

JENNER & BLOCK

Recent Developments in Bankruptcy Law, January 2023

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1. AUTOMATIC STAY

1.1 Covered Activities

- 1.1.a **Court declines to enjoin third party claims against the debtor's jointly liable parent corporation.** The debtor manufactured earplugs for many years. A major multinational corporation acquired it. Two years later, it transferred its earplug manufacturing operation to its parent. Although the parent continued to manufacture and sell the earplugs, 80% of the sales occurred before the transfer. The earplugs were ineffective, resulting in hundreds of thousands of product liability actions against the debtor and the parent in both state and federal court, with the federal actions consolidated under an MDL procedure. The debtor and the parent entered into a funding agreement, which provided that the parent would fund up to \$1 billion to a plaintiffs' recovery trust and up to \$240 million for the debtor's chapter 11 fees and expenses, and the debtor would indemnify the parent for any claims against the parent but could draw funding from the parent to pay any indemnification claims, with no repayment obligation (in effect, a circular transaction). In addition, the debtor and parent shared insurance policies that would cover a substantial amount of claims. Upon filing its petition, the debtor sought to apply the automatic stay to, or to affirmatively enjoin, the prosecution of the product liability actions against the parent. Section 362(a)(1) enjoins only litigation against the debtor, not third parties, unless (in some circuits) there is such an identity of interest that a judgment against the third party would amount to a judgment against the debtor or would cause the debtor irreparable harm. Circuit authority here does not extend the (a)(1) stay, so the court declines to apply it. Section 362(a)(3) stays acts to obtain possession of or exercise control over property of the debtor. Here, because the parent, under the funding agreement, will ultimately fund any liability imposed on the debtor, the tort litigation will not affect the debtor's property or its ability to pay claims. Section 105(a) permits the court to issue any order necessary to carry out the provisions of title 11, but the court must first have jurisdiction. A court has jurisdiction over an action if it is related to the title 11 case, that is, if the outcome could have any conceivable effect on the case, the debtor's assets, or claims. Because of the debtor's ability to access funds under the funding agreement, the tort litigation would not have any such effect. Therefore, the court denies any order staying the tort litigation. *3M Occupational Safety LLC v. Those Parties Listed on Appendix A to the Complaint (In re Aearo Techs. LLC)*, 642 B.R. 891 (Bankr. S.D. Ind. 2022).

1.2 Effect of Stay

1.3 Remedies

2. AVOIDING POWERS

2.1 Fraudulent Transfers

- 2.1.a **Failure to exercise option is not a transfer.** The debtor had an option to purchase real property within a specified period. The optionor gave notice of the commencement of the period. The debtor did not timely exercise the option. The debtor filed a bankruptcy petition a few months later and sought to avoid the option lapse as a fraudulent transfer. A transfer is any mode, direct or indirect, or parting with an interest in property. The debtor's rights under the option were a future contingent interest, more akin to a business opportunity, not an actual interest in property. Therefore, there was no transfer. *Berley Assocs. Ltd. v. 62-74 Speedwell Ave. LLC (In re Pazzo Pazzo Inc.)*, ___ Fed. App'x ___, 2022 U.S. App. LEXIS 34619 (3d Cir. Dec. 15, 2022).
- 2.1.b **State court-approved settlement only partially binds a subsequent bankruptcy trustee.** The debtor entered into a settlement of a shareholder derivative class action in which the plaintiffs alleged that a payment to the debtor's parent was a breach of fiduciary duty. The settlement provided for the director defendants to pay the shareholder class and the debtor and for a full

released of the directors. After a thorough fairness hearing, the state court approved the settlement. A few months later, and within four years after the payment to the parent, the debtor filed chapter 11. The plan provided for the appointment of a liquidating trustee, who then sued the former director defendants and the parent for fraudulent transfers. The trustee may avoid as a constructive fraudulent transfer one that is made for less than reasonably equivalent value while the debtor is insolvent. A release of claims is a transfer. However, the state court's fairness approval determined that the releases were made for reasonably equivalent value and may not be attacked in a later bankruptcy. A bankruptcy trustee may bring fraudulent transfer claims for the benefit of creditors. The settlement of the breach of fiduciary duty claim for the payment to the parent was for the benefit of the corporation and its shareholders. For the prior settlement to bind the trustee, the parties must be in privity with the parties to the trustee's action. Here, the creditors for whom the trustee acts were not parties to or in privity with the shareholder derivative plaintiffs or the corporation, so the settlement does not preclude the trustee from seeking to avoid and recover the payment. *Ogle v. Morgan (In re Evergreen Helicopters Int'l Inc.)*, 50 F.4th 547 (5th Cir. 2022).

