

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

G & G CHEESE COMPANY, INC.,

CASE NO. 95-22612

Debtor(s).

**Flower City Produce, Inc. and David
Fishgold, Inc.,**

A.P. NO. 96-2142

Plaintiff(s),

vs.

DECISION & ORDER

**G & G Cheese Company, Inc. and Barry
Goldman, Individually and in his
Corporate Capacity,**

Defendant(s).

BACKGROUND

On November 2, 1995, G & G Cheese Company, Inc. (the "Debtor") filed a petition initiating a Chapter 11 case. The Chapter 11 case was filed in order to accomplish an orderly liquidation of the Debtor's assets, since its business operations had or were about to cease.

On October 26, 1996, prior to the filing of the Debtor's petition, Flower City Produce, Inc. ("Flower City") and David Fishgold, Inc. ("Fishgold"), as plaintiffs (collectively the "PACA Claimants"), had commenced an action the ("PACA Action") by filing a Complaint (the "Complaint"), other required pleadings and an Application for a Temporary Restraining Order against the Debtor and Barry Goldman ("Goldman"), its President, in the United States District Court

for the Western District of New York (the “District Court”).

The Complaint alleged that: (1) the Debtor was a dealer and commission merchant of perishable agricultural commodities which were subject to the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. Section 499(a), et seq. (“PACA”); (2) between May 11, 1995 and August 13, 1995, Flower City had sold the Debtor mixed fruit and vegetables for which the Debtor owed it \$75,122.48; (3) between August 10, 1995 and September 21, 1995, Fishgold had sold the Debtor mixed fruit and vegetables for which the Debtor owed it \$29,462.14; (4) the perishable agricultural commodities sold to the Debtor had been shipped in interstate commerce, the Debtor had accepted them, and, as a result, under PACA, a statutory trust had arisen in favor of the PACA Claimants which covered all commodities received by the Debtor, all inventories of food or other products derived from said commodities, and all proceeds from the sale of such commodities, which trust continued until full payment was made by the Debtor to the Claimants; (5) Flower City and Fishgold had filed timely written notices with the United States Department of Agriculture (the “USDA”), and sent appropriate copies to the Debtor, of their intent to preserve trust benefits under PACA and the regulations promulgated by the USDA (the “Trust Notices”); and (6) Flower City and Fishgold would not receive full payment of the amounts due them, as required by PACA, if they suffered the loss of interest on the amounts due and were required to expend attorney’s fees in their collection. The Complaint requested that the Court enter a judgment against the Debtor and Goldman, jointly and severally, in favor of Flower City in the amount of \$75,122.48 and in favor of Fishgold in the amount of \$29,462.14, together with pre- and post-judgment interest and reasonable costs and expenses, including the attorney’s fees incurred in the action.

On October 27, 1995, the District Court entered a Temporary Restraining Order (the “Restraining Order”) which restrained any and all entities from disposing of any of the assets of the Debtor until further order of the District Court, or until the defendants paid the PACA Claimants the sum of \$104,584.62, plus interest, costs and attorney’s fees.

On December 21, 1995, the Debtor and Goldman filed an Answer in the PACA Action (the “Answer”) which set forth a number of specific denials, and alleged, as affirmative defenses, that: (1) the goods purchased from Flower City and Fishgold were ordered, sold and delivered to the Debtor entirely within New York State, and thus were not perishable agricultural commodities in interstate commerce as required by PACA; (2) the claims of Flower City and Fishgold should be barred by the “clean hands doctrine”, since they had filed PACA Notices for invoices that had been paid in full, thereby inflating and misrepresenting their alleged PACA trust interests; and (3) the PACA Notices given by Flower City and Fishgold did not meet the statutory time requirements.

On November 14, 1995, the Debtor filed a Motion (the “Cash Collateral Motion”) for the Use of Cash Collateral in which its primary secured creditor, M&T Bank (“M&T”), had an interest. At the December 6, 1995 return date of the Motion, the Court was advised that the Debtor, M&T, Flower City and Fishgold had agreed to the use by the Debtor of cash collateral in which M&T had an interest, provided that \$150,000 was maintained in escrow by M&T (the “PACA Escrow”) until the PACA claims of Flower City and Fishgold were finally determined.

