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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 FOR FEES AND COSTS

[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. Reorganized Holdings'[2] motion for fees and costs (the "Motion For Fees" or "Motion" Dkt. No. 1597) improperly seeks attorneys' fees and costs on the basis of the same conduct that is the subject of appeals brought by the Majority Shareholders.[3] The Court cannot grant the Motion because the appeals filed by the Majority Shareholders have divested this Court of jurisdiction as to those aspects of its prior orders that have been appealed. Courts in this circuit have found, specifically, that they are deprived of jurisdiction to decide a motion for fees based on conduct where the party who would be subject of the order for fees has appealed the court's prior order regarding that conduct. Put simply, the question of whether the Majority Shareholders' conduct was sanctionable such that the Court can require it to pay fees allegedly incurred by Reorganized Holdings is now before the District Court, and will likely end up before the Second Circuit. While those appeals are pending, the Court cannot levy additional sanctions for the same conduct.

2. Further, the Court must 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, 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 subject itself to personal jurisdiction in this Court by seeking any relief from this Court aside from in the 9024 Motion. Nor was Elafonissos ever served with motion papers in connection with the orders entered against it (including the Motion For Fees) in accordance with Rule 4 of the Federal Rules of Civil Procedure,

[2] The Debtor, Eletson Holdings Inc., as reorganized, is referred to herein as "Reorganized Holdings."
[3] The "Majority Shareholders" are Lassia Investment Company, Glafkos Trust Company, and Family Unity Trust Company.

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 For Fees as to Elafonissos and impose sanctions upon it.

3. The Motion For Fees also impermissibly groups together more than a dozen individual parties and seeks fees from each for actions not alleged to have been taken by each. An award of fees as a sanction must be compensatory, and must be supported by findings that particular actions of a sanctioned party caused the counterparty to incur fees it would not have otherwise incurred. Nonetheless, Reorganized Holdings seeks fees from the Majority Shareholders, for instance, purportedly incurred in connection with legal actions in Greece to which the Majority Shareholders are not parties. But without a particularized showing that the fees incurred in those actions were the result of actions undertaken by the Majority Shareholders, the Court cannot impose a fee sanction upon the Majority Shareholders. Indeed, this is one of the bases upon which the Majority Shareholders have appealed the Court's previous orders imposing sanctions on them, further underscoring the Court's lack of jurisdiction over the Motion For Fees.

4. The Motion For Fees is but one of several motions brought by Reorganized Holdings to expand and broaden the sanctions imposed upon the Majority Shareholders and others while the very propriety of the Court's imposition of those sanctions is on appeal. The rule divesting the Court of jurisdiction over such motions is meant to prevent piecemeal litigation with the potential for inconsistent results and applies squarely to this Motion. The Court should deny the Motion For Fees and allow the appeals to proceed undisturbed.

FACTUAL BACKGROUND

5. In the interest of economy, the Majority Shareholders and Elafonissos refer to the Factual Background section of their Objection to Reorganized Holdings' Motion to Amend the

March 13 Order filed concurrently herewith (the "Motion to Amend Objection" Dkt. No. 1642.) Capitalized terms not defined herein have the same meaning as in the Motion to Amend Objection.

ARGUMENT

A. The Court Lacks Jurisdiction To Award Fees Based On the Same Facts Underlying the Appealed Orders

6. 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).). "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.*; *see also 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."). 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.[4]

7. Here, Reorganized Holdings is seeking an award of attorneys' fees for the same alleged conduct that is the subject of the appeals of the Court's previous orders. Indeed, the Relief Requested section of the Motion For Fees makes clear that Reorganized Holdings seeks fees based entirely on the Court's previous findings, all of which are currently on appeal. (*See* Dkt. No. 1597 ¶¶ 32-35 (stating the Court found, in the appealed rulings, that it can award fees as a monetary

[4] The 9024 Motion differs from the Motion For Fees 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 For Fees because the Motion For Fees squarely implicates the aspects of the March 13 Order that have been appealed.

sanction for conduct that is the subject of the appealed orders).) Because the Motion For Fees is based entirely upon the Court's previous rulings that have been appealed, and are based on the same conduct underlying those rulings, the Court has been divested of jurisdiction as to the subject matter of the Motion For Fees. *See, e.g.*, *In re Wonder Corp. of Am.*, 81 B.R. 221, 225 (D. Conn. 1988).

8. In *In re Wonder Corporation of America*, the court found it had been divested of jurisdiction over a motion for fees brought by the debtor for allegedly frivolous motion practice by a secured creditor. *Id.* In a prior ruling, the court had significantly reduced the fees sought by the secured creditor under Section 506(b) of the Bankruptcy Code because, among other reasons, it found much of the secured creditor's motion practice served no legitimate purpose. *Id.* at 222. While the court's ruling on the 506(b) motion was on appeal, the debtor moved for its fees as a sanction for the purportedly frivolous motion practice that resulted in the appealed 506(b) motion ruling. *Id.* at 222-24. The court found the appeal divested it of jurisdiction over the debtor's motion for fees because the secured creditor's conduct in undertaking its motion practice was "the subject matter of . . . [the debtor's] amended motion. And that same conduct, found in the § 506(b) ruling, is the subject of [the secured lender's] appeal." *Id.* at 225. Thus, because the issue of the propriety of the secured creditor's conduct was now on appeal, the court found it lacked jurisdiction to decide the motion for fees based on the same conduct. *See id.*

