

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the Matter of:

Hawke Realty, Inc.

Debtor.

Hawke Realty, Inc.

Plaintiff,

vs.

Neil A. Chaness, as Agent for Creditors: Shirley
A. Ware, individually and as Trustee of the
Shirley A. Ware Trust, Dated August 14, 2002;
Discover Bank; United States of America Dept.
of Internal Revenue Service; James Lumber
Company; and State of Michigan, Dept. of
Environmental Quality.

Defendants.

Case No. 07-42697-PJS

Chapter 11

HON. PHILLIP J. SHEFFERLY

Adversary Proceeding No. 07-06603

STIPULATION FOR ENTRY OF CONSENT JUDGMENT

The undersigned parties hereby stipulate to the Court's entry of a Consent Judgment in
the form attached hereto as Exhibit A.

Respectfully submitted,

DAKMAK PEURACH, P.C.

/s/ Robert A. Peurach

Robert A. Peurach (P34446)
Atty. for Plaintiff
615 Griswold, Ste. 600
Detroit, MI 48226
313-964-0800/964-0581
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MICHIGAN DEPT. OF ATTORNEY GENERAL

/s/ John C. Scherbarth (with Consent)

John C. Scherbarth (P28865)
Atty. for MI Dept. of Environmental Quality
P.O. Box 30755
Lansing, MI 48909
517-373-7540/241-3473
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the Matter of:

Hawke Realty, Inc.

Debtor.

Case No. 07-42697-PJS

Chapter 11

HON. PHILLIP J. SHEFFERLY

Hawke Realty, Inc.,

Plaintiff,

vs.

Adversary Proc. 07-06603-PJS

Neil A. Chaness, as Agent for
Creditors, Shirley A. Ware.
Individually and as Trustee of
the Shirley A. Ware Trust,
Dated August 14, 2002; Discover
Bank; United States of America
Dept. of Internal Revenue Service;
James Lumber Company; and State
of Michigan, Dept. of Environmental
Quality,

Defendants.

CONSENT JUDGMENT

This matter having been brought before the Court pursuant to the Stipulation of Plaintiff, Hawke Realty, Inc. ("Hawke"), and Defendant State of Michigan. Department of Environmental Quality (the "State"), and the Court being otherwise fully advised in the premises:

IT IS HEREBY ORDERED that the State shall hold an allowed secured claim of \$257,608.22. The treatment of the State's allowed claim under Hawke's confirmed Plan of Reorganization dated May 4, 2007 (the "Plan") shall be modified in the following respects, only:

1. Hawke will have one year from the date of this Judgment to sell the Ortonville Road Property located at 160 Ortonville Road, Ortonville, Oakland County, Michigan (the "Property"). Hawke will be prohibited from selling the Property to any insider, as such term is defined in the Bankruptcy Code, and neither Hawke nor any insider of Hawke will be permitted to operate the Property following the sale. In the event the Property is not sold within the one year period, Hawke will place the Property for sale by auction with an auctioneer mutually acceptable to Hawke and the State. The auction sale shall take place not later than 60 days after the expiration of the one year period. The parties agree that the auction shall be conducted with a reserve price set at the amount that the parties agreed to in their correspondence of October 3, 2008. In the event that the Property does not sell at the auction, Hawke will continue to utilize its best efforts to sell the Property in a commercially reasonable manner as expeditiously as possible.
2. Commencing with the summer 2008 real estate taxes, Hawke will pay all on-going real estate taxes assessed against the Property until the Property has been sold. In the event Hawke defaults hereunder, the amount of any such unpaid real estate taxes, including penalty and interest, if any, shall be deducted from Hawke's share of the net proceeds of sale to be paid to it under paragraph 3 of this Judgment.
3. Following payment of the allowed and unpaid claims of Class 1 and 2 creditors in accordance with the terms of the Plan, the net proceeds

received from the sale of the Property shall be distributed between Hawke and the State as follows:

- (a) the first \$40,000.00 shall be paid to Hawke free and clear of any claim of the State in full satisfaction, release and discharge of any and all claims Hawke may have for reimbursement of expenses it has incurred and paid to date for the maintenance and repair of the Property or for the administration of this bankruptcy case;
- (b) 55% of the remaining balance of the net sales proceeds shall be paid to the State in full and final satisfaction and discharge of its allowed secured claim; and
- (c) 45% of the remaining balance of the net proceeds shall be paid to Hawke free and clear of any claims of the State.

