

Krys v. Farnum Place, LLC (In re Fairfield Sentry Ltd)

Summarized by [Robert Yan](#), Farrell Fritz, PC 22 hours 32 min ago

[2nd Circuit](#), [11 U.S.C. § 363](#), [11 U.S.C. § 1502](#), [11 U.S.C. § 1517](#), [11 U.S.C. § 1520](#), [Asset Sales](#)

Judicial Circuit: 2nd Circuit

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Citation: Docket No. 13-3000 (2d Cir. Sept. 26, 2014)

Ruling: VACATING and REMANDING the district court's order affirming the bankruptcy court's order denying an application to conduct, in a Chapter 15 ancillary bankruptcy proceeding, a section 363 review of a sale of customer claims filed in a SIPA liquidation (the "SIPA Claim"), the Court of Appeals for the Second Circuit held that the sale of the SIPA Claim is a "transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States" within the meaning of 11 U.S.C. § 1520(a)(2), and therefore the sale is subject to review under section 363.

Procedural context: Appeal from an order of the United States District Court for the Southern District of New York (Hellerstein, J.) affirming an order of the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) declining to conduct a section 363 review of a sale of the SIPA Claim because the sale did not involve a transfer under section 1520(a)(2) and because comity warranted deference be given to the British Virgin Islands court's judgment approving the sale. The Court vacated the district court's order and remanded to the district court with instructions to remand to the bankruptcy court for the section 363 review.

Facts: Fairfield Sentry Limited ("Sentry"), a British Virgin Islands investment fund, invested approximately 95% of its assets with Bernard L. Madoff Investment Securities LLC ("BLMIS"). Sentry filed three customer claims in the BLMIS SIPA liquidation. BLMIS objected to those claims. Sentry and the BLMIS trustee entered into a settlement. In July 2009, Sentry was placed into liquidation in the British Virgin Islands. The liquidator ("Krys") appointed for the Sentry liquidation filed a petition with the bankruptcy court seeking recognition of the Sentry liquidation as a foreign main proceeding under 11 U.S.C. § 1517. Krys accepted an offer from Farnum Place, LLC ("Farnum") to purchase Sentry's SIPA Claim and both parties executed a trade confirmation setting forth the terms and conditions of the sale. Three days after the execution of the trade confirmation, the BLMIS trustee announced that a settlement agreement was entered into with the estate of Jeffrey Picower. That settlement resulted in a substantial recovery that had the effect of increasing the value of Sentry's SIPA Claim by approximately \$40 million. Thereafter, Farnum applied to the British Virgin Islands court for an order to compel Krys to comply with the trade confirmation. Krys argued that the sale at the stipulated amount in light of the sudden increase in value of the SIPA Claim was not in the best interests of the Sentry estate and that the trade confirmation required the bankruptcy court's approval pursuant to 11 U.S.C §§ 363 and 1520(a)(2). The British Virgin Islands court approved the terms and conditions of the trade confirmation at the amount stipulated to and directed Krys to bring the question of approval of the trade confirmation before the bankruptcy court, which Krys subsequently did. The bankruptcy court held that a section 363 review was not warranted under section 1520(a)(2) because the sale did not involve the transfer of an interest in property within the United States. The bankruptcy court also stated that deference was to be given to the British Virgin Islands court for purposes of comity. The district court affirmed the bankruptcy court's decision. On appeal, the Court found that the "property" (as used in section 1520(a)(2)) is the SIPA Claim and that it is "within the territorial jurisdiction of the United States" (as used in section 1502(8)). The Court examined the language of section 1502(8) and found that the SIPA Claim is subject to attachment or garnishment and may be properly seized by an action in a Federal or State court in the United States. The Court added that under applicable nonbankruptcy law (in this instance, New York), the situs of intangible property that has as its subject a legal obligation to perform is the location of the party obligated to perform. Here, the SIPA trustee is obligated to distribute to Sentry its pro rata share of the assets and the situs of the SIPA Claim is the location of the SIPA trustee in New York. Therefore, the Court concluded that the sale of the SIPA Claim is within the meaning of section 1520(a)(2) and that pursuant to section 1520(a)(2) the bankruptcy court must apply section 363. With respect to comity, the Court held that the plain language of section 1520(a)(2) imposed a limitation on comity. According to the Court, section 1520(a)(2) plainly requires the bankruptcy court to conduct a section 363 review when the debtor seeks a transfer of an interest in property within the territorial jurisdiction of the United States. Therefore, the bankruptcy court erred by giving

deference to the British Virgin Islands court's approval of the trade confirmation and failed to conduct a section 363 review. The Court vacated and remanded to the district court with instructions to remand to the bankruptcy court to conduct the section 363 review. The Court did not address the merits of the section 363 review but did provide some guiding principles, including: (1) the requirement of an express finding of a good business reason to grant a section 363(b) application based on the evidence presented; (2) consideration of all salient factors pertaining to the proceeding, such as whether the asset is increasing or decreasing in value; (3) bankruptcy courts have broad discretion and flexibility to enhance the value of the estate; and (4) the bankruptcy court's principal responsibility is to secure for the benefit of the creditors the best possible bid. Based on the above, the Court noted that bankruptcy court must consider the increase in value of the SIPA Claim as part of the section 363 review.

Judge(s): Newman, Walker, and Cabranes (Circuit Judges)

Topics: Asset Sales

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