UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
ELETSON HOLDINGS INC.	Case No.: 23-10322 (JPM)
Debtor.[1]	

PROVISIONAL HOLDINGS' MEMORANDUM OF LAW IN OPPOSITION TO SUPPLEMENT TO ELETSON HOLDINGS INC.'S MOTION TO AMEND THE COURT'S FOREIGN OPPOSITION SANCTIONS ORDER

[1] The Court has ordered the following footnote to be included in this caption: "Prior to November 19, 2024, the Debtors in these cases were: Eletson Holdings Inc., Eletson Finance (US) LLC, and Agathonissos Finance LLC. On [March 5, 2025], the Court entered a final decree and order closing the chapter 11 cases of Eletson Finance (US) LLC and Agathonissos Finance LLC. Commencing on [March 5, 2025], all motions, notices, and other pleadings relating to any of the Debtors shall be filed in the chapter 11 case of Eletson Holdings Inc. The Debtor's mailing address is c/o Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119" (Dkt. 1515 ¶ 7).

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Provisional Eletson Holdings, Inc. ("Provisional Holdings") hereby submits its opposition to Reorganized Eletson Holdings Inc.'s ("Reorganized Holdings" or "Movant") Supplement (Dkt. 1629) (the "Supplement") to the *Motion to Amend the Court's Foreign Opposition Sanctions Order (Dkt. No. 1537) to (A) Increase the Sanctions Amount and (B) Impose Sanctions on Laskarina Karastamati* (Dkt. No. 1602) (the "Motion"). For the reasons stated below, and in *Provisional Holdings' Memorandum of Law in Opposition to Eletson Holdings Inc.'s Motion to Amend the Court's Foreign Opposition Sanctions Order* (the "Opposition") (Dkt. 1640), which Provisional Holdings incorporates by reference herein, and the Declaration of John Markianos-Daniolos ("Daniolos Decl.") (Dkt. 1641), this Court should deny the Motion and the Supplement.

PRELIMINARY STATEMENT

1. By way of the Supplement, Movant, again, seeks to further ***modify and expand*** the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "March 13 Order"), which is the subject of two pending appeals. As set forth in the Opposition, this Court lacks jurisdiction to do that.

2. Movant asks this Court, on pain of sanctions, to grant extraordinary relief effectively enjoining parties, including non-debtor, non-subsidiary entities which Movant does not—and cannot—control, from exercising their legitimate rights under foreign law. And it does this without even attempting to comply with the mandatory test established by the Second Circuit for the imposition of an anti-foreign-suit injunction. *See China Trade & Development Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987). Even worse, Movant asks this Court to control or otherwise restrict protected speech by foreign parties in foreign countries. U.S. courts, and U.S. law, do "not rule the world." *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 428 (2023) (citation omitted). Indeed, a U.S. court, absent issuing an anti-suit injunction (which

Movant has not sought), cannot control how a foreign court manages its court room (*see* Dkt. 1447, Ex. 5 at 38:21-22 (Judge Liman: "I don't think I can tell the Liberian court who can speak for Eletson Holdings in Liberia. I would not purport to do that.").

3. Movant has shown that it will continue to abuse this Court's orders, including by continuing to assert it has unfettered control over Gas and its subsidiaries by virtue of the Plan and the Confirmation Order. This was never contemplated in the Plan—it goes well beyond it. The Court should not permit it.

FACTUAL BACKGROUND

A. Procedural History

4. On March 12, 2025, this Court issued an oral ruling on the Third Sanctions Motion, finding "the following parties . . . in contempt for violating the Chapter 11 plan, the [C]onfirmation [O]rder and the January 29th order": "the former minority shareholders, the former majority shareholders, purported Eletson Holdings, the purported provisional board, and Vassilis Hadjieleftheriadis" (3/12/25 Tr. at 79:17-23). The Court further ruled that those specifically identified parties are "authorized, required and directed to withdraw any and all filings ***that oppose or undermine in any way the judicial recognition of the confirmation order***, including, without limitation, filings in the Liberian proceedings and the Greek proceedings, and are enjoined from making any filings in any court ***seeking to oppose or undermine in any way the judicial recognition of the confirmation order***, including, without limitation, by initiating or prosecuting any legal actions that seek to oppose or undermine the confirmation order" (*id.* at 80:1-10 (emphasis added)).

