

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

TRENCH MANUFACTURING COMPANY, INC.

Case No. 95-13385 K

Debtor

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Although the Court, at hearing, said that it would grant the Bank of America Illinois' "Motion . . . for Final Allowance and Payout of Secured Claim," the Court has now reviewed the proposed Order, has reconsidered, and is now inclined to deny the Motion for the following reasons:

1. Such an Order is unnecessary and serves no bankruptcy purpose. 11 U.S.C. § 502(a) provides that a filed claim is "deemed allowed" unless someone objects. This is a liquidation case, and there is no reason to make accommodations to the lender.

2. Such an Order, if granted, will become the norm. If the Court grants this needless Order, then every secured creditor who is receiving payments pursuant to cash collateral stipulations or the like in a Chapter 11 will have the right to insist on similar needless "comfort" orders. Hundreds of such requests will needlessly burden all judges of the Court.

3. Such an Order is inappropriate as a matter of law. It may inappropriately place the lender's claim beyond the reach of parties in interest who wish to object under 11 U.S.C. § 502(a) and (b). Indeed, this case is going to convert to Chapter 7, and the present order would preclude a claims objection by the Trustee who is yet to be appointed. That would contravene the Code here,

where the Court has not heard and determined the amount of the bank's claim on the merits in a contested matter, but rather is asked to adopt the bank's representations as the Court's own holding.

4. The Order might not comply with previous Orders in this case. This estate has been liquidating largely for the benefit of the Bank. The Court has repeatedly emphasized that the Bank must bear its fair share of the expenses. The proposed order recognizes that expenses should be paid first, and only the net is to be remitted to the Bank, but the Order fixes the Bank's secured claim without any regard whatsoever to the fact that an appropriate 11 U.S.C. § 506(c) contribution would in fact reduce the Bank's allowable claim, and not merely reduce the amount of payments it receives. (For example, its fair share of expenses might conceivably reduce its allowable recovery to an amount below the \$4.2 million it has already received.)

The Bank's counsel shall inform Chambers by Friday, May 3, 1996, whether it requests further argument in the above regards or whether an Order may be entered denying the Motion. If further argument is requested, it shall be heard on May 14, 1996 at 9:00 a.m.

SO ORDERED.

Dated: Buffalo, New York  
April , 1996

/s/Michael J. Kaplan

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U.S.B.J.