2.2 Preferences

2.2.a **Transfer under a wage garnishment order is made when money is paid.** The creditor obtained a wage garnishment order more than 90 days before the debtor's bankruptcy and received payments within the 90-day period. The trustee may avoid a transfer of the debtor's property made within 90 days before bankruptcy if certain other conditions are met. Under prior circuit precedent, state law determined when a transfer was made, and a garnishment effected a transfer, even before money was paid. *Barnhill v. Johnson*, 503 U.S. 393 (1992), held that federal law governs and that a transfer by a check, which is an order to pay money, is made only when the money is paid. It effectively overrules prior circuit precedent. Therefore, the transfer under the garnishment was made only when the employer paid the creditor. *Warsco v. Creditmax Collection Agency, Inc.*, ___ F.4th ___, 2023 U.S. App. LEXIS 447 (7th Cir. Jan. 9, 2023). 0

2.3 Postpetition Transfers

2.4 Setoff

2.5 Statutory Liens

2.6 Strong-arm Power

2.6.a **State registry's use of nonstandard search logic makes abbreviated debtor's name in financing statement seriously misleading.** The creditor filed its financing statement with an abbreviation of one word in the debtor's proper name. Under Florida's financing statement search procedures, a search returns a list of 20 names, starting with the name that most closely resembles the searched name, which permits the searcher to navigate forward and backward through all names indexed. UCC section 9-506 provides "a financing statement that fails sufficiently to provide the name of the debtor is seriously misleading" unless a search using "standard search logic" would disclose a financing statement for the debtor with an error in the debtor's name. Standard search logic produces an unambiguous list of hits. Florida's search method does not. Therefore, it is not standard search logic, and the exception in section 9-506 does not apply. The financing statement with the abbreviation in the debtor's name is seriously misleading and is ineffective to perfect the security interest. *1944 Beach Blvd., LLC v. Live Oak Banking Co. (In re NRP Lease Holdings, LLC)*, 50 F.4th 979 (11th Cir. 2022).

2.7 Recovery

2.7.a **DIP may not use turnover order to collect judgment.** The debtor in possession obtained a judgment against a third party and sought a turnover order under section 542(b) against the judgment debtor to turnover its property to pay the judgment. Section 542(b) requires an entity that owes a matured debt to the debtor that is property of the estate to pay the debt to the trustee. Although the judgment is property of the estate, the judgment debtor's property is not. The proper way to enforce a bankruptcy court judgment is through a writ of execution and, if necessary,

supplemental proceedings, as provided under Bankruptcy Rule 7069. Therefore, the court denies the motion. *In re J and M Supply of the Carolinas, LLC*, ___ B.R. ___, 2022 Bankr. LEXIS 3469 (Bankr. E.D.N.C. Dec. 8, 2022).

3. BANKRUPTCY RULES

4. CASE COMMENCEMENT AND ELIGIBILITY

4.1 Eligibility

4.2 Involuntary Petitions

- 4.2.a **Section 303(i) permits attorneys' fee award for all consequences of a dismissed involuntary petition.** After dismissal of the involuntary petition, the debtor brought litigation against the petitioning creditors under section 303(i)(1) for attorneys' fees and under section 303(i)(2) for compensatory and punitive damages for the creditors' bad faith filing. Before the court finally denied the compensatory and punitive damages claim, the creditor sought to attach and execute on its claim in state court. The debtor unsuccessfully defended that action, then filed a chapter 11 petition to obtain the automatic stay against execution of the attachment. Returning to the bankruptcy court, the debtor sought fees for its prosecution of the punitive damages claim, the defense of the attachment and execution proceeding, and the subsequent chapter 11 case. Section 303(i)(1) permits an award of costs and attorney's fees against a creditor who unsuccessfully files an involuntary petition. Section 303(i)(2) permits an award of compensatory and punitive damages if the creditor filed the petition in bad faith. The authorization to award attorneys' fees includes fees for pursuing the attorneys' fees award, including the compensatory and punitive damage award. Where that claim is unsuccessful, the court may still award fees to the extent that they overlapped with the litigation under section 303(i)(1), for example, where the creditor defends that action on the ground that it filed the petition in good faith. To give full effect to the right to attorneys' fees, the creditor may not offset the award against its claim, and the fees to be awarded may include the fees to collect or protect the award, including litigation in another court. The fees for determining whether to file a chapter 11 case to preserve the claim as an asset are also compensable, as are fees to prevent relief from the automatic stay, but not the fees for other aspects of the chapter 11 case. *Nat'l Med. Imaging, Holding Co., LLC v. United States Bank, N.A. (In re Nat'l Med. Imaging, LLC)*, 644 B.R. 94 (Bankr. E.D. Pa. 2022).