5. On March 13, 2025, the Court entered the *Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization* (the "March 13 Order") directing

the Violating Parties (as defined in the March 13 Order) "to withdraw any and all filings that oppose or undermine in any way the judicial recognition of the Conformation Order including, without limitation, filings in the Liberian Proceedings and the Greek Proceedings set forth on Exhibit 1," which included the Greek Arbitration Confirmation Petition (Dkt. 1537 ¶ 1).

6. On March 23, 2025, Provisional Holdings filed a Notice of Appeal of the Court's oral ruling on March 12, 2025 and the March 13 Order (*see* Dkt. 1558). Provisional Holdings' appeal is docketed and pending in the District Court for the Southern District of New York. *See In re Eletson Holdings*, Case No. 1:25-cv-02824-LJL (S.D.N.Y.). Provisional Holdings filed the Statement of Issues to be Presented on April 7, 2025, to include the following:

- Whether it was error for the Bankruptcy Court to grant the "Emergency Motion of Eletson Holdings Inc. for Entry of a Further Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization" filed on February 19, 2025 (Dkt. No. 1459), and issue the Sanctions Order on March 13, 2025.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, exceeded its jurisdiction.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellant to coerce Appellant to take actions beyond the scope permitted by Section 1142(b) of the Bankruptcy Code.

- Whether it was error for the Bankruptcy Court to issue sanctions against the Appellant in the Sanctions Order issued on March 13, 2025.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellant to coerce Appellant to act in a manner contrary to "applicable law" or against rules of international comity.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly grouped Appellant with other entities or persons it was also sanctioning without due consideration of the different powers and rights of the differing entities or persons.

(Dkt. 1581).

7. Following letter submissions by Reorganized Holdings and Reed Smith LLP ("Reed Smith") regarding the March 13 Order, on March 25, 2025, this Court issued a further oral ruling on the Third Sanction Motion (the "March 25 Order") (*see* 3/25/25 Tr. at 6:5-9:22). This Court stated that "to the extent that" non-debtor Gas "is acting without the consent of Reorganized Holdings, because the interests in the subsidiaries, including Eletson Gas, vested in Reorganized Holdings . . . [t]he Greek arbitration proceeding violates the [P]lan, the [C]onfirmation Order, the January 29 order, and the March 13 order, and that proceeding is properly included in the March 13th order" (*id.* at 9:22).

8. On March 26, 2025, the Majority Shareholders filed a Notice of Appeal of the Court's oral ruling on March 12, 2025 and the March 13 Order (*see* Dkt. 1563). The Majority Shareholders' appeal is docketed and pending in the District Court for the Southern District of New York. *See In re Eletson Holdings*, Case No. 1:25-cv-02897-LJL (S.D.N.Y.). The Majority Shareholders filed a Statement of Issues to be Presented on April 9, 2025, to include the following:

- Whether it was error for the Bankruptcy Court to grant the "Emergency Motion of Eletson Holdings Inc. for Entry of a Further Order in Support of Confirmation and Consummation of the Court-Approved Plan of Reorganization" (Docket No. 1459) (the "Sanctions Motion") filed on February 19, 2025, and issue the Sanctions Order on March 13, 2025.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, exceeded its jurisdiction.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellants to coerce Appellants to take actions beyond the scope permitted under section 1142(b) of the Bankruptcy Code.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly sanctioned the Appellants to coerce Appellants to act in a manner contrary to "applicable law" or against rules of international comity.

- Whether the Bankruptcy Court, in issuing the Sanctions Order, improperly grouped Appellants with other entities or persons it was also sanctioning without due consideration of the different powers and rights of the differing

entities or persons, or as to whether each individual Appellant substantially complied with the Bankruptcy Court's prior orders.

- Whether it was error for the Bankruptcy Court to issue sanctions against the Appellants in the Sanctions Order.

