

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 15
)	
ABC LEARNING CENTRES LIMITED, n/k/a)	Case No. 10-11711 (KG)
ZYX LEARNING CENTRES LIMITED, &)	(Jointly Administered)
A.B.C. USA HOLDINGS PTY LIMITED)	
)	
Debtors in Foreign Proceedings.)	
<hr/>		Re Dkt. Nos. 101, 102, 105, 107

MEMORANDUM ORDER (1) GRANTING, IN PART, AND DENYING, IN PART, RCS CAPITAL DEVELOPMENT, LLC’S MOTION FOR RECONSIDERATION OF THIS COURT’S NOVEMBER 16, 2010 ORDER GRANTING RECOGNITION OF FOREIGN PROCEEDINGS AND RELATED RELIEF AND (2) PROVIDING FOR AMENDMENT OF THE COURT’S NOVEMBER 16, 2010 ORDER TO CORRECT ERROR

The Court has before it the Motion (D.I. 104) of RCS Capital Development, LLC (“RCS”)¹ for reconsideration of this Court’s Order Granting Recognition of Foreign Proceedings and Related Relief (D.I. 102), entered on November 16, 2010 (the “Order”). Upon review of the pleadings, and following a hearing on January 6, 2011, it is hereby ORDERED that the Motion for Reconsideration is GRANTED, IN PART and DENIED, IN PART, as provided below.

A motion to reconsider may be granted only “to correct manifest error of law or fact or to present newly discovered evidence.” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). RCS does not assert that any evidence has been newly discovered. Rather, RCS argues that the Court made a clear error of law in that the Order Granting Recognition (1) appears to grant Chapter 15 recognition to the Debtors’ ongoing Receivership Proceedings, and (2) does not limit the protection of the automatic stay to the property controlled by the Liquidators.

¹ Capitalized terms carry the same meaning as ascribed in the Opinion at D.I. 101 and the Order at D.I. 102.

A. Chapter 15 Recognition Is Not Granted To The Receivership Proceedings

To the extent that the Order appears to grant recognition under Chapter 15 to the Receivership Proceedings, it is in error. This Court’s Opinion (D.I. 101) grants Chapter 15 recognition solely to the Debtors’ Liquidation Proceedings and not to the Receivership Proceedings. (The Receivers have not petitioned for recognition of the Receivership Proceedings, and, for the reasons set forth in the Opinion, such recognition would be denied.) Paragraphs (e), (f) and (g) of the Order refer to “Australian Proceedings.” As defined in the Opinion, the term “Australian Proceedings” encompasses both the Liquidation Proceedings and the Receivership Proceedings. Therefore, the Court erred in its use of the term “Australian Proceedings,” and will amend the Order replacing “Australian Proceedings” with “Liquidation Proceedings.”

B. Property Of The Debtors’ Bankruptcy Estate Includes Property Subject To The Receivership Proceedings

RCS further argues that the Court erred in extending the automatic stay to the property controlled by the Receivers. RCS asserts that the Debtors’ property is bifurcated into two categories, that which the Liquidators control and that which the Receivers control, and that Debtors’ bankruptcy estate is limited to the former. RCS asserts that the property under the control of the Receivers – which is substantially all of the Debtors’ assets, and upon which RCS wants to execute judgment – is not part of the Debtors’ bankruptcy estate and therefore is not protected by the automatic stay of 11 U.S.C. § 362, applicable to foreign main proceedings under §§1520(a)(1). The Court rejects this argument.²

² The Court is fully aware that RCS is now baldly attempting to reach Debtors’ assets after directly and repeatedly disavowing such an effort when it opposed recognition. The Court, in fact, granted RCS the relief it requested. RCS now seeks more in the guise of requesting reconsideration. The Court answers with a resounding “No.”

The Liquidators filed the petitions seeking recognition under Chapter 15 *on behalf of* the Debtors ABC Learning Centres Limited, n/k/a ZYX Learning Centres Limited, and A.B.C. USA Holdings Pty Limited. Section 1502(1) defines “debtor” as “an entity that is the subject of a foreign proceeding.” The Debtors are the corporate entities, and the property of the estate includes the Debtor entities’ property, regardless of whether the property is subject to the control of the Liquidators or the Receivers.

This Court’s holdings do not offend Australian law, as RCS alleges. To the contrary, the Court’s failure to protect the Debtors’ U.S. assets would undermine Australia’s insolvency laws. The orderly distribution of assets provided for by Australia’s Corporations Act of 2001 (*see, e.g.,* Corporations Act at § 556) would be defeated if creditors could proceed against the Debtors’ assets located outside of Australia as if the foreign main proceeding did not exist.

Chapter 15 provides that “[u]pon recognition of a foreign proceeding that is a foreign main proceeding – (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States; . . .” 11 U.S.C. § 1520(a)(1). The imposition of an automatic stay upon recognition of a foreign main proceeding is necessary to ensure that the goals of Chapter 15 – including cooperation between U.S. courts and foreign courts, fair and efficient administration of cross-border insolvencies, and the protection and maximization of the value of the debtors’ assets – are met. (*See* § 1501(a).)

Furthermore, the United States and Australia have adopted the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (available at http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html last visited January 14, 2010). The U.S. incorporated the Model Law into the Bankruptcy Code through Chapter 15;

Australia implemented the Model Law through the Cross-Border Insolvency Act 2008 (Cth). (11 U.S.C. § 1501(a). Australian Law Reform Commission at <http://www.alrc.gov.au/inquiries/cross-border-civil-remedies>, last visited January 14, 2011.)

[T]he Model Law is designed to assist States to equip their insolvency laws with a modern, harmonized and fair framework to address more effectively instances of cross-border insolvency. Those instances include cases where the insolvent debtor has assets in more than one State or where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place.

(UNCITRAL's introduction to the Model Law, available at http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html, last visited January 13, 2011).

Under Article 13 of the Model Law, foreign creditors have the same rights in an insolvency proceeding as creditors from the country in which the proceeding is located. *Id.* RCS asks the Court to give it greater rights than native Australian creditors, which the Court will not do. Were the Court to permit removal of assets from the purview of the foreign main proceeding, it would undermine the spirit and intent of the Model Law, U.S. law (Chapter 15), and Australian law (Cross-Border Insolvency Act 2008).

Having determined that the Order contains an incorrect phrase, which appears to reflect an error of law, RCS's Motion for Reconsideration is GRANTED, IN PART. The Order is hereby amended to replace "Australian Proceedings" with "Liquidation Proceedings." Having determined that RCS has not demonstrated any additional error of law or any error of fact, either in the Court's Opinion or the related Order, and there being no newly discovered evidence, the Court DENIES RCS's Motion for Reconsideration in all other respects.

Dated: January 21, 2011



Kevin Gross, U.S.B.J.