4.3 Dismissal

5. CHAPTER 11

5.1 Officers and Administration

- 5.1.a **Court permits redactions of individual creditors' home and email addresses.** The Irish debtor and multiple international subsidiaries filed chapter 11 in New York. Its creditors included opioid claimants, medical device injury claimants, employees, and suppliers, all of whom were individuals. Section 521 requires the debtor to file a list of creditors. Rule 1007 and the Official Forms require the list to include creditors' names, physical addresses, and email addresses. Section 107(c) permits the court to protect an individual with respect to personally identifiable information whose disclosure "would create undue risk of identity theft or other unlawful injury." Disclosure of home addresses and email addresses and, in some cases, names creates a risk of identity theft, stalking, and intimate partner violence, especially when the information might reveal certain medical conditions that can cause embarrassment or opprobrium. Therefore, the court permits the redaction of home and email addresses of the individual creditors. *In re Endo Int'l plc*, ___ B.R. ___, 2022 Bankr. LEXIS 3093 (Bankr. S.D.N.Y. Nov. 2, 2022).

5.1.b **Court orders appointment of subchapter V trustee upon debtor's refusal to be bound by the law.** After an adverse decision by a district court that exposed the debtor to substantial liability, the debtor filed a chapter 11 case and elected to proceed under subchapter V. Defying the district court's order, the debtor's principal sent numerous harassing emails to the creditor, including one that denied any intention to be bound by the law. The creditor moved to de-designate the case as a subchapter V case so that it would proceed under ordinary chapter 11; the U.S. trustee moved to remove the debtor from possession under section 1185 or to dismiss. Under section 103(i), a case proceeds under subchapter V based only on the debtor's election in the petition. Rule 1020(a) requires a small business debtor to state whether it is proceeding under subchapter V and permits an objection to the statement but does not contemplate de-designation. Rule 1009(a) permits the debtor to amend a petition and the court, on motion of a party in interest, to order the amendment of the petition. However, the structure of subchapter V, under which only the debtor may file a plan, suggests that the court may not override the debtor's decision and force the case into ordinary chapter 11, where any party in interest may file a plan. In this case, the court adopts an alternative remedy. Under subchapter V, the debtor, while remaining in possession, has all the rights and duties of a trustee, who is a fiduciary. Because the debtor's principal has shown himself to be unable to act as a fiduciary, the court may, under section 1185(a), remove the debtor from possession and grant the trustee control over the debtor's business, which the court does. *In re Comedymx, LLC*, ___ B.R. ___, 2022 Bankr. LEXIS 3551 (Bankr. D. Del. Dec. 16, 2022).

5.2 Exclusivity

5.3 Classification

5.4 Disclosure Statement and Voting

5.4.a **Plan modification requires resolicitation, even of rejecting creditors.** The debtor proposed a plan that allocated new equity to existing shareholders based solely on new capital contributions. A day before confirmation, the controlling shareholder moved to modify the plan to eliminate the contributions of the other three shareholders, without notifying them of the motion. The court confirmed the plan, reasoning that the shareholders were to receive or retain nothing under the plan on account of their old equity interests and were therefore deemed to reject the plan. Accordingly, it concluded that neither a new disclosure statement nor new solicitation was required. The three shareholders moved for reconsideration. Section 1126(g) provides that a class whose member receives or retains nothing under the plan on account of the interests is deemed to reject. However, the plan gave the three shareholders the right to invest to acquire new equity based on their existing interests and therefore did not provide for them to receive or retain nothing on account of their old interests. In addition, Bankruptcy Rule 3019(a) requires new disclosure and resolicitation when a modification materially and adversely affects the treatment of any creditor or equity holder who has not accepted the modification in writing. It is not limited to holders who had previously accepted the plan. Therefore, the court must require a new disclosure statement and solicitation before confirmation. *Braun v. America-CV Station Group, Inc.* (*In re America-CV Station Group, Inc.*), ___ F.4th ___, 2023 U.S. App. LEXIS 230 (11th Cir. Jan. 5, 2023).

