IAN FLETCHER INTERNATIONAL INSOLVENCY MOOT COMPETITION 2025

NUZILIA BANKRUPTCY COURT

In the matter of: Fairland Locomotors, Fairland Aviation, Fairland Operations, Debtors	
v.	Case No.: 25-12706
Dreamland Locomotors, Dexter Aviation, Bridgerton LLP. Creditors	

SUBMISSION FOR RESPONDENT – REPRESENTED BY TEAM 04

a. ORDER OF CONSOLIDATION OF FAIRLAND COMPANIES UNDER CHAPTER 15 SHOULD NOT BE RECOGNIZED AND ENFORCED BY COURT OF NUZILIA

1. Foreign Representative ("FR") has no Locus Standi to apply for Legal Recognition.

1.1. §1517 recognition has **seven criteria**.[1] One of the conditions is to prove that the proceeding is collective to meet the definition of a foreign proceeding under §101(23). Equitable treatment to all creditors is optimal to establish 'collective proceedings'.[2] However, reorganisation proceedings are **inherent to presence and priority** of one creditor (i.e. Rover Capital) which has had equity in the debtor previously. Several creditors, particularly of Fairland GO ("F-GO") (which have a stable financial outlook) are disadvantaged without relative benefits.[3]

1.2. The Second Circuit has **not allowed recognition under §1517 unless it meets §109(a)**.[4] This requirement is not met, as none of the Fairland Companies have any place of business in the USA. Presence of US Creditors is insufficient.

[1] Re Betcorp CLOUT 927.
[2] Re British Am 425 BR at 902.
[3] UNCITRAL Legislative Guide on Insolvency Law (LGIL) 2005 [35].
[4] Re Barnet 737 F.3d 238 (2d Cir. 2013).

1.3. The Utopian Court has been used to evade foreign creditors' claims of breach of fiduciary duty. Reorganisation plan was used to conduct an insider scheme benefiting Rover Capital as the creditor in priority,[5] and increase in equity of F-GO only, which has a stable financial outlook.[6] This is a clear case of **bad faith**[7] and **forum shopping**,[8] barring recognition.

2. Utopian Proceedings is not a Foreign Main Proceeding ("FMP").

2.1. FMP takes place in the state of the debtor's COMI.[9] COMI is an objective[10] fact-sensitive' enquiry[11] as to where the debtor conducts administration of its interests[12] on a regular basis as ascertainable by third parties. Article 16(3)[13] of the Model Law on Cross Border Insolvency ("MLCBI") **presumes debtor's registered office as COMI**.

2.2. This presumption only stands where there is no serious controversy[14] unlike in the present case. COMI is determined on a case-to-case basis,[15] mere presence of central administration in another state is **sufficient to rebut** presumption.[16] Most financing (and central administration) arose from outside Utopia, thereby shifting control away from it, **meeting the rebuttal threshold**.[17]

2.3. The presumption further breaks as the entity responsible for **management and supervision**[18] (Rover Capital) is not located in Utopia.[19] Rover Capital, incorporated in Nuzilia, exercises substantial control in two out of three members, i.e., Fairland Loco ("F-Loco") and F-GO.

2.4. Determination of 'real seat' [20] (i.e. directing centre where the debtor pursues economic activities) is critical,[21] taking precedence over daily operations.[22] Rover Capital's 49% stake in Fairland Aviation ("F-AV") and F-Loco **dilutes voting control**

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[5] Problem [21].
[6] Problem [19,21].
[7] Perry Koplik 357 BR 213.
[8] Octaviar Administration CLOUT 1483.
[9] UNCITRAL Model Law Cross-Border Insolvency 1997, (MLCBI) Article 2(b).
[10] Virgos and Schmit, Report on the Convention on Insolvency Proceedings (EU Council Doc 6500/96 1996) [75].
[11] UNCITRAL Model Law Cross-Border Insolvency with Guide to Enactment 2013 (GE) [145].
[12] Stanford International Bank [2011] Ch 33 [57].
[13] MLCBI 1997, Article 16(3).
[14] Re Alpha Fund 381 BR 37 [52–53].
[15] GE [146].
[16] Re Videology [2018] EWHC 2186 [44].
[17] Ibid.
[18] G Moss, Ian Fletcher & Isaacs, The EU Regulation on Insolvency Proceedings (3d ed., OUP 2016).
[19] Interedil v. Fallimento [2011] EUECJ C-396/09.
[20] Bear Stearns (n 20).
[21] Videology (n 16).
[22] Re Tradex (2008) 384 BR 34.

of Fairland Family, bringing overall supervision to Nuzilia. Rover Capital holds 50% equity of F-GO excersing **indirect control even over the third entity.**

2.5. Reorganisation of F-Loco, F-AV and F-GO altogether ("Fairland Group") was led by Rover Capital (including all financial restructuring agreements) evidencing remarkable control from Nuzila.[23] Thus, Nuzilia is the **directing centre of administration** of interests for Fairland Group.

