

IAN FLETCHER INTERNATIONAL INSOLVENCY LAW MOOT 2023

Nuzilia Supreme Court

Blujay Fund Ltd and Blujay Opportunities Ltd,

Applicant

v.

Robin Investment Fund Limited

Respondent

Appeal from: Provisional Liquidator of Blujay Fund et. al. v. Robin Investment Fund Limited

Judge: Solomon A.

Date of Decision 27 September 2022

Introduction

1. This is a matter being heard by the Supreme Court of Nuzilia on appeal from a decision of His Honour Judge Solomon of the Nuzilian Hight Court. The key insolvency statute is the Insolvency Statutes of the State of Nuzilia 1978. Nuzilia is a common law jurisdiction and, as such, its binding legal principles include judge-made or common law.

2. On May 2, 2022, due to financial difficulties relating to the Coronavirus pandemic and the ongoing war in Ukraine, Blujay Holdings, a Bermuda Company, Blujay Fund Ltd. an investment fund in located in Nuzilia and Blujay Opportunities Ltd. an investment fund located in Nuzilia commenced Provisional Liquidation Proceedings by filing winding-up petitions with the Bermuda Court and making application seeking the appointment of a provisional liquidator of the Debtors (the “PL”) with limited “light-touch” powers.¹

3. On May 4, 2022, the Bermuda Court issued the PL Appointment Orders, appointing Jane Bargewell as the PL.

¹ The appointment of a provisional liquidator or the making of a winding-up order brings into effect an automatic statutory stay of actions and proceedings against the Debtors in Bermuda during the pendency of the Provisional Liquidation Proceedings, with the effect that actions may not be commenced or continued against the Debtors without leave of the Bermuda Court and subject to such terms as the Bermuda Court may impose.

4. On May 4, 2022, the Foreign Representative filed the Chapter 15 Petitions commencing the Chapter 15 Cases.

5. Following the filing of the Chapter 15 Cases, the Scheme Companies commenced the Schemes in the Bermuda Court by (a) on May 5, 2022, filing summonses for the Scheme Companies along with an initial supporting affidavit requesting a hearing for an order that the Scheme Companies convene scheme meetings, and (b) on May 5, 2022, issuing a practice direction letter to all creditors or members affected by the Schemes.

6. On May 30, 2022, the U.S. Court held a hearing to consider recognition of the Bermuda Proceedings (the “**Recognition Hearing**”). The verified petition in support of recognition of the Bermuda Proceedings (the “**Verified Petition**”), the notice of the Recognition Hearing (the “**Recognition Hearing Notice**”), and the Recognition Order were served upon Robin at the firms’ last address available to the Debtors. An affidavit attesting to such service was filed on the public docket. The Recognition Hearing Notice was also published in the national and international editions of the *New York Times* on May 5, 2021, and a notice of such publication was filed on the public docket. The Recognition Order set an objection deadline of May 28, 2022. No objections were filed.

7. On May 30, 2022 the U.S. Court entered the *Order Granting (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Certain Related Relief* (the “**Recognition Order**”), which among other things, implemented the stay under Bankruptcy Code section 362 throughout the duration of the Chapter 15 Cases or until otherwise ordered by the Court pursuant to Bankruptcy Code 1520, and enjoined commencement or continuation of actions or proceedings concerning the Debtors’ assets, rights, obligations, or liabilities to the extent not stayed pursuant to Bankruptcy Code section 1520(a).

1. Robin's Participation in the Bermuda Proceedings

8. On June 16, 2022, Robin, a group of former bondholders, sent a letter (the "**Scheme Letter**") to the Bermuda Court challenging the Schemes on jurisdictional grounds.

9. The Scheme Companies responded to Robin's informal objections set forth in the Scheme Letter and noted that the disclosures in the various documents submitted in the Schemes, including the Practice Direction Letter and the Explanatory Statement, were comprehensive and addressed all issues raised by Robin in their Scheme Letter.

10. Robin did not appear at the Scheme meetings on June 20, 2022 to vote on the Schemes and did not submit a proxy.

11. Robin did not appear at the Sanction Hearing on July 22, 2022, and the Bermuda Court entered the Sanction Orders despite Robin's informal objections.

I. The Enforcement Order

12. On July 22, 2022, the US Bankruptcy Court held a hearing (the "**Enforcement Hearing**") to consider the motion seeking entry of the Enforcement Order (the "**Enforcement Motion**").

13. The Enforcement Motion, the notice of the Enforcement Hearing (the "**Enforcement Hearing Notice**"), and the Enforcement Order were served upon Robin at the firms' last address available to the Debtors. An affidavit attesting to such service was filed on the public docket. The Enforcement Hearing Notice was also published in the national and international editions of the *New York Times* on June 25, 2022, and a notice of such publication was filed on the public docket. The Enforcement Hearing Notice set an objection deadline of July 20, 2022. No objections were filed.