5.5 Confirmation, Absolute Priority

6. CLAIMS AND PRIORITIES

6.1 Claims

6.1.a **Code's disallowance of postpetition interest, not the plan, alters a creditor's right to postpetition interest and permits non-impairment without payment of interest.** Although the debtor claimed that it was insolvent, the debtor's plan proposed payment in cash in full of a class of unsecured claims, without postpetition interest. Section 502(b)(2) disallows unmaturing interest as of the petition date. Section 1124(1) provides that a class of claims is unimpaired under the

plan if the plan does not alter any of the holders' legal, contractual, or equitable rights. The Code, not the plan, disallowed postpetition interest on the claims. Therefore, the plan left unaltered the claims' legal and contractual rights, so the class was not impaired, as that terms is used in section 1124. However, the solvent debtor exception allows postpetition interest if the debtor is solvent, and the right to postpetition interest might be an equitable right under the solvent debtor exception. In this case, the debtor was not solvent, so the exception did not apply, although the court confusingly uses language that suggests the solvent debtor exception might not apply in any case. *TLA Claimholders Group v. LATAM Airlines Group S.A.*, 55 F.4th 377 (2d Cir. 2022).

- 6.1.b **Account debtor's payment to debtor does not satisfy obligation to secured lender.** The debtor granted a security interest in its accounts receivable to its lender. The lender notified an account debtor of the security interest and directed it to pay the lender on any obligations owing to the debtor. UCC § 9-607(a)(3) permits a secured party to enforce the debtor's obligations, including an account debtor's payment obligation to the debtor, if so agreed with the debtor or, in any event, after a default. Section 9-406(a) permits an account debtor to pay an assignor until (but not after) it receives a notice from the assignor or assignee that the amount due has been assigned. A security interest is an assignment. Although section 9-406(a) would have permitted the account debtor here to pay the debtor before notice, the account debtor paid the debtor after notice. Therefore, the payment did not satisfy the obligation to the secured party. *Worthy Lending LLC v. New Style Contractors, Inc.*, ___ N.Y. ___, 2022 N.Y. LEXIS 2384 (Nov. 22, 2022).

6.2 Priorities

7. CRIMES

8. DISCHARGE

8.1 General

8.2 Third-Party Releases

8.3 Environmental and Mass Tort Liabilities

9. EXECUTORY CONTRACTS

- 9.1.a **A deferred payment settlement agreement is not an executory contract.** The debtor settled a large claim by agreeing to make installment payments over time. After the debtor completed payments, the creditor would release the claim, but it maintained the claim until the payments were made. Section 365 permits the debtor to assume an executory contract. An executory contract is one under which performance remains due to some extent on both sides, such that a material breach by one party would excuse performance by the other. Under this settlement agreement, the creditor had no obligations it could breach. Therefore, the contract was not executory under section 365, and the debtor in possession may not assume it. *In re Svenhard's Swedish Bakery*, ___ B.R. ___, 2022 Bankr. LEXIS 3583 (Bankr. E.D. Cal. Dec. 19, 2022).

10. INDIVIDUAL DEBTORS

10.1 Chapter 13

10.2 Dischargeability

- 10.2.a **A discharge does not release future liability on a guarantee.** The individual debtor personally guaranteed debts to a supplier of the debtor's corporate restaurant business. Years later, the debtor filed a chapter 7 bankruptcy and received a discharge, but the restaurant continued to

operate and purchase from the supplier, and the debtor did not terminate the guarantee. Later, the restaurant closed with an outstanding balance owing to the supplier. The supplier sought payment from the debtor under the guarantee. A chapter 7 discharge releases any claim that arose before the discharge. A “claim” means right to payment, including contingent and unmatured rights. Under applicable state law, a claim under a guarantee arises only when a debt subject to the guarantee is incurred. Therefore, the supplier’s claim for the postpetition future advances was not contingent, and did not arise, prepetition. As such, the debtor’s discharge did not release liability for guaranteed postpetition advances. *Reinhart Foodservice LLC v. Schlundt*, 646 B.R. 478 (E.D. Wis. 2022).

