



In re: Manley Toys Ltd.

Chapter 15, Case No. 16-15374 (Bankr. D.N.J.)

Presented by:

Stephen M. Packman, Esq.



History of Manley Toys



- Founded in 1977, by 2016 claimed to be 7th largest toy company in the world
- Engaged in development, sourcing, and marketing of toys, children's products and party supplies in Hong Kong and China
- Concentration on sale and export to international markets, including the United States
- Marketed under various brand names, such as "Banzai" (waterslides and water-based toys)

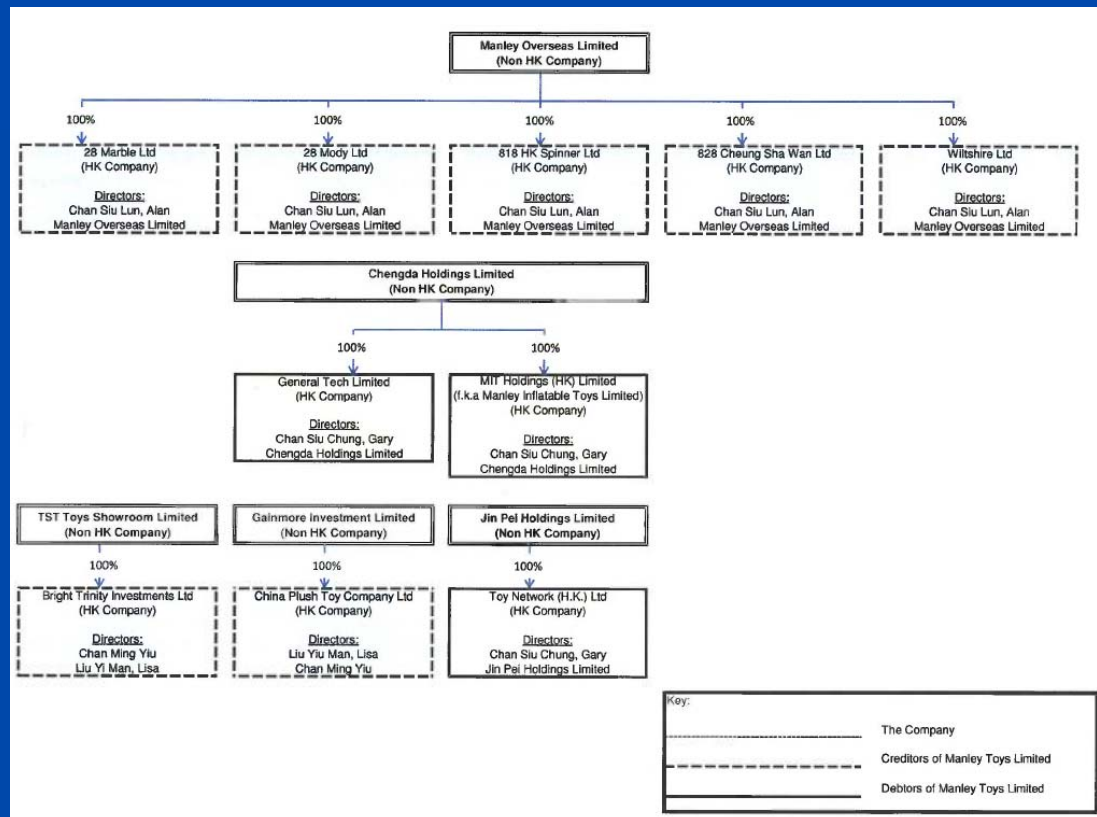


Commencement of Proceedings

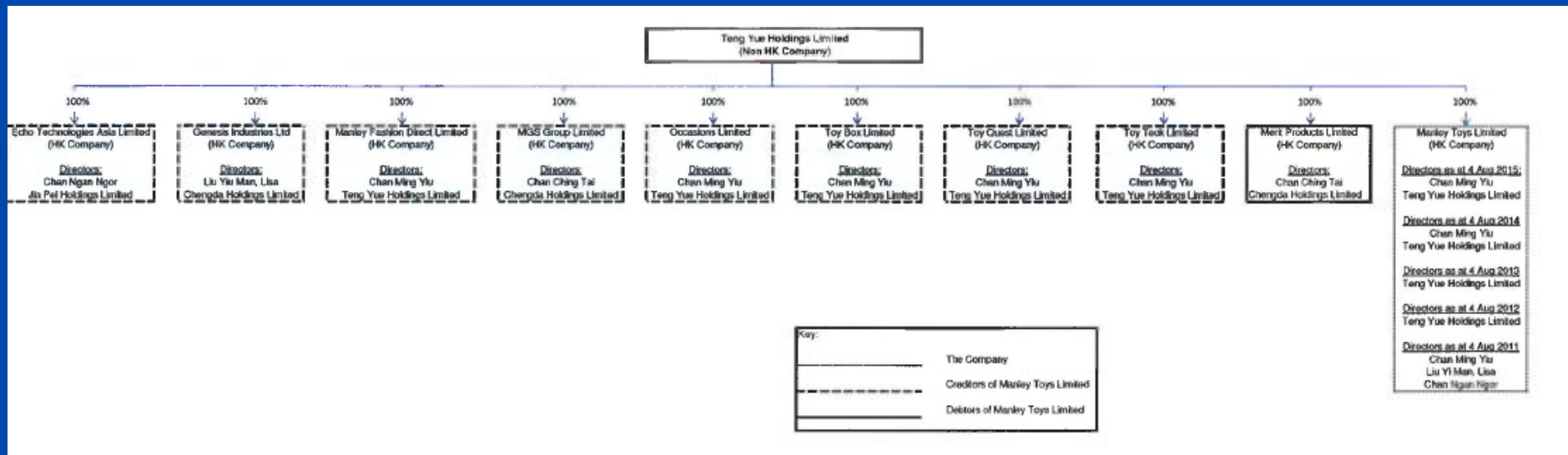


- Hong Kong representative of Manley Toys contacted Steve Packman in January 2016 regarding liquidation proceedings
- Manley Toys not yet in a “proceeding” in any country
 - No fiduciary yet in place
 - Contact was through related U.S. broker based in California
 - *(Corporate structure on next slides)*
- Interest in potential Chapter 15 proceedings in U.S. if main proceeding commenced in Hong Kong

Corporate Structure



Corporate Structure



Commencement of Proceedings



- Debtor filed voluntary liquidation proceeding in Hong Kong
 - (March 22, 2016)
 - Filed under Hong Kong Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32) (“CWUMPO”)
 - John Lees and Mat Ng appointed as co-liquidators
- Meeting of creditors held
 - (March 22, 2016)
 - Most in attendance were insiders, some with recent claim acquisition
 - Notice of meeting sent out several days prior; did not reach U.S. creditors in time
 - Committee of Inspection formed; all insiders
- Various allegations about suspect transfers involving the Debtor and related entities shortly before commencement of liquidation

Commencement of Proceedings



- Chapter 15 bankruptcy case filed in District of New Jersey
 - (March 22, 2016)
- Hong Kong Assets
 - Cash in bank accounts (minimal)
 - Accounts receivable (minimal)
- U.S. Assets
 - Primarily a \$5MM claim against Toys “R” Us (“TRU”)
 - TRU held \$24MM claim against Debtor arising out wrongful death / products suit



Ch. 15 – Recognition



- Petitions for provisional relief and recognition filed in Chapter 15 case
