

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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In re WILLIAM RAFTER, Debtor

Chapter 7
Case No. 05-51335 (RTL)

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OPINION

APPEARANCES:

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Joint Liquidators of Arquebus Limited)

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RAYMOND T. LYONS, U.S.B.J.

Debtor, William Rafter, (“the Debtor”) objects to the proof of claim of Maria Ferere and Paul Francis Duffy, as Joint Liquidators of Arquebus Limited, (“Arquebus”). Arquebus’ proof of claim is based on a default judgment obtained in the Isle of Man. The Debtor argues that this

court should not afford the default judgment comity because it was entered in violation of his due process rights in the United States and the Isle of Man. Because the Debtor has failed in his burden to show cause for denying the default judgment's admission to this court under the comity doctrine, the Debtor's objection is overruled.

JURISDICTION

This court has jurisdiction of this contested matter under 28 U.S.C. § 1334(b), 28 U.S.C. § 157(a) and the Standing Order of Reference by the United States District Court for the District of New Jersey dated July 23, 1984, referring all proceedings arising under Title 11 of the United States Code to the bankruptcy court. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B)(allowance or disallowance of claims against the estate).

FINDINGS OF FACT

The Debtor was involved in the foundation and operation of several legal entities now appearing as creditors in the proceedings before this court. Oracle was a mutual fund operating out of the Bahamas, until it was unable to meet the claims of its investors and entered liquidation in the Bahamas in July of 2000. The Debtor served as promoter for Oracle, raising over \$200 million from investors. Oracle, in turn, loaned funds to Breen Capital Holdings and the other Breen affiliates, ("the Breen Entities"), New Jersey companies in the business of acquiring tax liens.

Arquebus is a company organized and incorporated by the Debtor in the Isle of Man. He also served as a director. It was affiliated with Oracle. In March of 2004, Arquebus entered liquidation under the supervision of an Isle of Man court. The liquidators sued the Debtor, alleging that he defrauded Arquebus and its investors of millions of dollars, and applied for an ex

parte freezing order, known under English law as a Mareva Injunction. The Mareva Injunction was issued without notice to the Debtor. Entry of the Mareva Injunction forbade the Debtor from transferring or making use of his assets pending the outcome of the case. Before the order could be served on banks in the Isle of Man the Debtor removed \$1 million. Subsequently, the court in the Isle of Man issued the Debtor a summons, which was personally served on him in New Jersey. The Debtor hired counsel in the Isle of Man, contested jurisdiction and lost. Despite the Debtor's contentions, the Isle of Man court found that it had jurisdiction over the Debtor and that he had been properly served.

Arquebus presented an affirmative case against the Debtor in the Isle of Man court, claiming that the Debtor fraudulently caused Arquebus to transfer funds to other companies owned or controlled by the Debtor. The Debtor chose not to defend himself after losing his challenge to personal jurisdiction. On May 11, 2005, the Isle of Man court awarded the default judgment against the Debtor in the amount of \$32,833,777.01 based upon the allegations of fraud committed against the company, shareholders and investors. The court recited the following facts: In February of 1999, the Debtor induced Arquebus to advance \$21.9 million dollars to Delphi International. In turn, Delphi International forwarded \$21 million to an entity known as Castellum Limited, an Isle of Man company incorporated on the day of the transaction, in exchange for a promissory note bearing interest at 6%. Castellum then transferred \$18.9 million to another company known as Syngrapha, which used the funds to purchase property from the Breen Entities. The Debtor was the beneficial owner or investment advisor to Delphi International, Castellum Limited and Syngrapha, in addition to Arquebus and Oracle. Arquebus submitted that the complicated transfer of funds between the aforementioned companies was

arranged by the Debtor to cover up problems relating to Oracle's investments in the Breen Entities.¹ Arquebus received \$2.1 million from Delphi International in March of 2000 and was assigned the promissory note shortly before it was placed in liquidation. As Castellum Limited was also placed into liquidation, Arquebus was left with a claim for the balance on the principal \$21.9 million in addition to interest and costs associated with the liquidation. In a sixteen page, written decision, the Isle of Man court found that the Debtor had clearly committed wrongdoing.