10.3 Exemptions

10.4 Reaffirmations and Redemption

11. JURISDICTION AND POWERS OF THE COURT

11.1 Jurisdiction

11.1.a **The “close nexus” test for post-confirmation related-to jurisdiction does not apply to core proceedings.** The plan discharged all claims that arose before the effective date. Shortly before the effective date, the plan sponsor and the not-yet-existing successor to the debtor agreed to pay the sponsor’s financial advisor a contingent fee based on future financings. After the effective date, the financings occurred, but the debtor and sponsor did not pay the fee. The advisor sued, and the reorganized debtor asked the bankruptcy court to enjoin the action as violating the discharge order. The bankruptcy court’s jurisdiction extends to proceedings arising under title 11 or arising in a title 11 case (core proceedings) or related to a title 11 case. After confirmation, jurisdiction narrows, so that related to jurisdiction continues only if the proceeding has a close nexus to the underlying bankruptcy case. However, the close nexus test does not apply to a core proceeding. The bankruptcy court’s core proceeding jurisdiction continues after confirmation unabated. Interpreting and enforcing a discharge order is a core proceeding, because it is based on rights under title 11. Moreover, the bankruptcy court always has jurisdiction to interpret and enforce its orders. Therefore, the court has jurisdiction to enjoin the litigation. *Mesabi Metallics Co., LLC v. B. Riley FBR, Inc. (In re Essar Steel Minn., LLC)*, 47 F.4th 193 (3d Cir. 2022).

11.2 Sanctions

11.3 Appeals

11.4 Sovereign Immunity

12. PROPERTY OF THE ESTATE

12.1 Property of the Estate

12.1.a **Cryptocurrency deposits are property of the estate.** The cryptocurrency debtor operated an “earn” program, under which customers would “loan” stablecoin to the debtor, who could then hypothecate it as part of its business model, and the customer would earn crypto assets based on the amount and duration of the deposits. To participate in this program, the customer had to agree, on the debtor’s website, to the clickwrap terms of service. The terms of service provided that the customer grants the debtor all right and title to the digital assets, including ownership rights. A clickwrap contract is effective to bind the parties if there is assent, consideration, and intent to be bound and if the terms are conspicuous on the website. The contract here met those terms and so was valid and enforceable. Because the terms transferred title and ownership to the debtor, the stablecoin became property of the estate when the debtor filed its chapter 11 petition. The characterization of the transaction as a loan of stablecoin does not change the result. A loan of money or property to another creates a debtor-creditor relationship. And perfection of a security interest in the loaned assets requires filing a financing statement under the U.C.C., which

was not done here. Therefore, the assets are property of the estate. *In re Celsius Network LLC*, ___ B.R. ___ (Bankr. S.D.N.Y. Jan. 4, 2023).

- 12.1.b **A claim for aiding and abetting a principal's fraud against the debtor is property of the estate.** A defrauded Ponzi scheme creditor sued one of the scheme's major lenders for aiding and abetting the fraud. The trustee had already settled with the lender, asserting, among others, the same kind of claims. A claim that the debtor could have brought becomes property of the estate. The aiding and abetting claim asserts that the lender helped the principal steal from the debtor. The debtor could have brought that claim before bankruptcy. Therefore, it is property of the estate, and the defrauded creditor may not bring it against the lender. Only the trustee may do so. *Ritchie Special Credit Invs., Ltd. v. JPMorgan Chase & Co.*, 48 F4th 896 (8th Cir. 2022).

12.2 Turnover

12.3 Sales

13. TRUSTEES, COMMITTEES, AND PROFESSIONALS

13.1 Trustees

13.2 Attorneys

- 13.2.a **Attorney-client relationship does not transfer from debtor to liquidating trust.** Creditors proposed and confirmed a plan that provided for the creation of a liquidating trust, transfer of all the debtor's assets (including the debtor's attorney-client privilege) to the trust, and the liquidation of the debtor. The liquidating trustee objected to a tax claim. The debtor's former attorney appeared for the tax creditor, and the trustee moved to disqualify him. An attorney who has formerly represented a client in a matter may not, without consent, later represent another client in the same or a substantially related matter in which the later client's interest are materially adverse to the former client's interests. The transfer of the debtor's assets to the liquidating trust under a creditor plan does not create an attorney-client relationship between debtor's counsel and the trust, despite the transfer of the attorney-client privilege to the trust, because the trustee does not substitute for the debtor's management. Instead, the trustee oversees the liquidation, free from the debtor's corporate structure, so the attorney-client relationship does not transfer. However, the attorney may not disclose to the new client confidential information that was obtained in the prior representation. *In re Las Uvas Valley Dairies*, ___ B.R. ___, 2022 Bankr. LEXIS 3407 (Bankr. D.N.M. Dec. 2, 2022).