 - Archer as lead litigation counsel; Dan Glosband, Esq. of Goodwin Procter providing intellectual support
 - Objections filed to recognition by TRU and by ASI, Inc. f/k/a Aviva Sports (“ASI”)
 - ASI held \$8MM+ judgment against Debtor arising out of prior proceedings in Minnesota
- Court held initial hearing for provisional relief on April 1, 2016
 - Majority of provisional relief sought granted

Ch. 15 – Recognition



- Recognition hearing occurred over multi-day trial in May/August 2016
 - Proceedings delayed by massive amount of discovery sought by ASI and TRU
 - Hundreds of exhibits
 - Testimony of fact and expert witnesses (co-Liquidator, Matt Ng and expert, Kingsley Ong of Eversheds)
- Further objections and post-trial briefing continued throughout 2017
- Bankruptcy Court granted recognition on February 13, 2018
 - Published decision - *IN RE: MANLEY TOYS LIMITED, Debtor in a Foreign Proceeding*, 580 B.R. 632 (Bankr. D.N.J. 2018)

Ch. 15 – Recognition



- Framework for trial and Bankruptcy Court’s decision on recognition
- A foreign proceeding must:
 - (a) Meet the definition of “foreign proceeding” under 11 U.S.C. § 101(23))
 - The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.
 - (b) Meet the requirements for recognition set forth in 11 U.S.C. § 1517(a)
 - (a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—
 - (1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;
 - (2) the foreign representative applying for recognition is a person or body; and
 - (3) the petition meets the requirements of section 1515.
 - (c) Meet the requirements for recognition set forth in 11 U.S.C. § 1515
 - Accompanied by certified copy of decision commencing foreign proceeding and appointing foreign representative(s)
 - Accompanied by certificate from foreign court affirming existing of foreign proceeding and foreign representative(s) (or any other competent evidence)
 - Accompanied by statement of all other foreign proceedings with respect to the debtor known to the foreign representative(s)
 - (d) Not be “manifestly contrary to the public policy of the United States” (15 U.S.C. § 1506)