[The Debtor]...is a wrongdoer on a substantial and international scale. He has attempted to use corporate entities incorporated in the Isle of Man and individuals resident in the Isle of Man in an endeavor to facilitate his wrongdoing. He has not been successful. Let this judgement send out a message to fraudsters worldwide that they should not attempt to use this jurisdiction to facilitate their wrongdoings. Here in the Isle of Man we will not tolerate such conduct.

Because the Debtor refused to defend himself, the Isle of Man court entered the default judgment in total reliance on evidence submitted by Arquebus. The court wrote:

Despite being given notice of and a full opportunity to participate in these proceedings [the Debtor] has chosen not to do so. I am conscious that I have not had the benefit of evidence and submissions from [the Debtor]. In these circumstances I have been conscious of the need to carefully and closely scrutinize the claims of Arquebus.

The legal authority cited by the Isle of Man court focused on the award and calculation of

¹Arquebus claims that it was ultimately compelled to transfer funds to Delphi International so that Oracle might buy properties from the Breen Entities. In November of 1998, Oracle's auditor expressed concern with the company's failure to keep adequate records of its investments in a number of ventures, including the Breen Entities. Oracle purportedly purchased properties from the Breen Entities through Arquebus and other companies in order to augment Breen's financial statements and cover up the fact that it was losing money. Upon learning of the transactions, Oracle's auditor forced a disclosure to the Securities Commission of the Bahamas. Oracle's shares were then suspended and the company was placed in liquidation.

interest as damages.

The Debtor filed chapter 7 before this court on October 14, 2005 and Arquebus submitted a proof of claim based on the default judgment. The Debtor objects to Arquebus' claim on the grounds that he was not afforded due process under the laws of the United States or Isle of Man in the proceedings leading up to the issuance of the Mareva Injunction. In the Debtor's view, the wrongful issuance of the Mareva Injunction tainted all following proceedings; the default judgment was entered in error and therefore should not be admitted into this court to serve as a basis for Arquebus' proof of claim under the comity doctrine.

The Isle of Man is a Crown dependency, in the British Isles but is not part of the United Kingdom. Queen Elizabeth II of England is its monarch. It has its own legislature, the Tynwald, and a system of common law extremely similar to that of the United States. The Isle of Man has an independent judiciary, which keeps records of proceedings showing evidence presented and reasoned decisions. No evidence of outside influence from the government or other sources has been presented before this court.

DISCUSSION

The issue is whether the default judgment entered in the Isle of Man proceedings should be recognized by this court under the principles of comity and allowed to serve as the basis for the Arquebus Liquidator's proof of claim. Comity is the legal doctrine by which one nation allows the legislative, executive or judicial acts of another nation to hold effect within its own borders. The comity doctrine was addressed in the U.S. Supreme Court's decision *Hilton v. Guyot*, 159 U.S. 113 (1895). In *Hilton*, the Court observed:

'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will,

upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.

Id. at 163, 164.

Comity has been applied in the Third Circuit under the guidelines set forth in *Hilton v. Guyot* in several cases. In *Somportex Limited v. Philadelphia Chewing Gum Corporation*, comity was described as a “recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another”. *Somportex Limited v. Philadelphia Chewing Gum Corporation*, 453 F.2d 435, 440 (3d Cir. 1971). While it is not considered a formal rule of law, it has gained acceptance as one of practice, convenience, and expediency. *Id.* It’s application is nuanced, falling somewhere between mere courtesy or accommodation and imperative or obligation. *Id.* The doctrine of comity aims to serve as a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws. *Id.* As a result, comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation. *Id.*

A more recent application of the *Hilton* standards for granting foreign proceedings comity appeared in *United States ex rel. Saroop v. Garcia*, 109 F.3d 165, 169-170 (3d Cir. 1997). In *Sarooop*, the court noted that while it is never obligated to grant comity to a foreign judgment, there is a strong presumption for recognizing the decisions of foreign proceedings. *Id.* In reaching its decision to grant recognition to a foreign judgment, the court articulated the following standard:

Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon

regular proceedings, appearance of defendant, and under a system of jurisprudence likely to secure an impartial administration of justice, and there is nothing to show either prejudice in the court, or fraud in procuring the judgment, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal.

