UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
BRIDGEPORT DIVISION

In re:	:	CHAPTER 7
	:	
SEAN DUNNE,	:	CASE NO.: 13-50484
	:	
Debtor.	:	
	:	
ULSTER BANK IRELAND LIMITED,	:	
	:	
Movant,	:	
v.	:	
	:	
SEAN DUNNE,	:	
	:	
Respondent.	:	JUNE 14, 2013

DEBTOR SEAN DUNNE'S
MOTION FOR STAY PENDING APPEAL

Sean Dunne (the "Debtor"), the debtor in this Chapter 7 bankruptcy case, by his undersigned attorneys, Zeisler & Zeisler, P.C., hereby moves, pursuant to Fed. R. Bankr. P. 8005, for a stay pending the appeal from this Court's Order (the "Order") entered on June 12, 2013, Granting Amended Motion of Ulster Bank Ireland Limited for Entry of an Order Granting Limited Relief from the Automatic Stay (the "Motion"). In support thereof, the Debtor respectfully represents as follows.

Introduction

In the absence of a stay, the Debtor will be subjected to an insolvency proceeding in

Ireland pursuant to the Irish Bankruptcy Act, 1988, while simultaneously the debtor in this bankruptcy case under the United States Bankruptcy Code, 11 U.S.C. § 101-1532 ("Bankruptcy Code"). If the Irish High Court obtains jurisdiction over the Debtor upon the service of a summons—an act barred absent this Court's Order—the proceeding, In the Matter of a Petition for Adjudication of Bankruptcy by Ulster Bank Ireland Limited against Sean Dunne, 2013 No. 798 P, Republic of Ireland, High Court (2013) (the "Irish Insolvency Proceeding"), will go forward. The Debtor and his property will then be subject to the Irish High Court and the Irish Insolvency Proceeding, adversely impacting his rights, interests and liberties in numerous significant ways. Permitting the Irish Insolvency Proceeding to go forward would also create competing interests in competing bankruptcy proceedings, as more fully set forth below. By way of but one example, in Ireland, the debtor must wait 5 years to even apply for a discharge and the discharge order may be delayed by as much as 12 years from the commencement of the bankruptcy. Irish Civil (Miscellaneous Provisions) Act 30(g), 2011.

In contrast, granting a stay will not impose any financial hardship upon Ulster Bank Ireland Limited ("Ulster Bank") since no later than 2012 it has already obtained and directly controlled receiverships over all of its collateral in Ireland. All Ulster Bank needs to do is obtain relief from the automatic stay from this Court to proceed with the liquidation of its collateral in Ireland. The Debtor will not object to such truly "limited" relief. Ulster Bank's motivation for urgency in commencing an insolvency proceeding against the Debtor in Ireland appears then to be purely political—a factor that should not sway this Court. Finally, since no legal authority—not international comity, Chapter 15 of the Bankruptcy Code or any judicial precedent—justifies

permitting a second insolvency proceeding to be conferred with jurisdiction over the Debtor and the Debtor's property, there is a substantial possibility of success on appeal. Thus, a stay should be granted pending the appeal of the Order.

I. BACKGROUND

Mr. Dunne, primarily through his businesses, DCD Builders, Limited and its subsidiaries ("DCD"), was a successful real estate developer in Ireland since the 1990's until the collapse of the financial markets in 2008 and the crash of the real estate market in Ireland in early 2009. Over the years, Ulster Bank loaned substantial sums to DCD. Additionally, following the collapse of the financial and real estate markets, the National Asset Management Agency ("NAMA"), pursuant to the National Asset Management Agency Act 2009 (the "Act"), acquired a number of loans made to DCD.

In 2011 and 2012, NAMA and Ulster Bank, respectively, caused receivers to be appointed over all of their collateral. In Ireland, a receivership arises when a secured creditor, being the holder of a fixed charge security interest over an asset, becomes entitled to enforce its security interest by appointing a receiver to manage the underlying asset, effect a sale of the asset and collect all income from the asset for the exclusive benefit of such secured creditor. In the case of NAMA, any receiver appointed by it has additional powers conferred on it by the Act. Almost all of the Debtor's real estate whether owned directly or through a corporate entity is over-encumbered by creditors' secured claims.