II. The Restructuring

14. The purpose of the Bermuda Proceedings and the Chapter 15 Cases was to implement the Restructuring contemplated by the Schemes (the "**Restructuring**"), pursuant to which the Scheme Creditors received equity in exchange for their existing debt and their existing debt was discharged. The

Scheme Creditors also provided releases (the “**Scheme Releases**”) of Blujay Claims and Blujay Liabilities through Deed of Release, which include all claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies or the Blujay business.

15. The Closing Date of the Schemes for each of the debtors occurred on July 22, 2022 and the reorganization pursuant to the Schemes has been substantially consummated. In particular, the Deed of Release and other Transaction Documents have been executed, existing equity in Blujay Holdings has been cancelled, existing bonds have been cancelled, publicly traded equity securities have been issued, and the Releases have been granted.

III. Robin's Nuzilia Claim

16. On August 8, 2022, Robin filed a claim in the Nuzilian Court against the Debtors and certain directors alleging losses suffered on its investments in the Blujay funds and demanded payment on their existing notes which were cancelled through the Schemes.

17. Blujay, through their counsel, sent Robin a letter in response (the “**Response**”). In the Response, the Blujay provided the relevant portions of the Enforcement Injunctions, indicated that Robin was in violation of the Enforcement Order by filing the Nuzilia Claim and any actions taken with respect to the legal proceedings referenced in the Litigation Notice, and demanded that Robin immediately dismiss the Nuzilia Claim and cease and desist from any further attempts to assert any claims or take any other actions against the Blujay Released Parties in connection with the proceedings or otherwise prohibited by the Enforcement Injunctions.

18. Robin did not dismiss its claim and the Foreign Representative of Blujay filed a motion in the Nuzilian Court seeking an order:

- a. Enforcing the Enforcement Order against Robin Investment Fund Limited;
- b. Enjoining Robin from taking further actions in violation of the Enforcement Order;
- c. Finding Robin in civil contempt;

- d. Awarding the Foreign Representative attorneys' fees and costs incurred in connection with prosecuting this Motion; and
- e. Granting related relief.

IV. The Nuzilian Court Opinion

- 19. On 27 September 2022, the Nuzilian Court issued an opinion holding:
 - a. The discharge of debt pursuant to the Schemes was not effective due to the 'Rule in Gibbs';
 - b. The injunction in the Enforcement Order was enforceable in Nuzilia and enjoined Robin and other bondholders from taking any action related to the Blujay Claims or Blujay Liabilities.

V. Grounds for Appeal

- 20. Permission has been granted to Blujay to appeal to the Nuzilian Supreme Court on whether the Bermuda discharge was validly granted and the U.S. was capable of recognising that discharge.
- 21. Permission has been granted for Robin to appeal to the Nuzilian Supreme Court on whether the injunction in the Enforcement Order is enforceable.

VI. Relevant Law

- 22. *Model Law on Cross-Border Insolvency*
- 23. *Gibbs & Sons v Societe Industrielle et Commerciale des Metaux* (1890) 25 QBD 399
- 24. In the Matter of Rare Earth Magnesium Technology Group Holdings Limited, HCMP 2227/2021&HCCW 81/2021 (27 May 2022 (Harris J)).

IN THE HIGH COURT OF NUZILIA

Case no. 22-123456

[2022] ICNR 56

IN THE MATTER OF BLUJAY FUND LTD

Between:

Blujay Fund Ltd and Blujay Opportunities Ltd,

Applicant

Robin Investment Fund Limited

Respondent

27 September 2022

Decision of Judge Arthur Solomon

Facts:

The plaintiffs are Blujay Fund Ltd and Blujay Opportunities Ltd, both investment funds located in Nuzilia. They are subsidiaries of Blujay Holding, a company registered in Bermuda. Together they form a group of companies of which Holding is the top company and where the strategy of the whole group is determined (together also referred to as Blujay *et al.*).

The defendant is Robin Investment Fund based in Nuzilia (also referred to as Robin). It represents a group of holders of bonds in both Blujay Fund Ltd and Blujay Opportunities Ltd.

Due to financial difficulties, on May 2, 2022, Blujay *et al.* commenced the Provisional Liquidation proceedings with the Bermuda Court. In these proceedings they filed winding-up petitions and requested the appointment of a Provisional Liquidator (PL) with limited - "light touch" - powers. On May 4, 2022 the Bermuda Court issued an order appointing Jane Bargewell as PL.

On May 4, 2022 the PL, as the Foreign Representative of the company, filed the Chapter 15 Petitions at the US Bankruptcy Court.

In Bermuda, the Convening hearings in the Schemes of arrangement were held on June 1, 2022, the Schemes meetings were held on June 20, 2022 and the sanction hearings were held on July 22, 2022. With these schemes Blujay *et al.* could implement the restructuring transactions, pursuant to which the Scheme creditors received equity in exchange for their existing debts. In exchange, the Scheme Creditors provided releases of the "Investor Claims".

