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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
ELETSON HOLDINGS INC., *et al.,*	Case No. 23-10322 (JPM)
Debtors.[1]	(Jointly Administered)

MAJORITY SHAREHOLDERS' AND ELAFONISSOS SHIPPING CORPORATION'S OBJECTION TO REORGANIZED HOLDINGS' MOTION TO AMEND THE APPEALED MARCH 13, 2025 ORDER

[1] The Debtors in these chapter 11 cases are: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. The address of the Debtors' corporate headquarters is 118 Kolokotroni Street, GR 185 35 Piraeus, Greece. The Debtors' mailing address is c/o Eletson Maritime, Inc., 1 Landmark Square, Suite 424, Stamford, Connecticut 06901.

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PRELIMINARY STATEMENT

1. Through its motion to amend the Court's March 13, 2025 Order (the "Motion to Amend" or the "Motion"), Reorganized Holdings[2] asks this Court to modify an order as to those aspects of the order that have been appealed. This Court lacks jurisdiction to do that. The relevant parts of the order are before Judge Liman and this Court simply cannot amend the aspects of the order that are on appeal. In its recent opposition to a motion brought by Elafonissos Shipping Corporation ("Elafonissos") for relief from orders the Court entered against Elafonissos without personal jurisdiction over Elafonissos, Reorganized Holdings cited this very law in arguing the Court lacked jurisdiction to grant Elafonissos the relief sought. Although the currently pending appeals did not divest the Court of jurisdiction to hear Elafonissos's motion—because the Court's personal jurisdiction over Elafonissos has not yet been appealed—the Court is unquestionably deprived of jurisdiction to "amend" or "modify" the March 13 Order because the subject matter of the pending appeals is *precisely the same* as Reorganized Holdings' purported bases for its Motion to Amend.[3]

2. The Court must also deny the Motion to Amend as to Elafonissos specifically because the Court lacks personal jurisdiction over Elafonissos. As set forth at length in the 9024 Motion (defined below), Elafonissos is a foreign minority shareholder of a foreign corporation with no U.S. ties. It has not participated in these bankruptcy proceedings or otherwise subjected itself to personal jurisdiction in this Court by seeking any relief from this Court aside from in the 9024 Motion, which solely concerns personal jurisdiction. Nor was Elafonissos ever served with

[2] The Debtor, Eletson Holdings Inc., as reorganized, is referred to herein as "Reorganized Holdings."

[3] Certainly, to the extent the Court determines it lacks jurisdiction to rule on Elafonissos's motion for relief from the March 13 Order, it cannot exercise its jurisdiction to amend the March 13 Order as Reorganized Holdings now seeks.

motion papers in connection with the orders entered against it (including the Motion to Amend) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as was required for personal jurisdiction to attach. Because Elafonissos lacks the necessary minimum contacts with the U.S. required for the Court to exercise personal jurisdiction over it, the Court cannot grant the Motion to Amend as to Elafonissos and impose sanctions upon it, and modify and expand the injunctive relief against it that was improperly granted in the March 13 Order.

3. Finally, Reorganized Holdings makes no attempt to demonstrate that granting the Motion to Amend, which would modify and broaden an anti-foreign-suit injunction against numerous parties, would comply with the mandatory test established by the Second Circuit in *China Trade & Development Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987) for the imposition of an anti-foreign-suit injunction. This is fatal to its request for relief, as the Court cannot enter (or expand) such an injunction without making findings that the relief would comply with the *China Trade* test. Nonetheless, Reorganized Holdings would be incapable of making such a showing. Pursuant to the *China Trade* test, this Court can only enjoin foreign actions where the issues decided in this Court are dispositive to the issues being determined in the foreign proceeding. But the Petitioning Creditors whose Plan was adopted by the Court acknowledged in their Disclosure Statement that recognition of the Plan and Confirmation Order in foreign jurisdictions was uncertain and subject to foreign law. Indeed, this Court cannot make "dispositive" determinations as to the issues in the foreign proceedings because it is not within this Court's province, as acknowledged in the Disclosure Statement, to determine the application of foreign law in foreign jurisdictions. The anti-foreign-suit injunctions Reorganized Holdings seeks to modify and expand, therefore, are not consistent with the *China Trade* test and cannot be entered by this Court.

