

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

ESTATE OF A. CARY HARRISON, III,

Case No. 8:08-bk-07002-KRM
Chapter 15

Debtor in a Foreign Proceeding.

**MOTION TO MODIFY OR TERMINATE ORDER GRANTING
PETITION FOR RECOGNITION OF FOREIGN MAIN PROCEEDING**

RANDOLPH C. HARRISON, individually and as personal representative of the Florida probate estate of A. Cary Harrison, III, by and through his undersigned counsel, pursuant to Section 1517(d) of the Bankruptcy Code and all equitable powers of this Court, hereby moves to modify or terminate this Court's Order Granting Petition for Recognition of Foreign Main Proceeding dated July 10, 2008 (Doc. 11 – the "Recognition Order"), and states:

1. This proceeding presents an unusual (and delayed) collection attempt by a foreign judgment creditor of a deceased American citizen, which instead of going through the Florida probate legal system, decided to declare that deceased American citizen a bankrupt under foreign law and then have the English insolvency proceeding recognized in error as a "main" proceeding. The creditor (The Society of Lloyd's) seeks to circumvent and attack a validly opened Florida probate proceeding to reach Florida probate assets which are (and have been) within the jurisdiction of the Florida probate court. The unstated reason for this unusual move is that the creditor failed to assert its claim against the deceased American citizen within the applicable statute of limitations under Florida probate law.

Factual Background

2. A. Cary Harrison, III (“Cary Harrison”) was an American citizen (born in Richmond, Virginia) and a resident of the State of Florida. While he was alive, he maintained a U.S. passport (attached as Exhibit “A” is a copy of the relevant page of his passport, U.S. voter registration (attached as Exhibit “B” is a copy of voter registration) and a U.S. driver’s license. He maintained his homestead in Treasure Island, Pinellas County, Florida (“Florida Home”) and owned a strip shopping center in Holiday, Pasco County, Florida. He also maintained a Florida driver’s license (attached as Exhibit “C” is a copy of his driver’s license) and owned a vehicle registered in Florida. He had been a resident of Florida since the 1970s. Throughout the course of his adult life, Cary Harrison always maintained a homestead in the United States and always owned a vehicle for his use in the United States.

3. He maintained six bank accounts in Florida and while alive, paid both U.S. and state taxes, he was also a licensed real estate salesperson in the State of Florida.

4. All of Cary Harrison’s relatives are U.S. citizens and all live in America. His mother, a Virginian, outlived him. His only sibling, his brother, is a resident of Florida. His only child and son, the Defendant, resides both in Florida and in Maine. Cary Harrison also had relatives in Virginia, Indiana, North Carolina and Pennsylvania. He had no relatives in, the UK, or any foreign nation. Cary Harrison was ultimately buried in Virginia, in his family burial plot.

5. Although self-employed, Cary Harrison worked most of his adult life for American companies, most recently his association with Whitbread Nolan. He also served in the U.S. Army. He was educated in the United States. He was eligible for and

received U.S. social security and medical benefits. He maintained bank accounts in Florida and held stocks and shares in Florida.

6. Cary Harrison also lived abroad at times and maintained a home in London, England. He traveled extensively. Cary Harrison's main dealings in London pertained to litigation against The Society of Lloyd's ("Lloyd's"). He was involved as a "Name" and had been involved in litigation with Lloyd's since 1998.

7. The real property in London, located at 1 Rectory Grove, Clapham, London SW4 0DX ("London Property"), was mortgaged with the first mortgage held by Bank of Scotland in the approximate principal amount of £400,000 (and a second mortgage with a principal amount of £50,000).

8. Cary Harrison had been in prolonged (beginning in or by 1998) litigation with Lloyd's in the English courts at the time of his death.

9. Cary Harrison passed away unexpectedly in London on April 18, 2003. Randolph C. Harrison, the movant, is his son and his sole heir.