Even after NAMA and Ulster Bank appointed statutory receivers, the Debtor continued to cooperate with NAMA and Ulster Bank. The Debtor made advisors familiar with the

receivership properties available to assist the receivers on a full time basis so that the receivers might quickly come up the learning curve and derive maximum economic benefit from the receivership assets for his creditors.

The Debtor has resided in the United States for the last three years as has his wife and three young children. He is in the United States under a five year visa and is eligible for a green card which he intends to apply for. On March 29, 2013, the Debtor filed his voluntary petition for bankruptcy relief in this Court. The Debtor qualifies as a "debtor" pursuant to § 109 of the Bankruptcy Code, and is entitled to seek a discharge pursuant to Bankruptcy Code § 727.

II. ARGUMENT

A. Final Order For Appeal Purpose

The Order grants Ulster Bank relief from the automatic stay pursuant to Bankruptcy Code § 362(d) to proceed to cause a summons to be served upon the Debtor in connection with the Irish Bankruptcy Proceeding so that he may be adjudicated a "bankrupt" in the Irish Insolvency Proceeding. Consequently, the High Court may obtain jurisdiction over him and his assets, and an Official Assignee may be appointed to take over control and liquidate all of his assets and administer his affairs while this Court has identical jurisdiction and the Trustee has the same responsibilities. An order granting relief from the automatic stay so litigation may proceed in another forum is a "final" order for appeal purposes. Sonnax Indus. Inc. v. Tri Component Products Corp. (In re: Sonnax Indus. Inc.), 907 F.2d 1280, 1286 (2d Cir. 1990) ("all seem to agree that orders lifting the automatic stay are final because the issue of whether the litigation in

question may proceed has been resolved and because an immediate appeal by the trustee or debtor is necessary if there is to be appellate review at all") (citations omitted).

B. Standards and Application of Law Governing A Stay Pending Appeal

Pursuant to Fed. R. Bankr. P. 8005, this Court "may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest… ." Fed. R. Bankr. P. 8005. The Second Circuit has established a four-part test for determining whether to grant a stay pending an appeal from the bankruptcy court:

> (1) whether the movant will suffer irreparable injury absent a stay,
> (2) whether a party will suffer substantial injury if a stay is issued,
> (3) whether the movant has demonstrated a "substantial possibility, although less than a likelihood, of success" on appeal, and
> (4) the public interests that may be affected.

LaRouche v. Kezer, 20 F.3d 68, 72 (2d Cir. 1994) (quoting Hirschfeld v. Board of Elections, 984 F.2d 35, 39 (2d Cir. 1993)). See, also, Nken v. Holder, 556 U.S. 418, 434, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). "The first two factors . . . are the most critical." Nken, 556 U.S. at 434.

The Second Circuit has further recognized that the degree to which a factor must be present varies with the strength of the other factors, meaning that these factors are treated "somewhat like a sliding scale"; "more of one [factor] excuses less of the other." Thapa v. Gonzales, 460 F.3d 323, 334 (2d Cir. 2006) (quoting Mohammed v. Reno, 309 F.3d 95, 101 (2d Cir. 2002) (internal quotation marks omitted)). In Thepa, the Second Circuit stated that "[a]s to the question of irreparable harm, 'this Circuit has granted a stay pending appeal where the likelihood of success is not high but the balance of hardships favors the applicant.'" 460 F.3d at

336 (quoting Mohammed, 309 F.3d at 101). Similarly, in Mohammed, 509 F.3d at 100-01, the Second Circuit noted that, with respect to the "substantial possibility of success on appeal" factor: "[t]he necessary 'level' or 'degree' of possibility of success will vary according to the court's assessment of the other [stay] factors." Id. at 101 (adopting the approach expressed by the District of Columbia Circuit and quoting Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 182 U.S. App. D.C. 220, 559 F.2d 841, 843 (D.C. Cir. 1977)). "The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury plaintiff[] will suffer absent the stay. Simply stated, more of one excuses less of the other." Mohammed, 509 F.3d at 101 (quoting Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991) (citation omitted). See also Ofosu v. McElroy, 98 F.3d 694, 703 (2d Cir. 1996) (four stay factors "weighed").

