

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of :  
PESTER REFINING CO., : Case No. 85-340-C H  
Debtor. : Chapter 11  
- - - - - :  
ETHYL CORP., : Adv. No. 85-192  
Plaintiff, :  
v. :  
PESTER REFINING CO., LEA :  
REFINING CO., THE UNOFFICIAL :  
UNSECURED CREDITORS COMMITTEE, :  
COASTAL MART, INC., BANKERS :  
TRUST CO., PESTER MARKETING :  
CO., PETROLEUM SPECIAL, INC. OF :  
IOWA, INLAND CRUDE PURCHASING :  
CORP., CONTINENTAL BANK, N.A., :  
FIRST INTERSTATE BANK OF :  
DENVER, N.A., and SOUTHERN :  
REFINING CO., :  
Defendant. :  
THE UNOFFICIAL UNSECURED :  
CREDITORS COMMITTEE and :  
COASTAL MART, INC., :  
Intervenors. :  
- - - - -

**ORDER-COMPLAINT TO RECOVER MONEY OR PROPERTY**

On September 27, 1993 trial was held on Ethyl Corporation's Complaint to Recover Money or Property. Plaintiff, Ethyl Corporation ("Ethyl"), was represented by James M. Holcomb. Defendants, Pester Refining Company ("PRC"), Pester Marketing Company and Petroleum Special Inc. of Iowa were represented by attorney John G. Fletcher. Thomas

L. Flynn appeared on behalf of Defendant Bankers Trust Co. and as agent for Continental Bank, N.A. and First Interstate Bank of Denver, N.A. ("Bank Group"). Defendant, Southern Union Refining Co., was represented by Frank L. Burnette II. At the conclusion of the trial, the Court took this matter under advisement.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Upon review of the pleadings, evidence, and arguments of counsel, the Court now enters findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

#### **FINDINGS OF FACT**

1. On February 25, 1985, PRC, Pester Corporation, Pester Marketing, and Petroleum Special, Inc. of Iowa filed Chapter 11 petitions. An order was entered by the Court on February 27, 1985 granting Debtors' Application for Joint Administration. However, at no time have any of the four bankruptcy cases been substantively consolidated.

2. On March 21, 1986, the Joint Plan of Reorganization was confirmed. Pursuant to the Plan, Ethyl elected to pursue its reclamation claims and receive payment in an amount determined by court order rather than compromise and settle their claims.

3. An order modifying the Plan was entered on March 11, 1987, and judgment was entered on March 16, 1987. This

modification included the incorporation of a lease agreement ("Master Agreement") with Coastal.

4. On March 30, 1987, PRC, Pester Marketing Company, the Bank Group and the Junior Lienors entered into an agreement designating Bankers Trust Company as paying agent ("Paying Agent Agreement"). The Paying Agent Agreement was entered into pursuant to the Plan as modified.

5. On March 30, 1987, PRC, Pester Marketing Company, and Petroleum Special, Inc. made an assignment for security purposes to Bankers Trust Company as agent for the Bank Group and Southern Union Refining Company (SURCO).

6. On September 28, 1989 judgment was granted to Ethyl on its reclamation claim against PRC. The order further provided that Ethyl's rights of reclamation are subordinate to, but not extinguished by, the perfected security interests of the Bank Group and Junior Lienors.

7. On September 19, 1990, the Court determined that the value of Ethyl's claim is \$126,995.44. The order further provided that the court need not specify the source of funds out of which Ethyl's reclamation claim would be paid. The Eighth Circuit Court of Appeals modified and affirmed the District Court's affirmance of the Bankruptcy Court's orders of September 28, 1989 and September 19, 1990. Pester Refining Co. v. Ethyl Corp. (In re Pester Refining Co.), 964 F.2d 842 (8th Cir. 1992). The modification provided that Ethyl is

entitled to interest on its money judgment from the date of the judgment.

8. On July 18, 1991, Ethyl served a Notice of Garnishment upon Bankers Trust Company, individually and in its capacity as Paying Agent, for execution of its judgment. PRC moved to quash the garnishment.

9. On July 29, 1991 PRC's motion to quash was granted based on Ethyl's failure to show that PRC has a present interest in the payments made to the Paying Agent under the terms of the Paying Agent Agreement. The motion to quash was overruled, however, as to those funds of PRC in PRC's general account, number 02-374-4 at Bankers Trust Company.

10. Ethyl then moved the Court to Reconsider and Amend the Order Sustaining the Motion to Quash. Additionally, Ethyl made Applications for an Order Directing that the Paying Agent Agreement be Corrected and an Order Directing the Source of Funds Out of Which Pester Refining Co. Shall Pay Ethyl Corp.

11. On October 27, 1992, the Court entered an order denying Ethyl's Applications for Orders. Additionally, the Court gave Ethyl fifteen days to join Pester Marketing Co., Petroleum Special, the Unsecured Creditors Committee, Coastal Brand Marketing, Inc., the Bank Group, Inland Crude, SURCO, and Banker's Trust in the proceedings. The Court then continued the Motion to Reconsider and narrowed the issue to whether PRC has an interest in the earnings on the Paying

Account that may be garnished under Iowa law. The Court's extensive Findings of Fact detailed in the October 27, 1992 order are hereby incorporated by reference.

12. Subsequently, Ethyl twice amended its complaint to join the above named interested parties. Thereafter, Inland Crude Purchasing Corp. was dismissed from the action.