- Whether it was error for the Court to enter the Sanctions Order without sufficient notice to Appellants as to the scope of relief being sought by the Appellees and which was granted in the Sanctions Order.

(Dkt. 1592).

9. On April 9, 2025, Apargo Limited, Fentalon Limited and Desimusco Trading Limited (the "Preferred Shareholders") filed a Motion for Reconsideration of the March 24 Order (Dkt. 1587) (the "Motion for Reconsideration"). In the Motion for Reconsideration, the Preferred Shareholders requested that this Court "should reconsider the March 25 Order and strike and/or vacate the Greek arbitration proceeding from the Sanctions Order" (*id.* at 1). The Motion for Reconsideration is scheduled to heard by this Court on May 29, 2025 (*see* Dkt. 1623).

10. On April 25, 2025, approximately one week before Provisional Holdings' deadline to respond to the Motion, Reorganized Holdings filed the Supplement (Dkt. 1629).

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO AMEND ITS ORDER

11. This Court lacks jurisdiction to grant Movant's request ***to expand*** the scope and the terms of the March 13 Order, including for the reasons set forth in the Supplement. Upon the filing of the notices of appeals of the March 13 Order by both Provisional Holdings and the Majority Shareholders, this Court was divested of its jurisdiction to amend the March 13 Order. This is dispositive, and accordingly, the Motion and the Supplement should be denied.

12. "[A] bankruptcy judge does not have concurrent jurisdiction with the district court over the subject matter of an appeal." *First Nat'l Bank v. Overmyer*, 53 B.R. 952, 954 (Bankr. S.D.N.Y. 1985). Instead, an appeal "divests the lower court of jurisdiction regarding those issues

under appeal." *In re Strawberry Square Assocs*., 152 B.R. 699, 701 (Bankr. E.D.N.Y. 1993) (a bankruptcy court may not exercise jurisdiction over issues which "so impact those on appeal as to effectively circumvent the appeal process"); *see also In re Southold Development Corporation*, 129 B.R. 18, 21 (Bankr. E.D.N.Y. 1991) ("the bankruptcy court in the case at bar was divested of jurisdiction regarding issues on appeal, as well as matters undeniably related to issues on appeal").

13. The legal principle that an appeal divests the lower court of its control over matters on appeal "applies to appeals of bankruptcy court orders." *Asbestosis Claimants v. American S.S. Owners Mut. Protection & Indem. Ass'n (In re Prudential Lines)*, 170 B.R. 222, 243 (Bankr. S.D.N.Y. 1994); *In re Sabine Oil & Gas Corp.*, 2016 U.S. Dist. LEXIS 105029, at *20-21 (S.D.N.Y. Aug. 9, 2016).

14. Further, Bankruptcy Rule 8008 makes clear that the Court has only four options when faced with a motion when an appeal has been docketed and is pending: "(1) defer considering the motion; (2) deny the motion; (3) state that it would grant the motion if the court where the appeal is pending remands for that purpose; or (4) state that the motion raises a substantial issue." Fed. R. Bankr. P. 8008(a).

15. Pending appeal, courts may enforce or implement the order at issue, but they may not "expand" or "alter" that order. *In re Winimo Realty Corp.*, 270 B.R. 99, 105-06 (S.D.N.Y. 2001). Courts have found that allowing enforcement "while prohibiting [the lower court] from expanding upon them, allows the least disruption of the court's administration of a bankruptcy plan." *In re Prudential Lines*, 170 B.R. at 244. One court described the prohibited conduct as "tamper[ing] in some manner with the appealed order or [seeking] to make a decision on a contested issue identical to one on appeal." *Id.*

16. It is undisputed that Movant did not bring a new motion to sanction the respondents for additional conduct or lack of compliance. Instead, the Supplement explicitly seeks to ***further amend and modify*** the March 13 Order to include three additional foreign actions. But Movant has in fact conceded (as it must) that this Court lacks jurisdiction to amend and/or modify the March 13 Order while an appeal is pending (*see* Dkt. 1622 at ¶¶ 35-37 ("A bankruptcy court lacks jurisdiction to grant a Rule 60(b) motion where an appeal from the order from which relief is sought has been filed.").