4. Reorganized Holdings seeks to re-litigate and re-open matters that are now properly before the District Court on appeal, and that will be determined by the District Court, and the Second Circuit, in due course. While that process proceeds, Reorganized Holdings cannot seek modification of the appealed orders as to the aspects implicated in the appeals. The Court should deny the Motion to Amend while the appeals proceed.

FACTUAL BACKGROUND

5. On November 4, 2024, the Court issued its *Findings of Fact, Conclusions of Law, And Order Confirming Petitioning Creditors' Amended Joint Chapter 11 Plan of Eletson Holdings Inc. And Its Affiliated Debtors* (the "Confirmation Order"). (Dkt. No. 1223.) The Confirmation Order confirmed the plan of reorganization (the "Plan", Dkt. No. 1132, Ex. 1) proposed by certain of Eletson Holdings' creditors (the "Petitioning Creditors").

6. On November 25, 2024, Reorganized Holdings filed the *Emergency Motion of Reorganized Eletson Holdings Inc. for an Order Imposing Sanctions on Eletson Holdings' (A) Existing Person of Record and (B) Former Shareholders, Officers, Directors, and Counsel, Including Reed Smith LLP* (Dkt. No. 1268) (the "First Sanctions Motion"), seeking an order that, among other things, would compel certain former shareholders, directors, and officers—including the Majority Shareholders[4]—to file a change of AOR and amendment of corporate documents with the LISCR. (First Sanctions Motion, ¶ 30.) As set forth in Elafonissos's motion for relief from the January 29 Order (the "9024 Motion" Dkt. No. 1569), the First Sanctions Motion was not served on Elafonissos in accordance with Rule 4 of the Federal Rules of Civil Procedure, and

[4] The "Majority Shareholders" are Lassia Investment Company, Glafkos Trust Company, and Family Unity Trust Company.

Elafonissos, a foreign entity with no contacts with the U.S., had not participated in this bankruptcy case through the filing of any proof of claim, objection, or any motion seeking relief.

7. Following briefing, hearings, and trial, the Court issued an oral ruling on January 24, 2025 and entered the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (Dkt. No. 1402) (the "January 29 Order") on January 29, 2025, granting the First Sanctions Motion. In relevant part, the January 29 Order ordered the Majority Shareholders, Elafonissos, and others to take "all steps reasonably necessary to update or amend (a) Holdings' AOR to reflect that Adam Spears is Holdings' AOR and (b) Holdings' corporate governance documents on file with LISCR as directed by Holdings." The Majority Shareholders timely appealed the January 29 Order. (Dkt. No. 1413.)

8. On February 6, 2025, Reorganized Holdings moved again for sanctions for purported non-compliance with the January 29 Order, and on February 20, 2025, the Court ordered certain parties, including the Majority Shareholders, to file certifications relating to, among other things, the parties' compliance with the January 29 Order and the update of Reorganized Holdings' AOR (the "Second Sanctions Motion" Dkt. No. 1468, Ex. A). Elafonissos, which is not subject to this Court's personal jurisdiction, was not ordered to submit a certification.

9. On February 24, 2025, as directed by the Court, Majority Shareholders Lassia Investment Company and Family Unit Trust Company filed certifications with the Court stating that they had no knowledge of the identity of the then-current AOR for Eletson Holdings, but that they had communicated with the President of the provisional Board of Directors of Eletson Holdings to take direction from Eletson Holdings as to updating the AOR and amending corporate governance documents on file with LISCR. (*See* Dkt. Nos. 1472, 1473.)

10. On February 27, 2025, the Court entered an order (the "February 27 Order") imposing sanctions on, among others, the Majority Shareholders. (Dkt. No. 1495.) The February 27 Order imposed no sanctions on Elafonissos. The Majority Shareholders timely appealed the February 27 Order. (Dkt. No. 1541.)

