

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,

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

S.J. Williams of Begbies Traynor, LLP, the Trustee (the “Trustee”) of the English insolvency estate of A. Cary Harrison, III (the “Debtor”), pending in the High Court of Justice in Bankruptcy (Case No. 3963-2007) in London, England, responds to the Motion to Modify or Terminate Order Granting Petition for Recognition of Foreign Main Proceeding (the “Motion to Modify”) filed by Randolph C. Harrison (“Harrison”) as follows.

1. The Trustee is the duly appointed trustee of the insolvency estate of A. Cary Harrison, III (the “Debtor”), pending in the *High Court of Justice in Bankruptcy* (Case No. 3963-2007) in London, England (the “English Insolvency Proceeding”).

2. The English Insolvency Proceeding was commenced on September 13, 2007, when the *High Court of Justice in Bankruptcy* entered the Insolvency Administration Order. Subsequently, the Trustee was appointed with effect from November 14, 2007.

3. In connection with the English Insolvency Proceeding, the Trustee is charged with the duty of locating assets of the Debtor’s estate, wherever located, and administering those

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assets for the benefit of the creditors of the English Insolvency Proceeding (the “English Creditors”).

4. As of the date hereof, creditor claims in the in the English Insolvency Proceeding total approximately £ 867,000.00. The largest creditor is Bank of Scotland, which has a claim of £ 519,767, and the next largest is Society of Lloyd’s, which has a claim of £ 282,000. There are several other creditors. All of the creditors are located in England. *See* Declaration of Michael John Locke, ¶ 7.

5. The Debtor permanently resided at One Rectory Grove, Clapham, London SW4 ODX. The Debtor gave this address as his home address in numerous official documents and court filings. *See* Declaration of James Snowdon Barnett, ¶¶ 4-7. The Debtor became a permanent resident of England when he was in his 40’s. *Id.*, ¶¶ 6(8)(c). His visits to America were rare. His solicitor, James Barnett, who represented him for many years, recalls a single visit the Debtor planned to make in the summer of 2000 to visit his elderly mother. *Id.* The Debtor died in his London home on April 18, 2003. *Id.*, Exhibit JSB-4.

6. Harrison, the Debtor’s son, commenced a probate proceeding in Florida without advising the English creditors until it was too late for them to pursue probate claims. He did this to conceal his father’s Florida assets. Florida has a two-year jurisdictional statute of non-claim statute that is not subject to waiver or extension. *See* Fla. Stat. § 733.710; *May v. Illinois National Ins. Co.*, 771 So. 2d 1143, 1150 (Fla. 2000).

7. The Debtor died in England on April 18, 2003. Not by coincidence, Harrison caused a Florida probate estate to be opened on April 19, 2005, two years and a day after his

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father's death. See Motion to Modify, ¶ 12. Harrison then waited until May 18, 2005, two years and a month after his father's death, to obtain Letters of Administration. The Debtor's English solicitor, James Barnett, first advised Society of Lloyd's of the Florida probate by letter dated June 23, 2005, received by Lloyd's on June 27, 2005. Prior to this time, Lloyd's had no prior knowledge of the Florida probate proceeding. See Declaration of Nicholas P. Demery, ¶¶ 2-3 & Exhibit A. By the time Lloyd's was advised of the Florida probate, it was too late to pursue a probate claim. The same is true as to the Debtor's other English creditors.

8. The Petition commencing this proceeding was filed on May 15, 2008. Docket No. 1. On May 30, 2008, this Court issued a Summons, and the Summons and Petition were served on Harrison on June 2, 2007. His Answer to the Petition was due on June 30, 2008. Harrison failed to file any Answer or other response. On June 11, 2007, he was served with a Notice of Rescheduled Hearing on the Petition, providing notice of a hearing on July 9, 2008. See Docket Nos. 8-10. Harrison did not show up at the July 9, 2008 hearing. On July 10, the Court entered an Order Granting Petition for Recognition of Foreign Main Proceeding (the "Recognition Order"). Harrison was served with a copy of the Order on July 11, 2008. See Docket Nos. 11-13. Harrison did not respond to the Order in any manner until February 2, 2009, when he filed the instant motion. Docket No. 15.

9. Section 1517(a) of Chapter 15 of the Bankruptcy Code provides that the Court shall enter an order recognizing a foreign main proceeding after "notice and a hearing." A properly noticed hearing took place on July 9, 2008. Harrison failed to respond to the Petition, failed to show up for the hearing and failed to move, on a timely basis, for rehearing or

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reconsideration. The instant motion for relief from the Recognition Order is untimely and must be rejected on this basis alone. Harrison has not alleged any grounds that would entitle him to seek to vacate the Recognition Order some seven months after it was entered.

10. ~~Moreover, even if this Court were to consider vacating or modifying the~~ Recognition Order, Harrison has not presented any grounds for doing so. He suggests that the Petition was deficient because it did not provide information about the Debtor's citizenship, but there is no such requirement. The Petition provided information concerning the Debtor's residence and domicile in London, England. Under Section 1516, it is presumed—in the absence of contrary evidence—that the Debtor's "habitual residence" is "the center of the Debtor's main interests." The Petition also provides adequate information concerning the English Insolvency Proceeding.

11. Next, Harrison asserts that, in non-compliance with Section 1515(c), the Trustee did not disclose the existence of all "foreign proceedings with respect to the debtor." Harrison apparently considers the Florida probate a "foreign" proceeding. The statute requires a foreign representative to disclose all "foreign" proceedings. This requirement assures that only one foreign country main proceeding will be recognized. It does not require the disclosure of U.S. cases or proceeding involving the debtor.

12. Next, Harrison complains that the Recognition Order contains injunctive relief. Sections 1520 and 1521 clearly provide that various forms of injunctive relief may be granted upon the entry of an order recognizing a foreign proceeding as a foreign main proceeding. Beyond this, Section 1519 authorizes the court to grant injunctive relief upon the filing of the

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initial petition—even before a recognition order is entered.

13. Finally, Harrison contends that the “probate exception” prevents the Court from granting the relief granted in the Recognition Order. As discussed in the Trustee’s Response in Opposition to Motion to Abstain, or, in the Alternative, to Dismiss, the probate exception is extremely narrow. It prevents federal courts from probating or annulling a will or from disposing of property that is in the custody of a state probate court. *Marshall v. Marshall*, 547 U.S. 293, 126 S. Ct. 1735, 1748, 164 L. Ed. 2d 480 (2006).

14. The probate exception does not preclude any of the relief sought by the Trustee in this Chapter 15 proceeding. Two of the Trustee’s claims (turnover and equitable lien) seek relief as to assets that are owned by or in possession of Harrison. The Trustee’s third claim is a tort claim for damages for Harrison’s breach of fiduciary duty to the English creditors. None of these claims interfere with the Florida probate court.

WHEREFORE, for the foregoing reasons, the Trustee requests that this Court deny the Motion to Modify and grant such other and further relief as the Court deems just and proper.

Dated: March 26, 2009

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response was served electronically, ECF, or by U.S. Mail this 26th of March, 2009 to Michael C. Markham, Esq. and Angelina E. Lim, Esq., Johnson, Pope, Bokor, Ruppel & Burns, LLP, P.O. Box 1368, Clearwater, FL 33757.

/s/ Peter H. Levitt