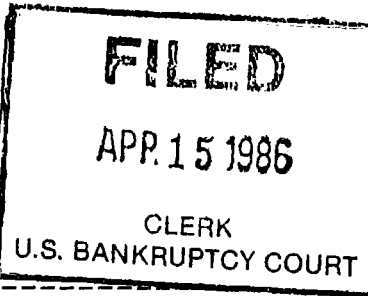


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

DEIST FOREST PRODUCTS, INC.

WF11-82-01627

Debtor.

OPINION AND ORDER

Application having been made to the court to determine the debt owed M & I Bank of Portage County; and the matter having come on for hearing; and the debtor being represented by Attorney James M. Siehr; and the Bank being represented by Attorney Thomas M. Kubasta of Rudolph, Kubasta, Rathjen & Murach; and the court having heard the testimony of James C. Deist of debtor company and John McIntee of creditor bank, and hearing the claims of the respective counsel as to the amounts due, and having considered the memo-brief submitted by debtor, examined the entire record and proceedings; and being fully advised in the premises, Finds:

1. That on September 17, 1982, debtor-in-possession filed a petition for relief under Chapter 11 of the Bankruptcy Code.
2. That on October 7, 1983, the debtor's Modified Plan of Reorganization was confirmed by this court.
3. That the M & I Bank of Portage County is the debtor's sole secured creditor.
4. That the court docket sheet reads as follows:

(See Exhibit A attached hereto and made a part hereof as if specifically herein repeated.)

5. That no claim was filed by M & I Bank herein.

6. That at the time the petition was filed, the Bank's claim was \$298,351. (See A-2 of Schedules.)

7. That from the approval of the plan to this date there have been continuous disputes between the parties with various allegations by both sides.

8. That it is necessary once and for all to bring the case to a final conclusion.

9. That the debtor has tried in every way to carry out the plan and comply with the court's orders.

10. As shown in the docket above the court had to value the property, clarify order for interest, attorney fees, appraisal fees, and disbursements (see #50 Docket) (also see #51 further construction or clarification)

11. The real estate was conveyed to the bank on May 15, 1984, and the personal property by bill of sale on same date.

12. The break off date is May 15, 1984.

13. The interest to the claim ends on same date.

14. Any disappearance after May 15, 1984, of personal property was the bank's loss. The fact that an item by item of inventory was not taken by the bank is entirely the problem of the bank and not chargeable to debtor.

15. That on October 4, 1984, the court entered a compliance order (see #54 Docket) directing further action by the bank.

DATE	BANKRUPTCY PROCEEDING RECORD
9/21	36. P/M: Plan conf. Appraisal to be furnished. bms
10/7	37. Ord. Conf. Plan as Modified. bms
10/19	38. Appraisal by Jack J. Rusch. cg
10/17	39. Not. of Entry of Ord. Conf. Plan w/AOM. bms
11/2	40. Appraisal of Eagan Agency, Ltd. cg
11/4	41. AOM copy of Not. of Entry of Ord. Conf. Plan. bms
11/28	42. P/M: Hearing held re appraisal of property. Mr. Siehr to send appraisal. cg
11/29	43. Appraisal of Atty. Siehr. bms
1984 2/3	44. P/M: Valuation hearing held. Attorney for M & I Bank to advise when appraisal ready. cg
2/15	45. P/M: Adj. valuation hrg...adj. to further ord. bms
3/1	46. Appraisal by Berry Appraisal Service, filed by Atty. Siehr. ca
3/6	47. Stip. by & btw. debtor & Farmers & Exchange Bank and Ord. Appr. Stip. signed by Ct. 3/6/84. bms
3/15	48. P/M: Adjourned valuation hearing held. Court took matter under advisement. cg
4/4	49. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR TRANSFER OF DEBTOR PROPERTY. cc: Attys. Kubasta & Siehr. bms
5/15	50. P/M: Telephone Conference held re clarification of order #49. Court allowed interest to date of transfer + \$5,500 attorney fee, \$1,300 appraisal \$1,300 disbursements. Attorneys agreed no written order necessary. cg
8/31	51. P/M: Tele. Conf. - re Court's Ord. of 4/4/84. Briefs to be filed. bms
9/5	52 Memorandum re: #51 (Atty. Siehr for Debtor) ca
9/24	53. Memorandum re: #51 (Atty. Kubasta for M & I Bank) ca & AOM
10/4	54. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR COMPLIANCE. **Signed: 10/4/84**. cc: Attys. Siehr & Kubasta. bms
1985 03/19	55. Application for Issuance of Order to Show Cause & for Contempt Judgment and Order. signed*** _____ *** jz
03/19	56. Motion of M & I Bank of Portage County for RFS; Notice thereof (hearing March 20, 1985 at 11:30 a.m.) and AOM. jz

