

Consent

07-90-11-2-702
#17163

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

*Arab
Planting
4-91-1036*

IN RE:)
)
)
Bowling Industries, Inc.,)
and)
David and Regina Bowling,)
)
Debtors.)

Chapter 7

BK NO. 89-9410

BK NO. 90-16091

FILED

DEC 18 1991

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Clerk, U. S. Bankruptcy Court
Northern District of Alabama

By: *[Signature]*
Deputy Clerk

CONSENT ORDER AND STIPULATIONS

The United States, on behalf of the United States Environmental Protection Agency ("EPA"), submitted an objection to the Trustee's motion to abandon certain property of the debtors. A hearing on the matter was held on April 29, 1991. The Alabama Department of Environmental Management neither filed an objection nor appeared at the hearing. In lieu of a ruling on the Trustee's motion to abandon and EPA's objection, the parties have agreed to the following Consent Order and Stipulations.

I.

This Court has jurisdiction over this matter and over the parties hereto.

II.

This Consent Order and Stipulation shall apply to and be binding upon the Debtors, the United States, EPA, the Trustee, the United States Small Business Administration, AmSouth Bank Arab, Alabama ("AmSouth"), and all other interested parties, provided that with respect to all other interested parties, such parties shall have the right to notice and hearing with respect to the provisions hereof that affect distribution of the Debtors' Estates.

III.

The parties hereto stipulate that the United States has incurred response costs of approximately \$572,000 while remediating environmental problems at the Debtors' facility located on Brashier's Chapel Road, Marshall County, Arab, Alabama. The United States conducted such response actions at the facility pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9604, as amended. The facility is subject to a deed of trust filed by AmSouth Bank which is a first

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deed of trust on the property. Other creditors may hold liens on certain equipment which has been decontaminated by EPA.

IV.

These actions are proceeding as Chapter 7 Bankruptcy matters and the Trustee has moved to abandon the real property and certain equipment of the Debtors as burdensome to the Estates.

V.

The parties hereto agree that upon completion of response activities by the United States at the facility, the property and fixtures of the respective Estates may be sold. Certain fixtures may be sold prior to completion of all response activities at the facility upon the written approval of EPA. Upon sale of such property, the gross receipts shall be distributed as follows:

AmSouth Bank has a deed of trust on land and an industrial building of the Debtors which is located on Brashier's Chapel Road, Arab, Alabama. The fair market value of such property is approximately \$50,000. But, due to environmental problems at the facility, it is assumed that the property is valueless. The United States, acting through EPA, has incurred approximately \$572,000.00 in response costs while remediating environmental problems at the site.

The Trustee will attempt to sell the equipment and real property upon completion of EPA's response activities at the facility. EPA shall notify the Trustee when such activities are completed. Administrative costs associated with the sale including the Trustees's reasonable expenses and attorneys fees are to be deducted from the gross sales price. The net proceeds from the sale of the property shall be paid eighty (80%) percent to the United States (EPA) and twenty (20%) percent to AmSouth Bank in satisfaction of the claim against the bankruptcy estates of Debtors of each such party. The balance of the net proceeds after satisfaction of such distribution shall be paid to the United States (EPA) or AmSouth Bank in an amount not to exceed their total claims against the estates. Any additional net proceeds shall be paid to general unsecured creditors. In the event that the net proceeds from the sale of the property are insufficient to satisfy in full the claims of either EPA or AmSouth Bank against the Debtors' bankruptcy estates, the unpaid balance of EPA's claim shall be entitled to first priority administrative expense status. The balance of any indebtedness, after the sale, owed to AmSouth Bank shall be treated as an unsecured claim, except that the amount of the balance secured by other collateral taken as security on the AmSouth loan shall remain secured to the degree of the value of the collateral.

VI.