On December 7, 1995, a cash collateral order was entered which provided for the PACA Escrow. On January 30, 1996, after the PACA Escrow was established with M&T, an Order Vacating the Restraining Order was entered by the District Court. On May 8, 1996, a stipulated

order (the "Removal Order") was entered which removed the PACA Action to the Bankruptcy Court.

On June 14, 1996, Flower City and Fishgold filed a Motion for Summary Judgment (the "Motion for Summary Judgment"). The Motion was originally made returnable on July 10, 1996, but because of ongoing settlement negotiations was adjourned by the request of the parties six separate times until oral argument was finally presented on October 2, 1996.

The Motion for Summary Judgment included the Affidavit of Vincent Frassetto (the "Frassetto Affidavit"), an officer of Flower City, in support of the Motion which: (1) included, as Exhibit "1", a trust fund chart (the "Flower City Chart") which summarized the amount due for each separately numbered unpaid invoice due from the Debtor to Flower City, the date the Debtor had accepted the invoiced goods, the payment due date for the invoice, the date Trust Notices were filed with the USDA, and the number of days which had elapsed from the date of acceptance to the date the related Trust Notice was filed; (2) included, as Exhibit "2", a June 29, 1994 letter agreement (the "Flower City Agreement") between the Debtor and Flower City which included the following provisions:

1. We want you to know that we will be participating to preserve our rights under the Trust Fund Provisions of PACA Rule 98-273.
2. We are required to notify you of our credit terms by letter rather than by our invoices.
3. We are aware of the "Past Due - 10 days after receipt and acceptance" set by PACA but we feel this is too restrictive for our customers and would cause unnecessary paper work.
4. We have extended our credit terms to NET 30 DAYS from the date of receipt.

5. When invoices are not paid within the 30 day requirement, we must now file a notice of intent to preserve trust benefits with the USDA within 30 days of the defaulted payment; and

(3) included, as Exhibit “3”, copies of the relevant Trust Notices filed with the USDA; (4) included, as Exhibit “4”, copies of acknowledgments from the USDA covering the related Trust Notices filed by Flower City; (5) alleged that Frassetto had been advised by counsel that Flower City was entitled to interest from the day after the payment due date of each invoice at the rate of 10% per annum, the amount which had been awarded in the past to the Secretary of the Department of Agriculture when the Secretary had commenced reparations actions; and (6) alleged that Flower City was obligated to pay attorney’s fees in connection with the PACA Action necessitated by the failure of the defendants to make prompt payment. The Frassetto Affidavit requested that the Court grant Flower City summary judgment in the amount of \$75,122.48, plus interest at 10% per annum from the payment due date of each invoice, together with the costs of suit and reasonable attorney’s fees.

The Motion for Summary Judgment also included the Affidavit of David Fishgold (the “Fishgold Affidavit”), an officer of Fishgold, in support of the Motion, which: (1) acknowledged that \$2,070.85 of the unpaid invoices which Fishgold had alleged were due in the PACA Action represented produce sold to the Debtor that was grown in New York State, and therefore did not qualify under PACA; (2) alleged that pursuant to the terms of invoices delivered to the Debtor, interest on non-PACA commodities accrued at 24% per annum on invoices more than 30 days past due¹; (3) attached, as Exhibit 1, a trust fund chart (the “Fishgold Chart”) which set forth the same

¹

Copies of invoices attached to the Fishgold Affidavit indicated that the terms were payment

items of information as set forth in the Flower City Chart; and (4) included copies of Trust Notices filed by Fishgold with the USDA, acknowledgments of the Notices filed with the USDA, copies of invoices, and the other items of information as set forth in the Frassetto Affidavit. The Fishgold Affidavit requested that the Court enter a judgment in the amount of \$27,421.91, plus interest at 10%, plus the costs of suit and reasonable attorney's fees on its PACA Claim, and a judgment for \$2070.85, plus interest at 24% per annum, commencing 30 days from the date of each unpaid invoice on its non-PACA claim.