17. In short, there is no question that the Supplement directly implicates and is intertwined with the issues on appeal as to the parties who have appealed the March 13 Order (i.e., Provisional Holdings and the Majority Shareholders) (*see* Dkt. 1581; Dkt. 1592). Indeed, the issues on appeal concern, among others, whether this Court erred when it issued the March 13 Order, including that it exceeded its jurisdiction, improperly sanctioned Provisional Holdings to take actions beyond the scope permitted by Section 1142(b) of the Bankruptcy Code, and improperly coerced Provisional Holdings to act in manner contrary to applicable law or against rules of international comity (*see* Dkt. 1581).

18. Unless and until the underlying motion is remanded, the Court does not have jurisdiction to decide the Motion or the Supplement. As such, the Court should deny the Motion and the Supplement or in the alternative, defer issuing a ruling pending the resolution of the appeals. *See* Fed. R. Bankr. P. 8008(a); *U.S. Bank N.A. v. Osuji (In re Osuji)*, 2019 Bankr. LEXIS 931, at *20-21 (Bankr. E.D.N.Y. Mar. 27, 2019) ("As the Supreme Court has observed, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.") (internal citation omitted).

II. MOVANT IMPROPERLY SEEKS ANTI-SUIT INJUNCTIONS THROUGH PAIN OF CONTEMPT

19. Movant, through pain of contempt, seeks to enjoin parties from pursuing or continuing foreign litigations—effectively an anti-foreign-suit injunction. In order to grant that relief, the Court would need to find that the relief sought by Movant complies with the test articulated in *China Trade & Development Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987). Movant does not even address this test.

20. Federal courts may, under *limited circumstances*, "enjoin foreign suits by persons subject to their jurisdiction." *China Trade*, 837 F.3d at 35. "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); *Gau Shan Co. v. Bankers Tr. Co*., 956 F.2d 1349, 1355 (6th Cir. 1992) ("antisuit injunctions are even more destructive of international comity than, for example, refusals to enforce foreign judgments")

21. 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)). Movant does not even address these factors in its Motion or Supplement. The Court, therefore, has been presented with no basis upon which to make these necessary threshold findings. *See Karha Bodas*, 500 F.3d at 119-20.

22. This showing is sufficient for the denial of the Motion. As important, even were such a motion made, Movant would not be able to make the showing necessary for such an injunction. Not only are the parties not the same in the respective actions; critically, this Court cannot grant the relief that is required in the foreign recognition proceedings. Movant acknowledges that it must seek and obtain that recognition in the foreign jurisdiction. This Court cannot supplant or substitute for that process.

III. THE SUPPLEMENTAL FOREIGN PROCEEDINGS DO NOT SEEK TO UNDERMINE THE JUDICIAL RECOGNITION OF THE CONFIRMATION ORDER

A. The LISCR Proceedings

23. Movant seeks to expand the March 13 Order and impose ***additional*** sanctions on Provisional Holdings for certain filings in Liberia, which, in Movant's own words "sought to ***challenge LISCR's authority*** to update the [relevant] companies' AORs" (Supplement ¶ 2) (emphasis added). After consulting with Liberian counsel, Provisional Holdings was unable to identify or locate any judicial proceedings or orders that permitted or otherwise explained the changes to the Address of Record ("AOR") for Eletson Holdings, Inc. ("Holdings"), Eletson Corporation ("Corp") and EMC Investment Corporation ("EMC Investment") (*see* Dkt. 1603, Ex. 3 ¶¶ 6, 8; *id.*, Ex. 8 ¶¶ 6, 8), resulting in "reason to suspect that a fraud had occurred in relation to the changes of the AOR" (Dkt. 1630, Ex. 11). Significantly, in neither the Motion nor the Supplement does Movant offer any explanation, or point to any documents, filings, evidence or legal opinions, to show how it was able to legitimately change the AORs without judicial recognition in Libera.