Ch. 15 – Recognition



- ASI and TRU objected on three (3) primary grounds:
 - (1) The HK proceeding is not “collective” in nature (11 U.S.C. § 101(23))
 - (2) The HK proceeding is not “main” because the Debtor’s centre of main interests (COMI) is in the U.S. and not HK (11 U.S.C. § 1502(4))
 - (3) Recognition would be manifestly contrary to public policy of the U.S. (invoking the 11 U.S.C. § 1506 exception!)

Ch. 15 – Recognition



- Trial on Contested Issues

- Liquidators presented testimony including expert insolvency witness from Hong Kong to establish HK proceeding was collective, administrative/judicial in nature, not dissimilar from U.S. insolvency proceedings
- Liquidators established through testimony and documents that COMI was in HK
- Liquidators refuted public policy argument of objectors by testifying about fairness and opportunity to be heard in HK; also that U.S. creditors could sit on COI and could fund investigations/claims
- Objectors presented only one witness on limited issues
- Documents in record did not support objections
 - *Notably, at most, documents illustrated “bad acts” / potential bad faith by Debtor and related parties!*

Bankruptcy Court's Decision



- Findings on general elements
 - (a) There is “a proceeding” under foreign law
 - (b) The proceeding is judicial or administrative in nature
 - (c) The proceeding is collective in nature
 - (d) The proceeding is in a foreign country (undisputed)
 - (e) The proceeding is conducted under a law related to insolvency or adjustment of debts (undisputed)
 - (f) The Debtor’s assets and affairs are subject to control or supervision of a foreign court
 - (g) The proceeding is for the purpose of reorganization or liquidation

Bankruptcy Court's Decision



- Other findings

- Liquidators have satisfied requirements of 11 U.S.C. § 1515

- Liquidators are proper “foreign representatives”
- Petition accompanied by documents required under statute

- Liquidators have satisfied requirements of 11 U.S.C. § 1517

- COMI analysis dictates finding of COMI in HK
- Only factor possibly favoring U.S. COMI is number of non-insider creditors present; by itself, not enough to shift

- Public policy exception not appropriate for application here

- This case is not like *In re Gold & Honey, Ltd.*, 410 B.R. 357 (Bankr. E.D.N.Y. 2009)
- At most, this case is more similar to *In re Creative Fin. Ltd.*, 543 B.R. 498 (Bankr. S.D.N.Y. 2016), where bad faith and bad acts by principals of debtor were insufficient to deny recognition on public policy grounds

Appeals



- Various appeals were filed almost immediately to District Court of New Jersey
 - TRU appealed Order/Opinion granting recognition (18-2777)
 - ASI appealed Order/Opinion granting recognition (18-2836)
 - ASI appealed a prior order denying stay relief in Ch. 15 (18-2838)
 - ToyQuest (related entity of Debtor) appealed an order granting certain sanctions against it unrelated to recognition (18-2923)
- Hon. Renee Marie Bumb, D.J. presided over appeals
 - Consolidated certain matters for convenience

Appeals



- On March 12, 2019, District Court affirmed Bankruptcy Court
 - *aff'd*, 2019 WL 1123284 (D.N.J. Mar. 12, 2019)
- District Court found Bankruptcy Court’s decision on recognition to be “well-reasoned and comprehensive”
- Relying in large part on *In re: ABC Learning Centres Ltd.*, 728 F.3d 301, 308 (3d Cir. 2013), District Court reiterated that when considering recognition of foreign proceeding, court must look to nature of such foreign proceeding generally, not specific contours of proceeding at issue!
- District Court agreed that public policy was not violated here
 - Distinguished *In re Toft*, 453 B.R. 186 (Bankr. S.D.N.Y. 2011) and *In re: Gold & Honey Ltd.*, 410 B.R. 357 (E.D.N.Y. 2009)

Thank You!



- Main takeaway from case is that even if debtor or its principals are “bad actors,” may not be sufficient basis alone to deny recognition
- Debtor’s affiliates continue to operate and sell product in the U.S. today
 - (*caveat emptor!!*)