1. In the Absence of a Stay, the Insolvency Proceeding in Ireland Will Impose Irreparable Injury Upon the Debtor

Ulster Bank cannot and should not be allowed to prosecute the Irish Insolvency Proceeding past the preliminary and purely procedural steps that occurred before the Debtor's Chapter 7 filing. Ulster Bank filed a petition and obtained the issuance of a summons, but the summons has not been served upon the Debtor, and, without the Court's Order, Ulster Bank cannot serve the summons upon the Debtor. See 11 U.S.C. § 362(a). In the absence of proper service of the summons, the High Court in Ireland does not have jurisdiction over the Debtor or his property. Notwithstanding Ulster Bank's unsupported protests to the contrary, (6/11/13 Hrg. Tr. at 14), there is not already a conflict between the application of the laws here and in Ireland.

There is no pending bankruptcy case in Ireland in any substantive sense and Ulster Bank has offered no support to the contrary despite bearing the burden. Even Ulster Bank concedes that the Irish bankruptcy estate would not arise and there would be no Official Assignee unless and until the Debtor was adjudicated a "bankrupt" in Ireland and service must be perfected before the issues can be joined for resolution. Irish Bankruptcy Act 7(1)g, 11, 14, 18 & 44, 1988. This Court's conclusion to the contrary that the High Court may proceed with the bankruptcy against the Debtor even in the absence of the Order (permitting Ulster Bank to serve of the summons upon the Debtor) (see 6/11/13 Hrg Tr. at 88), is incorrect because Ulster Bank must affirmatively act to prosecute the Irish Insolvency Proceeding, and Ulster Bank is precluded from doing so by the automatic stay. Thus, without the Order, the Debtor would not be subject to all of the obligations of a competing bankruptcy as well as the conflicting discharge laws that threaten to vitiate the fresh start available to the Debtor under Chapter 7 of the Bankruptcy Code. Presently, there is no conflict between this case and the Irish Insolvency Proceeding.

The stay pending appeal is, therefore, essential to prevent irreparable injury to the Debtor, because the Order would permit Ulster Bank to serve the summons upon the Debtor, confer the High Court in Ireland with jurisdiction over the Debtor, and force the Debtor to defend against being adjudicated a bankrupt in Ireland at the same time that he is a Debtor in this Court. Id. at 7, 11 & 14. If the Debtor were ultimately adjudicated a bankrupt in Ireland, an Official Assignee would be appointed and all of the Debtor's property would vest in the Official Assignee, id. at 18 & 44, despite this Court having exclusive jurisdiction over the same property pursuant to Bankruptcy Code § 541. The Official Assignee would be authorized and required to liquidate

and distribute the Debtor's assets—those of this bankruptcy estate. Irish Bankruptcy Act 61(2), 1988.

In addition to the foregoing, the Debtor would also be subjected to the following, among other provisions of Irish Bankruptcy Act, 1988:

- Compelled to deliver all books of account to the Official Assignee. Id. at 19(a);
- Compelled to deliver possession of all of his property to the Official Assignee. Id. at 19(b);
- Compelled to complete and deliver a statement of affairs in prescribed form. Id. at 19(c);
- Required to provide reasonable assistance to the Official Assignee. Id. at 19(d);
- Compelled to disclose to the Official Assignee any property acquired after being adjudicated a bankrupt. Id. at 19(e);Summoned before the Court and examined under oath concerning all property. Id. at 21(1);
- The Court may compel the Debtor to turnover part or all or the Debtor's post-bankruptcy "salary, income, emolument or pension for the payment to the Official Assignee." Id. at 65(1);
- Where it appears that the Debtor is about to leave Ireland, the High Court may cause him to be arrested and brought before it for examination. Id. at 23(1).[1]

[1] This is obviously a hardship for someone who has not resided in Ireland in six years, has resided in the United States for the last three years with his family, and does not intend to reside in Ireland.