24. Consistent with Liberian counsel's previous legal advice, *i.e.*, that the Plan and Confirmation Order do not have any legal effect in Liberian before they are judicially recognized there (Dkt. 1289 ¶ 9), Liberian counsel advised Provisional Holdings that Movant's actions were

unlawful under Liberian law, and therefore advised Provisional Holdings that the matters should be brought to the immediate attention of the Supreme Court of Liberia (Daniolos Decl. ¶¶ 6, 8). Accordingly, on March 18, 2025 and March 21, 2025, Provisional Holdings, the Majority Shareholders and Elafonissos Shipping Corporation ("Elafonissos") filed Petitions for the Writ of Prohibition in the Supreme Court of Liberia (Dkt. 1603, Ex. 3) (the "First LISCR Petition"); *id.*, Ex. 8 (the "Second LISCR Petition")).

25. In the First LISCR Petition and Second LISCR Petition, Provisional Holdings called to the Liberian court's attention that "the Deputy Registry acting through LISCR, [did] not provide any reason, justification, or reliance on law, for her decision to remove" the AORs and, further, did not "provide any indication [from which] they derive the authority to unilaterally terminate the appointment of an agent of a Liberian corporation" (Dkt. 1603, Ex. 3 ¶ 6, Ex. 8 ¶ 6). Because the Liberian actions sought to address the legal authority ***relied upon by LISCR*** to change ***the AOR*** of Holdings, Corp and EMC Investment, including in the absence of an order recognizing the Confirmation Order in Liberia, the First LISCR Petition and Second LISCR Petition cannot possibly be construed as "oppos[ing] or undermin[ing] in any way the judicial recognition of the Confirmation Order" (Dkt. 1537 ¶ 1). Rather, the petitions sought to return the parties to the status quo ante until the Liberian court could determine whether, in fact, the changes to the AOR violated Liberian law (*see* Dkt. 1603, Ex. 3 at 3, Ex. 8 at 3).

26. While the Supreme Court of Liberia initially issued order orders requiring the parties "to return to status quo ante" in response to the First LISCR Petition and Second LISCR Petition (Dkt. 1603 Ex. 4, Ex. 8), the court later denied the petitions based on Movant's re-domiciliation of Holdings, Corp and EMC Investment to the Republic of the Marshall Islands,

stripping (improperly) the Liberian court of jurisdiction to consider the petitions (Dkt. 1603, Ex. 5; Dkt. 1630, Ex. 7).

B. The Republic of the Marshall Islands Proceedings

27. As the Petitioning Creditors recognized, "[t]he Debtors are incorporated in Liberia and some of their interests are governed by the laws of foreign jurisdictions other than the United States" (Dkt. 847 § VIII.A.3). They further expressly undertook to "make every effort to ensure that any Confirmation Order entered by the Bankruptcy Court and the steps taken pursuant to the Confirmation Order to implement the Plan ***are recognized and are effective in all applicable jurisdictions***," including in Liberia and Greece (*id.*) (emphasis added).

28. What is undisputed is that Liberia requires the judicial recognition and enforcement of a foreign court order, i.e., the Confirmation Order (Dkt. 1289 ¶ 9; Dkt. 1268 ("Pierre Decl.") ("A party seeking to have a Liberian court recognize a foreign court order must commence an action in Liberia asking the court to enforce the order.")). However, apparently based on the changes to Holdings' AOR, Pach Shemen has withdrawn its petition for recognition in Liberia (Dkt. 1603, Ex. 2). Instead, Movant has purported to redomicile Holdings and various wholly owned subsidiaries to the Republic of the Marshall Islands in a transparent attempt to circumvent recognition in Liberia (where Holdings has always been incorporated), as it promised it would do (*see* Dkt. 847 § VIII.A.3). As a result of these efforts, it is Movant who is "undermining" "judicial recognition of the Confirmation Order" in Liberia.

29. At no point prior to confirmation of the Plan or the purported Effective Date did the Petitioning Creditors or Movant disclose that it would attempt to re-domicile Holdings to the Republic of the Marshall Islands. Nor has Movant pointed to any legal authority or otherwise that permits it do so absent recognition of the Confirmation Order in Liberia.