11. On February 19, 2025, Reorganized Holdings again moved for sanctions against numerous parties relating to foreign legal actions that were commenced or pending purportedly in violation of the Confirmation Order and previous sanctions orders (the "Third Sanctions Motion" Dkt. No. 1459). On February 28, 2025, Reorganized Holdings submitted a chart of such purported actions to the Court (Dkt. No. 1496), which, as noted by the Majority Shareholders in their objection to the Third Sanctions Motion, listed no actions to which the Majority Shareholders were parties. (Dkt. No. 1506.)

12. As with every previous motion seeking relief against Elafonissos, Elafonissos was not served the Third Sanctions Motion in accordance with Rule 4 of the Federal Rules of Civil Procedure. (*See* Dkt. No. 1625.)

13. On March 13, 2025, the Court entered an order (the "March 13 Order" Dkt. No. 1537, and together with the January 29 Order and the February 27 Order, the "Sanctions Orders"), imposing monetary sanctions upon, among others, the Majority Shareholders and Elafonissos, and ordering them to withdraw any filings in foreign actions listed on Exhibit 1 to the March 13 Order. Exhibit 1 to the March 13 Order was apparently submitted *ex parte* to the Court without notice and an opportunity to respond to the contents thereof, and included additional litigations for which Reorganized Holdings had not sought relief. (*See* Dkt. No. 1539.) The Majority Shareholders timely appealed the March 13 Order. (Dkt. No. 1563.)

14. The Sanctions Orders have been appealed in their entirety, and raise issues, among others, as to whether the Court exceeded its jurisdiction in entering the Sanctions Orders, whether the Sanctions Orders compel the Majority Shareholders to act inconsistent with foreign law applicable to them, and whether the Sanctions Orders improperly sanction the Majority Shareholder for actions taken by parties other than the Majority Shareholders. (*See, e.g.*, Dkt. No. 1592.)

15. On March 27, 2025, Elafonissos filed the 9024 Motion, seeking relief from the January 29 Order and the March 13 Order on the basis that the Orders are void as to it because the Court lacks personal jurisdiction over Elafonissos. (Dkt. No. 1569.) The 9024 Motion is fully submitted and the Court has not yet ruled on it.

ARGUMENT

A. The Court Lacks Jurisdiction To Amend The Order That Has Been Appealed

16. Reorganized Holdings has represented to this Court that it has been divested of jurisdiction to modify orders that have been appealed. (*See* Dkt. No. 1622 at 15 ("Once a notice of appeal is filed no lower court should be able to vacate ***or modify*** an order under appeal . . .") (quoting *In re Sabine Oil & Gas Corp.*, No. 16cv2561 (JGK), 2016 WL 4203551, at *6 (S.D.N.Y. Aug. 9, 2016)) (emphasis added).) Per Reorganized Holdings' own argument with regard to the 9024 Motion, the Court lacks jurisdiction to grant the relief it now seeks in the Motion to Amend.[5]

17. "The filing of a bankruptcy appeal confers jurisdiction on the appellate court and divests the trial court of control over those aspects of the case involved in the appeal." *Id.*

[5] The 9024 Motion differs from the Motion to Amend because the Court's personal jurisdiction over Elafonissos is not an aspect of the March 13 Order currently on appeal. Thus, the Court can properly exercise jurisdiction over the 9024 Motion despite that it has been divested of jurisdiction over the Motion to Amend because the Motion to Amend squarely implicates the aspects of the March 13 Order that have been appealed.

Reorganized Holdings' motion asks the Court to modify an order that has been appealed, which the Court lacks jurisdiction to do. *Id.* Specifically, through the Motion, Reorganized Holdings seeks to increase the monetary sanctions imposed in the March 13 Order and automatically increase them every two weeks thereafter. (Mot. ¶ 30.) But the propriety of the Court's imposition of those sanctions has been appealed by, among other parties, the Majority Shareholders. (*See, e.g.*, Dkt. No. 1592.) Indeed, the Court's imposition of sanctions upon the Majority Shareholders is the central issue in the Majority Shareholders' appeal. (*Id.*)