All of the foregoing diminish the relief afforded by this filing under Chapter 7 insofar as they duplicate obligations he owes to the estate here, impose burdens that go well beyond that what is required of a Chapter 7 debtor, and compel him to defend, in essence, against pre-petition claims, all in derogation of one of the central goals of Chapter 7, the debtor's fresh start.

More specifically and most significantly, the Debtor would be subject to conflicting laws governing his discharge. The Debtor, as a resident of Connecticut for the past three years, was legally entitled to file a petition for bankruptcy relief under Chapter 7 of the Bankruptcy Code and seek a discharge pursuant to § 727 of the Bankruptcy Code. See 11 U.S.C. §§ 109 & 727. The Debtor will receive such a discharge unless there is an objection to such discharge through the commencement of an adversary proceeding and the Court after trial denied the discharge. The adversary proceeding would be governed by Part VII of the Federal Rules of Bankruptcy Procedure which, to a large extent, incorporates the Federal Rules of Civil Procedure. Once a discharge order enters, the Debtor would be released from his debts, and creditors would be barred from pursuing the Debtor. 11 U.S.C. § 727(b). The Debtor's fresh start provided by the discharge is the essence of the relief provided to an individual who seeks protection under Chapter 7. "Congress made it a central purpose of the bankruptcy code to give debtors a fresh start in life and a clear field for future effort unburdened by the existence of old debts." Stoltz v. Brattleboro Hous. Auth. (In re Stoltz), 315 F.3d 80, 94 (2d Cir. 2002); "Capital Communications Fed. Credit Union v. Boodrow (In re Boodrow), 126 F.3d 43, 51 (2d Cir. 1997).

In Ireland, however, the Debtor may only apply to obtain his discharge after the bankruptcy has been pending for 5 years. Irish Civil (Miscellaneous Provisions) 30(g), 2011. In

order to be granted the discharge upon the Debtor's application, (1) provision must have been made for the payment of all expenses, fees and costs of the bankruptcy, and the payment of all preferential payments, (2) the estate of the bankrupt has been fully realizes, (3) all property acquired by the Debtor after the bankruptcy has been disclosed, and (4) the Court must be satisfied that granting the discharge is reasonable and proper. Id. If such application has not been granted sooner, the Debtor will obtain a discharge no sooner than 12 years after being adjudicated a bankrupt. Id.

Thus, in the absence of a stay of the Order, the Debtor will be subjected to the costs and burdens of dual insolvency proceedings in two countries, and the prospect that that his Chapter 7 discharge would be vitiated by a discharge regime in Ireland.[2]

2. No Other Party Will Suffer Substantial Injury If A Stay Is Issued

Ulster Bank's claim of threatened harm and urgency are pure fiction. First, it had already obtained a judgment. Second, all of its collateral has been in receivership since 2012. It did not attempt to commence its bankruptcy action against the Debtor until 2013. Assuming that Ulster Bank wants to realize upon its collateral, it needs simply to file a motion for relief from stay to do so in this Court. If it is concerned about any deficiency claim, all it needs to do is file a proof of claim in this Court. A stay of the Order would not impair any cognizable right of Ulster

[2] The Court opined that the relief afforded to Ulster Bank will make it more likely that the Debtor's Chapter 7 discharge would be honored in Ireland, (6/11/13 Hrg. Tr. at 85), but Debtor's counsel found no authority for that proposition and Ulster Bank provided none. In fact, Ulster Bank's did not agree with this conclusion. (6/11/13 Hrg. Tr at 78-79.)