30. Accordingly, on April 25, 2025, the Majority Shareholders and Emmanuel (Manolis) Adreoulakis filed a complaint in the High Court of the Republic of the Marshall Islands challenging the re-domiciliation by Movant of Holdings and certain wholly-owned subsidiaries to the Republic of the Marshall Islands (the "RMI Action") (Dkt. 1630, Ex. 8). Similar to the First LISCR Petition and Second LISCR Petition, the Majority Shareholders and Mr. Adreoulakis seek to return the parties to the status quo until a determination is made as to the legitimacy of the changes to the AORs in Liberia and the re-domiciliation of the relevant entities to the Republic of the Marshall Islands (*see id.*).

31. The RMI action does not seek to undermine the judicial recognition of the Confirmation Order; rather, it is a legitimate action filed to preserve the parties' rights under the laws of Liberia and the Republic of the Marshall Islands, including seeking information to probe the validity of Movant's actions under those laws. Movant, however, improperly seeks to have this Court override entirely a party's legal rights in a foreign country. Movant does not—and cannot—point to any authority that permits such an action by this Court. And there is no basis on which to issue additional sanctions based on Movant's own strategic actions to side-step compliance with foreign law to properly effectuate the restructuring of Holdings and, by extension, its wholly owned subsidiaries.

C. The Berenberg Proceedings

32. As set forth in the Opposition, on November 19, 2024, Adam Spears sent a letter to Berenberg Bank ("Berenberg") (the "November 19 Letter") in Hamburg, Germany purporting to revoke the banking authorizations of prior representatives for Holdings and ***sixty-three non-Debtor Eletson-affiliated bank accounts***, including Corp, ***Eletson Gas LLC*** ("Gas"), and ***EMC Gas Corporation*** ("EMC Gas") (a subsidiary of non-debtor Gas), and improperly designating Mark Lichtenstein as the new authorized representative for all of those accounts (Dkt. 1290, Ex.

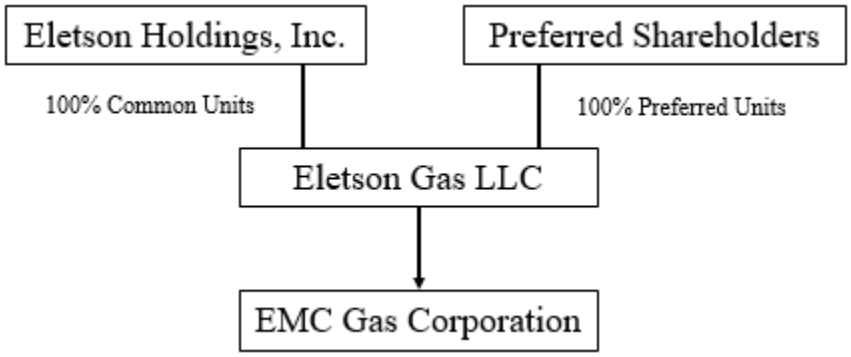
G). Spears had no authority to make such changes, and accordingly, Berenberg initially declined to implement the change for several months (*see* Dkt. 1603, Ex. 13) (March 5, 2025 email from Berenberg stating "[a]s already requested several times in the past, please provide us with documents . . . that prove the authority of the individuals listed in the letter to represent Eletson Holdings and ***its subsidiaries***") (emphasis added).

33. In late November 2024, Berenberg refused to make any transfer of funds to the entities in reliance on the November 19 Letter (Daniolos Decl. ¶ 9). This had the devastating effect of cutting off entirely non-debtor subsidiaries' access to funds and substantially disrupting business operations, requiring swift action to minimize the disruption (*id.*). Accordingly, Provisional Holdings immediately sought legal advice concerning the improper freezing of accounts (*id.*).

34. Notably, the bank obtained independent legal advice concerning the legal effect of the Confirmation Order in Germany (Daniolos Decl. ¶ 10). The firm retained by Berenberg concluded that, to the extent Holdings' Center of Main Interests ("COMI") is located in Greece or the European Union, the Confirmation Order is not automatically effective in Germany and requires recognition (*id.*). That law firm ultimately agreed that Holdings' COMI is in Greece (*id.*).

