**Dated: November 26, 2012**
**The following is ORDERED:**

Jennie D. Latta
**UNITED STATES BANKRUPTCY JUDGE**

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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| In re | KEMM LOTT RALPH,<br>Debtor. | Case No. 06-24163-L<br>Chapter 11 |

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| In re | ROGER MASON RALPH,<br>Debtor. | Case No. 09-23696<br>Chapter 11 |

**ORDER DENYING MOTIONS TO PARTIALLY SET ASIDE CONSENT ORDERS**

BEFORE THE COURT are motions filed by the Debtors, Kemm Lott Ralph ("KLR") and Roger Mason Ralph ("RMR"), brothers and former partners in Ralph Brothers Farms ("RBF"), to partially set aside Consent Orders entered in each of these cases which had the effect of fixing the amount of the secured claim of Scruggs Farm Implements, Inc. ("Scruggs") at $1,000,000 (KLR, Dkt. No. 485; RMR, Dkt. No. 255). The Consent Orders were entered August 17, 2009 (KLR, Dkt. No. 355) and August 18, 2009 (RMR, Dkt No. 70). The Debtors assert that as a result of an exhaustive audit completed in 2012, they have determined that the basis on which they agreed to

fixing the amount of Scruggs' claims was flawed. They assert that pursuant to 11 U.S.C. § 502(j), cause exists to reconsider these claims. They allege that the claim should be reconsidered for any or all of the following reasons: (a) that Scruggs and the Debtors failed to have a meeting of the minds while entering into the Compromise Order by consent; and/or (b) there was a failure of consideration given to the Debtors by Scruggs for entering into the Compromise Order by consent; and/or (c) Scruggs deliberately misled the Debtors as to monies owed by the Debtors to Scruggs.

Subsequent to the filing of their motions, the Debtors also filed objections to the claims of Scruggs. (KLR, Dkt No.488; RMR, Dkt. No. 259). Scruggs filed two proofs of claim in the KLR case, the first in the amount of $1,000,000 secured by real estate (Claim No. 10), and the second filed in the amount of $1,300,000 unsecured (Claim No. 11). Both claims were amended on September 24, 2007, but the amounts of the claims were not changed. No proofs of claim were filed by Scruggs in the RMR case. RMR objects to the Scruggs' claim as set out in his bankruptcy schedules and the Consent Order. RMR suggests that the fact that Scruggs did not file a proof of claim in his case is significant to the determination of whether the order allowing Scruggs' claim resulted from a contest. Pursuant to Federal Rule of Bankruptcy Procedure 3003(b), in Chapter 11 cases, the schedule of liabilities filed pursuant to § 521(a) of the Bankruptcy Code constitutes prima facie evidence of the validity and amount of the claims unless they are scheduled as disputed, contingent or unliquidated. Neither of the Debtors indicated in his schedules that Scruggs' claims were disputed, contingent, or unliquidated. As a result, pursuant to Rule 3003(b), they were deemed allowed as scheduled. In the KMR case, the proofs of claim later filed by Scruggs superceded the claims deemed allowed by his schedules. The Scruggs claims in each of the cases were superceded by the Consent Orders entered in August of 2009.

Scruggs filed a timely objection to each of the Motions to Partially Set Aside Consent Orders. Scruggs states that its secured and unsecured claims arose from the sale of agricultural chemicals and other farming products to the Ralph brothers on credit, and that its credit facility was secured by a note and deed of trust on several parcels of farm land in West Tennessee, dated April 2, 2002. Scruggs asserts that it had a senior lien on many of the parcels. Scruggs notes that in connection with the bankruptcy cases of KLR, RMR, and RBF, the Debtors listed Scruggs as a secured creditor holding an uncontested secured claim of at least $1 million. Scruggs further states that the Consent Orders resulted from extensive negotiations among multiple parties, which were approved through the compromise and settlement process provided at Federal Rule of Bankruptcy Procedure 9019. Scruggs also states that the Ralph brothers had ample opportunity to investigate Scruggs' claims through Rule 2004 examination taken over multiple days. Scruggs states that in connection with those examinations, both KLF and RMR acknowledged their large debt to Scruggs.

