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MF Global Assigned Assets LLC

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
MF GLOBAL HOLDINGS LTD., et al.,	:	Case No. 11-15059 (MG)
	:	
Debtors. ¹	:	(Jointly Administered)
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MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC,	:	
	:	
Plaintiffs,	:	
vs.	:	Adv. Proc. No. 16-01251 (MG)
	:	
ALLIED WORLD ASSURANCE COMPANY LTD., IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY,	:	
	:	
Defendants.	:	
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**EMERGENCY MOTION FOR RELIEF FROM AWAC'S VIOLATION OF THIS
COURT'S CONTEMPT ORDER AND PRELIMINARY INJUNCTION**

¹ The debtors in the chapter 11 cases are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

PRELIMINARY STATEMENT

This Court has repeatedly declared that it will not tolerate the Bermuda Insurers' attempts to seek relief in Bermuda and circumvent this Court's jurisdiction. Indeed, in the past month alone, this Court has issued two separate Orders to Show Cause, a Temporary Restraining Order, a Contempt Order, and a Preliminary Injunction, each with the stated goal of preventing the Bermuda Insurers from effecting an end-run around this Court's jurisdiction through parallel proceedings in Bermuda. And as this Court stated at the January 4, 2017 hearing, the consequences for obtaining an "additional order in Bermuda" in light of these Orders would be "draconian." Jan. 4 Hr'g Tr. 79:5-7.

Notwithstanding this Court's clear message, Allied World Assurance Company Ltd. ("AWAC") is once again seeking new relief in Bermuda, this time requesting a declaratory judgment from the Bermuda Court that the parties consented to mandatory arbitration in Bermuda. And once again, this requested relief threatens to undermine directly this Court's jurisdiction over a threshold issue in this adversary proceeding. Indeed, this issue of arbitrability that AWAC now seeks to have the Bermuda Court resolve is the very issue that the Bermuda Insurers have already voluntarily put before this Court by submitting their Motions to Compel Arbitration on November 28, 2016. Following AWAC's *ex parte* application for relief this morning, the Bermuda Court issued two orders today (January 19, 2017) listing substantive hearings on January 23 and January 25 on AWAC's request for declaratory relief on the issue of arbitrability.

AWAC's latest request for a declaratory judgment in Bermuda is in direct violation of this Court's prior orders, including the Preliminary Injunction, as well as the Bar Order and the Barton doctrine, and threatens to usurp this Court's jurisdiction over the arbitrability issue. Accordingly, the MFG Parties request an immediate hearing before this Court on January 20, 2017, and move for

any and all relief, including the entry of a default judgment, that this Court deems appropriate in light of this latest, blatant violation of this Court's orders.

RELEVANT BACKGROUND

As this Court is aware, following the Bermuda Insurers' second request for anti-suit injunctions in Bermuda, this Court issued its Second Order to Show Cause and held a hearing on January 4th, 2017. At the conclusion of that hearing, this Court stated the following:

And I just want to make one last comment. I'm going to give you the chance. **I don't want to find out that tomorrow your clients run into the Bermuda court and seek some other relief.** I want to give you a chance to file it. If you want an additional brief, you'll file an additional brief. **We'll schedule the argument, have it, but the consequences are going to be draconian if I found out you went in and got some order – additional order in Bermuda in the mean time.** When would you like to file the brief? That goes for both of you." Jan. 4, 2017 Hr'g Tr. 78:25-79:9 (emphasis added).

This Court then reaffirmed this language in its Preliminary Injunction Order. This Court ordered that "[f]or the avoidance of doubt, the Bermuda Insurers are also RESTRAINED and ENJOINED from taking any action to impede or obstruct the administration of this adversary proceeding. The Bermuda Insurers are so enjoined until further order entered by the Court." (Adv. D.I. 66 at pp. 21–22). This Court has not since issued any Order lifting these restrictions, and they remain in place to this day.

In blatant disregard of this Court's statements at the January 4 hearing and the Preliminary Injunction, AWAC has since taken multiple steps to request further relief from the Bermuda Court. Yesterday, January 18, 2017, AWAC provided notice that it intended to proceed *ex parte* before the Bermuda Court at 9:30 am Bermuda time. Unlike the Iron-Starr Defendants, which also filed an *ex parte* summons but limited its request to the discharging the anti-suit injunctions and the Bermuda Court's December 22, 2016 Order (as required by this Court's January 12, 2017 Contempt Order), AWAC requested that the Bermuda Court move forward with a hearing on "arbitrability" issues identified in Paragraph 3 of AWAC's originating summons on Monday, January 23, 2017 and

Wednesday, January 25, 2017. Paragraph 3 of the Originating Summons, in turn, requested that the Bermuda Court provide “[s]uch declaratory or other relief as may be just and appropriate.”

Counsel for AWAC has since clarified via correspondence that the specific declaratory relief sought by AWAC in Bermuda is as follows:

“[P]ursuant to paragraph 3 of our client’s Originating Summons in its unamended form (which is the same as paragraph 4 in its amended form), we have been instructed to apply, at the hearing on 23/25 January 2017, for declaratory relief (not injunctive relief), by seeking declarations from the Supreme Court of Bermuda that:

1. The arbitration agreement between the Plaintiff and the Defendants, as contained in Section IX. (Arbitration) and Section X. (Choice of Law) of the Allied World Policy No. C007357/005 (‘the Allied World Policy’) is valid and binding on the Plaintiff and the Defendants (and any persons or entities deriving rights through or asserting rights on behalf of the Defendants).
2. The Defendants are obliged to arbitrate any and all disputes arising under or relating to the Allied World Policy No. C007357/005 (‘the Allied World Policy’) in Hamilton, Bermuda under the provisions of the Bermuda International Conciliation and Arbitration Act 1993 in accordance with the terms of Section IX. (Arbitration) and Section X. (Choice of Law) of the Allied World Policy.
3. The various claims and remedies asserted by the Defendants against the Plaintiff in the Adversary Complaint filed by the Defendants in the United States Bankruptcy Court, Southern District of New York, Case No. 11-15059 (MG), Adv. Proc. No. 16-01251 (MG) are within the scope of the valid and binding arbitration agreement contained in Section IX. (Arbitration) and Section X. (Choice of Law) of the Allied World Policy.
4. The commencement, filing, maintenance, and/or prosecution of any lawsuit to determine coverage or otherwise determine liability under the Allied World Policy (including the Adversary Complaint filed by the Defendants in the United States Bankruptcy Court, Southern District of New York, Case No. 11-15059 (MG), Adv. Proc. No. 16-01251 (MG)) is a breach of the arbitration agreement contained in Section IX. (Arbitration) and Section X. (Choice of Law) of the Allied World Policy.”

Joyce Aff., Exh. A (January 17, 2017 Letter from Sedgwick Chudleigh to Mr. Jayson Wood and Mr. Mark Burrows).

The Bermuda Court heard these *ex parte* applications this morning, January 19, 2017. At the conclusion of this hearing, the Bermuda Court issued an order stating:

The substantive hearing of the Plaintiff’s Originating Summons which is currently listed for hearing on 23 January 2017 and 25 January 2017 shall remain in the Court

list, on terms that the Plaintiff shall limit the claims made by the Plaintiff at the hearing on 23 January 2017 and 25 January 2017 to claims for declaratory relief only, pursuant to paragraph 3 of the Plaintiff's Originating Summons. (January 19 Letter from the MFG Parties to the Honorable Martin Glenn, Exhibit A).

AWAC's counsel also indicated to the MFG Parties' Bermuda counsel that AWAC will be providing a bundle and skeleton argument on their request for declaratory relief sometime today, January 19, 2017.

ARGUMENT

As the Supreme Court has recognized, it is axiomatic that federal courts have “an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of case.” Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962); N.Y. Skyline, Inc. v. Empire State Bldg. Co. LLC, Nos. 09-10181 (SMB), 09-01145 (SMB), 2015 Bankr. LEXIS 2837, at *54 (U.S. Bankr. S.D.N.Y. Aug. 26, 2015) (same). Pursuant to this inherent power, Bankruptcy Courts have the power to “enjoin proceedings in other courts when it is satisfied that such a proceeding would defeat or impair its jurisdiction with respect to a case before it.” In re AP Indus., Inc., 117 B.R. 789, 802 (Bankr. S.D.N.Y. 1990). Likewise, the Bankruptcy Code grants Bankruptcy Courts the power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C § 105(a). This includes orders for sanctions for “expenses reasonably incurred to meet the other party’s groundless bad faith procedural moves.” Waller v. Kriss, 217 B.R. 147, 159 (Bankr. S.D.N.Y. 1998).

This Court should exercise these broad inherent powers here in order to ensure that AWAC's bad faith procedural maneuvers in Bermuda do not deprive this Court of its jurisdiction to decide the AWAC's pending motion to compel arbitration, and to enforce its own prior orders. Given the pattern of *ex parte* procedural maneuvers by the Bermuda Insurers in disregard of Court's

orders, such relief appears the only way to ensure that this Court retains jurisdiction over this adversary proceeding.

First, this Court should enjoin AWAC from proceeding with its request for declaratory relief in Bermuda with respect to “arbitrability.” This request is not only in direct violation of this Court’s Preliminary Injunction, it also seeks to strip this Court of the ability to decide the very issues that the Bermuda Insurers themselves put before this Court through their Motions to Compel Arbitration. To ensure that this Court’s jurisdiction is not usurped through a ruling by the Bermuda Court, an injunction is both appropriate and necessary here.

Second, this Court should sanction AWAC for its violation of this Court’s direct orders. This Court made clear at the January 4, 2017 hearing that an attempt by the Bermuda Insurers to obtain any “additional order in Bermuda” or other request for “some other relief” would have “draconian” consequences. This Court then further clarified in its Preliminary Injunction order that “[f]or the avoidance of doubt, the Bermuda Insurers are also RESTRAINED and ENJOINED from taking *any* action to *impede or obstruct* the administration of this adversary proceeding.” (Adv. D.I. 66 at pp. 21-22 (emphasis added)). Yet that is precisely what AWAC did here when it requested that the Bermuda Court rule on an issue that the Bermuda Insurers previously submitted to this Court for adjudication.² Accordingly, the MFG Parties’ respectfully submit that AWAC be sanctioned in an amount to be determined, that this Court enter a default judgment against AWAC, and that this Court provide any and all additional relief that it deems appropriate for AWAC’s groundless procedural moves aimed at avoiding this Court’s jurisdiction.

² AWAC’s request for declaratory relief in Bermuda also constitutes another violation of this Court’s Bar Order and the Barton doctrine, as detailed in the MFG Parties’ December 27, 2016 and January 18, 2017 submissions to this Court.

CONCLUSION

For the foregoing reasons, the MFG Parties respectfully request that this Court enjoin AWAC from proceeding with its request for declaratory relief in Bermuda, enter an order sanctioning AWAC for their direct violation of this Court's prior orders, enter a default judgment against AWAC, and for any and all other relief as this Court deems just and appropriate.

Dated: January 19, 2017
New York, New York

Respectfully submitted,

/s/ Bruce Bennett

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