35. Notwithstanding this, Berenberg continued to restrict access to all bank accounts listed in the November 19 Letter (Daniolos Decl. ¶ 11). Accordingly, on February 26, 2025, Eletson Corporation and EMC Investment—non-debtor subsidiaries—filed writs of action in Germany ***against Berenberg***, requesting that the accounts be released and returned to those entities' control because the Confirmation Order has yet to be recognized in both Greece and Germany, consistent with the legal advice Berenberg received (*id.*; Dkt. 1630, Ex. 12).

36. Additionally, on February 26, 2025, EMC Gas filed a writ of action in Germany ***against Berenberg*** for failing to carry out payment orders in reliance on the November 19 Letter (the "EMC Gas Action"). Significant here, and as the chart below reflects, EMC Gas is not a wholly owned subsidiary of Holdings—it is a wholly owned subsidiary of Gas (Dkt. 580 ¶ 58).



For the reasons stated in the Opposition (*see* Dkt. 1640 ¶¶ 44-54), Movant has no authority to revoke the banking authorizations for non-debtor, non-subsidiary EMC Gas.

37. As a threshold matter, the Supplement seeks relief against EMC Gas—a party who has not submitted itself to the jurisdiction of this Court. "[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*, 2013 U.S. Dist. LEXIS 114293, at *29-30 (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)). Indeed, even the automatic stay—an injunction that is fundamental to the administration of the bankruptcy estate—while widely recognized as having extraterritorial reach, cannot be enforced against foreign parties over whom the bankruptcy courts lack personal jurisdiction. *Sec. Inv. Protection Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 474 B.R. 76, 82 (Bankr. S.D.N.Y. 2012) ("*Madoff I*") ("[A] bankruptcy court can enforce the automatic stay extraterritorially only against entities over which it has *in personam* jurisdiction."). For this

reason alone, the Court should deny any requested relief as it relates to EMC Gas.

38. To the extent Movant purports to require Provisional Holdings—or any other respondent—to direct EMC Gas to withdraw the EMC Gas Action, it lacks authority to do so, and in any event, as discussed below, this relief is not supported by the Motion.

39. *First*, Movant does not and cannot point to any proof that the EMC Gas Action "oppose[s] or undermine[s] in any way the judicial recognition of the Confirmation Order" (Dkt. 1537 ¶ 1)—it could not. Therefore, the Court should deny the relief requested by Movant in the Supplement to the extent it purports to require the withdrawal of the EMC Gas Action.

40. *Second*, there is no provision in the Plan or Confirmation Order that prevents non-debtor EMC Gas from asserting its own rights to prevent the unlawful takeover and control of its banking accounts by Movant. From the outset, all parties to this bankruptcy proceeding knew that any reorganization would have no effect on the operation or management or Gas (and EMC Gas) and that, for there to be any effect, further proceedings would be necessary (*see e.g.,* Dkt. 721 at 34, 38). That conclusion flows from the facts that, as the creditors understood, Gas—a non-subsidiary of Holdings—was never part of the bankruptcy estate. In fact, the creditors explicitly understood that Gas assets were not part of their pool of assets available for repayment (*see* Dkt. 579 ¶ 23 (noting "Gas is not a guarantor of the obligations due to the Noteholders . . . and it was never contemplated that the assets of Gas would be included in the consolidated financials made available to the Noteholders); Dkt. 721 at 9 (acknowledging Gas is a "non-debtor"). In no case did the bankruptcy or the Plan have any effect on the management or control of Gas or EMC Gas.

41. What Movant now seeks to do is slip in an unconstitutional and statutorily inappropriate extension of the Confirmation Order to a non-debtor, non-subsidiary entity. To assert that parties with potential litigation claims related to a non-debtor—that were not discharged

or enjoined by a plan of reorganization—are precluded from asserting their own rights is beyond the scope of the Bankruptcy Code.

CONCLUSION

The Court should deny the Motion and the Supplement and grant such other relief as the Court deems proper.

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