

FILED
COMMON PLEAS COURT
MUSKINGUM CO., OHIO
2012 SEP 14 PM 3 31
TODD A. BICKLE
CLERK

IN THE COURT OF COMMON PLEAS
MUSKINGUM COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
OHIO ATTORNEY GENERAL

Plaintiff

v.

CLARENCE GOSS and GOSS REALTY
CORPORATION

Defendants

CASE NO CH 2000-0400 ~~CY 4603~~

JUDGE JOHN D. MARTIN

AMENDED AND RESTATED AGREED ENTRY RESOLVING
THE STATE'S CHARGES IN CONTEMPT

Plaintiff, the State of Ohio (the "State") and Defendants, Clarence Goss and Goss Realty Corporation (collectively, the "Defendants") and together with the State, the "Parties") agree and stipulate as follows:

RECITALS

A. On December 23, 2002, this Court entered an order regarding an unlicensed and unpermitted solid waste disposal area located on Baughman Run Road, Muskingum County,

Ohio (the "Property") that was owned/operated by Defendants (the "Remediation Order").

Pursuant to the Remediation Order, Defendants were ordered to:

- i. Remove all tires on the Property and lawfully recycle or dispose of such tires at a facility authorized to accept scrap tires by June 21, 2003;
- ii. Apply or arrange for the application of a pesticide or larvicide, in accordance with Ohio Adm. Code 3745-27-60(B)(8)(b), beginning on or before April 1, 2003, and continuing until all exposed scrap tires were removed; and
- iii. Pay a Two Hundred Fifty Thousand, and 00/100 Dollars (\$250,000.00) civil penalty to the State, which penalty would be deemed waived if Defendants substantially complied with the Remediation Order by March 15, 2003.

B. On March 21, 2005, Defendant Goss Realty Corporation filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division (the "Bankruptcy Court"), administered under Case No. 05-054300 (the "Goss Realty Bankruptcy Case").

C. On June 22, 2006, this Court entered an *Agreed Entry Resolving the State's Charges In Contempt* (the "Agreed Entry"), which Agreed Entry was deemed to fully satisfy the Defendants' obligations under the Remediation Order.

D. Pursuant to the Agreed Entry, James Krischak, Esq. was appointed as receiver (the "Receiver") to sell certain parcels of real estate owned by Defendants as identified on Exhibit A attached hereto (collectively, the "Designated Real Estate"). To date, none of the Designated Real Estate has been sold.

E. In compliance with the Agreed Entry, Defendant Goss Realty Corporation sought dismissal of the Goss Realty Bankruptcy Case. On August 23, 2006, the Bankruptcy Court entered an order dismissing the Goss Realty Bankruptcy Case.

F. In compliance with the Agreed Entry, Defendants authorized and granted the Ohio Environmental Protection Agency property access to remove scrap tires and address any outstanding issue adversely affecting human health and the environment in a letter dated August 15, 2005.

G. The Parties hereby stipulate and agree that all remaining obligations of the Agreed Entry shall be deemed satisfied by the terms of this Amended and Restated Agreed Entry.

NOW THEREFORE, without trial, admission, or determination of any issue of fact or law, and upon the consent of the Parties, it is ORDERED, ADJUDGED, and DECREED as follows:

1. Each of the recitals set forth above is incorporated as if fully stated herein.
2. Defendants shall prepare General Warranty Deeds for the properties to be transferred to the State of Ohio as outlined below.
3. Defendants' funds currently consist of a total of One Hundred Four Thousand, Nine Hundred Thirty Nine Dollars (\$104,939) broken down as follows:
 - a. Eighty-One Thousand, Four Hundred Thirty Nine Dollars (\$81,439), representing the balance of funds held in the Goss Realty Corporation bank account with The Community Bank;
 - b. Sixteen Thousand and 00/100 Dollars (\$16,000.00) in lieu of the assignment of a life insurance policy on the life of Clarence Goss; and

c. Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) in additional cash consideration.

4. Within five (5) business days of entry of this Amended and Restated Agreed Entry, the Defendants shall remit the funds identified in paragraph 3 above as follows:

a. To MGS Consulting LLC, via bank check, Defendants shall remit the amount of Three Thousand, Eight Hundred and Sixty Nine and 20/100 Dollars (\$3,869.20).

b. Payments to the State of Ohio shall be made by delivering a certified check in the amount of \$101,069.80, payable to the order of "Treasurer, State of Ohio," delivered to Martha Sexton, Paralegal, or her successor, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

5. In lieu of the sale of the Designated Real Estate by the Receiver, Defendants shall convey the Designated Real Estate to the State, by general warranty deeds, within thirty (30) business days of entry of this Amended and Restated Agreed Entry. In addition, Defendant Goss Realty Corporation shall convey to the State, by quit claim deed, an approximate 1.65 acre segment of parcel number 08-20-17-82-000 (see the legal description for "Parcel Two" on the quit claim deed from Goss Realty Corporation to the State identified in Exhibit A attached hereto) to provide access to certain parcels located south of Baughman Run Road that are being conveyed by the Defendants to the State. For purposes of resolving the instant Charges in Contempt, any parcels or other interests in real estate owned or held by the Defendants shall be retained by the Defendants, free and clear of any and all claims, liens or interests held or asserted by the State against the Defendants.