In order to support the outcome of the Schemes, an Enforcement Order was requested of the US Bankruptcy Court in the Chapter 15 proceedings in order to prevent entities, including bondholders, from taking actions that would 'frustrate' the execution of the Schemes. The Court entered an Enforcement order enjoining all entities from taking any action, directly or indirectly, with respect to any Blujay Claim or Blujay Liability or that would otherwise be inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, or consummation of the

Schemes, the Sanction Order, the Deed of release, the Transaction Documents, or the terms of the Enforcement Order or the application of Bermuda Law in connection with the Restructuring of Blujay *et al.*

On May 30, 2022, hearings were held before the US Bankruptcy Court considering recognition of the Bermuda Proceedings (the appointment of the PL and the schemes) and the Enforcement Order. Notices were served upon Robin at the latest address known to Blujay *et al* and filed in the public docket. The Recognition Hearing Notice was also published in national and international papers.

On May 30, 2022, the US Court entered the *order Granting (I) Recognition of Foreign main Proceedings, (II) Recognition of Foreign Representative, and (III) Certain Related Relief* (the “Recognition Order”), which among other things, implemented a general stay. In addition, it included an injunction enjoining all entities from, in short, start any action concerning the debtor’s estate (hereafter also: Recognition Order). In these hearings, although notices were sent, Robin did not participate at all.

Robin did not participate in any of the hearings concerning the Bermudian Schemes and they did not vote on the Schemes. They did however send an Objection Letter, dated 16 June 2022, to the Supreme Court of Bermuda raising informal objections to the Bermudian Proceedings, challenging the Schemes on jurisdictional grounds. They did not participate in the US proceedings either. Notice of these proceedings was given to them.

On August 8, 2022, Robin filed a claim with this Court against the Debtors and certain directors for losses on its investments and demanded payment on the notes they hold in Blujay Fund Ltd and Blujay Opportunities Ltd, which were cancelled through the Schemes. Robin was not a Scheme creditor to the Scheme Blujay Holdings entered into with its creditors. On August 9, 2022, the PL of Blujay *et al* has file a motion to dismiss the claim.

Reasons for the decision:

I have before me a motion requesting the Court to enter an order:

- (1) Enforcing the Enforcement Order against Robin Investment Fund Limited;
- (2) Enjoining Robin from taking further actions in violation of the Enforcement Order;
- (3) Finding Robin in civil contempt;
- (4) Awarding the Foreign Representative attorneys’ fees and costs incurred in connection with prosecuting this Motion; and
- (5) Granting relief.

This court has jurisdiction to consider the Motion and the relief requested therein. Adequate, sufficient, appropriate and timely notification of the request was made to all parties relevant, and Robin is a Nuzilian entity.

These are proceedings brought by Jane Bargewell in her capacity as the provisional liquidator (here after PL) and the foreign representative of Blujay *et al.*

The background to the request at issue is – in short – as follows. Blujay *et al.* encountered financial difficulties due to the Coronavirus Crisis and the impact of the war in Ukraine on the financial markets. The company’s indebtedness arises from – among others – the unsecured interest-bearing bonds issued by Blujay *et al.* governed by US law. Blujay *et al.* commenced the Provisional Liquidation

Proceedings in Bermuda under Part XIII of the Bermuda Companies Act 1981 and the Schemes of Arrangement under section 99 of the Bermuda Companies Act 1981 (the “Bermuda Proceedings”). Under the winding-up petition the Bermuda court appointed Jane Bargewell as a Provisional Liquidator. The purpose of the Bermuda Proceedings is to implement the restructuring contemplated by the Schemes, pursuant to which the Schemes Creditors received equity in exchange for their existing debt, which was discharged by the Bermuda Court. The creditors also provided releases of claims which include all claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Schemes Companies or the Blujay Business. If the restructuring would not succeed the Company would be liquidated and the estimated recovery for the Scheme creditors would be approximately 1.5% to 4.8% of their outstanding claims. As stated, the Bermuda Court sanctioned the three Schemes on July 22, 2022.

The US Bankruptcy court recognized the Bermuda Schemes under Chapter 15 on July 30, 2022 and entered an Enforcement Order that enjoined all entities from taking any action, directly or indirectly, with respect to any Blujay Claim or Blujay Liability or that would otherwise be inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, or consummation of the Schemes, the Sanction Order, the Deed of Release, the Transaction Documents, or the terms of the Enforcement Order or the application of Bermuda law in connection with the restructuring of the Enforcement Order. The Recognition Order implemented the stay under Bankruptcy Code section 362 for the duration of the Chapter 15 cases until otherwise ordered by the court, and enjoined commencement or continuation of actions or proceedings concerning the Debtor’s assets, rights, obligation, or liabilities to the extent not stayed pursuant to the bankruptcy Code section 1520 (a). This injunction concerned all entities involved in the Schemes.

The question before the Court is whether the US Enforcement Order under Chapter 15 can be recognized in Nuzilia. Undisputed is the fact that the Enforcement Order is an ‘insolvency related Judgement’. Nuzilia does recognize foreign insolvency related judgement if certain criteria are met.