Bank.[3]

The Trustee also cannot claim injury from the stay of the Order and Ulster Bank's inability to proceed to serve the summons upon the Debtor. The Debtor has made clear that regardless of the appeal he intends to comply with all his obligations as a Chapter 7 discharge so the Trustee can investigate his affairs. He recognizes that his cooperation is a prerequisite to his Chapter 7 discharge.[4]

3. There is a Substantial Possibility of Success On Appeal

In deciding to grant Ulster Bank's motion and enter the Order, this Court relied upon and applied two of the factors set forth in Sonnax, 907 F.2d at 1286. Sonnax does not apply to the issue presented by Ulster Bank's motion. In Sonnax, the Second Circuit set forth the factors to be considered in deciding whether pending litigation against the debtor could proceed in another jurisdiction. Id. By "litigation," Sonnax involved a pending action against the debtor and several other defendants, not a completely separate insolvency proceeding in a foreign country. Here, Ulster Bank did not seek relief to have its claim against the Debtor adjudicated in Ireland. In fact, Ulster Bank already has a judgment. Ulster Bank sought to have this Court lift the automatic stay in this case to permit it to serve a summons upon the Debtor so the Irish High Court could obtain jurisdiction over him in order to commence the Irish Insolvency Proceeding.

[3] In fact, from the lack of any economic necessity, the Debtor has inferred that Ulster Bank's Motion is motivated by a desire to deprive the Debtor of his Chapter 7 discharge and/or is simply politically motivated to harass the Debtor.

[4] Creditors generally will not be hurt by imposition of the stay. Whether or not there is a dual proceeding in Ireland, they will need to be involved in this case as their rights and interests may be impacted.

Sonnax is simply not apposite.[5]

In the event that Sonnax were apposite precedent, however, the Sonnax factors still militate strongly against the relief sought in the Motion. The Court supported its decision by reference to the "specialized tribunal" and "judicial economy" factors. (6/11/13 Hearing Tr. at 92-93.) The Court perceived the Irish High Court as a "specialized tribunal" within the meaning of this Sonnax factors. To the contrary, however, the Irish High Court is not a "specialize tribunal with the necessary expertise [that] has been established to hear the cause of action" as stated in Sonnax. 907 F.2d at 1286. A cause of action is not at issue. The issue is whether there should be dual insolvency proceedings, and the Irish High Court has not been "established" at this point since it has no jurisdiction over the Debtor or his property. Indeed, the Irish High Court would be sitting as a bankruptcy court but it does not sit only as a bankruptcy court.[6] There is also very little judicial authority interpreting and applying the Irish Bankruptcy Act, 1988. Consequently, this Court is a far more specialized tribunal than the Irish High Court regarding insolvency matters.

Additionally, the interests of judicial economy and the expeditious and economical resolution of litigation weigh overwhelmingly in favor of denying relief from the automatic stay, because dual and conflicting insolvency proceedings would impose substantial burdens and costs

[5] In Sonnax, although there was no question that the non-bankruptcy action had been pending against the Debtor for almost a year and though the Debtor filed its petition a day after a motion to stay an injunction against it was denied, the Second Circuit affirmed the denial of the relief from stay motion.

[6] As a consequence of the burdensome bankruptcy laws in Ireland, only one or two bankruptcy proceedings were filed a year prior to the financial crisis and even now there are only 20 to 25 cases each year.

on all parties-in-interest and both courts, including, but not limited to, a discharge process for the Debtor that may span 12 years in Ireland. It is not realistic that competing courts with different laws and different fiduciaries in different countries could more efficiently administer the Debtor's assets and with less judicial resources than this Court. It should be further noted that the Debtor has the right to contest the Irish proceeding and so there is no assurance that he would ever be adjudicated or when that might occur. Even Ulster Bank concedes that there is no bankruptcy estate in Ireland until a debtor is adjudicated a bankrupt.[7] The adjudication dispute, by definition, will also add to delay and costs.