4. Payment to the State is to be made by certified or cashier's check payable to the State of Michigan Environmental Response Fund" and sent to:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, MI 48909-8157

Via Courier:
Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, MI 48933-2125

The certified or cashier's check shall reference the Res Well Mill Street Settlement RRD2242. In addition, copies of the transmittal letter and check should also be sent to:

John C. Scherbarth
Assistant Attorney General
Environment, Natural Resources & Agriculture Division
P.O. Box 30755
Lansing, MI 48909

Ms. Jacqueline Barnett
Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-8157

5. Hawke Realty has entered into a mutually satisfactory Tolling Agreement (Attachment A) with the State to toll the statute of limitations of any potential cause of action for recovery under part 201 of NREPA until the closing on the sale of the Property. The State will initiate the release and discharge of its lien recorded against the Property immediately upon receipt of its share of the net sales proceeds hereunder. To facilitate the lien release at the time of the closing, Hawke will establish an escrow (at no cost to the State) with the title insurance company who will administer the closing (the "Closing Agent") and the State will provide the Closing Agent with an acceptable Lien Release for the Property to be recorded with the Oakland County Register of Deed's Office only after the State's receipt of its share of the sales proceeds owed to it under the Consent Judgment. At the closing, Hawke will direct the Closing Agent to hold the State's share of such proceeds out of the gross sale proceeds and to pay immediately that sum to the State in accordance with the directions set forth in paragraph 4 of the Consent Judgment. Upon the State's receipt of the payment, the Closing Agent shall be permitted to send the Lien

Release to the Oakland County Register of Deeds for recording (at no cost to the State). The recorded original of the Lien Release will be returned to the preparer of the form identified on the Lien Release. In the event any such sales transaction is not completed as required by the terms of this Consent Judgment, the Lien Release will, upon written notification to the Closing Agent, be returned, unrecorded, to the State.

6. This Consent Judgment is not to be construed as an admission of liability by either party but is being entered into by the parties solely as a means to settle and compromise the dispute between the parties which is the subject matter of this adversary proceeding. In releasing the State's allowed secured claim of \$257,608.22 upon receipt of the payment specified in paragraph 3(b) of this Consent Judgment, the State covenants not to bring a civil judicial or civil administrative action, or take any other civil action against Hawke or any of its officers, directors or shareholders to recover the response activity costs that had been secured by the Lien Placement dated March 11, 2004 and filed on the Property, the same which include all costs, fees and expenses incurred by the State through the date of this Agreement, and the State waives releases and discharges Hawke and its officers, directors, and shareholders from any and all such costs, fees and expenses.
7. Pursuant to Section 20129(5) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, (NREPA) and Section 9613(f)(2) of the Comprehensive Environmental Response,

Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA or Superfund), 42, USC 9613; and to the extent provided in Paragraph 6, Hawke shall not be liable for claims for contribution for matters set forth in Paragraph 6 of this Consent Judgment, to the extent allowable by law. Entry of this Consent Judgment does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 9607 and 9613 of the CERCLA. Pursuant to Section 20129(9) of the NREPA, any action by Hawke for contribution from any person that is not a party to this Consent Judgment shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to the NREPA or other applicable state or federal law.