I. Effect of Recognition of the Schemes

As is well known Nuzilia did not adopt the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgements (hereafter: The Model Law), however some of the provisions of the Nuzilia insolvency law are quite similar to the Model law. Nuzilia also follows the rule as laid down in the case of *Antony Gibbs & Sons v Societe Industrielle et Commerciale des Metaux* (1980) 25 Q.B.D. 399, which is part of the common law of Nuzilia.

The Gibbs Rule is a long-standing rule in Nuzilia, which was perhaps best explained by the late Professor Ian Fletcher in his book, *The Law of Insolvency* 5th edn (Sweet & Maxwell, 2017) at para 30-061, which states:

“According to English law, a foreign liquidation—or other species of insolvency procedure whose purpose is to bring about the extinction or cancellation of a debtor’s obligations—is considered to effect the discharge only of such a company’s liabilities as are properly governed by the law of the country in which the liquidation takes place or, alternatively, of such as are governed by some other foreign law under which the liquidation is accorded the same effect. Consequently, whatever may be the purported effect of the liquidation according to the law of the country in which it has been conducted, the position at English law is that a debt owed to or by a dissolved company is not considered to

be extinguished unless that is the effect according to the law which, in the eyes of English private international law, constitutes the proper law of the debt in question.”

Before we get into the rule in *Gibbs*, the Court will first say a few words on the effect of recognition of the Schemes under the chapter 15 judgement and its effect in Nuzilia, although this is not the issue before the Court. In transnational cases one of the relevant questions to be answered under Nuzilian law is whether the scheme is effective in other relevant jurisdictions. This is of practical importance because it would not be a proper exercise of the discretion to sanction a scheme (and the Accompanying Enforcement Order) if it serves no purpose.

As stated above the Blujay Group is a transnational group. The Holding company is incorporated in Bermuda and the two investment Funds are located in Nuzilia. The debt to be compromised by the schemes is – as far as the Court has knowledge of – largely governed by US law. All bonds are subject to US law. Robin represents the Nuzilian bondholders who hold 10% of the debt of Blujay *et al*. The first question to be answered is whether the Bermuda sanctioned Schemes are effective in foreign jurisdictions, particularly Nuzilia. Although there are no parallel schemes or recognition applications in any jurisdiction apart from the US, the Schemes are expected to be internationally effective, in particular in Bermuda and the US, because the bonds and a large part of the debt are governed by US law.

Will a scheme that entails the discharge of US law-governed debt effected by a Bermuda scheme of arrangement be recognized abroad or is the so-called *Gibbs* rule a hinderance? Is the recognition of the Schemes under Chapter 15 by a US Bankruptcy Court sufficient for the Schemes to be internationally effective?

The Rule in *Gibbs* provides that a debt is treated as discharged if compromised in accordance with the law of the jurisdiction, which governed the instrument giving rise to the debt. A scheme sanctioned in an offshore jurisdiction and recognized under *Chapter 15* in the United States will not be treated by a Nuzilia court as compromising debt governed by US Law. The Rule in *Gibbs* requires the substantive alteration of contractual rights to be sanctioned by some substantive provision of the relevant law. Of such a substantive alteration under Chapter 15 is no question. Recognition of the Scheme under Chapter 15 does not constitute a compromise of debt governed by US law which satisfies the Rule of *Gibbs*. It is clear that recognition under *Chapter 15* operates procedurally to prevent action by a creditor against a debtor’s property in the United States. Recognition does not appear as a matter of United States’ law to discharge the debt. In other words, that U.S. governed law debt should have been discharged by under a U.S. process, not a Bermudian law process, to be effective in other jurisdictions. It is consistent with this rule that it is appropriate to extend comity within the territorial jurisdiction of the United States. Unlike a discharge under *Chapter 11* which purports to have worldwide effect, recognition under *Chapter 15* is limited to only recognizing the underlying Bermuda proceeding, which was incapable of discharging U.S. debt. It is reasonable to assume that the reason for this is that the procedure does not discharge the debt. This means that the company is not protected by the U.S. recognition of the Bermudian discharge under *Chapter 15* from actions taken in other jurisdictions than the US. Recognition as such of the Scheme under *Chapter 15* in the US does not satisfy the Rule in *Gibbs*. This is consistent with a recent ruling in Hong Kong and while that ruling is not binding on this court, it is persuasive. See *In the Matter of Rare Earth Magnesium Technology Group Holdings Limited*, HCMP 2227/2021&HCCW 81/2021 (27 May 2022 (Harris J)).

As far as I am aware, at the time of this decision *Gibbs* is followed in Bermuda, Cayman Islands and other offshore jurisdictions. If a creditor submits to the jurisdiction of a foreign insolvency process, he is taken to have accepted that his contractual rights will be governed by the law of the foreign insolvency process. Ordinarily, a scheme sanctioned by the court of an offshore jurisdiction compromising debt will be treated in Nuzilia as binding on a creditor, who has submitted to the foreign jurisdiction. It will not however bind a creditor, who did not participate in the scheme proceedings or any associated insolvency process in the foreign jurisdiction. This means that a creditor, which did not submit to the jurisdiction of the Bermuda Court has the ability to present a petition to the Nuzilian Court in order to exercise its rights.

