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Bad Faith Is Not a Bar to Chapter 15 Recognition of Foreign Proceeding, Says Southern District of New York Bankruptcy Court[1]

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Synopsis

In *Culligan Ltd.*,[2] the U.S. Bankruptcy Court for the Southern District of New York (the 'Bankruptcy Court') held that bad faith is not a bar to recognition of a foreign proceeding under chapter 15 of the U.S. Bankruptcy Code (the 'Bankruptcy Code')[3] where the debtor filed chapter 15 solely as a litigation tactic to stay pending litigation in New York state court. In reaching its decision, the Bankruptcy Court explained that, unlike in chapter 11 cases, there is no good faith filing requirement under chapter 15 of the Bankruptcy Code. Rather, recognition of a foreign proceeding under chapter 15 is subject to the requirements set forth in section 1517(a) of the Bankruptcy Code as limited by the public policy exception contained in section 1506 of the Bankruptcy Code. The public policy exception is narrow and is to be invoked only in extraordinary circumstances. The chapter 15 filing by the debtor in the *Culligan* case, though a litigation tactic, was not such an extraordinary circumstance, according to the Bankruptcy Court. Accordingly, as all the requirements for recognition of the foreign proceeding had been met, the Bankruptcy Court granted recognition of the proceeding.

I. Background

A. Requirements for recognition of foreign proceeding under chapter 15

The United Nations Commission on International Trade promulgated the Model Law on Cross-Border Insolvency (the 'Model Law') in 1997. The Model Law consists of procedural rules for enacting countries to follow in cross-border insolvency cases.[4] The United States incorporated the Model Law into federal statute via chapter 15 of the Bankruptcy Code in 2005. Among other things, chapter 15 is designed to streamline the process of recognition of a foreign insolvency or restructuring proceeding in the United States.

To that end, section 1517(a) of chapter 15 of the Bankruptcy Code provides that a bankruptcy court shall enter an order recognising a foreign proceeding if certain requirements are met. Specifically, section 1517(a) of the Bankruptcy Code provides that, subject to section 1506 of the Bankruptcy Code (discussed below), after notice and a hearing, an order recognising 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.[5]

Inherent in section 1517(a) and (b) are the requirements that 'the foreign proceeding and the foreign representative must meet the definitional requirements set out in sections 101(23) and 101(24) [of the Bankruptcy Code].'[6] Section 101(23) defines a foreign proceeding as '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,

Notes

1 The views expressed herein are solely those of Maja Zerjal Fink and Ginger Clements and not necessarily the views of Arnold & Porter Kaye Scholer LLP or any of its attorneys.
2 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926 (Bankr. S.D.N.Y. July 2, 2021).
3 11 U.S.C. §§ 101, et al.
4 U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, at 19, 25, U.N. Sales No. E.14.V.2 (2014).
5 § 1517(a).
6 *See In re U.S. Steel Canada Inc.*, 571 B.R. 600, 608 (Bankr. S.D.N.Y. 2017) (internal quotations omitted).

for the purpose of reorganization or liquidation.'[7] A foreign main proceeding is 'a foreign proceeding pending in the country where the debtor has the center of its main interests,'[8] and a foreign nonmain proceeding is 'a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment.'[9] Section 101(24) defines a foreign representative as 'a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.'[10]

Section 1515 of the Bankruptcy Code and rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the 'Bankruptcy Rules') identify the documents that a debtor must file in support of a chapter 15 petition.[11] Under section 1515 of the Bankruptcy Code, a foreign representative may apply for recognition of a foreign proceeding by filing a petition, and such petition must be accompanied by –

(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.[12]

Section 1515 also provides that '[a] petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.'[13] Bankruptcy Rule 1007(a)(4) requires that '[i]n addition to the documents required under §1515 of the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under §1519 of the Code.'[14]

The Second Circuit Court of Appeals has held that a chapter 15 debtor must also meet the requirements section 109(a) of the Bankruptcy Code,[15] which provides that 'only a person that resides or has a domicile, a place of business, or property in the United States …' may be a debtor under the Bankruptcy Code.[16] However, '[u]ndrawn attorney retainers satisfy the 'property in the United States' eligibility requirement of section 109(a) of the Bankruptcy Code.'[17]

Thus, in order to qualify for relief under chapter 15, a debtor must meet '(a) the general eligibility requirements under section 109(a) of the Bankruptcy Code, and (b) the more specific eligibility requirements under section 1517(a) of the Bankruptcy Code; and the chapter 15 petition for recognition must meet the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).'[18]