The balance of the Sonnax factors, not discussed by the court, also weigh decidedly against granting Ulster Bank relief from the automatic stay:

(1) Relief from the automatic stay to permit the summons to be served upon the Debtor and the Irish Insolvency Proceeding to go forward would not result in a partial or complete resolution of the issues; in fact, it would create many far more complicated issues necessitating adjudication;

(2) The Irish Insolvency Proceeding, rather than lacking any connection with or interference with this bankruptcy case, would, once the High Court obtains jurisdiction over the Debtor and all the Debtor's property vests in the Official Assignee, directly conflict with this bankruptcy case. In Sonnax, the court denied the motion for relief in part, because the bankruptcy case and state court action

[7] The Debtor has serious defenses to the adjudication, including, without limitation, the fact that he has not resided in Ireland for 6 years.

were "inextricably intertwined." Nothing could be more intertwined with this bankruptcy case than a second bankruptcy case over the identical debtor with identical assets and identical creditors;

(3) The Irish Insolvency Proceeding does not involve the Debtor as a fiduciary (and, at this point in time, does not involve the Debtor in an substantive way, other than his name);

(4) As noted above, the Irish High Court is not a specialized tribunal for this "cause of action." It is this Court which is the specialized tribunal for the Debtor's bankruptcy case;

(5) An insurer has not assumed the cost of defending the Debtor in the Irish Insolvency Proceeding;

(6) The Irish Insolvency Proceeding does not primarily involve third parties; if allowed to go forward, it would directly involve the Debtor and all of the Debtor's property;

(7) The Irish Insolvency Proceeding would prejudice the interest of other creditors to the extent the cost and delay arising from the complexity and conflicts involved in dual insolvency proceedings diminishes the funds available to make distributions to creditors, and it would be incumbent upon creditors to analyze their rights and protect their claims in two overlapping proceedings under different laws. That may be fine with NAMA and Ulster Bank which apparently have limitless resources to pursue the Debtor but severely prejudices the Debtor and any creditor

that does not have limitless resources;

(8) It is not clear whether or not that a judgment claim entered in the Irish Insolvency Proceeding may be subject to equitable subordination in this case and whether this factor is applicable. This factor highlights how inapposite Sonnax is, however, because Ulster Bank is not liquidating a claim. Any judgment obtained by Ulster Bank in the Irish proceeding could not be asserted at all in this case and hence this factor, at least by analogy, also militates against the Motion. The Debtor which has sought relief in this court should not be forced to expend resources in another court when the second "action" should not in any way affect the Debtor;

(9) While Ulster Bank would not obtain a judicial lien through the Irish Insolvency Proceeding that is avoidable by the Debtor, proceeding with the Irish Insolvency Proceeding will vest all of the property of this bankruptcy estate into the Official Assignee for his administration and liquidation;

(10) As noted above, the interests of judicial economy and an economic and efficient resolution of the Debtor's bankruptcy case cannot possibly be served by permitting Ulster Bank to purse a duplicative insolvency proceeding in Ireland.

(11) The parties are not ready for trial in the Irish Insolvency Proceeding, of course; the Debtor has not been served; and

(12) As set forth above, the balance of the harms weighs decidedly in favor of denying relief from the automatic stay.

Thus, even if the Sonnax factors are applied to the relief sought by Ulster Bank, they support the

denial of Ulster Bank's motion. It is a heavy burden for an unsecured creditor to obtain relief from the automatic stay. In re: Leibowitz, 147 B.R. 341, 345 (Bankr. S.D.N.Y. 1992) ("the general rule is that claims that are not viewed as secured in the context of section 362(d)(1) should not be granted relief from the stay unless extraordinary circumstances are established to justify such relief"). Ulster Bank submitted no evidence that satisfied that burden and no findings were made to support such a conclusion.

