

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

HYMAN CONTAINER CORPORATION

Case No. 96-10604 K

Debtor

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By Order of December 12, 1996, the Court placed upon Fleet Bank (the "Bank") the burden of going forward to introduce some evidence, or some proposed method of producing evidence, to substantiate its claim that it is entitled to a larger share of the sale proceeds than the Trustee is willing to concede. I placed the burden on the Bank rather than the Trustee because I have ruled the Bank's real estate appraisal to be irrelevant (it is a fair market value appraisal rather than an appraisal based on an auction sale of the Debtor's assets as a going concern), and have deemed the Buyer's allocation of value as among the assets to be the "best evidence" of the respective value of the various components of the sale, in the absence of a better proposal by the Bank.

The Bank's "proposal," if one may call it that, is to split the difference - "Since neither side can provide 'proof' of the exact value of the property at the time of the auction, perhaps the equitable solution would be to strike a balance somewhere in the middle."

That might have been a worthy proposal to the Trustee for settlement of this matter long ago, as I vigorously encouraged. Now, it is not only too late, but it is addressed to the Court, and the Court does not negotiate its decisions.

I did not rule that “neither side can provide ‘proof,’” I ruled that the Buyer’s allocation is the best evidence in the absence of a better method. The Bank has not offered one. Moreover, there is a suggestion in paragraph 2 of its letter to the effect that nothing that I have previously said on this matter persuades the Bank that it is incorrect in asserting that a fair market value in an auction context is the proper value. If that is its position, then it should say so plainly, and request entry of an appealable order. The effort to maintain its arguments while attempting to negotiate with the Court instead of with the opposing party, and while attempting to mischaracterize or ignore the Court’s rulings, is unbecoming.

The Bank has failed to persuade the Court that the Buyer’s allocation is not the “best evidence” of true values. Deeming this proceeding to be the equivalent of a claims objection (as explained in my earlier Order), I find that the Trustee has overcome the Rule 3001(f) effect of the Bank’s assertion that its secured and unsecured claims should be allowed in accordance with its appraisal evidence. The Bank’s claims shall be allowed as the Trustee proposes.

So that the Bank need not await a final Order of Distribution if it wishes to appeal, this Order shall constitute a Final Judgment on this matter without entry of any further judgment,

decree or order. I certify it as an appealable order.

SO ORDERED.

Dated: Buffalo, New York  
January 31, 1997

/s/ Michael J. Kaplan

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Michael J. Kaplan, U.S.B.J.