



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

FAIRFIELD SENTRY LIMITED,
Debtor.

**ORDER AFFIRMING
DECISION OF
BANKRUPTCY COURT**

13 Civ. 1524 (AKH)

KENNETH KRYS,
Appellant,

-against-

FARNUM PLACE, LLC,
Appellee.

ALVIN K. HELLERSTEIN, U.S.D.J.:

For the reasons stated on the record and below, the Bankruptcy Court’s decision is affirmed.

It is not clear that Section 363 of the Bankruptcy Code applies to this case because it is questionable as to whether there has been “a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States.” 11 U.S.C. § 1520(a)(2). Here, the relevant property is intangible property, and New York State law applies to determine the location of the property. See 11 U.S.C. § 1502(8). Judge Cardozo long ago called for “a common sense appraisal of the requirements of justice and convenience” to establish the situs of intangibles. Severnoe Sec. Corp. v. London & Lancashire Ins. Co., 255 N.Y. 120, 123-24

(1931). This “common sense appraisal” is quite similar to interest analysis in the conflicts-of-law arena. Here, the British Virgin Islands has a strong interest in managing its own bankruptcy proceedings, but New York also has an interest in ensuring that creditors related to Bernard Madoff’s fraud are adequately compensated.

However, even if Section 363 applies, I find that Judge Burton R. Lifland’s denial of the foreign representative’s challenge was proper. Courts should be “loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence.” In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003). Judges generally should not require a trustee to accept a bid that occurred after a properly-held auction was closed. See In re Financial News Network, 980 F.2d 165, 169 (2d Cir. 1992) (“Gil-Bern properly reasoned that accepting the post-auction higher bid would be a ‘penny wise and pound foolish’ practice, because it would encourage parties to submit low formal bids and then come back, if necessary, with higher post-auction offers.”). In “unusual situations,” such as where “no clear winner emerged” from the auction process, late bids can be considered. Id. at 170.

Here, Farnum Places’s offer for the debtor’s claim against the Madoff trustee was the winning bid in a properly held auction. At the time the parties agreed to the sale of the claim, the deal was a reasonable one from the perspective of the debtor’s liquidator, as it guaranteed a floor of 32.125 cents on the dollar when similar claims were selling on the market at closer to 25 cents on the dollar. In approving of the sale, Justice Edward Bannister of the British Virgin Island’s Eastern Caribbean Supreme Court—the court with primary jurisdiction over the debtor’s bankruptcy—observed that the deal “was negotiated at arms length by sophisticated parties with full awareness of the market” and he concluded that “the fact . . . that the market has risen since

the transaction closed is irrelevant.” Justice Bannister’s conclusion was reasonable, and in light of the comity considerations that are at play here, I will not set aside the transaction.

The Clerk shall mark the case closed.

SO ORDERED.

Dated: New York, New York
July 3, 2013



ALVIN K. HELLERSTEIN
United States District Judge