So in this case the question arises whether Robin is bound by the Bermuda Schemes and the Enforcement Order. Has it submitted to the jurisdiction of the Bermuda Court and consequently the U.S. Court?

I am of the opinion that Robin has submitted to the jurisdiction of the Bermuda Court by sending the Scheme letter to the Bermuda Court raising informal objections to the Bermuda Proceedings. It is my view that under the circumstance, which I will set out below, a recognition of the jurisdiction of the Bermuda Court.

Had the Bermudian discharge been effective, Robin's rights under the Bermuda Schemes are compromised in two out of the three Schemes: The Scheme concerning Blujay Funds Ltd and Blujay Opportunities Ltd. Although these entities are located in Nuzilia, they are part of a group of companies of which the top company – Blujay Holding Ltd – is registered in Bermuda. This leads the conclusion the Robin has (indirectly) invested in a Bermuda based company which is the ultimate beneficiary of the moneys the bonds raised, and which is the leading company of the Group. So it could expect that a Bermuda Court at some stage would have jurisdiction to rule on a question of law concerning the Group. Under these circumstances simply not appearing at the hearings but instead sending an informal letter, while given duly and properly notices of the proceedings, is not enough to conclude that they did not submit to the jurisdiction of the Bermuda Court. Robin might not be a Bermudian subject, however it did conduct business with a Group of companies which conducted (at least some of) its business out of Bermuda and was headed by a Bermudian company. This leads to the conclusion that Robin is bound to the Bermudian schemes of which it is a creditor and will not be able to exercise its right under the bonds in Bermuda.

The above conclusion means that Blujay *et al.* are entitled to present a petition to this Court against Robin. The next question is whether Robin is enjoined from exercising its rights under the bonds in Nuzilia or whether it is precluded to do so by the Enforcement Order.

II. Effect of Injunction

Although the discharge was not effective, the injunction sought contained in the enforcement order was separate and apart from the discharge. Because the injunction was not dependent on receiving a discharge, it can and should be treated separately. The question is whether the permanent injunction should be recognized and enforced under Nuzilian law. I find that it should for the reasons stated below.

Since Nuzilia has not adopted the Model Law, although its rules are interpreted quite similar, and has no statutory cross-border insolvency regime its Courts have to resort to common law principles in circumstances where they are requested to recognize foreign insolvency proceedings and to grant assistance. See, e.g. *Hilton v. Guyot*, 159 U.S. 113 (1895). This means that that courts should take a restrictive view toward judicial assistance under the principles. Although the 'comity of nations' is

recognized as a doctrinal basis for the common law powers to recognize and grant assistance to foreign insolvency proceedings it should not be equated with the—often vague—dictates of comity.

The common law power as applied by Nuzilian Courts to recognize and assist a foreign insolvency practitioner has as its foundation the notion of ‘modified universalism’. This implies that it has the discretion to assess whether the foreign proceedings are consistent with Nuzilian public policy and justice. This means that a Nuzilian Court will not grant a foreign PL more powers than it would grant a Nuzilian insolvency practitioner/liquidator. Ms Jane Bargwell is appointed as a Provisional Liquidator by a Bermuda Court. The position of PL is not similar to the position of a full fledged insolvency practitioner. Assistance to such soft-touch PL’s is in principle limited to managerial assistance or to assistance which is necessary on practical grounds. The relief asked by the PL is, as is stated in the Motion, necessary to assure the proper execution of the Schemes.

The Enforcement Order provides at paragraph E that “[a]dequate, sufficient, appropriate, and timely notice of the filing of the [Enforcement] Motion and the [Enforcement] Hearing was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.”

The Enforcement Order includes the Enforcement Injunctions. Under the Enforcement Injunctions:

all Entities are permanently enjoined from commencing, continuing in any manner, or taking any action, directly or indirectly, including by way of counterclaim, any action, suit, or other proceeding, employing any process, or performing any act to collect, recover, or offset (except as expressly provided in the Schemes, the Deed of Release, and the Transaction Documents), or seeking any related discovery, in each case with respect to any Blujay Claim or Blujay Liability or any claim, debt, or interest cancelled, released, discharged, assigned, or restructured under the Schemes, the Deed of Release, or the Transaction Documents against the Debtors, any Blujay Released Parties or that would otherwise be inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, or consummation of the Schemes, the Sanction Orders, the Deed of Release, the Transaction Documents, or the terms of this Order or the application of Bermuda law in connection with the Restructuring

Enforcement Order ¶ 3(c) (emphasis added). As noted in the Enforcement Order, “Blujay Claims” and “Blujay Liabilities” include all claims “at any time” “arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies or the Blujay Business.” See Enforcement Order ¶ 3(b) nn.7 & 8. “Blujay Released Parties” includes the Debtors and “all or any of their respective former and existing affiliates, directors, managers, shareholders, officers, controlling persons . . . advisory board members, employees . . . agents, members, [and] managers.” Enforcement Order ¶ 3(b) n.6.

