

The “Omnibus Order” - “Mutually Beneficial ‘Kitchen- sinking’” | Part Two

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If I’ve learned anything over my many years of legal practice, it’s not to under-estimate how much can be achieved in a single Final Order. Having had my eyes opened to the “mutually beneficial kitchen-sinking” concept, I have taken the challenge personally to test the limits of this time-saving, client-cost-saving practice. For instance, in conjunction with a negotiated global settlement on behalf of a multi-million dollar judgment-creditor involving third-party rights in real property in which the judgment-debtor held an interest (and a host of other pending and potential forthcoming creditor’s rights enforcement proceedings), counsel and unrepresented parties managed in a single order to take a pending Circuit Court case from and through a threshold pre-trial stage of amending the Complaint to allow and add an arguably necessary party (and resolving service issues consequent thereto) all the way to a final order of dismissal.

With the cooperation of all but the judgment-debtor, counsel for all parties were able to consolidate into a single comprehensive order presented at a short and simple Motions Day docket presentation for the Court, a multi-party settlement of a pending post-judgment creditor’s rights complaint to sell the judgment-debtor’s real property asset.

In the omnibus consent order, agreed to and jointly presented by all but the judgment-debtor, the parties managed to cobble together in a manner ultimately found acceptable to the Court, all of the following: (i) allowing intervention and adding parties; (ii) defaulting the judgment-debtor; (iii) amending claims; (iv) accepting/waiving formal service; (v) stipulating to facts; (vi) stipulating to legal and factual findings and conclusions of law (and doing so in the alternative); (vii) making asset value determinations; (viii) allowing and deeming a private sale had and held with credits/setoffs determined and applied (and done in a manner so as to moot the need for otherwise required proceedings); (ix) entering judgment; and (x) awarding fee simple title transferred to the judgment-creditor.

There was no need for a sale, public or private; no commissioners needed to be appointed; no valuation hearings needed to be held. In this manner, the time and expense of proceeds allocation arguments or accountings were all avoided along with the potentially substantial expert and legal fees attendant to such procedural requirements. Rather than presume some or all of the foregoing would be necessary hoops through which the parties were required to jump, even if consensually, counsel cooperatively approached the global resolution with a collective eye towards minimizing time and expense for all involved while assuring that procedural corners were cut in such a way that no rights were prejudiced.

Faced with having to choose form or substance, sometimes “all of the above” works best!