2.6. Administration of debtor's interests, including **activities of consumers**[24] pulls COMI away from Utopia. This clubbed with **economic and financial interests**[25] establish Nuzila as COMI. Rover Capital signed a debt-release agreement regarding amounts owed to F-Loco's largest and key consumer, Bridgerton LLP to retain it as a customer, falling beyond Utopian jurisdiction. Further, Dreamland Loco (incorporated in Nuzila) as a bondholder in F-GO points towards Nuzila COMI.

2.7. While determining COMI, **reliance must be given to majority creditors' value** and significance[26] and those who would be affected by the case along with the jurisdiction whose law would apply to most disputes.[27] Substantial creditors[28] of Fairland Group, such as Dreamland Locomotors, Rover Capital and a number of banks, are located in Nuzilia thereby bringing control to Nuzila.

2.8. There must be '**an element of durability'**[29] to COMI. Courts consistently protected creditors' interests and emphasised on a 'cautious analysis'[30] in cases of COMI shifts. Although there is no COMI shifting here, the principle of **specific regard to** creditors[31] still applies. COMI determinations should not disproportionately benefit debtors at the expense of creditors, which would be deemed 'suspicious'.[32] The debtor's interest in sustaining business must be balanced against creditors' interest[33] of deriving adequate satisfaction out of restructuring. A creditor should be able to rely on representations[34] by its debtor about the relevant jurisdiction.[35] **Rover Capital – one of Fairland's principal creditors**, to which Fairland owes a significant loan amount of USD 25 million is governed by Nuzilian laws. Thus, Utopia COMI is ineffective and detrimental to its principal creditor.

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[23] Re Hellas Telecommunications (Luxemburg) II SCA [2010] BCC 295, [5].
[24] Schmit Report (n 13) [75].
[25] Re Eurofoods [2006] ECR 3854 [32].
[26] Re SPhinX 351 B.R. 103 [117].
[27] Re Bear Stearns 374 BR 122 128.
[28] Sendo [2005] EWHC 1604 (Ch).
[29] Luxembourg Judgment 2019TALCH02/01728 of [2019].
[30] Ibid.
[31] Moore v Australian Equity [2012] FCA 1002 [19].
[32] H. Eidenmüller, Abuse of Law in the Context of European Insolvency Law, European Company And Financial Law Rev. (2009).
[33] Stanford (n 12).
[34] Eurofoods (n 27) [118].
[35] Moore (n 30) [19].

2.9. Hence, **proceedings in Utopia do not constitute FMP.**

3. The Fairland Group should not be Substantially Consolidated.

3.1. Proceedings in Utopia have two legs, consolidation, and a reorganisation, wherein latter consumes the former. These proceedings must be defined as a planning proceeding under the Model Law on Enterprise Group Insolvency ("MLEG").[36] This requirement establishes MLEG's scope.[37] **Planning proceedings must be a main proceeding**[38] under MLEG.[39] As previously argued, the proceedings are not main proceedings. Thus, there is no planning proceeding in Utopia.

3.2. There can be no recognition of consolidation under MLEG[40] as the substantive proceeding is **not a planning proceeding**.

3.3. A **'Group Insolvency Solution' must be developed** through a planning proceeding under MLEG.[41] The reorganisation proceedings in Utopia are not main proceedings. Thus, there is no requirement of consolidation.