Importantly, when the U.S. Court recognized the discharge, it also entered the injunction. While the discharge was not properly effected, the injunction contained that order is severable and can nonetheless be enforced. It is this injunction that prohibits the bondholders from seeking to make claims on the bonds. Without this relief, bondholders would simply race to the Nuzilian courthouse for payment and defeat the purpose of the Schemes. Although this might exceed the above-mentioned examples of managerial assistance it seems to me that since the liquidation proceedings were brought to an end by the recognition of the approval of the Schemes, which contained a broad injunction and Robin is bound by this injunction. This type of assistance is at this stage of the restructuring process not against the public policy and justice of Nuzilia. Moreover, the relief asked

by the PL does not exceed the powers given to local liquidators under Nuzilian law in similar circumstances.

Therefore, for the reasons state above, the action taken by Robin by submitting the claim in Nuzilia is a violation of the Enforcement Order and undermines the Schemes. The PL is the duly appointed foreign presentative of Blujay *et al.*. She is entitled to the assistance and relief asked in the Motion. The relief sought in the motion is necessary and beneficial to the debtors and protects the interests of the Scheme creditors. Just treatment and due process were satisfied because Robin was provided with all information and was given a full and fair opportunity to be heard in meaning full way in connection with the Motion. The request is consistent with Nuzilian law.

It is hereby ordered that the motion is granted, the relief is requested in the Motion is approved and any objections are overruled on the merits with prejudice.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

BLUJAY FUND LTD., *et al.*,

Debtors in Foreign Proceedings.¹

Chapter 15

Case No. 21-11733 (DRS)

(Jointly Administered)

**ORDER GIVING FULL FORCE AND EFFECT
TO BERMUDA SCHEMES OF ARRANGEMENT**

Upon consideration of the *Motion for Entry of an Order Giving Full Force and Effect to Bermuda Schemes of Arrangement* [Docket No. 30] (the “**Motion**”)² of Jane Bargewell of Turnaround FA UK LLP, in her capacity as provisional liquidator and authorized foreign representative (in such capacities, the “**PL**” or the “**Foreign Representative**”) of the above-captioned foreign debtors (the “**Debtors**”) subject to liquidation proceedings (the “**Provisional Liquidation Proceedings**”) under Part XIII of the Companies Act 1981 (the “**Bermuda Companies Act**”) and the schemes of arrangement under section 99 of the Bermuda Companies Act commenced in the Provisional Liquidation Proceedings (the “**Schemes**” and, together with the Provisional Liquidation Proceedings, the “**Bermuda Proceedings**”), which Bermuda Proceedings were commenced to implement the restructuring contemplated by such Schemes (the “**Restructuring**” and the implementation of such Restructuring through the Scheme and these chapter 15 cases (the “**Chapter 15 Cases**”), before the Supreme Court of

¹ The Debtors are Blujay Holdings, a Bermuda Company, Blujay Fund Ltd. an investment fund in located in Nuzilia and Blujay Opportunities Ltd. an investment fund located in Nuzilia.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Bermuda (the “**Bermuda Court**”), for entry of an order (this “**Order**”) giving full force and effect to the Schemes and approving the releases, the permanent injunctions, and the related relief described below in support of court-approved and creditor-endorsed Schemes and the Restructuring; and this court (the “**Court**”) having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and all other pleadings and papers in these cases establish just cause to grant the relief ordered herein, and after due deliberation therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:

A. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(P). Venue is proper under 28 U.S.C. § 1410.

C. The relief sought in the Motion is necessary and beneficial to the Debtors and is necessary and appropriate to effectuate the purposes of chapter 15 and to protect the Debtors,

their assets, and the interests of the Scheme Creditors, other parties-in-interest, the public and of international comity, and is consistent with the laws and public policies of the United States, international comity, and the policies of title 11 of the United States Code (the “**Bankruptcy Code**”).

D. The Debtors and the Foreign Representative are entitled to all of the relief requested in the Motion.

E. Adequate, sufficient, appropriate, and timely notice of the filing of the Motion and the Hearing was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

F. No objections or other responses were filed that have not been overruled, withdrawn, or otherwise resolved.

G. Just treatment and due process were satisfied because Scheme Creditors and other parties-in-interest were provided with access to information and a full and fair opportunity to be heard in a meaningful manner in connection with the Schemes.

H. The Foreign Representative and the Debtors, as applicable, are entitled to the additional assistance and discretionary relief requested in the Motion (including enforcement of the Bermuda Proceedings, including the Schemes (and the Releases contained therein), the Sanction Orders, and the Restructuring) under Bankruptcy Code sections 1507 and 1521.

I. The relief granted hereby is necessary and appropriate in the interests of the public and of international comity, consistent with the public policy of the United States, warranted pursuant to Bankruptcy Code sections 105(a), 1507, 1509(b), 1517(d), 1521, 1522,

and 1525(a), and will not cause hardship to the Scheme Creditors or other parties-in-interest that is not outweighed by the benefits of granting that relief.