9. The same is the case here. The January 29 Order, the February 27 Order, and the March 13 Order, which provide the factual and legal bases for the Motion For Fees, are all on appeal. (*See* Dkt. Nos. 1413, 1541, 1563.) Whether the motions resulting in those orders were correctly decided is now properly before the District Court, and this Court is divested of jurisdiction to decide whether the conduct alleged in connection with those Orders can result in

additional sanctions. *See In re Wonder Corp. of Am.*, 81 B.R. at 225. "The divestment of jurisdiction is meant to preserve the integrity of the appellate process by avoiding the needless confusion which would assuredly flow from putting the same issue before two courts at once." *Id.* at 224. Here, at a minimum, the question of whether this Court properly sanctioned the sanctioned parties is before the District Court, and this Court, therefore, cannot enter an additional order imposing new sanctions based on the appealed orders and the conduct underlying them. The Court should, therefore, deny the Motion For Fees.

10. Denying the Motion For Fees during the pendency of the appeals fulfills the purpose of the rule divesting the Court of jurisdiction of avoiding "the confusion and waste of time that might result from putting the same issues before two courts at the same time." *In re Emergency Beacon Corp.*, 58 B.R. at 402. If the Court were to award Reorganized Holdings fees for conduct that is the subject of the appeals, and the Court's rulings on one or all of the Sanctions Motions are overturned on appeal, this would only spark further litigation, as the Majority Shareholders would be forced to retrieve any fees paid prior to resolution of the appeal. It thus makes perfect sense that the Court should refrain from assessing new sanctions based on conduct that is the subject of an appeal to avoid having to unwind additional court orders if the appeals are successful.

B. The Court Lacks Personal Jurisdiction Over Elafonissos

11. "[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)).

12. 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 For Fees) such that the Court can exercise personal jurisdiction over it. As this Motion For Fees seeks fees from Elafonissos ostensibly for violation of orders the Court entered without personal jurisdiction over 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 For Fees. (*See* Dkt. Nos. 1569, 1625.)

C. The Motion For Fees Impermissibly Seeks Fees From the Majority Shareholders and Elafonissos For Conduct Purportedly Undertaken By Other Parties

13. The Motion For Fees impermissibly lumps together more than a dozen distinct parties and, without regard for the conduct allegedly undertaken by each of them, seeks a jpoint-and-several fee award from all of them. (*See, e.g.*, Dkt. No. 1597 at 8, n. 8 (identifying 16 distinct parties).) An award of attorneys' fees under the Court's inherent powers "must be compensatory rather than punitive in nature." *Goodyear Tire & Rubber Co. v. Hager*, 581 U.S. 101, 108 (2017). Accordingly, in imposing an award of fees, the Court must "establish a causal link—between the litigant's misbehavior and legal fees paid by the opposing party." *Id.* Thus, unless an action of a particular party is a "but-for" cause of the particular fees sought, the Court may not impose a fee award on that party. *See id.* at 108-09.

14. Here, Reorganized Holdings seeks fees from both the Majority Shareholders and Elafonissos that have no connection to actions undertaken by those parties. As an example,

Reorganized Holdings seeks fees purportedly incurred in certain "Greek Proceedings" (Dkt. No. 1597 ¶ 31) that were the subject of the March 13 Order, but as the March 13 Order makes clear, the Majority Shareholders are not a party to any of those Greek Proceedings. (*See* Dkt. No. 1537, Ex. 1.) It thus cannot be said—as is required to impose a fee sanction on them—that "but for" the actions of the Majority Shareholders, Reorganized Holdings would not have incurred fees in the Greek Proceedings. Similarly, Reorganized Holdings seeks fees in connection with proceedings in this Court relating to the Sanctions Motions (Dkt. No. 1597 ¶ 31), but with the sole exception of the 9024 Motion, Elafonissos has not engaged in any litigation in this Court because this Court has no personal jurisdiction over Elafonissos. Indeed, the Court already rejected Reorganized Holdings' attempt, in connection with the Third Sanctions Motion, to assess a joint-and-several fee sanction against the various parties alleged to have engaged in varying conduct. (*Compare* Dkt. No. 1459, Ex. A ¶ 3 (proposed order requiring "Ordered Parties on a joint-and-several basis to pay Holdings' fees and expenses") *with* Dkt. No. 1537 ¶¶ 3-4 (entered order naming parties individually, reserving on issue of fees and expenses, and striking "joint-and-several" language).)

15. Reorganized Holdings makes no attempt in its Motion For Fees to "establish a causal link" between the actions of particular parties and particular fees it purports to have incurred as a result of those actions, instead simply requesting all of its fees purportedly incurred in litigation in this Court, and in proceedings in Greece and Liberia, from the "Sanctioned Parties" as a whole. (*See* Dkt. No. 1597 ¶ 35.) "[T]he Supreme Court has made clear that courts should impose sanctions pursuant to their inherent authority only in rare circumstances." *Yukos Cap. S.A.R.L. v. Feldman*, 977 F.3d 216, 235 (2d Cir. 2020) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991)). At the very least, the Court cannot award the broad fee sanction sought by Reorganized Holdings on this record, which does not attempt to parse out which party allegedly

caused Reorganized Holdings to incur which fees. Where, as here, the party seeking a fee award as sanctions has failed to connect the fees sought directly to the actions of the party from whom it seeks the fee sanction, the Court should not award the fees sought. *See Goodyear Tire & Rubber Co.*, 581 U.S. at 108-109.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion for Fees.

Dated: May 6, 2025
New York, New York

Respectfully submitted,

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