ATTACHMENT A

In RE:

Hawke Realty, Inc.
Res Well Mill Street
Ortonville, Oakland County, Michigan
Site ID No. 6300074

TOLLING AGREEMENT

- A. This Tolling Agreement (Agreement) is entered into voluntarily by and between the State of Michigan (State) and Hawke Realty, Inc. (Hawke). The State and Hawke are collectively referred to as the "Parties."
- B. The Michigan Department of Environmental Quality (MDEQ) has alleged that releases of hazardous substances have occurred at the property located at 160 Ortonville Road, Ortonville, Oakland County, Michigan (Facility).
- C. The MDEQ has alleged that it has incurred response activity costs in responding to the alleged release of hazardous substances at the Facility and has alleged that Hawke has legal responsibility for such costs under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.
- D. The Parties believe that their interests will best be served by entering into a Consent Judgment that orders the property at 160 Ortonville Road to be sold. This Tolling Agreement will remain in effect until the property is sold and the MDEQ receives its proceeds according to the terms of the Consent Judgment.

THEREFORE, in consideration of the State entering into the Consent Judgment, the Parties stipulate and agree as follows:

1. Hawke will not assert, plead, or raise in any fashion, any defense or avoidance based on the running of any statute of limitations with respect to the Residential Well Mill Street Facility which includes the property located at 160 Ortonville Road, or any defense or avoidance based upon laches or other principles concerning the timeliness of commencing a civil action based upon the lapse of time consented to in this Agreement.
2. Nothing in this Agreement shall affect any defense available to the Parties as of the effective date of the Consent Judgment, and this Agreement shall not be deemed to create or revive any claim or defense that is or was barred as of the effective date of the Consent Judgment. Further, nothing in this Agreement or in the circumstances that gave rise to this Agreement shall be construed as an acknowledgement by the Parties that any claim or defense has or has not been

In RE:

Hawke Realty, Inc.
Res Well Mill Street
Ortonville, Oakland County, Michigan
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barred, or is about to be barred, by the statute of limitations, laches, or other defense based upon the lapse of time. This Agreement does not constitute any admission of any fact, determination, or liability by Hawke, nor does it constitute any admission or acknowledgment by the Parties that any statute of limitations has run or that any particular period of limitation is applicable to the claims described above. Neither this Agreement nor any action taken hereunder shall be offered or received in evidence in any action or proceeding as evidence of or an admission of liability or wrongdoing of any nature on the part of any Party.

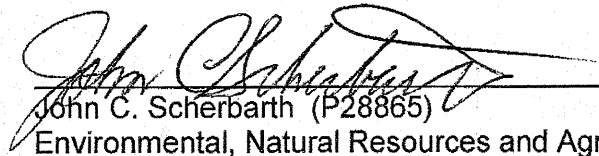
3. Upon termination of this Agreement, the Parties shall have all rights, defenses, and authorities available to them under applicable state and federal laws.
4. The Parties acknowledge that those executing this Agreement on their behalf are authorized representatives acting within the scope of their authority and that this Agreement constitutes the entire understanding and agreement between the Parties. This Agreement shall be binding upon the successors and assigns of the respective Parties.
5. The effective date of this Agreement shall be the date of the last signature of the Parties.

In RE:

Hawke Realty, Inc.
Res Well Mill Street
Ortonville, Oakland County, Michigan
Site ID No. 6300074
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IT IS SO AGREED:

FOR THE STATE OF MICHIGAN



John C. Scherbarth (P28865)
Environmental, Natural Resources and Agriculture Division
Department of Attorney General

12/3/08
Date

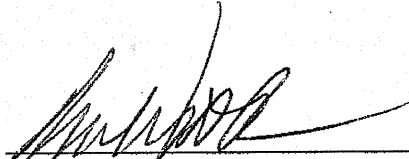
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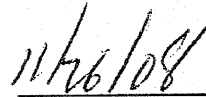
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IT IS SO AGREED:

FOR HAWKE REALTY, INC.



Robert A. Peurach (P34446)
Dakmak Peurach, P.C.



Date