13.3 Committees

13.4 Other Professionals

13.5 United States Trustee

- 13.5.a **Liquidating trust must pay U.S. trustee fees.** The debtor's plan provided for the creation of a liquidating trust and transfer to the trust of all its assets, with the trust to be the successor to the debtor for all purposes. It also provided for the trust to pay quarterly fees imposed under 28 U.S.C. § 1930(a)(6) until the issuance of a final decree or the case is closed or dismissed. Section 1930(a)(6) requires payments of a fee calculated based on "all disbursements." Although the statute does not specifically say who shall pay, context suggests it is the debtor. The liquidating trust succeeded to that obligation. Disbursements include payments to the debtor's creditors, even though they became trust beneficiaries and therefore equitable owners of the trust's assets upon the plan's effective date. The payments are still disbursements and subject to the fees. *In re Health Diagnostics Lab., Inc.*, ___ B.R. ___ (Bankr. E.D. Va. Jan. 4, 2023).

14. TAXES

- 14.1.a **State’s strict property tax foreclosure law is unconstitutional.** Under state law, a county could conduct strict foreclosure—that is, take title without a foreclosure sale process—to real property on which there were delinquent real property taxes. The Fifth Amendment’s Takings Clause prohibits the government from taking private property for a public use without just compensation. A land owner retains equitable title, that is, the equity in the property’s value over and above the amount of any liens, including tax liens, on the property. The courts protect that equity by requiring a foreclosure sale to determine the property’s value and to provide the portion of the sale price in excess of the lien to the land owner. The state’s failure to do so under its real property tax foreclosure statute amounts to a taking of the land owner’s property without just compensation and so is unconstitutional. *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022).
- 14.1.b **Liquidating trustee may not make refund determination request under section 505.** The debtor confirmed a liquidation plan, which provided for creation of a liquidation trust and appointment of a liquidation trustee. The liquidation trustee filed a request with the IRS for a refund based on prior year losses. The IRS issued a tentative refund, but it had about two years in which to initiate deficiency proceedings to recover the refund. The trustee requested a court determination of the trust’s liability for return of the refunds. Section 505(a)(1) permits the court to determine the amount or legality of any tax, but section 505(a)(2)(B)(i) prohibits the court from determining a right to a refund for 120 days after the trustee properly requests the refund. Section 505 is a jurisdictional statute and must be narrowly construed. A liquidating trustee, as a representative of the estate under section 1123(b)(3), is not a “trustee” as that term is used in the Bankruptcy Code. Therefore, section 505(a)(1) does not permit the liquidating trustee to make the refund determination request. *In re GUE Liquidation Cos.*, 642 B.R. 683 (Bankr. D. Del. 2022).
- 14.1.c **Section 505 gives the bankruptcy court jurisdiction to determine a state or local property tax.** The county imposed a prepetition *ad valorem* property tax on the debtor’s property. The debtor paid the tax and sued for a refund in state court. After plan confirmation, the reorganized debtor brought an adversary proceeding under section 505 to determine the amount or legality of the tax. Section 505(a)(1) gives the bankruptcy court jurisdiction to determine the amount or legality of any tax, whether or not paid and whether or not contested. However, the Tax Injunction Act deprives the court of jurisdiction to “enjoin, suspend or restrain the assessment, levy or collection of any tax under State law.” Because the TIA has been interpreted to prohibit determination of refunds, the two statutes conflict. Section 505’s predecessor statute was enacted 29 years after the TIA. Generally, the later enacted statute controls. Section 505 is more specific than the TIA, and the more specific statute generally controls the more general one. Section 505(a)(2)(C) prohibits the court from determining the amount or legality of an *ad valorem* property tax if the period under applicable nonbankruptcy law to challenge the tax has expired, and section 505(b)(1)(A) requires the clerk to maintain a list of federal, state, and local taxing authorities addresses for service of requests under section 505. Both provisions evidence Congressional intent that section 505 applies to state and local property taxes. Therefore, the court denies the county’s motion to dismiss for lack of jurisdiction. *WPG Northtown Venture, LLC v. Cnty. of Anoka (In re Wash. Prime Grp., Inc.)*, 642 B.R. 771 (Bankr. S.D. Tex. 2022).

