

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:) CHAPTER 11
) CASE NO. 01-52973-JDW
ALLIANCE AEROSPACE, LLC,)
)
DEBTOR.)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Alliance Aerospace:

Wesley J. Boyer
William M. Flatau
355 Cotton Ave.
Macon, Georgia 31201

For Keltic Financial Partners, Ltd.:

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For Lucas Western, Inc.:

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For Lori and G. William Northrup:

Thomas C. James, III

438 Cotton Ave.
Macon, Georgia 31201

For International Ass'n of Machinists
and Aerospace Workers, AFL-CIO, its
Local No. 2726 and the Employees,
Members of the Local's Hourly
Bargaining Unit:

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Marilyn S. Bright
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For Certain Salaried Employees:

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For United States Trustee:

Mark W. Roadarmel
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MEMORANDUM OPINION

This matter comes before the Court on the motion of Debtor Alliance Aerospace, LLC (“Debtor”) to sell substantially all its assets. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(N) and (O). The Court having held a hearing on August 2, 2001 (the "Sale Hearing") on Debtor’s motion, and the highest and best bid submitted at the Sale Hearing having been made by Western Steel, Inc. ("Western Steel") in the aggregate amount of \$5,200,000 (the "Sale Proceeds"); and the Court having announced at the Sale Hearing that a hearing would be held on August 10, 2001 to determine how to allocate the Sale Proceeds among the various assets to be purchased by Western Steel; and the Court having entered an Order on August 7, 2001 (the "Sale Order") approving and authorizing the sale to Western Steel; and a hearing having been commenced on August 10 and continued on August 17 ("Allocation Hearing") during which evidence was presented as to appropriate allocation of the Sale Proceeds; and the sale to Western Steel having been closed on Friday, August 17, 2001; and the Court having heard closing arguments from counsel on August 31, 2001; and upon the record made at the Allocation Hearing and all prior proceedings in this case and after due deliberation and sufficient cause appearing therefore, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052:

Findings of Fact

On July 16, 2001 (the "Petition Date"), Debtor commenced a voluntary case under Chapter 11 of the Bankruptcy Code. No trustee or examiner has been appointed for Debtor, and Debtor continues to be in control of its assets as a debtor-in-possession.

Keltic Financial Partners, LP ("Keltic") asserts a first priority security interest in and lien upon, among other things, the real property and improvements located at Debtor's facility at 7979 N.E. Industrial Boulevard, Macon, Bibb County, Georgia ("Real Property") and certain equipment located on the Real Property and general intangibles relating to such equipment (the "Keltic Equipment"). The Real Property and the Keltic Equipment are hereinafter referred to jointly as the "Keltic Collateral." Keltic asserts, and Debtor does not dispute, that Debtor granted Keltic a first priority security interest in and lien upon the Keltic Collateral to secure the indebtedness owing by Debtor to Keltic for term loans, revolving advances and other indebtedness and obligations owing to Keltic by Debtor pursuant to the Loan and Security Agreement dated December 21, 2000, between Debtor and Keltic, and related documents ("Keltic Loan Documents").

On August 2, 2001, Keltic filed a proof of claim with the Court in the amount of \$2,309,650.06, which represents Debtor's indebtedness to Keltic as of the Petition Date with interest continuing to accrue on the principal indebtedness since the Petition Date, plus attorney fees and any other fees and charges to

which Keltic may be entitled under the Keltic Loan Documents. No objection to the Keltic proof of claim has been filed with the Court as of the date hereof.

Lucas Western, Inc. ("Lucas Western") asserts a first priority security interest in and lien upon certain items of equipment (the "Mazak Equipment") not included in the Keltic Equipment. Lucas Western asserts, and Debtor does not dispute, that Debtor granted Lucas Western a security interest in and lien upon the Mazak Equipment to secure Debtor's indebtedness to Lucas Western under a promissory note in the original principal amount of \$1,500,000 ("Mazak Note"). Lucas Western is also the holder of a second promissory note executed by Debtor and in the original principal amount of \$500,000 ("Second Note"). Lucas Western contends that the Second Note is secured by a second priority security interest in the Keltic Equipment.