10. At the time of Cary Harrison's death, the London Property was worth approximately £575,000. His son attempted to settle the father's disputes with Lloyd's and came to some form of understanding that Lloyd's would be paid from proceeds from the sale of the London Property. It was understood that a probate estate would be opened in Florida and an ancillary proceeding would be opened in England. Despite the hiring of English counsel and negotiations with Lloyd's, an English probate was never opened.

11. Approximately two years *after* Cary Harrison's death, Lloyd's obtained from the English counsel a consent order by which "judgment" on its counterclaim against Cary Harrison could be ordered if payment was not made by November 2005 of

the principal sum of £282,000. There are serious issues with the conduct of English counsel and the entry of any judgment in favor of Lloyd's.

12. On or about April 19, 2005, Randolph C. Harrison filed to open a probate estate ("Probate") in the Circuit Court for Pinellas County, Florida, Case No. 05-3103 ("Probate Court"). Pursuant to the will, Randolph C. Harrison was appointed the personal representative by the Probate Court.

13. On or about June 23, 2006, Lloyds applied for an interim charging order in England. In that application, attached as Exhibit "D", Lloyds admitted to knowledge of the Florida probate proceeding in the Probate Court.

14. On April 3, 2007, Lloyd's filed the equivalent of an involuntary bankruptcy proceeding in England against Cary Harrison (pending in the High Court of Justice in Bankruptcy – Case No. 3963-2007).

15. Meanwhile, on August 14, 2007, the Probate Court issued an Order Determining Homestead Status of Real Property (a copy is attached hereto as Exhibit "E") and the Florida Home was transferred to Randolph C. Harrison.

16. On September 13, 2007, the deceased was declared "bankrupt" by the English courts. On November 14, 2007, over two and one-half years after the Probate was opened and approximately four and one-half years after Cary Harrison's death, the petitioner was appointed as the Trustee.

17. On May 16, 2008, the petitioner filed a Chapter 15 Petition for Recognition of Foreign Main Proceeding (the "Petition"), and on July 10, 2008, this Court entered the Recognition Order.

18. On December 12, 2008, petitioner filed an adversary Complaint (Adv. 08-624) for Turnover, to Impose Equitable Lien and Breach of Fiduciary Duty against Randolph C. Harrison, the movant. A Motion to Abstain, or in the Alternative, To Dismiss has been filed in the adversary proceeding (Adv. Doc. 6). The allegations in such motion are incorporated herein by reference.

Legal Arguments

19. Section 1517(d) of the Bankruptcy Code expressly contemplates the modification or termination of a recognition if it is shown that the grounds for granting the recognition were fully or partially lacking or have ceased to exist. As set forth herein, the stated grounds for the recognition in this case were fully or partially lacking or frankly never existed. In considering a modification or termination, the court should give due weight to possible prejudice to parties that have relied upon the order granting recognition. There being no reliance whatsoever on the Recognition Order, there can be no prejudice to any party. In any event, there has been no prejudice. Accordingly, termination or modification of the Recognition Order is appropriate.

20. A simple review of the Petition (Doc. 1) and the Motion for Order Granting Petition (Doc. 2) readily reveals that proper grounds for recognition of the foreign proceeding were lacking or simply did not exist. First, the Petition lacks any information about the citizenship of Cary Harrison or the alleged creditors of Cary Harrison. Without such information, it is impossible to determine whether Chapter 15 even applies. *See* 11 U.S.C. §1501(c)(2). It cannot be disputed that Cary Harrison was an individual who was a citizen of the United States. On information and belief, his remaining debts, if any, are within the limits specified in Section 109(e) of the

Bankruptcy Code. The English bankruptcy trustee (and his appointer, Lloyd's) certainly had this information.