B. Public policy exception of section 1506 of the Bankruptcy Code

Even if a debtor meets all the requirements for relief under chapter 15, section 1506 of the Bankruptcy Code subjects a debtor's right to recognition to a narrow public policy exception. Section 1506 provides '[n]othing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.'[19] 'Unless barred by the public policy exception, courts will grant recognition

Notes

7 § 101(23).
8 11 U.S.C. § 1502(4).
9 § 1502(5). Establishment means 'any place of operations where the debtor carries out a nontransitory economic activity.' § 1502(2).
10 § 101(24).
11 *See* § 1515; Fed. R. Bankr. P. 1007(a)(4).
12 § 1515(a)–(b).
13 11 U.S.C. § 1515(c).
14 Fed. R. Bankr. P. 1007(a)(4).
15 *See In re Barnet*, 737 F.3d 238, 241 (2d Cir. 2013).
16 § 109(a).
17 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *9 (Bankr. S.D.N.Y. July 2, 2021) (citing *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 373–374 (Bankr. S.D.N.Y. 2014) (finding that the foreign debtor 'ha[d] property in the United States in the form of an undrawn retainer in the possession of the Foreign Representatives' counsel.'); *In re U.S. Steel Canada Inc.*, 571 B.R. 600, 610 (Bankr. S.D.N.Y. 2017) (foreign debtor had property in the United States including 'an undrawn $100,000 retainer paid to its U.S. counsel and held in a JP Morgan Chase Bank account located in New York, NY.').
18 *Culligan*, 2021 WL 2787926, at *7.
19 11 U.S.C. § 1516.

to foreign proceedings that meet the requirements of section 1517(a) of the Bankruptcy Code.'[20]

II. Case background

Culligan Ltd. (the 'Debtor'), incorporated in Bermuda as an exempted company under the Bermuda Companies Act, was a holding company for direct and indirect subsidiaries in the business of distribution of water purification and filtration units through franchise dealers in the United States.[21] In 2006 and 2007, the Debtor's business underwent a restructuring in which it returned $200 million of capital to its investor and recapitalised by borrowing more than $850 million, using $400 million to refinance existing debt and $375 million to pay a dividend to shareholders.[22] In 2012, the Debtor underwent another restructuring in which all of its equity in one of its subsidiaries was transferred into a new company ('Newco').[23]

In May 2012, a group of minority shareholders of the Debtor (the 'New York Plaintiffs'), consisting of 71 of the Debtor's 262 water dealers holding approximately 3.8 percent of the Debtor's shares, commenced a derivative action against, among others, the Debtor's directors and controlling shareholders in state court in New York (the 'New York Action').[24] The Debtor is the nominal defendant in the action.[25] The New York Plaintiffs assert that the consolidated Culligan entities, including the Debtor, had insufficient capital at the time when they paid the $200 million return of capital to their investor and the $375 million dividend in 2006 and 2007, and thus violated New York law.[26] The defendants filed motions to dismiss the New York Action, arguing that Bermuda law, not New York law, governed the transactions at issue.[27] In March 2013, the New York court granted the motions to dismiss.[28]

In April 2013, the Debtor entered into a members' voluntary liquidation under applicable Bermuda law.[29] Two foreign representatives (the 'Foreign Representatives') were appointed joint liquidators of the Debtor by a resolution of the Debtor's shareholders.[30] The Foreign Representatives requested that the New York Plaintiffs take no further action in the New York Action.[31] The New York Plaintiffs, however, filed an appeal of the dismissal of the New York Action in May 2013, and the dismissal was reversed by the New York appellate court in June 2013 on the grounds that New York law applied to the transactions at issue.[32] The New York court granted the New York Plaintiffs leave to replead, which they did.[33] Between 2014 and 2020, the New York Plaintiffs filed four additional amended complaints in the New York Action.[34]

In June 2017, Newco paid $11.67 million to the Debtor.[35] The Foreign Representatives distributed $11.1 million in funds, including to 56 of the 71 New York Plaintiffs.[36] As of June 2019, the Debtor had approximately $240,000 remaining in payment obligations to multiple shareholders, including to 15 remaining unpaid New York Plaintiffs.[37] The Foreign Representatives determined that the Debtor had become insolvent due to anticipated future fees arising in the New York Action and petitioned the Bermuda court (the 'Bermuda Court') for court supervision of the liquidation in July 2019.[38] In August 2019, the Bermuda Court entered an order converting the Debtor's member voluntary liquidation into a court-supervised liquidation (the 'Bermuda Liquidation') and confirming the Foreign Representatives as joint liquidators of the Debtor.[39]