At the Allocation Hearing, Lucas Western presented testimony that Debtor's indebtedness to Lucas Western under the Mazak Note as of the Petition Date equals the amount of \$1,569,051.40. Lucas Western also presented testimony that Debtor was indebted to Lucas Western under the Second Note as of the Petition Date in the amount of \$523,011.16. Interest and expenses continue to accrue on these amounts after the Petition Date.

Prior to the Sale Hearing, Fort Knox Auctioneers ("Fort Knox") and Western Steel offered to purchase all of the personal property of Debtor, including the Keltic Equipment and the Mazak Equipment, for the aggregate amount of \$2,900,000. In this offer, Fort Knox and Western Steel allocated

\$1,800,000 to the Mazak Equipment and \$1,100,000 to the Keltic Equipment. Debtor accepted this offer by Fort Knox and Western Steel prior to the Petition Date. Western Steel also offered prior to the Sale Hearing to purchase the Real Property for \$2,100,000. At the Sale Hearing, Western Steel submitted a combined offer to purchase the Real Property, the Keltic Equipment and the Mazak Equipment (collectively, the "Property") for the total purchase price of \$5,000,000 and subsequently increased its bid during the Sale Hearing to \$5,200,000.

Several witnesses testified at the Allocation Hearing. James Knox, who formulated the offer for Western Steel, testified that the purchase offer was based on the original allocation of \$1,800,000 to the Mazak Equipment, \$1,100,000 to the Keltic Equipment with the remainder of \$2,300,000 attributable to the Real Property. Lucas Western presented the expert testimony of Tom Locke as to the orderly liquidation value of the Mazak Equipment. Mr. Locke testified that the Mazak Equipment had an orderly liquidation value, assuming the removal of this equipment after the liquidation sale, of \$1,785,000 as of the date of the Allocation Hearing. He also testified to an orderly liquidation value "in place" of \$1,973,000, which value is based on the assumption that the purchaser intends to use the equipment in place and as currently configured at the location as a part of an ongoing operation. Certain employees of Debtor presented the expert testimony of Keith Bainbridge as to the orderly liquidation value in place of both the Mazak Equipment and the

Keltic Equipment. Mr. Bainbridge testified to a value of \$785,555 for the Mazak Equipment and to a value of \$445,079 for the Keltic Equipment. The Northrups, principals of Debtor, presented the expert testimony of Jerry Wernke. As to the Keltic Equipment, he testified to an orderly liquidation value of \$700,000 and an orderly liquidation value in place of \$840,000. On cross examination, he also estimated the value of the Mazak Equipment to be between \$1,750,000 and \$2,000,000. In addition, the Northrups offered the expert testimony of Trip Yarborough, a real estate appraiser, who testified that the distressed sale value of the Real Property equaled \$2,000,000.

Debtor's pre-petition indebtedness to Keltic is fully secured by the Keltic Collateral. Debtor's pre-petition indebtedness to Lucas Western under the Mazak Note is fully secured by the Mazak Equipment. Pursuant to the Interim Order on Keltic Financial Partners, LP's Emergency Motion for Relief from Automatic Stay entered July 27, 2001, and the Second Interim Order on Keltic Financial Partners LP's Emergency Motion for Relief from Automatic Stay entered August 13, 2001, Keltic made advances to Debtor of funds to be paid directly to Georgia Power Company and The Macon Water Authority for electrical and water services to Debtor's facility in the amounts of \$82,500 (the "Electric Deposit") and \$6,795.00 (the "Water Deposit"), respectively. This indebtedness remains outstanding.

Conclusions of Law

To the extent that any of the foregoing findings of fact are deemed to be conclusions of law, then such conclusions are hereby confirmed. There has been proper and adequate notice of the Allocation Hearing, and a proper and adequate opportunity to be heard on the allocation of the Sale Proceeds has been given to all parties in interest.

In determining how to allocate the Sale Proceeds, the Court will use as a starting point the allocation in the original bids by Fort Knox and Western Steel of \$2,100,000 for the Real Property, \$1,900,000 for the Mazak Equipment, and \$1,100,000 for the Keltic Equipment. Most of the expert valuation testimony conformed relatively closely to these numbers. For the real estate, Mr. Yarborough testified to a value of \$2,000,000. For the Mazak Equipment, Mr. Wernke and Mr. Locke testified to values ranging between \$1,750,000 and \$2,000,000. For the Keltic Equipment, Mr. Wernke testified to values ranging between \$700,000 and \$840,000. The only testimony that significantly deviated from the Fort Knox/Western Steel bid allocations was that of Mr. Bainbridge, whose appraisal for both types of equipment totaled approximately \$1,200,000. Based on this substantial deviation from both the bidders' allocation and the appraisals of other experts, the Court considers Mr. Bainbridge to be less reliable than the other experts.