Moreover, rather than the Sonnax test, principles of international comity and Chapter 15 of the Bankruptcy Code govern cross-border insolvencies. Because of the unique circumstances of this case where the Irish Insolvency Proceeding has no jurisdiction over the Debtor or his property, the consideration of the principles of international comity lead to the same conclusion: relief from the automatic stay should not be granted to Ulster Bank. As the Second Circuit recognized in In re Maxwell Communication Corp., 93 F.3d 1036, 1049 (2d. Cir. 1996), the analysis of "[i]nternational comity comes into play only when there is a true conflict between American law and that of a foreign jurisdiction." (Citing Hartford Fire Ins. Co. v. California, 509 U.S. 764, 798, 113 S. Ct. 2891, 125 L. Ed. 2d 612 (1993), and Societe Nationale Industrielle Aerospatiale v. U.S. Dist. C. S. D. Iowa, 482 U.S. 522, 555, 107 S. Ct. 2542, 96 L. Ed. 2d 461 (1987) (Blackmun, J., dissenting) (existence of true conflict is a "threshold question")). The party requesting comity bears the burden of demonstrating that comity is appropriate. See Allstate Life Ins. Co. v. Linter Group Ltd., 994 F.2d 996, 999 (2d Cir. 1993).

There is no true conflict between this bankruptcy case, and the Irish Insolvency Proceeding because the Irish High Court does not have jurisdiction over the Debtor or his

property. The Irish High Court lacks any authority to enter any order against the Debtor until the summons is served upon the Debtor. Irish Bankruptcy Act 11 & 14, 1988. This is not a mere technicality. The conflicts which Ulster Bank claimed at the hearing on the Motion already exist, do not. The instant bankruptcy case may proceed in the manner provided by the Bankruptcy Code and Bankruptcy Rules without any interference with or by a competing insolvency proceeding. The Trustee may liquidate the Debtor's assets and fully administer the bankruptcy estate. The Debtor may obtain or be denied his discharge by this Court. Ulster Bank may obtain relief from the automatic stay to proceed with its receiverships and file a proof of claim in this case. Comity is not implicated because there is no conflict for this Court to resolve or foreign judicial decision or activity to accommodate. Bufford, Samuel L., United States International Insolvency Law, 2008-2009 at 36 (Oxford 2009).

Further evidencing the inappropriateness of permitting the Irish High Court to obtain jurisdiction over the Debtor and his property, Chapter 15 of the Bankruptcy Code does not permit any relief to Ulster Bank or on account of the Irish Insolvency Proceeding. As part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 ("Bankruptcy Reform Act"), Chapter 15 was incorporated into the Bankruptcy Code. Chapter 15 adopted the Model Law on Cross-Border Insolvency. Iida v. Junichi Kitahara, 377 B.R. 243, 256 (B.A.P. 9th Cir. 2007) (citations omitted). Those courts that have considered the issue have held that Chapter 15 is the exclusive procedure available to resolve issues arising out of foreign insolvency proceedings. Id. at 257-58; Oak Point Partners v. Lessing, No. 11-CV-03328-LHK, 2013 U.S. Dist. LEXIS 56674, at *9-*17 (N.D.Cal. April 19, 2013) (Koh, J.) (attached hereto as

Exhibit A).

Chapter 15 expressly applies where, inter alia, "a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently." 11 U.S.C. § 1501(b)(3). Yet recognition of the Irish Insolvency Proceeding under Chapter 15 cannot be obtained because no foreign representative has been appointed in the Irish Insolvency Proceeding. Consequently, there is no foreign representative to apply for such recognition. See 11 U.S.C. § 1515. No remedy is available because none is required by the circumstances presented in this case. In effect, if a foreign bankruptcy proceeding has not progressed to the point where a foreign representative is or may be appointed, then the court should not permit relief from the automatic stay so in the event that the Debtor is adjudicated a bankrupt at some point and the foreign representative may agree to a protocol that does not violate the laws governing Chapter 7. If the Trustee needs the assistance of a foreign court, he may petition for recognition in the foreign country.

