

Foreign Debtors: What Happens in the Bahamas – – Stays in the Bahamas

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An important decision was issued last week by the Bankruptcy Court for the District of **Delaware** in favor of CCA Bahamas, Inc. (“CCA Bahamas”). The decision provides guidance on when U.S. bankruptcy courts should dismiss cases filed by foreign debtors. See [*In re Northshore Mainland Services, Inc., et al.*](#), Case No. 15-11402 (KJC). *Northshore* will certainly be used for support by parties objecting to foreign corporations filing Chapter 11 cases when such corporations have limited business connections in the U.S.

The facts of this case were largely undisputed. There were fifteen debtors in this jointly administered Chapter 11 case. All of the debtors were Bahamian companies, except for the lead debtor Northshore Mainland Services, Inc. (“Northshore”), which was a Delaware corporation. The debtors were involved in the development and construction of a \$3.5 billion, 3.3 million square foot resort located in The Bahamas (the “Project”). The Project is one of the largest of its kind in the Western Hemisphere and has enormous economic implications for The Bahamas. The debtors projected that revenues from the Project would exceed 12% of the GDP of The Bahamas and would employ 1% of the population of the country.

The debtors filed their Chapter 11 petitions on June 29, 2015. Immediately thereafter, the fourteen Bahamian debtors filed an application with The Bahamian Supreme Court seeking recognition of the Chapter 11 cases and a stay of all legal proceedings in The Bahamas involving the debtors pending the completion of the Chapter 11 cases. The Bahamian Supreme Court declined to recognize the Delaware proceedings or to enforce the automatic stay in The Bahamas. Shortly thereafter, the Bahamian government sought orders from the Bahamian Supreme Court for the winding up of all the Bahamian debtors’ businesses and the appointment of provisional liquidators for the Bahamian debtors. On September 4, 2015, the Bahamian Supreme Court appointed joint provisional liquidators for seven of the Bahamian debtors.

In the United States proceeding, CCA Bahamas, the construction manager for the Project, and The Export-Import Bank of China (“CEXIM”), which had financed approximately \$2.45 billion to fund the

development of the Project, both filed motions to dismiss the Chapter 11 cases. The primary arguments made by CCA Bahamas and CEXIM were that The Bahamas' overwhelming interest in the Project far outweighed the minimal connection between the debtors and the United States. They argued, in part, that Northshore was the only one of the fifteen debtors with business assets in the United States, and that most of the debtors' creditors — including the Bahamian government — were in The Bahamas. The remaining debtors' U.S. assets were limited to deposit accounts opened shortly before the bankruptcy filing and containing only nominal amounts.

On September 15, 2015, the bankruptcy court issued a written decision dismissing the Chapter 11 case of each debtor other than Northshore. The court based its decision primarily on the necessity to complete the Project as soon as possible, a goal that the Chapter 11 cases would not advance given the Bahamian Supreme Court's non-recognition order, and the appointment of provisional liquidators in The Bahamas.

The bankruptcy court ruled that even the limited assets in the debtors' deposit accounts were sufficient to establish jurisdiction over the filed Chapter 11 cases. However, the bankruptcy court decided to abstain from exercising its jurisdiction based, among other things, on the principle of comity since the Bahamian Supreme Court had appointed provisional liquidators that were given the mandate to preserve the assets in The Bahamas and promote a compromise between the parties-in-interest in the hope of completing the Project.

Chapter 11 has provided an attractive opportunity for companies located in other countries to seek to reorganize their businesses. And the threshold necessary to demonstrate sufficient connections to trigger U.S. jurisdiction is very low. Here, a \$10,000 deposit account was found to meet that standard. However, there are limits to the power of the U.S. bankruptcy court. Here, the compelling interests of the Bahamian government, its citizens and the debtors' Bahamian creditors led the Bahamian Supreme Court to refuse to accept the authority of the U.S. bankruptcy court and instead to insist on local control of the reorganization of an enterprise vital to the Bahamian economy. It remains to be seen whether this case represents the unique "exception to the rule" or whether it is the beginning of a trend for foreign jurisdictions to assert greater local authority over their debtors.

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