The parties agree that the Bowling Industries facility and real property shall be sold or leased based upon the following terms:

(1) The Trustee shall list the property for sale with a qualified competent commercial relator, and in the event of an offer, shall negotiate the terms of a sale or lease and shall make all necessary arrangements to carry out those terms, subject to the approval of AmSouth Bank and EPA. Such sale or lease shall not require approval of the Bankruptcy Court, except as follows. In the event the sales price of the property shall be less than \$50,000.00, the Bankruptcy Court shall retain jurisdiction to determine that the sale of the property is at a fair and reasonable price and upon fair and reasonable terms. The parties hereto may waive such right of court review in that event by written agreement.

(2) At the closing of the sale of the property, the net proceeds of the sale shall be distributed eighty (80%) percent to the United States, but not to exceed the amounts expended by the United States for response costs incurred with respect to the site, and twenty (20%) percent to AmSouth Bank, but not to exceed the indebtedness owed by Debtor to AmSouth. Any excess proceeds available upon satisfaction of such distribution to EPA and AmSouth shall be allocated first to either EPA or AmSouth up to the full amount necessary to satisfy their claims, and if such claims are satisfied, any remaining excess proceeds shall be made available for payment to general unsecured creditors of the Debtor.

(3) The "net proceeds" of the sale means that the Trustee may deduct reasonable costs incurred in selling the property prior to distributions described in Subparagraph (2) above. Reasonable costs shall include, but are not limited to real estate brokerage fees, marketing fees (that are not included within the real estate broker's fees), fees of Debtor's attorney specifically related to the sale of the property, and closing costs.

(4) In the event that a satisfactory sale of the real property is not possible, the Trustee may, with the approval of EPA and AmSouth Bank, arrange a lease of the property at its fair market value. The proceeds from each lease payment shall be distributed as set forth in Subparagraph (2) above. Such lease shall be for a term of no more than fifteen (15) years, but shall be renewable upon consent of all the parties. If the parties do not consent to the lease or renewal of the lease, the property shall be sold as set forth above.

(5) In the event that the real property is disposed of in a manner not provided for in this Consent Order, any proceeds resulting from such disposal shall be disbursed in a manner consistent with Section V of this Order.

(6) The United States stipulates that it currently has no claim against the trustee pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607, as amended.

(7) The trustee under the deed of trust held by AmSouth Bank, shall sell the property with all due speed at the first commercially reasonable opportunity. The proceeds of such sale shall be distributed as previously provided herein. The trustee shall submit written annual reports to EPA and the SBA, beginning 30 days after entry of this Order and Stipulations, describing his efforts to sell the property and any offers to buy the property he has received during the preceding year.

VII.

Amounts paid to the United States pursuant to this Consent Order and Stipulations shall be made payable by certified or cashier's check to the "EPA Hazardous Substances Superfund" and shall be remitted to EPA Region IV, Attn: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384. The transmittal of each payment shall reference that the payment is made pursuant to this Consent Order and Stipulations, shall be accompanied by correspondence identifying these actions, In re Bowling Industries, Inc., BK No. 89-9410 and In re David and Regina Bowling, BK No. 90-16091, DOJ File No. 90-11-2-702, and the identity of the paying party. Copies of this correspondence shall be concurrently transmitted to all counsel of record for the United States.

VIII.

This Court specifically retains jurisdiction over both the subject matter hereof and the parties hereto for the purpose of enforcing the terms of this Consent Order and Stipulations.

IX.

The parties hereto consent to the entry of this Consent Order and Stipulations without further notice for hearing, provided that in the event of an objection by other interested parties which specifically affect or alter the agreements set forth in this Consent Order, the parties agree that this Consent Order and Stipulations may be withdrawn by either EPA or AmSouth Bank, upon motion filed with the Court.

This the 18th day of December 1991.
Edwin D. Breland
Judge Presiding Edwin D. Breland.

WE CONSENT to this Order and agree to the stipulations contained herein.

FOR THE UNITED STATES:

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REGIONAL ADMINISTRATOR

By: [Signature]
ATTORNEY ADVISOR
SMALL BUSINESS ADMINISTRATION

FOR AMSOUTH BANK OF ARAB, ALABAMA

7-2-91

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FOR BOWLING INDUSTRIES, INC.

By: Michael C.

THE TRUSTEE

By: Be J. Pige

FOR DAVID L. BOWLING AND REGINA BOWLING

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