Nevertheless, Mr. Bainbridge's proportions were consistent with the Fort Knox equipment bid. The Fort Knox bid proportions were 62% of the \$2,900,000 total to Mazak Equipment and 38% to Keltic Equipment. Mr.

Baimbridge's appraisals resulted in proportions of 63% of his \$1,200,000 total to Mazak Equipment and 37% to Keltic Equipment.

While the Fort Knox/Western Steel bid allocation and the valuation testimony is helpful, the Court is not attempting to value the property. Unlike a Section 506(b) analysis in which a court must hypothesize about the value of certain collateral, the value of the property in this case has already been set at \$5,200,000 by the sale. Furthermore, the intentions of the purchaser in terms of allocation are not necessarily determinative because they likely do not reflect real world values. Reality transcends the both the buyer's intentions and the experts' opinions. While the bidders' allocation totals \$5,000,000 and the most generous appraisals total approximately \$4,800,000, in reality the Court has \$5,200,000 to allocate.

Counsel for the union employees suggested that proceeds that exceed the values established by the expert witnesses could be allocated to a fourth intangible asset, which she described as a premium for buying all the property intact. This argument is analogous to the residual value method of setting goodwill value for tax purposes. Under the residual value method, the fair market value of all assets acquired is assumed to equal the purchase price. The fair market value of the individual assets are then subtracted from the purchase price and the remaining value is allocated to goodwill. R.M. Smith, Inc. v. C.I.R., 591 F.2d 248, 252 (3d Cir. 1979). However, while this method may be useful when dealing with fair market value, it has been criticized for its failure to

take into account a bargain received on either side of the deal, thus resulting in either under- or overinflated goodwill values. Id. at 252-53. Certainly the circumstances of an expedited sale during a bankruptcy proceeding create even more variables that the residual value method is not designed to accommodate. Furthermore, the Court has been unable to find any precedent for using the residual method as a basis or guide for its allocation decision and therefore declines to do so.

The Court is most persuaded by the common proportions that run through the bidders' allocation and the appraisals. Therefore, based on all the evidence and in line with those proportions, the Court concludes that the Sale Proceeds should be allocated as follows:

Real Property	\$2,300,000
Keltic Equipment	\$1,100,000
Mazak Equipment	\$1,800,000

The above allocations for the Real Property and the Keltic Equipment shall constitute the "Real Property Allocation" and the "Keltic Equipment Allocation," respectively for purposes of the Court's separate order on partial disbursement of the Sale Proceeds entered on August 31, 2001 ("Disbursement Order"), and collectively as the "Keltic Collateral Allocation" for purposes of the Disbursement Order. The allocation for the Mazak Equipment shall constitute the "Mazak Collateral Allocation" for purposes of the Disbursement Order.

Dated, this 13th day of September, 2001

James D. Walker, Jr.
United States Bankruptcy Court Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Wesley J. Boyer
William M. Flatau
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Macon, Georgia 31201

Rufus T. Dorsey, IV
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Hubert C. Lovein, Jr.
P.O. Box 6437
Macon, Georgia 31208

Mark W. Roadarmel
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Macon, Georgia 31201

This 13th day of September, 2001.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
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IN RE:) CHAPTER 11
) CASE NO. 01-52973-JDW
ALLIANCE AEROSPACE, LLC)
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DEBTOR.)

ORDER

In accordance with the Memorandum Opinion entered on this date, it is hereby

ORDERED that the proceeds from the sale of Alliance Aerospace, LLC's assets be allocated as follows: \$2,300,000 to assets identified in the Opinion as the Real Property; \$1,800,000 to the assets identified in the Opinion as the Mazak Equipment; and \$1,100,000 to the assets identified in the Opinion as the Keltic Equipment.

So ORDERED, this 13th day of September, 2001.

James D. Walker, Jr.
United States Bankruptcy Judge

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This 13th day of September, 2001.

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