J. Absent the relief requested in the Motion, the Debtors or the Blujay Released Parties may be subject to the prosecution of Blujay Claims or Blujay Liabilities or other proceedings in connection with claims against the Debtors, the Blujay Released Parties or their property in the United States, thereby interfering with and causing irreparable harm to the Debtors, the Scheme Creditors, the Blujay Released Parties and other parties-in-interest and, as a result, the Debtors, the Scheme Creditors, the Blujay Released Parties and such other parties-in-interest would suffer irreparable injury for which there is no adequate remedy at law.

K. Absent the relief requested in the Motion, the efforts of the Debtors, the Bermuda Court and the Foreign Representative in conducting the Bermuda Proceedings and effecting the Restructuring under the Schemes and Bermuda law may be undermined by the actions of certain parties, contrary to the purposes of chapter 15 as reflected in Bankruptcy Code section 1501(a).

L. Each of the injunctions contained in this Order (i) is within this Court's jurisdiction; (ii) is essential to the success of the Schemes and the Restructuring and their overall objectives; (iii) is an integral element of the Schemes and the Restructuring and/or to their effectuation; and (iv) confers material benefits on, and is in the best interests of, the Debtors and their creditors, including without limitation the Scheme Creditors.

M. In accordance with Bankruptcy Code section 1507(b), the relief granted herein will reasonably assure: (i) the just treatment of all holders of claims against or interests in the

Debtors' property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Bermuda Proceedings; (iii) the prevention of preferential or fraudulent dispositions of the Debtors' property; and (iv) the distribution of proceeds of the Debtors' property substantially in accordance with the order prescribed in the Bankruptcy Code.

N. All creditors and other parties-in-interest, including the Debtors, are sufficiently protected in the grant of the relief ordered hereby in compliance with Bankruptcy Code section 1522(a).

O. The Foreign Representative and the Debtors are entitled to this Court's cooperation under Bankruptcy Code section 1525(a) in implementing the Bermuda Proceedings, including the Schemes and Restructuring, in the form of relief granted by this Order on the terms provided herein.

For all of the foregoing reasons, and for the reasons stated by the Court on the record of the Hearing, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, the relief requested in the Motion is approved, and any objections are overruled on the merits with prejudice.

2. Upon entry of this Order, the Bermuda Proceedings and all prior orders of the Bermuda Court shall be and hereby are granted comity and given full force and effect in the United States.

3. As of the date each is deemed approved, sanctioned, enforceable, and/or effective by their terms or under applicable law (as applicable to each, the "**Effective Date**"):

- (a) the Bermuda Proceedings, the Schemes, the Sanction Orders, the Deed of Release,³ and any other documents to be entered into pursuant to authority or instructions provided for by the Schemes or otherwise in connection with the Schemes and Restructuring (all such documents, the “**Transaction Documents**”), and all other agreements related thereto are recognized, granted comity, and given full force and effect and are binding upon and enforceable against all Entities⁴ in accordance with their terms, and such terms shall be binding upon and fully enforceable against the Scheme Creditors,⁵ whether or not they have actually agreed to be bound by the Schemes or have participated in the Bermuda Proceedings;
- (b) the releases and agreements not to sue granted, provided for, or approved under the Sanction Orders, the Schemes, the Deed of Release, the Transaction Documents, and all other related documents (collectively, the “**Releases**”), are enforceable by all Released Parties⁶ who shall be entitled to enforce the

³ “**Deed of Release**” means a deed of release to be dated on or about the date of completion of the implementation of the Restructuring (the “**Closing Date**”) between the Scheme Creditors and the Scheme Companies.

⁴ “**Entities**” has the meaning given to it in section 101(15) of the Bankruptcy Code.

⁵ “**Scheme Creditors**” means all persons that are beneficially interested in the shares issued by the Blujay Fund (the “**Blujay Fund Shares**”) and the ordinary shares (the “**Ordinary Shares**”) and C shares (the “**C Shares**” and together with the Ordinary Shares, the “**Shares**”) issued by the Opportunities Fund (the Blujay Fund Shares and the Opportunities Fund Shares, together, the “**Shares**”) as at July 1, 2022 at 2:00 p.m. (Bermuda Time) (the “**Scheme Record Time**”), in their capacity as potential creditors of the Blujay Fund or the Opportunities Fund, as applicable, in relation to their potential Blujay Claims or Blujay Liabilities.