The defendants filed motions to dismiss the fifth amended complaint, which was filed by the New York Plaintiffs in May 2020.[40] In June 2020, the Foreign Representatives sought an order (the 'Bermuda Action') from the Bermuda Court restraining the New

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20 *Culligan*, 2021 WL 2787926, at *6.
21 *Culligan*, 2021 WL 2787926, at *2.
22 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *3 (Bankr. S.D.N.Y. July 2, 2021).
23 *Id.*, at *3.
24 *Id.*, at *4.
25 *Id.*
26 *Id.*
27 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *4 (Bankr. S.D.N.Y. July 2, 2021).
28 *Id.*
29 *Id.*, at *3.
30 *Id.*
31 *Id.*, at *5.
32 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *5 (Bankr. S.D.N.Y. July 2, 2021).
33 *Id.*
34 *Id.*, at *5–6.
35 *Id.*, at *3.
36 *Id.*
37 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *3 (Bankr. S.D.N.Y. July 2, 2021).
38 *Id.*, at *4.
39 *Id.*
40 Further litigation in the New York Action is currently stayed by operation of the automatic stay in the chapter 15 bankruptcy case. *See id.*, at *6, 19.

York Plaintiffs from 'bringing proceedings against the Debtor, and bringing proceedings in the name of the Debtor, anywhere in the world.'[41] In response, the New York Plaintiffs sought an emergency restraining order from the court in the New York Action.[42]

In the interim, on September 17, 2020, the Foreign Representatives filed a chapter 15 petition after the Bermuda Court issued an order specifically sanctioning the filing of chapter 15 for recognition of the Bermuda Liquidation.[43] Later in September 2020, upon the encouragement of the New York court, the parties in the New York Action reached a stipulation by consent, which the New York court entered, staying the Bermuda Action until further order of the New York court or the Bankruptcy Court.[44] The New York Plaintiffs opposed recognition of the Bermuda Liquidation under chapter 15 because, among other things, they maintained that the Debtor commenced the chapter 15 case in bad faith, with the filing amounting to nothing more than forum shopping for the purpose of enjoining the New York Action.[45]

III. Bankruptcy Court's analysis

In reaching its decision to grant recognition to the Bermuda Liquidation as a foreign main proceeding, the Bankruptcy Court examined whether all the requirements for such recognition had been met. The Bankruptcy Court found that the Debtor met the requirements of section 109(a) of the Bankruptcy Code as it had property in the United States in the form of an undisputed interest in certain funds deposited with its counsel, held in a client trust account in New York, New York, as a retainer for services.[46] The Bankruptcy Court found that the Foreign Representatives were proper foreign representatives as required by section 101(24) of the Bankruptcy Code via section 1517(a)(2) as they were appointed as joint liquidators by the Bermuda Court and were authorised to file the chapter 15 petition by the Bermuda Court. The Bankruptcy Court found that the chapter 15 petition filed by the Foreign Representatives met the documentation requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).

The Bankruptcy Court's assessment of whether the Bermuda Liquidation was a foreign main proceeding or non-main proceeding for purposes of section 1517(a)(1) of the Bankruptcy Code consisted of an in-depth review of the facts and case law related to the Debtor's 'center of main interests' or 'COMI.' The Bankruptcy Court concluded that the relevant date for determining the Debtor's COMI was the date the joint liquidators were initially appointed in April 2013.[47] The Bankruptcy Court found that in 2013 and on the date of the filing for chapter 15 in 2020, the Debtor's COMI was in Bermuda, where it was incorporated and headquartered; most of the Debtor's cash was on deposit in Bermuda; the Debtor's shareholders voted to commence the member voluntary liquidation in Bermuda; and the joint liquidators resided in Bermuda and were overseeing all liquidation activities, which were governed by Bermuda law.[48] The Bankruptcy Court found that the contingent and disputed litigation claims asserted in the New York Action and the New York court's determination that New York law governed the transactions at issue in the New York Action did not undermine the Debtor's COMI in Bermuda.[49] With a finding of Bermuda as the Debtor's COMI, the Bankruptcy Court further found that the Foreign Representatives were entitled to an order recognising the Bermuda Liquidation as a foreign main proceeding under section 1517(a)(1).[50]