Id.

In this case, this court is asked to deny comity to a default judgment issued by a court in the Isle of Man. The Debtor was offered the chance at a full and fair trial in the proceedings leading up to the final judgment. Upholding the decision of the court in the Isle of Man would, in no way, prove prejudicial or adverse to any interests of the United States. The Isle of Man is clearly a competent court with subject matter jurisdiction over a suit for money damages by an Isle of Man company against one of its organizers. The Isle of Man court obtained personal jurisdiction by way of personal service of a summons on the Debtor in New Jersey. Personal jurisdiction was challenged by the Debtor in Isle of Man court and upheld under rules and standards for long-arm personal jurisdiction similar to those that exist in the United States. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (U.S. 1980). The basic requirements for long-arm personal jurisdiction in the United States center on a party's minimum contacts with the jurisdiction in question. Here, the Debtor chose to form a company in the Isle of Man and that company ended up suing him. This constitutes clear minimum contacts between the Debtor and the foreign jurisdiction. The Isle of Man court's assertion of long-arm personal jurisdiction is not offensive to our traditional notions of fair play and substantial justice. There is no doubt that someone forming a company in the Isle of Man may expect to defend himself in the Isle of Man, particularly where the cause of action is related to the minimum contacts between the Debtor and the state. There is every reason to afford comity to the decisions of the

court of Isle of Man under the circumstances presented to this court.

The Debtor relies upon the United States Supreme Court decision in *Grupo Mexicano De Desarrollo, S.A.. v. Alliance Bond Fund, Inc.* to stand for the proposition that a pre-judgment seizure of a defendant's assets denies him due process and taints any subsequent judgment. *Grupo Mexicano De Desarrollo, S.A.. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). *Grupo Mexicano* involved a suit between a holding company that was the debtor on notes held by a purchaser. Upon initiating a breach of contract suit against the holding company, the purchaser sought and obtained a preliminary injunction requiring the holding company to post a monetary bond. After final judgment was entered in favor of the purchaser, the holding company contested the initial award for the preliminary injunction. The Court stated that the scope of federal jurisdiction extended only as far as that of traditional English courts of equity. Because traditional English courts did not seize a party's assets in the absence of an established judgment, the Court found that the trial court lacked jurisdiction to grant the preliminary injunction and reversed the lower court's ruling.

The Debtor argues that because the Mareva Injunction entered in the Isle of Man was done so in contravention of the Debtor's due process rights under the laws of the Isle of Man and the United States and deprived him of use of certain funds, the subsequent default judgment cannot support a proof of claim in this proceeding. While the entry of the Mareva Injunction may have been beyond the jurisdiction of a United States court, it was within the jurisdiction of the court in the Isle of Man. The Tynwald has expressly authorized courts in the Isle of Man to issue a Mareva Injunction. The subsequent judgment was awarded a full year after the Mareva Injunction. *Grupo Mexicano* in no way prevents this court from granting comity to a foreign

judgment because a court in another country entered a freezing order prior to the entry of such judgment. *Grupo Mexicano* applies to the United States Federal Judiciary Act of 1789 and considers the scope of federal equity jurisdiction.

CONCLUSION

For the reasons discussed above, the judgment from the Isle of Man will be allowed to stand as the basis for Arquebus' proof of claim in this proceeding. The Debtor's objection to Arquebus' claim is overruled.

Dated: June 6, 2007

/S/ Raymond T. Lyons
United States Bankruptcy Judge