4. The Consolidation of Fairland Group violates Public Policy under §1506.

4.1. Recognition is subject to the public policy exception[42] to the presumption of comity. This is grounded in domestic law[43] and interpreted in accordance with national sensibilities.[44] Public policy is restricted to only the **most fundamental policies**[45] of US law.[46]

4.2. Within Nuzilian law it has been established that non-consensual release of third-party claims is **manifestly contrary** to public policy.[47] The Fairland Group's reorganization and consolidation is approved with such non-consensual release, rendering it manifestly contradictory to Nuzilian public policy. Any application hindering protection of such essential **statutory or constitutional rights**, triggers the exception.[48] It protects against serious impingement of value or import of the statute.[49] Third-party

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[36] MLEG Art. 2(g).
[37] The Legislative Guide to Enactment of MLEG, (LG) (Pg. 29).
[38] Ibid Pg. 33.
[39] MLEG Art. 2(g), Art. 2(j).
[40] UNCITRAL Model Law on Enterprise Group Insolvency 2019, (MLEG) Art. 21.
[41] LG (n 37) Pg. 32.
[42] MLCBI Article 6; US Code, Title 11 Ch:15, §1506.
[43] UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective 2013, (JP) [46,47], [18].
[44] GE Part II [30].
[45] Re ABC Learning [2010] 445 BR.
[46] Re PT Bakrie 601 BR 707, 714.
[47] Re Vitro SAB de CV 473 BR at 132.
[48] Re Ashapura Minechem 480 BR [139].
[49] Re Qimonda 433 BR 547 [28].

releases without creditor consent also impinges on **procedural fairness**, recognized as legitimate grounds[50] to invoke the exception.[51]

4.3. It is applied not only to the extent of recognition but also to its individual effects.[52] Effect of releases constitutes a scenario manifestly contrary to Nuzilian jurisprudence. MLCBI is founded on **'Modified Universalism'**, allowing for flexible accommodation of local laws and customs, especially when an Enacting State's fundamental principles are threatened.[53]

4.4. Thus, **recognition must be set aside** as the proposed reorganization through consolidation, includes non-consensual releases established as 'manifestly contrary'.

5. Directors have breached their Fiduciary Duty.

5.1. Adversarial proceedings are brought by Dexter Aviation and Dreamland Loco.[54] Dreamland Loco is a bondholder in F-GO and thus a secured creditor.[55] F-GO was profitable compared to its related parties and considers its consolidation into the insolvency estate as a **breach of fiduciary duty of directors towards F-GO**. It shared its directors with F-AV,[56] and is argued to have worked in furtherance of F-AV's interests than that of F-GO, evident from the profit-sharing agreement[57] and eventual consolidation.[58]

5.2. Dexter Aviation (unsecured creditor) claims its guarantees as reimbursements for defaulted contracts. Rejecting the consolidation, it argues F-AV as an independent entity,[59] proposing an independent debtor-in-possession financing option,[60] as **F-AV's directors failed in their duty to successfully save** it, immediately preceding insolvency.

5.3. It is established that directors' duty to creditors not only vests when in zone of insolvency but also near-insolvency or when not insolvent.[61] **'Near-insolvency'** refers to a deterioration in corporation's financial stability.[62] Directors are not merely agents of residue risk bearers but also corporation's creditors.[63] There has been an

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[50] Re Polywheels [2009] 53 C.B.R. (5th) 109.
[51] UNCITRAL 'Report of the Working Group on Insolvency Law on the Work of the Twentieth Session' A/CN.9/433 [171].
[52] Ibid [84 - 85].
[53] Re Rubin Eurofinance [2013] 1 A.C. 236, 252, 253.
[54] Federal Rules of Bankruptcy Procedure 1983, Part VII.
[55] Clarifications [5].
[56] Problem [8].
[57] Problem [19].
[58] Problem [20].
[59] Problem [23].
[60] Problem [37].
[61] Weaver v. Kellogg 216 BR 563 [583-84].
[62] Peoples Stores v. Wise [2004] 3 SCR 461 [493].
[63] Re Buckhead 178 BR 956 [968].

expansion of liability towards creditors as well, when corporation is near insolvency.[64] It also persists when directors strip a corporation's assets to change company structure, even though concerned entities were not yet insolvent.[65]

5.4. The directors' acts contributed to **'deepening insolvency'**. F-AV defaulted on its contracts, leading to F-Loco extending an inter-company loan agreement.[66] Continued failure caused F-Loco to also default and even corporate guarantees being issued on its behalf.[67] For such a failing entity to then issue a corporate guarantee on behalf of F-AV to Dexter Aviation,[68] deepened the problem of insolvency. This attempt at prolongation of corporate life through expansion of corporate debt, caused injury to debtor's corporate property.[69] It is a breach of fiduciary duty, to extend artificially a corporation's life (here, F-AV), through incurrence of additional debt inadvertently leading to heightened asset diminution.[70] Further, F-GO's profit-sharing arrangement forced it to contribute funds to two failing entities,[71] also deepening insolvency risk. Such acts deepening insolvency are valid grounds as a cause of action under directors' duties.[72]

5.5. Consolidation of F-GO, its profit-sharing agreement and overall management of F-AV, were all attempts to mitigate deteriorating financial crises, preceding insolvency. Thus, recognition must be rejected and **duties towards creditors recognized**.