15. CHAPTER 15—CROSS-BORDER INSOLVENCIES

- 15.1.a **Corporate governance and fraud remediation proceeding that does not address creditors’ claims is not a foreign proceeding.** The Cayman company entered into questionable transactions, which some of the shareholders challenged. Upon their petition, the Cayman High Court appointed provisional joint liquidators to take steps to protect and preserve and prevent dissipation of the company’s assets and to commence any winding up proceedings or insolvency process in Cayman or elsewhere. The liquidators had not commenced winding up proceedings or insolvency process in Cayman. The company’s creditors had not received formal notice of the proceeding, and the proceeding had not involved any attempt to identify or classify creditors or determine how and whether to satisfy their claims. The liquidators sought recognition of the proceeding under chapter 15 as a foreign main proceeding. A bankruptcy court may grant

recognition to a “foreign proceeding,” which is defined in section 101(23) of the Code as a collective judicial or administrative proceeding in a foreign country under a law relating to insolvency of adjustment of debt for the purpose of reorganization or liquidation. Although the definition is to be broadly construed, it is not limitless. The proceeding must involve the treatment of and potential benefit to creditors as a whole. Here, the proceeding involved primarily a corporate governance and fraud remediation effort, not one to reorganize or liquidate the company or deal with its creditors. Therefore, it does not meet the definition of “foreign proceeding,” and the chapter 15 petition must be denied. *In re Global Cord Blood Corp.*, ___ B.R. ___, 2022 Bankr. LEXIS 3426 (Bankr. S.D.N.Y. Dec. 5, 2022).

- 15.1.b **Bankruptcy court issues anti-suit injunction against the trustee pursuing Singapore avoiding power actions in a cross-border case in Singapore.** A U.S. debtor and its Singapore affiliate filed bankruptcy cases in the U.S. The U.S. trustee obtained recognition in Singapore of the U.S. proceedings as foreign main proceedings. The trustee brought U.S. preference and fraudulent transfer actions against several defendants. The U.S. bankruptcy court granted motions to dismiss on the ground that the avoiding powers did not apply extraterritorially. The trustee filed an amended complaint without the preference claims. The court granted motions to dismiss those claims as well. The trustee appealed. While the appeal was pending, the trustee brought actions in the Singapore court under Singapore avoiding power law to avoid and recover the same transfers from the same defendants involved in the U.S. action. The defendants brought an action in the U.S. bankruptcy court for an anti-suit injunction against the trustee. Although the Singapore recognition action permitted the trustee to bring those actions in the Singapore court, it did not require him to do so. The Code does not expressly grant the trustee rights to bring foreign avoiding power actions, but here, the trustee’s powers as a foreign representative in Singapore on behalf of the U.S. estates made the Singapore avoiding power actions property of the U.S. estates. U.S. law, not an order of a Singapore court, determines whether the U.S. court has jurisdiction to hear an action, even an action under Singapore law. Because those claims are related to the bankruptcy cases in the U.S., the court had jurisdiction to hear them. The court may issue an anti-suit injunction if the parties and the issues are the same in both jurisdictions, at least one *Unterweser* factor applies, and the injunction’s effect on international comity is tolerable. The parties here are the same. Whether the issues are the same may be analyzed under principles of res judicata, as a court may issue an anti-suit injunction if res judicata would bar a later foreign action. Res judicata applies when the parties are identical, the first action involved the same cause of action as the second, and the first action was resolved by a final judgment. Although the second action here is based on Singapore law, rather than U.S. law, the underlying facts, transactions, and transfers are all the same. Therefore, res judicata applies. The *Unterweser* factors are whether the foreign action would frustrate the local forum’s policy, would be vexatious, or oppressive, or prejudice other equitable considerations. Here, the Singapore action would frustrate the bankruptcy court’s judgment in the first action, would be vexatious or oppressive because it is a second action for the same claims against the same parties, and would prejudice equitable considerations, because the trustee’s choice of forum in Singapore strongly suggests forum shopping. Finally, because there are no government litigants, issues of foreign relations, or concerns involving international law, any effect on comity of an anti-suit injunction would be tolerable. Therefore, the court grants the injunction. *King v. Exp. Dev. Can. (In re Zetta Jet USA, Inc.)*, 644 B.R. 12 (Bankr. C.D. Cal. 2022).