18. Reorganized Holdings styles its Motion as one to "amend" the March 13 Order. (Dkt. No. 1602.) "Amend" is simply a synonym for "modify," precisely one of the actions this Court is barred from taking with respect to an appealed order. *See In re Sabine Oil & Gas Corp.*, 2016 WL 4203551, at *6; *see also* Meriam-Webster, Definition 2 of Amend, *available at* https://www.merriam-webster.com/dictionary/amend ("to change ***or modify*** (something) . . .") (emphasis added). Further, the Court cannot "expand upon or alter" an order that is on appeal. *See In re Prudential Lines, Inc.,* 170 B.R. 222, 243 (Bank. S.D.N.Y. 1994). But that is precisely what Reorganized Holdings seeks in the Motion to Amend. The proposed order submitted by Reorganized Holdings in connection with the Motion to Amend states unambiguously that "[t]his Order amends and supersedes in its entirety the Original Order." (Dkt. No. 1602, Ex. A ¶ 1.) In particular, Reorganized Holdings seeks to "amend and supersede" the March 13 Order by increasing the dollar amount of sanctions imposed on each party "by $5,000 per party per day, and increasing an additional $5,000 per party per day for each two-week period of non-compliance." (Dkt. No. 1602 ¶ 30.) Indeed, the relief sought by Reorganized Holdings would fundamentally, and unfairly, alter the entire sanctions regime from one assessing daily monetary sanctions to one ratcheting up in virtual perpetuity while the appeal is pending.

19. In essence, the same arguments advanced by the Majority Shareholders in opposition to the motions resulting in the March 13 Order—and those advanced in their appeal of the March 13 Order—are applicable to this Motion to Amend. This is precisely the situation that the rule divesting this Court of jurisdiction over an appealed order is meant to avoid. *See In re Emergency Beacon Corp.*, 58 B.R. 399, 402 (Bankr. S.D.N.Y. 1986) ("The rationale for this rule is the avoidance of the confusion and waste of time that might result from putting the same issues before two courts at the same time."). Here, the Majority Shareholders' appeal raises numerous issues re-implicated by this Motion to Amend, including whether the Court's March 13 Order was entered in error, whether it purports to require the Majority Shareholders to act in a manner inconsistent with "applicable law," whether it improperly groups the Majority Shareholders with other parties that have commenced the foreign actions at issue, and whether the Court exceeded its jurisdiction in entering the March 13 Order Reorganized Holdings now seeks to amend. (*See* Dkt. No 1592.) These questions are now properly before the District Court, and the Court is therefore divested of jurisdiction to modify the March 13 Order based upon its resolution of issues that will be determined by the District Court in the course of the pending appeals. *See, e.g.*, *In re Emergency Beacon Corp.*, 58 B.R. at 402 ("Once a notice of appeal is filed no lower court should be able to vacate or modify an order under appeal . . . .").

B. The Court Lacks Personal Jurisdiction Over Elafonissos

20. "[P]ersonal jurisdiction is fundamental to a court's power to adjudicate a case" and "[i]t is well established that a court may not grant an 'injunction over a party over whom it does not have personal jurisdiction.'" *Sec. Investor Protection Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Nos. 12-mc-115(JSR), 12-cv-5597(JSR), 2013 WL 4077586, at *3 (S.D.N.Y. Aug. 2, 2013) ("*Madoff II*") (quoting *Hyundai Mipo Dockyard Co. v. AEP/Borden Indus.*, 261 F.3d 264, 270 (2d Cir. 2001)).

21. As was set forth at length in Elafonissos's 9024 Motion (Dkt. No. 1569) and in its reply in further support of its 9024 Motion (Dkt. No. 1625), the Court lacks personal jurisdiction over Elafonissos because (1) Elafonissos lacks the requisite minimum contacts with the U.S. necessary for the Court to exercise personal jurisdiction over it, and (2) Elafonissos was not properly served process in connection with the January 29 Order and the March 13 Order (nor in connection with the Motion to Amend) such that the Court can exercise personal jurisdiction over it. As this Motion to Amend seeks to amend the March 13 Order to increase the sanctions being imposed upon Elafonissos, and as the Court has taken the 9024 Motion under advisement and not yet ruled upon it, Elafonissos incorporates by reference in their entirety its arguments made in the 9024 Motion and the reply in further support of the 9024 Motion in support of its objection to the Motion to Amend the March 13 Order that was improperly entered against Elafonissos. (*See* Dkt. Nos. 1569, 1625.)