### **DISCUSSION**

The only issue before the Court is whether PRC has an interest in the earnings on the Paying Agent Account which may be garnished by Ethyl. PRC argues that any interest held in the earnings of the paying agent account is subject to the extensive security interest granted for the benefit of Bankers Trust as agent for the Bank Group and SURCO. Liens of attachment or garnishment are not superior to any prior possessory interest. Briley v. Madrid Improvement Co., 122 N.W.2d 824, 825 (Iowa 1963). In this case, the assignment for purposes of security provides in relevant part:

SECTION 1. Assignment. As collateral security for the due and punctual performance and payment of the Secured Obligations, the Assignors [the Pester entities] hereby sell, assign, transfer and set over unto the Agent [Bankers Trust Company], for the benefit of the Bank Group, and to SURCO, and hereby grant to the Agent, for the benefit of the Bank Group, and to SURCO, a continuing security interest in, all of the Assignors' right, title and interest, whether now existing or hereafter arising or acquired, in, to and under the Contract, together with the Master Lease referred to therein, and, subject to the rights of Branded under the Contract, all rights to receive payments thereunder and in connection therewith,

all claims thereunder and in connection therewith (including, without limitation, claims in respect of the Coastal Corporation Guarantee referred to therein), all payments thereunder and in connection therewith and all other rights and interests now existing or hereafter arising or acquired under and in connection with the Contract, including, without limitation, all rights to receive proceeds of any insurance, indemnity, warranty, guaranty or collateral security with respect to the Contract, and all proceeds of any thereof.

The Court finds that the earnings on the Paying Agent Account are subject to this security agreement. Therefore, if this Court finds that PRC does have an interest in the earnings, Ethyl's rights of reclamation would be subordinate to this perfected security interest.

The Court must next consider whether PRC has a present interest in the earnings. Generally, garnishment is effective only to the extent of the other party's interest in the property attached. Id.

Section 12.18 of the Master Agreement provides:

Paying Agent. Pester shall appoint a depository bank (which depository bank shall be reasonably satisfactory to Coastal) as its designated paying agent. So long as there are outstanding any Debt Repayment Obligations scheduled for repayment by Pester or obligations to pay the Advance Payment Note or the Operating Advance Note, Coastal shall be entitled to make all payments of rent and Advance Payments (other than the Advance Payment pursuant to Section 2.4.1.1.(a)) to such designated paying agent. Pester, by written notice (with a copy to Coastal), shall direct such designated paying agent to make payment of Debt Repayment Obligations in accordance with Appendix F hereto, the Advance Payment Note and the Operating Advance Note in accordance with the provisions of this Agreement; provided, however, that Pester may withdraw from such designated paying agent depository the amount of earnings on any deposits at such depository bank and the amount, if any, of any excess funds not

required for the payment of Debt Repayment Obligations, the Advance Payment Note and the Operating Advance Note.

Pester agrees to provide Coastal with copies of such paying agent's confirmation of payment.

(emphasis added).

The Master Agreement provides that PRC, Pester Marketing Company and Petroleum Special, Inc. of Iowa are sometimes collectively referred to as "Pester." Therefore, Ethyl argues that in this clause "Pester" refers to PRC. Ethyl concludes that this language in the Master Agreement gives PRC an interest in the earnings in question as it allows it to withdraw such funds. However, Section 6.(c) of the Paying Agent Agreement, which was established pursuant to the Master Agreement, provides as follows:

The Paying Agent shall, subject to the set off rights of the Paying Agent set forth in Section 13, pay to Pester Marketing, on or before the third (3rd) day of each month, the amount of any earnings on funds in the Agency Account provided, however, that Pester Marketing shall use such earnings only for corporate purposes (including but not limited to paying the Paying Agent and accounting expenses). Pester Marketing agrees that Pester Marketing shall not use such earnings for the payment of dividends to Jack C. Pester (or to in any way pay any indebtedness of Jack C. Pester).

(emphasis added).

PRC maintains that pursuant to the language of the Paying Agent Agreement, Pester Marketing, alone, is entitled to the earnings of the Account and that PRC has no interest in the funds. The Master Agreement, which was incorporated into the Joint Plan, specifically referred to and provided for the

future execution of the Paying Agent Agreement. On March 30, 1987, shortly after court approval of the modification of the Joint Plan, the Paying Agent Agreement was executed in order to implement the Plan as modified. Since that date, earnings on the Paying Agent Account have been paid to Pester Marketing as provided in the Paying Agent Agreement. The Court finds that the Master Agreement was intended to incorporate the Paying Agent Agreement.

Generally, specific contractual language controls over more general language. See Iowa Fuel & Minerals, Inc. v. Iowa State Board of Regents, 471 N.W.2d 859 (Iowa 1991). The language in the Paying Agent Agreement specifically clarifies the general reference in the Master Agreement to "Pester". Accordingly, the Court finds PRC has no interest in the funds and the funds are not subject to garnishment by Ethyl.

#### **ORDER**

IT IS THEREFORE ORDERED that any earnings on the Paying Agent account are subject to the prior perfected security interest held by Bankers Trust Co. as agent for the Bank Group and SURCO.

IT IS FURTHER ORDERED that Pester Refining Co. has no interest in the earnings on the Paying Agent Account which is subject to garnishment by Ethyl Corp.



Dated this 16th day of November, 1993.

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RUSSELL J. HILL  
U.S. BANKRUPTCY JUDGE