third Judicial Circuit, in and for Lafayette County, Florida,

captioned Lafayette State Bank v. Rabo Agrifinance, Inc., a foreign corporation, Koon's Farm, Inc., a Florida corporation, Sidney Koon, individually, and Julie Koon, individually, Case No. 11-204 CA (the "State Court Action").

7. On or about January 27, 2012, a *Notice of Removal* [AP Doc. No. 1] was filed and the State Court Action was removed to this Court, and now proceeds as this Adversary Proceeding.

8. On February 8, 2012, this Court entered in the Bankruptcy Cases, an *Order Directing the Endorsement and Negotiation of Checks and the Establishment of Escrow Account Pending the Determination of Lien Priority Disputes Between Creditors, Lafayette State Bank and Rabo Agrifinance, Inc.* (the "Escrow Order") [Doc. No. 36].

9. Pursuant to the terms of the Escrow Order, certain checks which represent aggregate funds of approximately One Million, Nine Thousand, Seven Hundred Twenty-four and 11/100 Dollars (\$1,009,724.11), were endorsed and deposited into the Lafayette State Bank Koon's Farms Escrow Account (the "Escrow Account"), established as a result of the Escrow Order. Subsequent to the entry of the Escrow Order, an additional \$5,333.53 has been deposited in the Escrow Account, bringing the total balance in the Escrow Account to approximately \$1,018,057.64 (the "Escrow Funds").

10. Mayo Fertilizer has asserted an interest in the Escrow Funds, and has sought this Court's allowance of Mayo Fertilizer's intervention as a party-Defendant in this Adversary Proceeding in order to have its claims in the Escrow Funds adjudicated by this Court. All of the Movants have consented to this intervention.

11. This Court finds that the Joint Motion further satisfies the obligations and requirements of Federal Rule of Bankruptcy Procedure 7024, and Federal Rules of Civil Procedure 24(a)(2), 24(b)(1)(B), and 24(c), and other applicable law.

12. The Chapter 12 Debtors have recognized the existence of certain valid and perfected security interests in the Escrow Funds, in favor, respectively, of Rabo, Mayo Fertilizer and Lafayette (collectively, the "Interested Secured Creditors").

13. Based upon the existence of these valid and perfected security interests, and further based upon the Chapter 12 Debtors' interest in payment of and reduction to certain claims in the Bankruptcy Cases of the respective Interested Secured Creditors, the Chapter 12 Debtors desire to have the Escrow Funds paid to the respective Interested Secured Creditors in accordance with the respective priority of the valid and perfected security interests possessed by the Interested Secured Creditors.

14. The Court has analyzed the respective priorities of the Interested Secured Creditors' secured claims in the Escrow Funds, and finds that it should enter final judgment adjudicating the validity, extent and priority of the claims of the respective Interested Secured Creditors in the Escrow Funds, and authorizing the distribution of same from the Escrow Account.

Accordingly, it is hereby ORDERED AND ADJUDGED:

1. Mayo Fertilizer is hereby allowed to intervene as a party-Defendant in this Adversary Proceeding in order to have its claims in the Escrow Funds adjudicated by this Court.

2. Rabo possesses a first priority, valid and perfected security interest, in the Escrow Funds, based upon Rabo's loan to the Chapter 12 Debtors (the "Rabo Loan") and Rabo's UCC filing 20100214154 dated March 10, 2010. Rabo's first priority secured claim is properly calculated as follows:

a.	Principal Balance of Secured Claim:	\$700,570.21
b.	Accrued Interest through 3/13/2012:	\$48,520.09
c.	Accrued Attorneys' Fees and Costs:	<u>\$61,300.00</u>
	Total	\$810,390.30

In addition to the foregoing, Rabo's secured claim shall bear interest at the per diem rate of \$102.05 per day, per day until paid in full from the Escrow Funds, representing per diem interest calculated at the non-default rate of 5.244% per annum. Accordingly, Rabo's interest in the Escrow Funds is hereby adjudicated as valid and perfected to the extent of \$810,390.30, together with accrual of per diem interest to be calculated as noted above, and Rabo's interest in the Escrow Funds shall be paid in full from the Escrow Funds. This payment will result in Rabo having no further claims in the Bankruptcy Cases. The entry of this order approving this compromise, and this final judgment in the Adversary Proceeding shall be conclusively and irrevocably deemed to be a full and final release and discharge of any and all claims and causes of action by and between Rabo (together with its predecessors, successors, legal representatives, officers, directors, employees, and agents) on the one hand and the Chapter 12 Debtors, or any of them, on the other which in any way pertains or relates to the Rabo Loan.

3. Mayo Fertilizer possesses a second priority, valid and perfected security interest in the Escrow Funds, based upon Mayo Fertilizer being the assignee of certain additional claims and security interests of Producer's Credit Corporation, a/k/a ProPartners Financial, UCC filing 201104497695 dated April 29, 2011, in the amount of \$397,653.35 with an aggregate principal balance of Mayo Fertilizer's claims in the amount of \$601,217.07, without consideration of accrued interest or attorneys' fees and costs. Accordingly, Mayo Fertilizer's secured interest in the Escrow Funds is hereby adjudicated as valid and perfected to the extent of all remaining

portions of the Escrow Funds, subject only to the first priority interest of Rabo to the extent noted in paragraph 2, above. This payment will be a partial payment of Mayo Fertilizer's claims, and will result in Mayo Fertilizer retaining additional claims in the Bankruptcy Cases.

4. Based upon the foregoing, the interests of Lafayette are not secured by the Escrow Funds. Accordingly, Lafayette will receive no disbursement of the Escrow Funds, but will retain its right to assert claims in the Bankruptcy Cases.

5. Lafayette is hereby authorized and directed to immediately disburse all of the funds from the Escrow Account by issuing and delivering checks as follows:

a. a check in the amount calculated pursuant to paragraph 2, above, made payable to Rabo Agrifinance, Inc., which shall be delivered to the attorneys for Rabo; and

b. a check for the balance remaining in the Escrow Account after making the aforementioned payment to Rabo, made payable to Mayo Fertilizer, Inc., which shall be delivered to the attorneys for Mayo.

Upon making the aforementioned payments, Lafayette shall close the Escrow Account and shall have no further obligations or liability with respect thereto.

6. This Court retains jurisdiction over this Adversary Proceeding to enter such further orders and judgments are necessary in order to enforce the terms of this Final Consent Judgment, and to enter such further orders and judgments that this Court deems just and proper.

DONE AND ORDERED in Chambers at Jacksonville, Florida, on April 30, 2012



HONORABLE PAUL M. GLENN
United States Bankruptcy Judge

RECORDED IN THE US BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
P.B. VOL. 54 NO. 17547

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