

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

In re:	)	
	)	
FARMLAND INDUSTRIES, INC., et al.,	)	Case No. 02-50557-JWV
	)	Joint Administration
Debtors.	)	

**ORDER**<sup>1</sup>

On this date the Court took up on an emergency and expedited basis American Plant Food Corporation's Motion for Stay Pending Appeal. By its Motion, American Plant Food Corporation ("American") has asked the Court to stay an auction of a fertilizer warehouse owned by the Debtor, Farmland Industries, Inc. ("Debtor"), presently scheduled for 2:30 p.m. on October 22, 2002, before the Court. The Debtor opposes the Motion for Stay, as do the Official Committee of Unsecured Creditors, the Bondholders' Committee, and Equalizer, Inc., the second highest bidder at the auction conducted by the Debtor on September 9, 2002.

At an auction on September 9, 2002, American made the highest bid of \$2,120,000.00 for the fertilizer warehouse owned by the Debtor. At a hearing for approval of the highest and best bid on September 10, 2002, the Court was advised that an entity known as United Agri Products, Inc. ("UAP"), had a contractual right of first refusal with respect to the fertilizer warehouse property, giving UAP the right to match any offer received by the Debtor for the warehouse property. On the basis of affidavits submitted by UAP and the Debtor, the Court determined that UAP had not received actual or constructive notice of the auction or the final hearing on the sale, and therefore the Court ordered the bidding resumed at a later date for the purpose of receiving additional bids. At a subsequent hearing, the Court ordered that the bidding be resumed on October 22, 2002, and limited the bidding at that time to UAP, American, and Equalizer, Inc. American has appealed the Court's rulings to the Eighth Circuit Bankruptcy Appellate Panel and, as indicated previously, has filed a Motion for Stay Pending Appeal.

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<sup>1</sup> This written Order is entered for the purpose of memorializing the Court's findings and conclusions announced in open Court at the conclusion of the hearing on American Plant Food Corporation's Motion for Stay Pending Appeal. The findings and conclusions announced in open Court are incorporated herein by reference.

The factors to be considered in determining whether to grant the Motion for Stay are set out in American's Motion for Stay as follows: First, whether the movant has demonstrated a substantial likelihood of success on the merits. Second, whether the movant will suffer irreparable injury absent the stay. Third, whether a stay would substantially harm other parties in the litigation. Fourth, whether a stay is in the public interest. *In re Forty-Eight Insulations, Incorporated*, 115 F.3d 1294 (7<sup>th</sup> Cir. 1997).

The Court has considered these factors in reaching its decision to deny the Motion for Stay. First, the Court does not believe that American has demonstrated a substantial likelihood of success on the merits. Indeed, under prevailing law, it appears that American will not prevail on the merits. The Court has previously discussed, in its Memorandum Opinion and Order entered on September 16, 2002, the bases for the Court's decision to resume the bidding for the fertilizer warehouse property. Those grounds are incorporated herein by reference. As the Court has previously indicated, the primary goal of an auction process in the bankruptcy court is to generate the best possible return on the property being sold. Resuming the bidding process will almost certainly guarantee a higher return - - perhaps as much as 10% or more - - than has previously been bid. Therefore, resuming the bidding process is in the best interests of the bankruptcy estate and its creditors. Moreover, the Court has determined that a significant mistake was made in the first auction in that UAP did not receive actual or constructive notice of the auction on September 9, 2002, or the final hearing on approval of the bid on September 10, 2002. UAP was thus deprived of due process of law. This is the sort of mistake that was appropriately to be brought before the Court at the final hearing on September 10, 2002. Under the circumstances then existing, the Court determined that it could not approve American's high bid and further determined that the bidding process should be resumed at a later date. Numerous courts have held that the bankruptcy court has wide discretion in handling sales of property in the bankruptcy context. See *In re Food Barn Stores, Inc.*, 107 F.3d 558 (8<sup>th</sup> Cir. 1997); *In re GGS Liquidation, Inc., v. Paloian*, 280 B.R. 425 (D. Ill. 2002); *Consumer News and Business Channel Partnership v. Financial News Network Inc. (In re Financial News Network, Inc.)*, 980 F.2d 165 (2<sup>nd</sup> Cir. 1992).

As to the second point, American has not demonstrated that it will suffer irreparable injury absent the stay, although the Court does recognize that American has the better side of the argument

on this point, in that it may either have to pay more for the property than it had originally bid or the property may be sold to another, higher bidder. Regardless of which of those events occurs, however, American will not be *irreparably* injured.

Third, a stay would not substantially harm other parties in the bidding process. In fact, resuming the bidding process will benefit, most importantly, the bankruptcy estate in that it is likely that higher bids will be received for the property. Reopening the bidding process will also enable UAP to submit a further bid on the property, on which it had a right of first refusal.<sup>2</sup> Though ordinarily Equalizer, Inc., would not be allowed to participate in the resumed bidding, in this instance the Court believes it is appropriate to include Equalizer, Inc., in the bidding process in order to provide competition that could lead to a higher bid being received (based on Equalizer, Inc.'s statement that it will increase the bid by a minimum of \$200,000.00) and the fact that Equalizer, Inc., has asserted that it did not receive full information concerning the business operations of the fertilizer warehouse prior to the auction on September 9, 2002.

Fourth, it is clear to the Court at this point that a stay would not be in the public interest. As previously indicated, the public interest is in the sale process obtaining the best possible price for the Debtor's assets. In this instance, a better price is almost certainly guaranteed, and it is apparent that the price will not be less than the amount previously bid by American. Moreover, a stay is not in the public interest in this instance because public agencies with a right of first refusal on the property have advised counsel for the Debtor that they would waive those rights of first refusal for the auction to be conducted on October 22, 2002, and for no other auction and for no period beyond October 22, 2002. Should those rights of first refusal be exercised, that would further cloud the sale of this property and would most likely further delay the sale of the property. There is also the possibility that, by delaying the sale further, additional costs would be incurred, and the property would be subject to loss or destruction by casualty or other causes.

Therefore, for the foregoing reasons, and for the reasons stated by the Court in open Court at the conclusion of the hearing on the Motion for Stay, it is

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<sup>2</sup> At the subsequent hearing before the Court, UAP waived its right of first refusal as a condition of reopening the bidding process.

**ORDERED** that the Motion for Stay Pending Appeal filed herein by American Plant Food Corporation be and is hereby DENIED.

**SO ORDERED** this 21<sup>st</sup> day of October, 2002.

/s/ Jerry W. Venters  
United States Bankruptcy Judge

Frazen to Serve Parties In Interest who Do  
Not Receive Electronic Notice