Finally, the Bankruptcy Court analysed whether the alleged bad faith prohibited recognition of the Bermuda Liquidation. The New York Plaintiffs argued in their objection to recognition that the Debtor's alleged bad faith filing of the chapter 15 petition justified dismissal of the chapter 15 case, or, at the very least, the preclusion of any stay relief with respect to the New York Action.[51] In support of their position, the New York Plaintiffs relied on a chapter 11 case, *In re C-TC 9th Ave. Partnership,*[52] in which the court dismissed a chapter 11 case in part for cause under section 1112(b) of the Bankruptcy Code because it met certain factors considered indicative of bad faith.[53] The Foreign Representatives maintained that the New York Plaintiffs' dismissal request and request regarding the

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41 *Id.*, at *5.
42 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *5 (Bankr. S.D.N.Y. July 2, 2021).
43 *Id.*, at *6.
44 *Id.*, at *5.
45 *Id.*, at *7.
46 *Id.*, at *9.
47 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *12 (Bankr. S.D.N.Y. July 2, 2021).
48 *Id.*, at *12–13.
49 *Id.*
50 *Id.*, at *13.
51 *Id.*, at *15.
52 113 F.3d 1304, 1309 (2d Cir. 1997).
53 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *15 (Bankr. S.D.N.Y. July 2, 2021); *see also C-TC 9th Ave. P'ship*, 113 F.3d at 1311.

stay were procedurally defective as each requires notice and a hearing.[54] The Foreign Representatives also maintained that chapter 15, unlike chapter 11, has no 'good faith' filing requirement.[55]

The Bankruptcy Court found that in the instant case 'the admitted, and apparently entire, purpose of the present chapter 15 filing is to prevent the New York Plaintiffs from continuing the New York Action … Therefore, it is clear that the filing of this chapter 15 is a litigation strategy.'[56] However, the Bankruptcy Court was not persuaded by the New York Plaintiffs' 'attempt to import caselaw from other chapters of the Bankruptcy Code,' finding it 'not sufficient.'[57] Rather, it concluded, the chapter 15 filing was subject to section 1506, the public policy exception.

The Bankruptcy Court explained that the public policy exception 'is intended to be invoked only under exceptional circumstances concerning matters of fundamental importance for the United States,'[58] and that 'courts have found the exception to be narrow, with deference when a foreign court's proceedings meet fundamental standards of fairness.'[59] Thus, the Bankruptcy Court noted that 'courts have generally found that section 1506 does not prohibit recognition in situations where the debtor has engaged in bad faith.'[60] The Bankruptcy Court clarified that 'the question under section 1506 is not whether the actions of the debtor violate public policy, but rather whether the foreign tribunal's procedures and safeguards do not comport with United States public policy.'[61]

With that question as the guiding principle, the Bankruptcy Court noted the absence of any allegations that the Bermuda Liquidation was itself contrary to public policy of the United States and found that the public policy exception of section 1506 of the Bankruptcy Code was not met by 'a simple finding that the Chapter 15 Petition has been filed as a litigation tactic.'[62] Accordingly, the Bankruptcy Court granted the petition for recognition of the Bermuda Liquidation under chapter 15 as a foreign main proceeding. The Bankruptcy Court stated that the application of the automatic stay is mandatory upon recognition of a foreign main proceeding,[63] and noted that to the extent the 'New York Plaintiffs seek to lift the automatic stay regarding the New York Action, they may file an appropriate motion and the Court will address the matter in due course.'[64]

IV. Conclusion

The Bankruptcy Court's *Culligan* decision underscores distinctions in the policies underlying chapter 11 and chapter 15 of the Bankruptcy Code. In chapter 11, the good faith standard applied to bankruptcy petitions 'furthers the balancing process between the interests of debtors and creditors which characterizes so many provisions of the bankruptcy laws and is necessary to legitimize the delay and costs imposed upon parties to a bankruptcy.'[65] In other words, '[t]he purpose of

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54 *Culligan*, 2021 WL 2787926, at *15, 19.

55 *Id.*, at *15.

56 *Id.*, at *15 (citing *In re C-TC 9th Ave. P'ship*, 113 F.3d at 1309 ('[T]hus, that the primary function of the petition was to serve as a litigation tactic.')).

57 *Id.*, at *16.

58 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *14 (Bankr. S.D.N.Y. July 2, 2021) (citing *In re Millard*, 501 B.R. 644, 651 (Bankr. S.D.N.Y. 2013); *Iida v. Kitahara* (*In re Iida*), 377 B.R. 243, 259 (9th Cir. BAP 2007) ('This public policy exception is narrow and, by virtue of the qualifier 'manifestly,' is limited only to the most fundamental policies of the United States.'); *In re Ephedra Prods. Liability Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006) ('In adopting Chapter 15, Congress instructed the courts that the exception provided therein for refusing to take actions manifestly contrary to the public policy of the United States should be narrowly interpreted, as [t]he word 'manifestly' in international usage restricts the public policy exception to the most fundamental policies of the United States.')).