6. Defendants have assumed and paid certain survey costs in the approximate amount of Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$37,500.00) required to convey the Designated Real Estate to the State. In addition, Defendants have assumed and paid the cost to prepare the general warranty deeds required to convey the Designated Real Estate to the State. The Defendants shall also pay any additional conveyance fees charged by the Muskingum County Auditor with respect to the conveyance of the Designated Real Estate to the State, the recording fees for the deeds in the approximate amount of Four Hundred Forty Dollars (\$440.00) payable to the Muskingum County Recorder, and the transfer taxes in the approximate amount of Seventeen Dollars (\$17.00) payable to the Muskingum County Auditor. The Parties are not aware of any additional costs with respect to the conveyance of the Designated Real Estate.

7. In the General Warranty Deeds, Defendants will specifically convey to the State any and all interests in whatever mineral rights that Defendants own in the Designated Real Estate, to the extent that such rights were not previously assigned to unrelated third parties. The parties acknowledge that Beekmantown Ltd. is not a related third party.

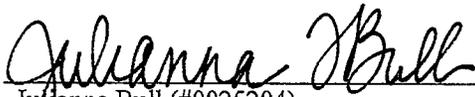
8. The Receiver is hereby released and relieved of any further obligations as receiver in this proceeding. Within five (5) business days of entry of this Amended and Restated Agreed Entry, the Defendants shall remit Four Thousand, Four Hundred Twenty and 75/100 Dollars (\$4420.75) to the Receiver as payment in full of the Receiver's fees and expenses.

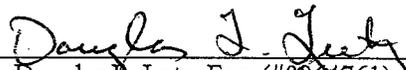
9. This Amended and Restated Agreed Entry is deemed to fully satisfy all requirements of the Remediation Order.

Respectfully Submitted and Approved:

**STATE OF OHIO
MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

FROST BROWN TODD LLC

By: 
Julianna Bull (#0025204)
Principal Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
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Attorney for Goss Realty Corporation

Attorney for Plaintiff

AGREED:

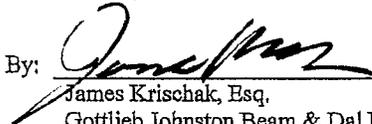
GOSS REALTY CORPORATION

CLARENCE GOSS

By: 
Terry Goss
Vice President
2830 Pinkerton Rd.
P.O. Box 112
Zanesville, OH 43702-0112

By: 
Terry Goss, on behalf of Clarence Goss,
Pursuant to Power of Attorney dated
December 16, 2004

JAMES KRISCHAK, ESQ., RECEIVER

By: 
James Krischak, Esq.
Gottlieb Johnston Beam & Dal Ponte PLL
320 Main Street, PO Box 190
Zanesville, Ohio 43702-0190
(740) 452-7555 - Telephone
(740) 452-2257 - Facsimile

IT IS SO ORDERED. September 13, 2012

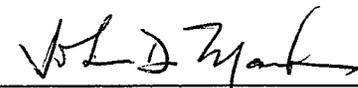

JUDGE JOHN D. MARTIN
MUSKINGUM COURT OF COMMON PLEAS

Exhibit A
Designated Real Estate

Goss Parcels for Transfer to the State of Ohio

Tract	Parcel #	Acres
1	08-30-25-11-000	80
2	08-30-25-09-000	82.87
3	08-30-25-08-000	80.88
	08-30-25-07-000	80.88
4	08-30-25-10-000	1.0
5	08-15-16-05-000	99.99
6	08-15-15-10-000	9.97
	08-15-16-04-000	46.87
	08-15-16-03-000	1.0
7	08-30-25-06-000	70.19
8	08-40-24-23-000	10.00
	08-40-24-24-000	0.68
	08-40-24-25-000	13.02
9	47-52-13-20-000	17.67
	47-52-24-02-000	45.69
GR1	47-52-13-22-000	41.35
GR2	08-20-17-82-000	1.65 (access road to tracts 1,2,3,4,7,8)
GR3	47-52-24-12-000	75.41 (tire dump clean-up site)