In any event, even if Chapter 15 were applicable, the case would be governed by the controlling precedent of Morning Mist Holdings Ltd. V. Krys (In re: Fairfield Sentry Ltd.), 714 F.3d 127 (2d Cir. 2013). In that case, the United States Court of Appeals for the Second Circuit ruled that the "center of main interests" must be determined on the basis of the debtor's "activities at or around the time the Chapter 15 petition is filed, as the statutory text suggests." Id. Of course, no Chapter 15 petition has been filed, but for the last three years, the Debtor's activities have been in the United States. Accordingly, even if Chapter 15 was applicable, the case pending before this Court would be the main case and it is quite possible that the Irish case

would not even be recognized as a non-main case. In its Fairfield Sentry decision, the Second Circuit followed In re Ran, 607 F.3d 1017 (5th Cir. 2010) (bankruptcy proceeding pending against individual debtor in Israel since 1997 was denied recognition as foreign main and non-main proceedings when debtor had been residing in the United States at the time a recognition petition was filed against debtor in the United States in 2006). This provides an additional reason why an Irish insolvency proceeding can serve no useful purpose and would only prejudice the Debtor and cause additional and expensive delays for everyone.

For the foregoing reasons, there is a substantial possibility of success on appeal.

4. The Public Interests that May Be Affected

Generally, the public policy in favor of judicial economy supports the imposition of the stay pending appeal. See Northrup Corp. v. United States, 27 Fed. Cl. 795, 803 (1993), (citing Far West Fed. Bank S.B. v OTS, 930 F.2d 883, 891 (Fed Cir. 1991) ("In today's climate of burgeoning litigation and strained resources, duplication of litigation serves no congressional purpose; it squanders judicial governmental, and private resources.")). Specifically, as it relates to individual bankruptcy cases, on the central public goals of the Bankruptcy Reform Act to provide a debtor a fresh start through his discharge, see e.g. In re Butler, 186 B.R. 371 (Bankr. D. Vt 1995), such public policy would be undermined by allowing the Irish Proceeding to go ahead pending appeal. At a minimum, the Debtor would incur costs and fees related to pre-petition claims that would erode the fresh start promised by Chapter 7. The Debtor should not be under any obligation to address pre-petition obligations except as required by Chapter 7. If a stay is not imposed pending appeal, then he would be compelled to protect his expected Chapter

7 discharge by defending the insolvency proceedings in Ireland.

E. No Bond Is Required Pending Appeal

Bankruptcy Rule 8005 provides that in connection with an order granting a stay pending an appeal that the district court or the bankruptcy appellate panel may condition the relief it grants under Rule 8005 on the posting of the bond or other appropriate security with the bankruptcy court. The posting of a bond is discretionary. In re: Sphere Holding Corp., 162 B.R. 639, 644 (E.D.N.Y. 1994). The purpose of the bond is to secure the prevailing party against loss that might be sustained by a failed appeal. Id. (citing 9 Collier on Bankruptcy P 8005.07[2] (1993)). No bond is required when little or no damage will be incurred as a result of the stay. Id. See also Silverman v. Nat'l Union Fire Ins. Co., 330 B.R. 93, 96 (S.D.N.Y. 2005).

In this case, the stay of the Irish proceedings will not cause any diminishment to Ulster Bank's claims. The stay sought by the Debtor has no effect whatsoever on the ability for Ulster Bank to realize upon its collateral. Indeed, as noted, Ulster Bank never articulated why economically a second bankruptcy case was necessary for it to realize upon its claims.

III. CONCLUSION

The Debtor faces irreparable harm if Ulster Bank is allowed to cause a summons to be served upon the Debtor and thereby prosecute the Irish Insolvency Proceeding. On the other hand, there is absence of any injury to Ulster Bank if the stay is imposed. Given the balance of relative harms and the substantial possibility of success on appeal, this Court should grant a stay of the Order pending appeal.

Dated this 14th day of June, 2013.

THE DEBTOR, SEAN DUNNE

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