DATE	BANKRUPTCY PROCEEDING RECORD
1985 04/17	57. PM/Hearing on #56 - adjourned to further Order - attys to advise. jz
04/17	58. PM/Hearing on #55 - adjourned to further Order - attys to advise. jz
*** 04/12	56A. Notice of Motion(#55 & #56) (hearing 04/17/85 at 11 a.m. and AOM. jz
*** 07/03 7/25	58A. Order lifting Stay as to M & I Bank. signed* 59. Notice of telephone hearing re: M & I Bank RFS Motion. 8/5/85 - 9:00 am. ca
8/5	60. P/M: Phone conf. held re: #59. Adj. to phone conf. on 8/12/85 at 9:00 am. ca (settled per Atty. Kubasta - 08/12/85)
8/12	60a. P/M: No hearing held re: #60. Settled per Atty. Kubasta. ca
11/8	61. Status Report. ss
11/15	62. Notice of hearing re: Determination of debt owed M & I Bank of Portage County. 12/3/85 - 10:30 am. ca (Adj. to December 18, 1985 at 11:00 a.m.) ss (Adj. to January 24, 1986 at 10:30 a.m.) ss
1986	
1/24	63. PM: Hearing held re: #62. Taken under advisement. ca
1/29	64. Letter Brief from James Siehr. ss

jz

16. That an application by the bank was made for contempt which was followed by other motions.

17. The last hearing on January 24, 1986, as to amounts due are summarized as follows:

By Debtor:

Debt as of filing date		\$358,030.03
Interest to 5-15-84 @ 11% (date of turnover)		<u>52,655.20</u>
Debt as of 5-16-84		\$410,685.23
Credit Debtor:		
Value of real property	\$168,500.00	
Value of personal	214,579.20	
Property sold	<u>42,759.67</u>	
		<u>(425,838.87)</u>
<u>Value transferred in excess</u>		<u>\$ 15,153.64</u>
Less property declared to be real by court		<u>(14,520.00)</u>
		633.64
Add taxes, fees, and costs		<u>(18,705.16)</u>
		18,071.52
Credit cash payment		<u>(7,315.00)</u>
		\$10,756.52
Credit pre-cut log home	\$2,500.00	
Credit inventory	<u>16,571.00</u>	
		<u>(19,071.00)</u>
		\$ 8,314.48
Deduct rents owed by debtor		<u>260.00</u>
Total credits to debtor in excess of debt		\$ 8,054.48

By Bank:

9/17/82 - Balance Due:
9/17/82 - Date of Filing
per letter attached as Exhibit "A"
Exhibit "A" 358,030.03

Interest rate to be 11% per
Judicial decision. Note
rate is 12%.

3/7/84 - Interest 9/17/82 to
3/7/84 - 11%:
1982 = 105 days
1983 = 365 days
1984 = 66 days
536 days:

57,834.13

Received on Equipment Sale
Exhibit "B" \$ 44,100.00

Paid to Deist to dismantel 1,340.33
Equipment those items
highlighted in yellow on
Exhibit "C": (42,759.67)

\$373,104.49

5/15/85 - Interest 3/7/84
to 5/15/84 - 11% - 69 days: 7,758.54

Real estate deeded:
Value, per Court: \$168,500.00
Delinquent Real Estate
Taxes: (10,287.08)
1984 Real Estate Taxes
Prorated to 5/15/84: (1,154.36)

Rent Paid Deist for May: (260.00) (156,798.56)

Personal Property Surrendered
5/15/84
Item with "X" at Value on
Exhibit "C":
See Exhibit "D" for Adding
Machine Tapes. 223,195.00

Per Judge's Decision: x 66% (147,308.70)

Attorneys' Fees Allowed: 5,500.00

Attorney Disbursements Allowed: 364.16

Appraisal Fee: 1,300.00

Check from Deist: (6,557.00)

295,741.56

77,362.93

6/20/84 - Interest - 11% - 36 Days: 839.34

Items Surrendered:

Items underlined
on Exhibit "C":

Tape is Exhibit "E":

46,625.00
x 66%

(30,772.50)

(29,933.16)

47,429.77

Miscellaneous left on
premises on 5/20/84,
Sold 7/85 - Credit to 5/20/84:

(4,500.00)

42,929.77

Interest - 6/20/84 to 1/24/86:

1984 = 194 days

1985 = 365 days

1986 = 24 days

583 days

7,542.72

11%

\$ 50,472.49

Summary:

	<u>Bank's Calculation</u>	<u>Debtor's Calculation</u>	<u>Total Difference</u>
Interest	\$73,974.73	\$52,655.20	\$21,319.53
Value of Personal Property Transferred	\$178,081.20	\$199,956.20	\$21,878.00
Inventory Taken By Bank	\$4,500.00	\$19,071.00	\$14,571.00
Cash Paid	\$6,557.00	\$7,315.00	<u>\$758.00</u>
			\$58,526.53
Bank claims debt owed of	\$50,472.49		
Debtor overpaid	<u>8,054.48</u>		
			\$58,526.77

17. That from all the evidence adduced at the trial and from the exhibits and records the court is convinced that the debtor has

overpaid the bank the sum of \$8,054.48 as referred to in above summary.

CONCLUSIONS OF LAW

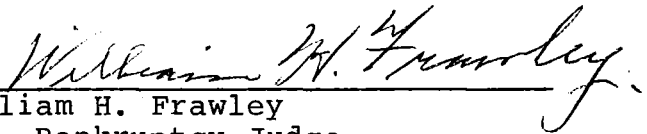
That the debtor be granted judgment for the sum of \$8,054.48 plus interest from May 15, 1984, at 11% per annum.

ORDER

THEREFORE, IT IS ORDERED AND ADJUDGED THAT, the debtor overpaid the claimant bank the sum of \$8,054.58 and that judgment be awarded said debtor in the sum of \$8,054.48 plus interest at 11% per annum from May 15, 1984, without costs.

Dated: April 15, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

cc: Attorney James M. Siehr
Attorney Thomas M. Kubasta