On July 3, 1996, the defendants filed the Affidavit of Goldman (the "Goldman Affidavit") in opposition to the Motion for Summary Judgment, which alleged that: (1) the Debtor is a corporation which was engaged in the distribution of food products, including perishable agricultural commodities, and at all times was engaged in such business exclusively within New York State; (2) Flower City and Fishgold were also engaged in the distribution of food products, including perishable agricultural commodities, and each had places of business in the Rochester, New York area, and, upon information and belief, distributed agricultural commodities exclusively within New York State; (3) by the Flower City Agreement, Flower City and the Debtor had agreed that the Debtor would be in default if payment for any goods delivered and accepted was not made within 38 days from the acceptance of the goods; (4) on or about September 5, 1995, Flower City and the Debtor entered into an agreement (the "Repayment Agreement"), a copy of which was attached as

due net 7 days, and stated that "We reserve the right to assess a finance charge of 2% per month (annual rate of 24%) to accounts 30 days past due, and if collection efforts are necessary, a reasonable collection fee will be added to the past due balance."

Exhibit “B”², which provided that the Debtor would pay the then unpaid indebtedness due to Flower City by weekly payments of \$6,000.00 per week, commencing on September 11, 1995; (5) subsequent to the date of the Repayment Agreement, the Debtor made approximately \$30,000.00 in payments on the unpaid amounts covered by the Repayment Agreement; (6) the Debtor and Fishgold had agreed upon a net 21-day payment term as indicated on Fishgold’s PACA Trust Notices and on a letter dated October 6, 1995, a copy of which was attached to the Goldman Affidavit as Exhibit “C” (the “Fishgold Payment Agreement”); (7) Fishgold had filed Trust Notices alleging amounts due in excess of \$250,000.00, and Fishgold’s practice of filing repetitive, redundant PACA Trust Notices made it practically impossible to accurately determine the amount of the PACA trust claim by Fishgold, and was totally misleading to the Debtor as well as other creditors monitoring the Debtor’s payment history; (8) of the amount claimed as due under PACA by Flower City, \$5,978.00, represented commodities grown in New York State, and \$3,441.40 representing commodities grown in foreign countries; and (9) \$2,331.50 of the amounts being claimed by Fishgold as due under PACA represented commodities grown in New York State, and \$2,813.50 involved commodities grown in foreign countries. The Goldman Affidavit requested the denial of the Motion for Summary Judgment.

The following additional pleadings were filed by the parties: (1) a Memo of Law (the “PACA Memo”) in support of the Motion for Summary Judgment, filed on June 19, 1996; (2) a Reply Memo

2

The Repayment Agreement, attached as Exhibit “B”, was dated and signed by Goldman on behalf of the Debtor, but does not bear the signature of any individual on behalf of Flower City.

of Law (the “PACA Reply Memo”) in support of the Motion for Summary Judgment, filed on September 12, 1996; (3) a Reply Affidavit of Frassetto (the “Frassetto Reply Affidavit”), filed on September 12, 1996; (4) a Memorandum of Law in Opposition to the Motion for Summary Judgment (the “Debtor’s Memorandum”) filed on July 3, 1996; (5) the Debtor’s Surreply Memorandum of Law (the “Debtor’s Surreply Memorandum”), filed on September 16, 1996; and (6) a September 16, 1996 letter from one of the attorneys for the PACA claimants, which included a copy of a September 13, 1996 letter from Chief of the PACA Branch, Fruit and Vegetable Division, of the USDA (the “USDA Letter”), which stated that:

Prior to the PACA Amendments of 1995 which eliminated the requirement that trust notices be filed with the U.S. Department of Agriculture (USDA), it was our policy to accept and certify trust notice filings regardless of whether the filings were filed prior to the default date. It is our opinion that this policy is consistent with precedent court decisions (*In re Bradley*, 75 B.R. 505 (Bankr. E.D.Pa. 1987), *In re Richmond Produce Co., Inc.* 112 B.R. 364 (Bkrty. N.D.Cal. 1990) and *In re Fresh Approach, Inc.* 51 B.R. 412 (Bankr. N.D.Tex. 1985)).

DISCUSSION

Based upon the pleadings and the oral argument presented on October 2, 1996, it appears that the parties agree that there are no disputed issues of material fact, and that the following issues are before the Court for decision:

- (I) Whether the amounts due from the Debtor to the PACA Claimants for invoices representing the sale of commodities grown outside New York State, whether in another state of the United States, a territory or a foreign country, are covered by PACA, since such goods were ordered, sold and delivered among the Debtor, the PACA Claimants and the Debtor’s customers, all within the State of New York;
- (II) Whether if Trust Notices were filed with the USDA prior to the payment due date for an

invoice, this violated the specific requirements and intent of PACA, so that the amounts due under those invoices could not be recovered under PACA;