⁶ “**Released Parties**” means (a) the “**Blujay Released Parties**”, comprised of (i) the Blujay Fund, (ii) the Blujay Opportunities Fund and (iii) all or any of their respective former and existing affiliates, directors, managers, shareholders, officers, controlling persons, beneficial owners or interest holders, advisory board members, employees, consultants, agents, subsidiaries, members, managers, predecessors and successors in interest, heirs, executors and assignors or assignees, nominees, participants, partners, limited partners, general partners, principals, fund advisors, attorneys, financial advisors, investment bankers, accountants, other professionals or representatives, sub-advisors (and their respective affiliates directors, managers, shareholders, partners, principals, members, officers, controlling persons, employees and agents), and agents and/or the legal representatives and controlling person of any of them, (b) all persons beneficially interested in Shares as at the Scheme Record Time (for purposes of this definition, an “**Investor**”); (c) in respect of any Investor, any financial or investment adviser or manager, introducer, or equivalent party (howsoever described) in respect of which such Investor may have a claim, potential claim, counterclaim, potential counterclaim, right of set-off, indemnity, cause of action, demand, suit, right to payment (whether or not such right is reduced to judgment), right or interest of any kind or nature whatsoever, whether in law or in equity, civil or criminal, contractual or in tort (including, but not limited to, negligence, fraud or breach of fiduciary duty), or under the laws that govern the offer and sale of securities in any jurisdiction and whether direct or derivative in nature, whether known or unknown, suspected or unsuspected, contingent or actual, liquidated or unliquidated, matured or unmatured, direct or indirect, disputed or undisputed, secured or unsecured, fixed or undetermined, present or future, however and whenever arising and in whatever capacity and jurisdiction (“**Claims**”) in respect of the Investor’s investment in either of the Scheme Companies, to the extent that such party would be entitled to indemnity from any of Blujay Released Parties on account of such Claims; and (d) the JPL.

Releases in respect of any Blujay Claims⁷ or Blujay Liabilities⁸ asserted by any Scheme Creditor against any Blujay Released Party in the United States pursuant to their terms and in respect of all parties subject thereto;

- (c) all Entities are permanently enjoined from commencing, continuing in any manner, or taking any action, directly or indirectly, including by way of counterclaim, any action, suit, or other proceeding, employing any process, or performing any act to collect, recover, or offset (except as expressly provided in the Schemes, the Deed of Release, and the Transaction Documents), or seeking any related discovery, in each case with respect to any Blujay Claim or Blujay Liability or any claim, debt, or interest cancelled, released, discharged, assigned, or restructured under the Schemes, the Deed of Release, or the Transaction Documents against the Debtors, any Blujay Released Parties or that would otherwise be inconsistent with, in contravention of, or would interfere with or impede the administration, implementation, or consummation of the Schemes, the Sanction Orders, the Deed of Release, the Transaction Documents, or the terms of this Order or the application of Bermuda law in connection with the Restructuring, including:
- (i) against any property of the Debtors (or of any direct or indirect transferee of or successor to any property of the Debtors), including (i) levying, attaching, collecting, or otherwise recovering such property, (ii) enforcing against such property any judgment, award, determination, decree, assessment, garnishment, or order against Debtors, or (iii) creating, perfecting, or otherwise enforcing any lien or encumbrance against such property; or
 - (ii) transferring, relinquishing, or disposing of any property of the Debtors, or taking or continuing any act to obtain possession of, commingle, or exercise control over, such property;

⁷ “**Blujay Claims**” means all Claims at any time arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies or the Blujay Business, and/or the Investors' Shares, including, without limitation, any such Claims based on any oral or written statements or omissions by any person; based in tort (including, but not limited to, negligence or fraud), contract, or the laws that govern the offer and sale of securities under the law of any jurisdiction; based on breach of fiduciary or other duties or breach of any contracts or deviations from operations; based on any argument or theory of alter ego, vicarious liability, agency, or piercing the corporate veil; for breach of representation, warranty or undertaking; based on an event of default or under any indemnity given under or in connection with any such Claim; based on indemnification, whether statutory or otherwise in any jurisdiction; for damages, restitution, contribution, attorneys' fees, costs, or other liability; or as a result of any recovery by any person of a payment on the grounds of preference or otherwise, and any Claims which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

⁸ “**Blujay Liabilities**” means all Liabilities at any time due, owing or incurred by any Released Party to any Party or any of its Related Parties arising out of, relating to, or in connection with any investment in or exposure to the Scheme Companies or the Blujay Business, and/or the Investors' Shares, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

- (d) any judgment that purports to determine the liability of any entity released pursuant to the Schemes, the Deed of Release, or the Transaction Documents with respect to any Blujay Claim or Blujay Liability or claim, debt, or interest cancelled, released, discharged, assigned, or restructured under the Schemes or as a result of the application of Bermuda law in connection with the Schemes is unenforceable, in each case to the extent inconsistent with the Schemes, the Sanction Orders, the Transaction Documents, or the application of Bermuda law in connection with the Restructuring; and

4. No action taken by the Foreign Representative in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the Schemes, the Transaction Documents, or any order entered in or in respect of these Chapter 15 Cases will be deemed to constitute a waiver of any immunity afforded the Foreign Representative, including pursuant to section 1510 of the Bankruptcy Code.

5. This Order is without prejudice to the Foreign Representative requesting an additional relief in the Chapter 15 Cases.

6. The Foreign Representative and the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

7. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, effect, enforcement, amendment, or modification of this Order.

8. This Order shall be immediately effective and enforceable upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

Dated: **July 23, 2022**

New York, New York

/s/ Dawn Smith

HON. Dawn R. Smith

UNITED STATES BANKRUPTCY JUDGE