

IN THE COURT OF COMMON PLEAS

ASHTABULA COUNTY, OHIO

STATE OF OHIO, ex rel. :
WILLIAM J. BROWN, (succeeded by : Case No. 71096
ANTHONY J. CELEBREZZE, JR.), :
ATTORNEY GENERAL OF OHIO, : JUDGE MALLONE
:
Plaintiff, :
vs. :
POPLAR OIL COMPANY, :
Defendant. : MOTION REQUESTING RECONSID-
: ERATION OF THE COURT'S JUDGMENT
: ENTRY OF ON OR ABOUT APRIL 25,
: 1983 AND MEMORANDUM IN RESPONSE
: TO THE MOTION OF WARREN PRODUCTION
: CREDIT ASSOCIATION FOR DETERMIN-
: ATION OF PRIORITIES AND DISTRIBUTION
: OF MONIES HELD IN RECEIVERSHIP
: ACCOUNT
:

On or about April 25, 1983, Warren Production Credit Association (hereinafter "WPCA") filed a Judgment Entry with the Court wherein the relief ordered was an extension of time in which to conduct a sale of assets of Defendant Poplar Oil Company. Plaintiff's counsel has been advised by Mr. Robert M. McNair, attorney for WPCA that this Judgment Entry has been approved by the Court. WPCA also filed on April 25, 1983, a Motion for Determination of Priorities and Distribution of Monies Held in Receivership Account. Both of these documents were received by Plaintiff's counsel on May 2, 1983.

The Plaintiff moves the Court to reconsider its Judgment Entry granting WPCA an extension of time to conduct a sale of assets of the Defendant and the Plaintiff also submits that it is entitled to all of the monies held or which will be held in the receivership account. The reasons for the Plaintiff's position are stated in the accompanying Memorandum of Law.

MEMORANDUM OF LAW

Regarding the Judgment Entry filed by counsel for WPCA on or about April 25, 1983, Plaintiff first takes issue with WPCA's submitting this entry to the Court without giving any prior notice (in motion form or otherwise) to the Plaintiff. Plaintiff first became aware of WPCA's seeking this Judgment Entry after it was already filed with and approved by the Court. Such action is contrary to Civ. R. 5 and 7.

The substance of this Judgment Entry is that WPCA is granted an extension of time to some uncertain date in the future to initiate foreclosure proceedings against certain assets of Defendant Poplar Oil Company. The proceeds from the foreclosure proceedings will then be paid to the Receiver and WPCA will file a motion to determine the priorities of these sums.

Plaintiff submits that the Court should not have granted this extension but rather it should have followed its previous "Final Judgment Entry" dated November 8, 1982. In the November 1982 entry the Court ordered:

7. Within 90 days of the date of this Judgment Entry, provided that foreclosure actions have not been initiated by defendant's creditor Warren Production Credit Association against all of defendant's assets, both tangible and intangible, Defendant Poplar Oil Company shall present to its receiver, Keith Michael Wheeler, an accounting of all of its assets as of October 1, 1982. Within 60 days thereafter, the receiver shall proceed to liquidate said assets, by way of a sheriff's sale if necessary, and shall pay all monies received from said liquidation to the plaintiff as reimbursement for any expenses incurred for its activities carried out pursuant to paragraphs 5 and 6 above.

The Judgment is clear and unambiguous in ordering that WPCA had ninety days to initiate a foreclosure action against the Defendant's assets. There is no provision in the Judgment for any extension of this time period. Nor, as the WPCA contends, has the Ohio Environmental Protection Agency (hereinafter "OEPA") held up the foreclosure actions.

In regard to WPCA's Motion for Determination of Priorities and Distribution of Monies Held in Receivership Account, Plaintiff contends again that the answer to this Motion is found in this Court's "Final Judgment Entry" of November 8, 1982. In paragraph 7, which is quoted in its entirety, supra, the Plaintiff is entitled to all monies received from the liquidation of Defendant's assets because WPCA did not initiate a foreclosure proceeding within ninety days after November 8, 1982. If the Court follows its previous order, the OEPA will be reimbursed at least in part for the thousands of dollars it has already paid for the cleanup of the Defendant's facility.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

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CERTIFICATE OF SERVICE

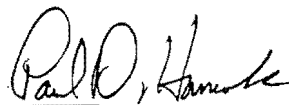
I hereby certify that a copy of the foregoing "Motion Requesting Reconsideration of the Court's Judgment Entry of On Or About April 25, 1983 And Memorandum In Response To The Motion of Warren Production Credit Association For Determination Of Priorities And Distribution Of Monies Held In Receivership Account", was sent by regular mail, postage prepaid, this 4th day of May, 1983, to:

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PAUL D. HANCOCK
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