6. Thus, we urge this Court to declare that the:

6.1. FR has no locus standi to apply for legal recognition;

6.2. Utopian proceeding is not an FMP;

6.3. Fairland Group should not be consolidated;

6.4. Utopian proceedings cannot be recognised;

6.5. Consolidation violates public policy; and

6.6. Directors have breached their Fiduciary Duty.

[64] Credit Lyonnais v. Pathe 1991 WL 277613 [34].
[65] Re Zale Corp. 196 BR 348 [354-55].
[66] Problem [16].
[67] Problem [18].
[68] Ibid.
[69] Creditors v. Lafferty 267 F.3d 340 [347-50].
[70] J. Brighton, Deepening Insolvency: Secured Lenders and Bankruptcy Professionals Beware, AM. BANKR. INST. J., Apr. 23, 2004 [34].
[71] Problem [19].
[72] Re Exide Technologies 299 BR 732.

b. NUZILIAN COURT CANNOT GRANT AN ORDER RELEASING THIRD PARTY CLAIMS

7. Relief of Non-Consensual Release of Third Party Claims (NCR) cannot be statutorily granted.

7.1. NCR can be granted under § 1521(a) if **conditions of just treatment**, protection of USA creditor claims and distribution of proceeds are met.[73] Creditor claims are being released on a financing the debtor model.[74] Rover Capital has been prioritised as a top creditor violating just treatment. No heed to claims of breach of fiduciary duty violate the second condition.

7.2. Relief under § 1507(b) needs to meet **principles of comity**.[75] Comity will be established only when there is no fraud. The breach of fiduciary duty and Chapter 11 application by Rover Capital show a high chance of fraud[76] as it coincides with the clean sheet given to the Fairland family.[77]

7.3. The Second Circuit will not grant comity if the **result will prejudice U.S. Citizens**[78] and if it violates Nuzilia's **policy of equality**.[79] Clear bias towards Rover Capital as creditor in priority and increase in its equity proves inequality.

8. NCR should not be subjectively granted.

8.1. The Second Circuit allowed for NCR as **an exchange for funding of the reorganisation plan**.[80] Rover Capital has filed Chapter 11 proceedings due to a liquidity crunch.[81] This questions the position of funding reorganisation, which cannot lead to NCR in exchange.

8.2. NCR claims are allowed on their importance and necessity to the reorganisation plan.[82] **There is no necessity for NCR** to this plan when the very funding by Rover Capital is not stable. The very necessity of removing all claims from Fairland family while upholding a financing the debtor model is precarious if the very funding agency has a chapter 11 proceedings filed voluntarily.

8.3. The requirement of NCR does not meet the **rare and extraordinary**[83] circumstance threshold as there is no proof of its amplified role in reorganisation**.** NCR cannot be

[73] Re Intl. Banking 439 BR 614 [626–27].
[74] Problem [21].
[75] Bakrie (n 45).
[76] Hilton v Guyot 159 US 113 [164].
[77] Problem [21].
[78] Financement v. Bank of Boston 568 F.2d 911 [921].
[79] Ibid.
[80] Re Continental Airlines 203 F.3d 203, 212–13.
[81] Problem [35].
[82] Re Metromedia Fiber Network 416 F.3d 136 [143].
[83] EC v. Drexel 160 B.R. 508.

granted according to the Second Circuit unless the very specific fact allows **necessity of the release**.[84] There is no presented fact.

8.4. The Supreme Court has **declared NCR invalid** in Chapter 11 proceedings.[85] Such an explicit bar read with the relief's violation of public policy, requires a bar of NCR under Chapter 15 proceedings as well. As the relief fails both public policy and subjective assessment that Second Circuit Courts undertake, **the question of its validity amplifies after the explicit bar** by precedent under Chapter 11 enables the Nuzilian Court to consider NCR as explicitly barred under Chapter 15.

9. Thus, this Court is not empowered to pass an order granting NCR as:

9.1. There is no statutory ground; and

9.2. There is no threshold enabling Court's discretion.

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[84] Ibid.
[85] Harrington v. Purdue Pharma 2024 WL 3187799.