

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES & EXCHANGE	:	
COMMISSION,	:	<u>ORDER</u>
	:	
Plaintiff,	:	16-cv-6848 (BMC)
	:	
- against -	:	
	:	
PLATINUM MANAGEMENT (NY) LLC;	:	
PLATINUM CREDIT MANAGEMENT,	:	
L.P.; MARK NORDLICHT; DAVID LEVY;	:	
DANIEL SMALL; URI LANDESMAN;	:	
JOSEPH MANN; JOSEPH SANFILIPPO;	:	
and JEFFREY SHULSE;	:	
	:	
Defendants.	:	
	:	
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COGAN, District Judge.

After Mark Nordlicht commenced a Chapter 7 bankruptcy case, the Receiver in this case asserted a \$220 million claim. The Receiver objected to discharge under 11 U.S.C. § 727(a)(4)(A), alleging that Nordlicht knowingly and fraudulently made a false oath in connection with the bankruptcy case. According to Nordlicht, however, the Receiver lacked standing to object. He pointed to this Court’s Second Amended Order Appointing the Receiver, dated October 16, 2017 (the “Order”), which, in his view, required the Receiver to seek leave of court before filing the discharge objection. The Bankruptcy Court stayed the adversary proceeding pending a ruling from this Court. The Receiver has moved for clarification of the Order.

I conclude that the Order authorized the Receiver to pursue the discharge objection without seeking leave of court. The starting point is Section I, which sets out the “General Powers and Duties of [the] Receiver.” That section gives the Receiver the following powers:

J. To bring such legal actions based on law or equity in any state, federal, or foreign court as the Receiver deems necessary or appropriate in discharging the Receiver’s duties as Receiver; [and]

K. To pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estate[.]

Those general powers encompass the power to file the discharge objection.

Granted, the Order also provides that the general powers are “[s]ubject to the specific provisions in this Order,” and those specific provisions are the focus of Nordlicht’s arguments.

He points to Section IX, which provides:

IX. Investigate and Prosecute Claims

34. Subject to the requirement, in Section VII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in the Receiver’s discretion, be advisable or proper to recover and/or conserve Receivership Property.

35. Subject to the Receiver’s obligation to expend Receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate, the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits and fees, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order.

Nordlicht then zeros in on the “requirement[] in Section VII.” That section provides, in relevant part:

VII. Stay of Litigation

24. As set forth in detail below, the following proceedings, excluding (i) the instant proceeding, (ii) all police or regulatory actions and actions of the Commission related to the above-captioned enforcement action, and for the avoidance of doubt, (iii) Cause No: FSD 118/2016 (NAS) and Cause No: FSD 131 of 2016 (AJJ) pending before the Grand Court of the Cayman Islands, and (iv) the bankruptcy cases In re Platinum Partners Value Arbitrage Fund L.P., 16-12925 (Bankr. S.D.N.Y.) and In re Platinum Partners Value Arbitrage Fund International Ltd., 16-12934 (Bankr. S.D.N.Y.), are stayed until further Order of this Court:

All civil legal proceedings of any nature, including, but not limited to, bankruptcy proceedings, arbitration proceedings, foreclosure actions, default proceedings, or other actions of any nature involving: (a) the Receiver, in the Receiver’s capacity as Receiver; (b) any Receivership Property, wherever located; (c) any of the Receivership Entities; or, (d) any of the Receivership Entities’ past or present officers, directors, managers, managing members, agents, or general or limited partners sued for, or in connection with, any action taken by them while acting in such capacity of any nature, whether as plaintiff, defendant, third-party plaintiff, third-party defendant, or otherwise (such proceedings are hereinafter referred to as “Ancillary Proceedings”).

25. The parties to any and all Ancillary Proceedings are enjoined from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.

According to Nordlicht, these provisions barred the Receiver from filing the discharge objection without first seeking leave of this Court.

I disagree. Although the actual text of the Order could have been clearer, it is clear enough that the purpose of Section VII is to parallel the automatic stay in bankruptcy. Section VII thus envisions that the Receiver would need leave of court to restart litigation that was pending at the time the Order was entered. Non-parties would also need leave to litigate against receivership entities. See, e.g., S.E.C. v. Platinum Mgmt. (NY) LLC, No. 16-cv-6848, 2018 WL

3442550, at *1 (E.D.N.Y. July 17, 2018) (addressing a non-party that sought an order lifting the litigation stay so that it could implead one of the receivership entities in another action). But these provisions were not intended to restrict the Receiver from commencing new litigation that the Receiver deemed necessary or appropriate in discharging her duties.

I thus conclude that neither Section VII nor Section IX of the Order required the Receiver to seek leave of court before pursuing the discharge objection in Nordlicht's bankruptcy case. Rather, the discharge objection fell squarely within the Receiver's general powers under Section I. Nordlicht's remaining arguments – including his contention that filing the discharge objection violates the Receiver's "obligation to expend Receivership funds in a reasonable and cost-effective manner" – are without merit.

Separately, three creditors in the bankruptcy case – David Gichtin, Ora Gichtin, and Stephen Sundheimer – have moved to intervene and to join in Nordlicht's opposition to the Receiver's motion. To the extent these creditors may "ha[ve] a claim or defense that shares with the main action a common question of law or fact" as to allow permissive intervention under Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure, I will exercise my discretion to deny the motion. The creditors' interests are adequately represented by Nordlicht, and intervention would not "significantly contribute to full development of the underlying factual issues in the suit" or "to the just and equitable adjudication of the legal questions presented." United States v. Lauer, 242 F.R.D. 184, 186 (D. Conn. 2007) (quoting another source). Specifically, the creditors seek to highlight a statement in the Receiver's Fifteenth Status Report, which stated that any recovery in Nordlicht's bankruptcy case was "uncertain." That statement does not inform whether the Receiver needed leave of court to file the discharge objection, and I have

already rejected Nordlicht's argument that the objection is not cost-effective or necessary.

Intervention is not warranted in these circumstances.

The Receiver's motion requesting clarification [569] is granted, and the Second Amended Order Appointing the Receiver is clarified as set forth above. David Gichtin, Ora Gichtin, and Stephen Sundheimer's motion to intervene [578] is denied.

SO ORDERED.

Digitally signed by Brian M.
Cogan



U.S.D.J.

Dated: Brooklyn, New York
July 25, 2021