

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

DATAPORT (U.S.A.) LIMITED

Case No. 92-10723 K

Debtor

MEMORANDUM AND ORDER
SUSTAINING OBJECTION TO CLAIM # 16

Ricoh's claim of entitlement to "involuntary gap" priority status, 11 U.S.C. §§ 507(a)(2) and 502(f), or (as was discussed at argument) to "administrative status" could be sustained only if it were presumed that the goods that were the subject of its reclamation demand and replevin action were still in Dataport's possession as of February 28, 1992, the date the involuntary petition was filed.

If, on the other hand, Dataport had sold the goods prior to that date, then every event pertinent to Ricoh's claim occurred pre-petition, and no priority could be sustained. (If funds in the Trustee's possession were traceable "proceeds" of those goods, then Ricoh would be entitled to the funds. But there is no evidence to that effect.)

The Court need not rule on what the result would be were it shown that the goods were tortiously dissipated by Dataport or its principals after the filing of the involuntary petition, or rule on how such a fact pattern would differ from the more common pattern in which the creditor merely has a lien on the debtor's goods, rather than having ownership of goods (by

virtue of the timely reclamation demand) in the debtor's possession.

The Court need only note here that, "The burden of proving entitlement to priority payment as an administrative expense . . . rests with the party requesting it." *Woburn Assoc. v. Kahn (In re Hemingway Transp.)*, 954 F.2d 1, 5 (1st Cir. 1992) (citing *Woods v. City National Bank & Trust Co.*, 312 U.S. 262, 268 (1941)). Ricoh has not set forth facts from which the Court could conclude that it was more likely than not that Ricoh was injured by post-petition acts of Dataport, rather than pre-petition acts.

The Trustee's objection is sustained. The claim of Ricoh will be allowed only as a general prepetition claim.

SO ORDERED.

Dated: Buffalo, New York
April 23, 1996

/s/Michael J. Kaplan

U.S.B.J.