59 *Culligan*, 2021 WL 2787926, at *14 (internal citation omitted).

60 *Id.*, at *14 (citing *In re Creative Fin. Ltd.*, 543 B.R. 498, 515 (Bankr. S.D.N.Y. 2016) ('But even though … the Court has found bad faith on the part of the Debtors (and though that bad faith must be imputed to the Liquidator, even if he was not trying to assist the individuals who had retained him), and even though anything this Court might do to facilitate the Debtors' conduct could legitimately be said to be contrary to U.S. public policy, the Court does not consider it appropriate to invoke section 1506 …')).

61 *Culligan*, 2021 WL 2787926, at *14 (citing *In re Manley Toys Ltd.*, 580 B.R. 632, 648 (Bankr. D.N.J. 2018); *In re Millard*, 501 B.R. at 654 ('[W]hen 1517(a) says [recognition of a foreign proceeding] is "subject to" one thing – section 1506, which … is the public policy exception – that sends a message to the judiciary that *it is not subject to other things that were not so included.*'); *In re Octaviar Admin. Pty Ltd*, 511 B.R. at 373 (declining to infer a good faith requirement under section 109(a), holding 'the Court must abide by the plain meaning of the words in the statute') (internal citation omitted)).

62 *Culligan*, 2021 WL 2787926, at *16.

63 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *19 (Bankr. S.D.N.Y. July 2, 2021) (citing 11 U.S.C. § 1520(a)(1) ('Upon recognition of a foreign proceeding that is a foreign main proceeding – (1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States')).

64 *Culligan*, 2021 WL 2787926, at *19. In September 2021, the New York Plaintiffs filed a motion to lift the automatic stay in the bankruptcy case. The motion has been fully briefed, and, as of December 2021, a hearing on the motion is currently set for January 2022. *See* Case No. 20-12192 (JLG) [Docket Nos. 65, 69, 75, 77].

65 *In re C-TC 9th Ave. P'ship*, 113 F.3d 1304, 1310 (2d Cir. 1997) (citing *Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (In re Little Creek Dev. Co.)*, 779 F.2d 1068, 1071 (5th Cir. 1986)).

Chapter 11 reorganization is to assist financially distressed business enterprises by providing them with breathing space in which to return to a viable state. [I]f there is not a potentially viable business in place worthy of protection and rehabilitation, the Chapter 11 effort has lost its *raison d'etre* ...'[66] Filing a chapter 11 case solely as a litigation tactic, where there is no business otherwise to be rehabilitated, may result in dismissal for lack of good faith.[67]

However, chapter 15's underlying policy is the furtherance of cooperation among courts in multinational restructurings, including through streamlined procedures for recognition of foreign proceedings in the United States. As the Bankruptcy Court highlighted in *Culligan*, 'when gauging whether to recognize a proceeding, the question under section 1506 is not whether the actions of the debtor violate public policy, but rather whether the foreign tribunal's procedures and safeguards do not comport with United States public policy.'[68] Through this lens, bad faith of a debtor in filing a chapter 15 petition is not itself enough to meet section 1506's requirement where the foreign proceeding for which it is seeking recognition is not otherwise manifestly contrary to United States public policy.[69]

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66 *C-TC 9th Ave. P'ship*, 113 F.3d at 1310 (internal quotation omitted).

67 *See, e.g., id.*, at 1309 (finding bad faith where, among other factors, the 'primary function of the [chapter 11] petition was to serve as a litigation tactic').

68 *In re Culligan Ltd.*, No. 20-12192 (JLG), 2021 WL 2787926, at *14 (Bankr. S.D.N.Y. July 2, 2021).

69 *In re Manley Toys Ltd.*, 580 B.R. 632, 650 (Bankr. D.N.J. 2018) ('Just as foreign courts should recognize the bankruptcy of a bad company based in the United States when all of the elements for recognition have been met, United States courts should recognize foreign proceedings of bad companies when a foreign representative can establish the requirements for recognition.'); *In re Creative Fin. Ltd.*, 543 B.R. 498, 516 (Bankr. S.D.N.Y. 2016) ('It does not seem right to find a violation of U.S. public policy when U.S. debtors sometimes engage in the same or similar bad faith, under U.S. law.').

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