- (III) Whether Fishgold's alleged inflated Trust Notices (Notices regularly filed in connection with invoices before the payment due date where the invoices were then paid on or before the payment due date) should result in Fishgold being estopped from recovering any amounts under PACA;
- (IV) Whether the terms of the Flower City Agreement or the Repayment Agreement, if it constituted an enforceable agreement between the parties, prevents Fishgold from being able to recover under PACA;
- (V) Whether pre-judgment interest is recoverable by the PACA Claimants out of the PACA Escrow; and
- (VI) Whether attorney's fees are recoverable by the PACA Claimants out of the PACA Escrow.

I. INTERSTATE vs. INTRASTATE TRANSACTIONS

Section 499e provides for the establishment of a non-segregated trust under which a produce dealer holds its produce-related assets as a fiduciary until full payment is made to the produce seller (a "PACA Trust").

_____The parties have agreed that for this PACA Action the amounts due for invoices representing the sale of commodities grown within New York State are not recoverable from the PACA Escrow. As to the amounts due for invoices representing the sale of commodities grown outside New York State, I find that such commodities are the kinds of perishable agricultural commodities intended to be covered by the PACA Trust provisions of Section 499e(c) as being commodities in interstate or foreign commerce. These commodities would appear to fall within the definitions set forth in both

Section 499a(3) and Section 499a(8)³, and be the kind of commodities courts such as the Bankruptcy Appellate Panel of the Ninth Circuit have found to be in interstate or foreign commerce in decisions such as in *In re Southland + Keystone*, 132 B.R. 632 (9th Cir. BAP 1991).

II. TRUST NOTICES FILED WITH THE USDA PRIOR TO THE PAYMENT DUE DATE

Under Section 499e(c)(3), a trust beneficiary must give written notice of its intent to preserve the benefits of the trust to the commission merchant, dealer, or broker and file such a notice with the USDA within thirty calendar days after the applicable payment due date. The Debtor and Goldman have alleged that the PACA Claimants on many occasions filed their Trust Notices prior to the payment due date for some or all of the transactions covered by the Notices, and, therefore, such

3

Section 499a(3) provides that:

The term “interstate or foreign commerce” means commerce between any State or Territory, or the District of Columbia and any place outside thereof; or between points within the same State or Territory, the District of Columbia but through any place outside thereof; or within the District of Columbia.

Section 499a(8) provides that:

A transaction in respect of any perishable agricultural commodity shall be considered in interstate or foreign commerce if such commodity is part of that current of commerce usual in the trade in that commodity whereby such commodity and/or the products of such commodity are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where sale is either for shipment to another State, or for processing within the State and the shipment outside the State of the products resulting from such processing. Commodities normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act....

Notices were not in strict compliance with the requirements of PACA. The USDA Letter indicates that the USDA had a policy of allowing the filing of such early Trust Notices, and that it believed its policy was consistent with the rulings of numerous bankruptcy courts which had found that the filing of trust notices before the payment due date did not violate the requirements, intent or policies of PACA. In view of the USDA Letter, the policy which it indicates, and the analysis set forth in the cases cited in the USDA Letter (see page 9 of this Decision & Order), I find that the Trust Notices filed with the USDA and sent to the Debtor prior to the payment due date of any applicable transaction, were not ineffective to preserve the PACA Trust rights of the PACA Claimants.

III. INFLATED TRUST NOTICES

Section 499b(4) provides in part that:

It shall be unlawful in or in connection with any transaction in interstate or foreign commerce—

- (4) For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker;

The Debtor and Goldman have asserted that the PACA Claimants should be estopped from recovering under PACA because, within the meaning and intent of Section 499b(4), for a fraudulent purpose, they made false or misleading statements in connection with the transactions between them and the Debtor when they regularly filed Trust Notices before the payment due dates for some of the transactions. The Debtor and Goldman have alleged that such premature filings mislead customers

and suppliers of the Debtor, since often times full payment was made on the transaction before the payment due date expired.

From the pleadings and proceedings before me, it appears that before the 1985 Amendments to PACA which eliminated the requirement for filing Trust Notices with the USDA, in order to insure they preserved their rights under PACA, it had become a custom and practice in the industry for suppliers to automatically file Trust Notices after a number of shipments had been made to a customer such as the Debtor. This practice appears to have been at least indirectly endorsed by the USDA, since it accepted such premature filings. This indicates that the PACA Claimants when filing premature Notices were not filing them for a fraudulent purpose, but were filing them in accordance with what had become a custom and practice in the industry.