Scruggs notes that the rationale for the compromise and settlement was the Ralph brothers' need to clear title to certain parcels of property to enable them to sell those parcels to raise funds to implement a settlement reached with certain other creditors, especially Monsanto Company. Scruggs states that in exchange for its receiving an allowed secured claim in the amount of $1 million, Scruggs agreed to waive certain rights, including the right to object to the sale of the so-called "Sale Farms"; the right to receive interest on its claim for the period prior to and through July 31, 2009; the right to receive interest at the contractual rate after July 31, 2009; the right to retain its mortgage and/or liens on all farms owned by KLR, RMR, RBF, Donna Ralph, and/or Ralph Investment Services Trust other than three farms specified in the Consent Orders; the right to receive

repayment according to the contractual terms; and the right not to have its claim subordinated to the claim of Monsanto Company. The pending motions to partially set aside the Consent Orders were not filed until almost three years after the Consent Orders were entered.

After an oral hearing on September 19, 2012, I asked the parties to file briefs directed to the question of whether the motions for reconsideration of the Consent Orders are barred by the time constraints of Federal Rule of Bankruptcy Procedure 9024, which incorporates Rule 60 of the Federal Rules of Civil Procedure. The parties have filed their briefs, and I turn to their arguments now.

Rule 60(c)(1) provides that a motion for relief from a judgment or order for the reasons set forth in Rule 60(b)(1) ("mistake, inadvertence, surprise, or excusable neglect"), 60(b)(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)"), and 60(b)(3) ("fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party"), must be made no more than one year after the entry of the judgment or order. The one-year periods to file motions with respect to the Consent Orders expired on August 17 and 18, 2010.

The Debtors rely on Bankruptcy Code section 502(j), which they correctly state gives the court discretion to reconsider previously decided claims "for cause" and "according to the equities of the case." The Debtors correctly point out that Rule 9024 specifically excepts from the application of the one-year limitation prescribed in Rule 60(c) "an order allowing or disallowing a claim against the estate entered without a contest." The Debtors thus assert that two questions must be considered: first, whether a consent order constitutes a contest within the meaning of Rule 9024;

and second, whether an order allowing a claim that is not precipitated by a formal objection to that claim results from a contest.

The Debtors point to one case which discusses the language of Rule 9024, "entered without a contest": *In re Tender Loving Care Health Services, Inc.*, 562 F.3d 158 (2d Cir. 2009). In that case, the court of appeals held that a settlement that resulted from the filing of an objection to a proof of claim was not "entered without a contest" – i.e., it resulted from a contest – for purposes of Rule 9024. The court of appeals reached this conclusion as the result of the Committee Note to Rule 3007, which provides that a "contested matter" is initiated, among other ways, by the filing of an objection to a proof of claim. The court stated, "[t]he critical factor in our Rule 9024 analysis is that the claimant filed a proof of claim and the Debtors filed an objection to it." 562 F.3d at 162.

The Debtors assert that their case should be distinguished from *Tender Loving Care Health Services* because no objections were filed by the Debtors with respect to Scruggs' claims. Relying on *Tender Loving Care Health Services*, they argue that where no objections were filed to the proofs of claim filed by Scruggs, there was no contested matter and therefore that the consent order setting the amount of Scruggs' claims did not result from a contest. The Debtors do admit, however, that in the Emergency Motion to Approve Compromise and Settlement they asserted that Monsanto Company had raised issues as to the extent, validity, and priority of Scruggs' claims. The Debtors further admit that they benefitted from the Consent Orders as the result of the concession by Scruggs as to the amounts of its claims, but they assert that this concession resulted from a mistaken belief concerning the amounts that were owed to Scruggs.

Scruggs argues that the Consent Orders resulted from extensive negotiations among multiple parties. It notes that they were comprehensive orders and involved more than the resolution of the

claims disputes between the Debtors and Scruggs. As the result of the Consent Orders, the Debtors were given permission to sell certain farms that were subject to creditor liens, including liens held by Scruggs and Monsanto. As the result of the sales, Scruggs' collateral was reduced and Scruggs waived substantial rights. Scruggs argues that the Debtors substantially mistake the relation between the parties leading to the Consent Orders. Moreover, Scruggs does not agree that the Debtors' present calculation of its claim is correct.