21. Second, the scant allegations supporting the assertion of a “main” proceeding simply do not establish Cary Harrison’s “center of main interests.” Petitioner ignored the presumption in Section 1516(c) of the Bankruptcy Code relating to an individual debtor’s habitual or permanent residence. With no mention of Cary Harrison’s Florida homestead, Petitioner alleged that the “Debtor’s principal residence” was in London. Later, Petitioner alleged, in circular fashion, that the “English Administration...is the ‘center of main interests’ of the English Administration.” See Doc. 1, ¶11. On information and belief, the Petitioner knew of the Florida homestead but intentionally failed to mention it. Petitioner also knew that Cary Harrison was in fact a U.S. citizen but failed to mention that fact as well.

22. Third, the petition did not meet the requirements of Section 1515 of the Bankruptcy Code (as required by Section 1517(a)(3)). Section 1515(c) requires a statement identifying *all* foreign proceedings with respect to the Debtor that are known by the foreign representative. The Petition carefully alleges that the “Trustee is not aware of any other foreign *bankruptcy* proceedings with respect to the *Debtor’s estate*.” See Doc. 1, ¶12 (emphasis added). As carefully worded, the Petitioner avoided mention of the Florida probate proceeding. On information and belief, the Petitioner had actual knowledge of the Florida probate proceeding that had been pending since 2005, and expected it even earlier. The Florida probate proceeding should have been expressly disclosed by the English bankruptcy trustee (as a “foreign” proceeding as it relates to the alleged “main” proceeding in England).

23. Finally, instead of obtaining a recognition order and *then* obtaining additional relief, the Recognition Order in this case includes simultaneous extraordinary injunctive relief against a state court personal representative (without even identifying the state court probate case). There is nothing in the Petition or the record to support such extraordinary relief. In fact, such relief was not even sought in the Petition or related motion (Doc. 1, 2). If such order is allowed to stand, the personal representative is unable to comply with his duties in the Florida Probate.¹

24. The careful crafting of the Petition failed to give the Court or any party in interest a true understanding of the situation. Due process was simply not afforded – particularly to the personal representative and the Florida Probate Court.

25. The unexplained failure to even mention the pending Florida probate proceeding is critical given the well established “probate exception” to the exercise of federal jurisdiction in this country. The United States Supreme Court has recently confirmed and summarized this exception as follows:

Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent’s estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. *Marshall v. Marshall (In re Marshall)*, 547 U.S. 293, 311 (2006).

26. This case and the related adversary proceeding are a clear attempt to convince this Court to take *in rem* jurisdiction over (and dispose of) the probate property when the Florida Probate Court has had jurisdiction for almost four years. The “probate exception” precludes this Court from granting such relief. Moreover, Chapter 15 of the Bankruptcy Code should not be used to circumvent otherwise applicable law of the

¹ Apparently, no bond or security was offered or required in connection with the extraordinary injunctive relief in the Recognition Order. *See* 11 U.S.C. §1522.

United States. Without question, a foreign representative is subject to applicable nonbankruptcy law. *See* 11 U.S.C §1509(e). Accordingly, this case should be dismissed or the Recognition Order should be significantly curtailed.

WHEREFORE, Randolph C. Harrison moves this Court to terminate or modify the Recognition Order for the reasons stated above, modify or terminate the injunctive provisions in the Recognition Order thereby permitting the personal representative to perform his duties and properly prosecute and defend matters in the Florida Probate, close this case, and for such further relief as the Court deems appropriate.

/s/ Michael C. Markham
Michael C. Markham, FBN: 0768560
Angelina E. Lim; FBN: 0158313
Johnson, Pope, Bokor,
Ruppel & Burns, LLP
P.O. Box 1368
Clearwater, FL 33757
(727) 461-1818
(727) 443-6548 fax
Attorney for Randolph C. Harrison

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served on the 2nd day of February, 2009, either by electronic transmission or by U.S. first class mail postage prepaid upon Damien H. Prosser, Shutts & Bowen LLP, 300 South Orange Avenue, Suite 1000, Orlando, FL 32801.

/s/ Michael C. Markham
Michael C. Markham