Furthermore, the information in the premature Trust Notices attached as Exhibits to the Frassetto and Fishgold Affidavits do not appear to have been false. They did not indicate that the amounts due had not been paid before the expiration of the payment due date, but that they had not been paid at the time of the Notice.

Also, since it appears that this premature filing was a custom and practice in the industry, at least indirectly endorsed by the USDA, there is no basis for the Court to conclude that these premature Notices were in any way misleading to others engaged in the industry, such as suppliers, customers or potential financiers, such as M&T. In addition, and there has been no showing of any kind by the Debtor or Goldman that any customer, supplier or other creditor of the Debtor, including M&T, was in fact misled by the premature filing of Trust Notices by the PACA Claimants, or that the Debtor's business was in fact negatively affected by the Notices.

For the foregoing reasons, the Court does not believe that the PACA Claimants violated Section 499b(4), or that the filing of premature Trust Notices should otherwise result in the PACA Claimants being estopped from recovering under PACA.

IV. DID THE FLOWER CITY PAYMENT AGREEMENTS VIOLATE THE REQUIREMENTS OF PACA

A. The Repayment Agreement

Neither the Debtor nor Goldman had been able to produce a copy of the Repayment Agreement signed by an officer or a representative of Flower City, nor have they alleged that there ever was a copy of the Repayment Agreement executed on behalf of Flower City by an authorized officer or other representative.

Neither the Debtor's payments to Flower City of the weekly payments set forth in its unilateral Repayment Agreement, nor the acceptance of those weekly payments by Flower City, constituted an acceptance by Flower City of the terms of the Repayment Agreement or a ratification of the Agreement. The Debtor was indebted to Flower City for past due invoices, and it was entitled to receive and apply partial payments on that indebtedness without it being deemed to be an acceptance or ratification of the Repayment Agreement which it had not accepted.

For the foregoing reasons, I find that neither the Repayment Agreement nor its terms ever became a binding and enforceable agreement between Flower City and the Debtor.

B. The Flower City Agreement

The invoices of Flower City attached as an Exhibit to the Frassetto Affidavit, provided that "Default will occur if thirty-eight (38) days after purchase no payment has been made." However,

they also provided that the “Effect of Default” was only that “purchaser will be liable for all collection costs, including reasonable Attorney’s fees and Court costs.” These provisions, even if they were enforceable as between the parties in view of the Flower City Agreement, did not, in this Court’s opinion, extend the due date for payment beyond the 30-day outside limit provided for in PACA and the Flower City Agreement. This simply provided an additional extended period of time within which a purchaser like the Debtor could pay an invoice without incurring a possible increased legal obligation under New York State Law to pay additional collection costs, including attorney’s fees.

Furthermore, the Flower City Agreement, which was executed by the parties and clearly an enforceable agreement, specifically provided that “We are required to notify you of our credit terms by letter rather than by our invoices”, so that the credit terms on the back of the Flower City invoices do not appear to be applicable to the transactions between the parties.

V. PRE-JUDGMENT INTEREST

I agree with the many courts that have determined that whether to award pre-judgment interest under PACA, as well as the appropriate rate and the commencement date for any award of pre-judgment interest, is a matter left to the broad discretion of the court. *See Southland + Keystone*, 132 B.R. 632, 640 (9th Cir. BAP 1991) and *In re W.L. Bradley Co., Inc.*, 78 B.R. 95, 96 (Bankr. E.D.Pa. 1987).

In this case, it appears that: (1) the PACA Claimants attempted to work with the Debtor, Goldman and M&T to have the amounts due them paid before commencing the PACA Action; (2) the Action was commenced within a reasonable period of time after default in payment for the goods

sold to the Debtor; and (3) the PACA Claimants have prosecuted the PACA Action in good faith, including having attempted in good faith to negotiate a settlement of the Action. For those reasons, there does not appear to be any reason for the Court not to exercise its discretion to award the PACA Claimants appropriate pre-judgment interest. Since the PACA Claimants determined in their business judgment to bring this Action in Federal Court, they must have anticipated that any pre-judgment interest would be awarded at the Federal Judgment Rate. On all of the facts and circumstances in this case, I believe that an award of pre-judgment interest to the PACA Claimants on the qualifying sales from the date that payment was due will both compensate them for the loss of the monies they should have received and further the underlying policies of PACA.