In support of its arguments, Scruggs relies upon certain decisions not cited by the Debtors. The first is *In re Salander*, 450 B.R. 37 (Bankr. S.D.N.Y. 2011), in which a debtor asked the court to vacate or amend its prior order approving a settlement pursuant to Rule 60(b)(1), (2), and (3), one year and five months after the order approving the settlement agreement was entered. The debtor argued that her motion was excepted from the one-year limitation of Rule 60(c) by the language of Federal Rule of Bankruptcy Procedure 9024 because the related creditor's claim was entered "without contest." Counsel for the debtor argued that "while the motion to approve the Agreement was objected to, 'no objection was ever filed as to the ... claim'" and thus that the one-year limitation should not apply. The bankruptcy judge rejected this argument, saying that the debtor failed to explain why she was attempting to apply the standard for a motion to reconsider the allowance or disallowance of a claim to her motion to reconsider approval of a settlement. 450 B.R. at 54.

Similarly, in the present case the Debtors seek to partially set aside the Consent Orders on the Emergency Motions to Compromise and Settle Claims filed in each Debtor's case. The Emergency Motions note that disputes existed between Monsanto and Scruggs as to the relative priority of their claims. The Emergency Motions further state:

32. Monsanto has raised issues as to the extent, validity and priority of Scruggs' claims. While no objection has been filed in regard to any proof of claim submitted on behalf of Scruggs, several examinations have been taken in connection with a possible objection to the Scruggs claims during the pendency of this proceeding.

33. Nothing in this motion is intended to comment on the priority of the claims of Monsanto and/or Scruggs, relative to the other. Rather, this motion is directed to concessions agreed to by Scruggs and Monsanto as is outlined below in more detail.

34. The parties are desirous of resolving those objections in this settlement.

KLR, Dkt. No. 352; RMR, Dkt. No. 66. The Emergency Motions were submitted pursuant to Federal Rule of Bankruptcy Procedure 9019, which governs compromise and arbitration, not pursuant to Rule 3007, governing objections to claims. Rule 9019(a) permits the court to approve a compromise or settlement on motion of the trustee (or debtor in possession) after notice and a hearing. The request for approval of a "compromise" or "settlement" presupposes an underlying dispute that is to be compromised or settled. Moreover, the Emergency Motions themselves, which were filed by the Debtors not Scruggs, indicate uncertainty about the claims of Scruggs and a desire to "adjust and compromise" the claims of Scruggs. Pursuant to the compromise, Scruggs agreed to waive its unsecured claim in the amount of $475,555.18 and all interest on its secured claim through July 31, 2009; and it released its liens on all farms save three. In exchange, the Debtors agreed that Scruggs would have an allowed secured claim in the amount of $1 million and would be entitled to interest on its claim after July 31, 2009, at the rate of prime plus 2%, which would be repaid pursuant to the Debtors' plans of reorganization. The compromise was essential to allowing the Debtors to move forward with their farming operations and their reorganization plans. Consideration was given for the agreement on all sides as the result of the compromise of claims and waiver of rights.

Under these particular facts and circumstances, I find that the orders allowing the claims of Scruggs, which were the Consent Orders on the Emergency Motions, were not "entered without a contest" and moreover that the equities of the case do not favor reconsideration of these claims. The Consent Orders did not simply allow Scruggs' claims, but dealt with numerous other issues necessary to the global settlement of contested issues envisioned by the Emergency Motions. It would be inequitable for the court to only partially set aside the Consent Orders because that would not put Scruggs in the position that it was in before it agreed to compromise its claims. It is clear that the Debtors do not wish to completely "unscramble the egg," but only to avoid their concession to Scruggs' claims. It is not possible to look only to the portion of the Consent Orders that allows Scruggs' secured claims as if it that portion stands alone as "an order allowing or disallowing a claim against the estate entered without a contest." That portion of the Consent Orders is part of an overall compromise and settlement in which a number of parties, including Scruggs and Monsanto, agreed to compromise claims that they might otherwise have advanced. As such, the Consent Orders fall outside the exception for orders allowing or disallowing claims without a contest, and fall within the requirement of Rule 60(c) that motions for relief from a judgment or order for reasons (b)(1), (2), or (3) be filed within one year after the entry of the judgment or order. Because the Motions to Partially Set Aside the Consent Orders were filed outside that one-year limitation, the motions are **DENIED.**

cc: Matrix (each case)