C. Reorganized Holdings Seeks an Anti-Foreign-Suit Injunction Without Addressing the *China Trade* Factors

22. The Sanctions Orders enjoined numerous parties (including Elafonissos, over which the Court lacks personal jurisdiction) from pursuing or continuing foreign litigations, and the Motion to Amend seeks to modify and broaden the Court's anti-foreign-suit injunctions. (*See, e.g.*, Dkt. No. 1602, Ex. A (Proposed Amended Order) ¶ 2 (enjoining the "Violating Parties" from making filings and directing them to withdraw actions in foreign courts).) In order to expand the Court's anti-foreign-suit injunction (and to have entered it in the first place), the Court must find the anti-foreign-suit injunction sought by Reorganized Holdings complies with the test articulated in *China Trade & Development Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987). Reorganized Holdings does not even address this test, however, and the Motion to Amend must therefore be denied.

23. Federal courts may, under limited circumstances, "enjoin foreign suits ***by persons subject to their jurisdiction***." *China Trade*, 837 F.3d at 35 (emphasis added). "The fact that the injunction operates only against the parties, and not directly against the foreign court, does not eliminate the need for due regard to principles of international comity because such an order effectively restricts the jurisdiction of the court of a foreign sovereign." *Id.* (internal citations omitted). "Therefore, an anti-foreign-suit injunction should be used sparingly and should be granted only with great care and restraint." *Id.* at 36 (internal quotes and citations omitted).

24. Accordingly, a court may only order an anti-foreign-suit injunction where "(A) the parties are the same in both matters, and (B) resolution of the case before the enjoining court is dispositive of the action to be enjoined." *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 500 F.3d 111, 119 (2d Cir. 2007) (quoting *Paramedics Electromedicina Comercial, Ltda. v. GE Med. Sys. Info. Tech., Inc.*, 369 F.3d 645, 651 (2d Cir. 2004)). Reorganized Holdings does not even address these factors in its Motion to Amend, and the Motion is therefore fatally deficient, as the Court is unable to enjoin foreign actions without making these threshold findings. *See Karha Bodas*, 500 F.3d at 119-20.

25. Nor could the Court make the required findings even if Reorganized Holdings had addressed them. The Motion to Amend seeks to broaden an anti-foreign-suit injunction against numerous entities and individuals, several of whom (including Elafonissos) are not present in the U.S. and have not appeared before this Court (aside from disputing personal jurisdiction through the 9024 Motion).

26. In addition, even a cursory review of the descriptions of the foreign actions in Exhibit 1 to the proposed order submitted by Reorganized Holdings in connection with the Motion to Amend reveals that resolution of the matters before this Court are not dispositive as to certain

of the foreign actions. This Court's resolution of certain matters pertaining to U.S. bankruptcy law, for instance, is not dispositive as to matters of Greek internal corporate law, or Greek law as to recognition of the Plan and Confirmation Order. (*See* Dkt. No. 1602, Ex. 1 to Proposed Order (listing subject matter of foreign actions).) Indeed, in their disclosure statement, the Petitioning Creditors acknowledged that extraterritorial recognition of Plan confirmation was "uncertain" and that "a foreign court may refuse to recognize the effect of the Confirmation Order." (Dkt. No. 849 § IX.B.3.) It is thus impossible, as recognized by the Petitioning Creditors themselves, that resolution of the matters before this Court are dispositive as to the foreign actions relating to foreign recognition. *See Karha Bodas*, 500 F.3d at 119 (explaining that, in order to enter anti-foreign-suit injunction, "resolution of the case before the enjoining court" must be "dispositive of the action to be enjoined").

27. Throughout the filing of the successive Sanctions Motions, Reorganized Holdings has sought extraordinary extraterritorial relief that can only be obtained upon specific findings. Reorganized Holdings now seeks to broaden the relief granted in the March 13 Order (while the propriety of that relief is on appeal) without attempting to make the requisite showing required to obtain that relief. Accordingly, the Court should deny the Motion to Amend.

CONCLUSION

For the foregoing reasons, the Court should grant deny the Motion to Amend.

Dated: May 6, 2025
New York, New York

Respectfully submitted,

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