VI. RECOVERY OF ATTORNEY'S FEES

_____ Section 499e(c)(2) provides for the continuation of a PACA Trust “until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers or agents”.

In this PACA Action, the PACA Claimants have made the argument that there cannot be “full payment” unless attorney’s fees incurred in connection with the collection of the amounts due them are also recovered. This argument is the same argument which was made to and rejected by Bankruptcy Judge Fox in *In re W.L. Bradley Co., Inc.*, 78 B.R. 95 (Bankr. E.D.Pa. 1987). I agree with the analysis of Bankruptcy Judge Fox in that decision, and find that attorney’s fees are not recoverable from a PACA Trust as a matter of law.

The PACA Claimants have cited to the Court the decision of the United States Court of Appeals for the Ninth Circuit in *In re Milton Poulos, Inc.*, 947 F.2d 1351 (9th Cir. 1991) as standing

for the proposition that attorney's fees are recoverable as a matter of law by the trust beneficiaries from a PACA Trust. I disagree that the *In re Milton Poulos, Inc.* decision stands for that proposition. In its decision, the Court did not increase the recovery from the PACA Trust by the amount of the attorney's fees incurred, but appears to have simply determined that from the Trust proceeds received, the attorney's fees incurred, which benefited the Trust beneficiaries, should be paid before distribution to the beneficiaries.

To the extent that the decision of the United States Court of Appeals for the Ninth Circuit, the Bankruptcy Appellate Panel for the Ninth Circuit and the Bankruptcy Court in *In re Milton Poulos, Inc.* are correct in determining that attorney's fees may, in the discretion of the Court, be awarded in a PACA action from a PACA Trust as an additional component of recovery, I decline to exercise such discretion in this case. There are no compelling circumstances in this case which would warrant the award of attorney's fees to the PACA Claimants to be paid from the PACA Escrow, which ultimately would be to the detriment of the other creditors of the Debtor.

As to Flower City, as set forth above, the Flower City Agreement sets out the credit terms between the parties, rather than any invoices, and the Agreement does not specifically provide for the recovery of attorney's fees. As to Fishgold, its invoices provided that it had the right to assess a reasonable "collection fee". That does not equate to a reasonable attorney's fee. Furthermore, not all of the Fishgold invoices provided as Exhibits appear to have been signed by a representative of the Debtor. Also, there is no evidence before the Court as to whether finance charges or collection fees were ever demanded by Fishgold or paid by the Debtor in prior transactions. Although the parties have agreed that there are no material issues of fact, whether attorney's fees might be due

Fishgold in connection with some of the transactions between it and the Debtor cannot be determined by the Court based upon the evidence before it.

CONCLUSION

In accordance with this Decision & Order, the parties shall prepare and present to the Court a separate judgment to be entered which shall provide that: (1) Flower City shall recover from the PACA Escrow the amount of \$72,201.23, together with interest at the Federal Judgment Rate on each unpaid invoice representing the sale of goods grown outside New York State from the date each invoice was due to the date of the entry of the separate judgment; (2) Fishgold shall recover from the PACA Escrow the sum of \$27,421.91, together with interest at the Federal Judgment Rate on each unpaid invoice representing the sale of goods grown outside New York State from the date each invoice was due to the date of the entry of the separate judgment; (3) Flower City shall have a judgment and unsecured claim against the Debtor for \$2,921.25, representing unpaid invoices for the sale of goods grown within New York State, together with interest at the Federal Judgment Rate from the date each such invoice was due to the date of the filing of the Debtor's petition; and (4) Fishgold shall have a judgment and unsecured claim against the Debtor for \$2,070.85, representing unpaid invoices for the sale of goods grown within New York State, together with interest at the Federal Judgment Rate from the date each such invoice was due to the date of the filing of the Debtor's petition.

Upon the entry of the separate judgment required herein, M&T shall immediately pay the amounts due to Flower City and Fishgold from the PACA Escrow in the manner directed by their

BK NO 95-22612
A. P. NO 96-2142

18

attorneys.

IT IS SO ORDERED.

_____/s/_____
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: December 17, 1996