

In re Ho Wan Kwok, Chapter 11 Case No. 22-50073 (JAM)

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1. Recap of Last Status Conference

- The last status conference was held on January 10, 2024. The topics covered included the tolling of the two-year statute of limitations.

2. Two Year Anniversary Milestone

- Having just reached the milestone of the two-year anniversary of the petition date on February 15, 2024, now is an appropriate time to give the Court and parties-in-interest a further update on the progress of the case.

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3. Initial Adversary Proceedings

- Prior to the ten days leading up to and including the February 15, 2024 anniversary date, the Trustee had commenced eleven adversary proceedings seeking to incorporate assets and/or entities of the Debtor into the estate (the “Initial Adversary Proceedings”). These include:

Adversary Proceeding	Assets / Entities at Issue	Adversary Proceeding Status	Appeals	Appeal Status
<i>HK USA v. Kwok et al.</i> (AP No. 22-05003) (“HK USA Adversary Proceeding”)	Lady May / HK USA	Summary judgment rulings issued in favor of Trustee	<i>HK USA v. Despins</i> (23-cv-00458-VAB)	Fully briefed; stay denied; Mandamus petition filed (discussed <i>infra</i> p. 5)
<i>Despins v. Bravo Luck</i> (AP No. 22-05027) [consolidated]	Sherry Netherland Apartment	9019 settlement order giving ownership of apartment to Trustee approved by Court	N/A	N/A
<i>Despins v. Greenwich Land & Ngok</i> (AP No. 23-05005) (“Greenwich Land Adversary Proceeding”)	Greenwich Land LLC	<i>Sub judice</i> ; summary judgment hearing held on January 9, 2024	N/A	N/A
<i>Despins v. Mei Guo</i> (AP No. 23-05008) (Bombardier Aircraft AP)	Bombardier aircraft / certain BVI entities	<i>Sub judice</i> ; summary judgment hearing held on February 5, 2024	N/A	N/A
<i>US Bank v. HK USA et al.</i> (AP No. 23-05012)	Escrowed Funds (interpleader)	Summary judgment ruling issued in favor of Trustee	<i>HK USA v. Despins</i> (23-cv-01207-JAM)	Stayed pending HK USA Adversary Proceeding appeal decision

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3. Initial Adversary Proceedings (continued)

Adversary Proceeding	Assets / Entities at Issue	Adversary Proceeding Status	Appeals	Appeal Status
<i>Despins v. HCHK Technologies et al.</i> (AP No. 23-05013)	HCHK Technologies, Inc. / HCHK Property Management, Inc. / Lexington Property and Staffing, Inc.	Hearing on motion to set aside default held on January 9, 2024; motion is <i>sub judice</i>	<i>Yu v. Despins</i> (23-cv-01067-JCH) (consolidated appeal of denial of motion to intervene and Rule 9019 order)	Proposed intervenors' opening appeal brief due April 26, 2024
			<i>G Club Operations v. Despins</i> (23-cv-01514-KAD) (appeal of order to produce G-Club documents)	G Club Operations' opening appeal brief filed January 31, 2024; Trustee's brief due March 29, 2024; stay denied
<i>Despins v. Taurus Fund et al.</i> (AP No. 23-5017)	Mahwah Mansion / Taurus Fund LLC	Stayed pending conclusion of trial in Debtor's criminal case	N/A	N/A
<i>Despins v. Golden Spring (NY) Limited et al.</i> (AP No. 23-05018)	Golden Spring (NY) Limited	Default judgment entered in favor of Trustee	N/A	N/A
<i>Despins v. Lamp Capital LLC, et al.</i> (AP No. 23-05023)	Lamp Capital LLC ("Lamp") / Hudson Diamond NY LLC ("HDNY") / Leading Shine NY Limited ("LSNY")	Lamp default judgment entered in favor of Trustee; HDNY motion to dismiss fully briefed and scheduled for hearing on March 19, 2024; LSNY hearing on motion to set aside default held on January 23, 2024; <i>sub judice</i>	<i>Lamp Capital v. Despins</i> (24-cv-00217)	Designation of record on appeal due March 19, 2024
<i>Despins v. Ace Decade Limited et al.</i> , (AP No. 23-05028)	Ace Decade Limited	Yvette Wang's motion to dismiss filed February 1, 2024; Trustee's objection filed February 22, 2024; six month stay of UK proceeding likely to be granted.	N/A	N/A
<i>Despins v. Cao</i> (AP No. 24-5001)	Certain motor vehicles	Answer deadline March 8, 2024	N/A	N/A

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4. Other Adversary Proceedings

- Two other adversary proceedings are worth noting in addition to the Initial Adversary Proceedings discussed above.
 - *PAX v. Kwok* (Adv. Proc. No. 22-05032): Adversary proceeding brought by PAX (joined by the Trustee) against the Debtor seeking an injunction against the Debtor in connection with the protest and harassment campaign directed at, among others, PAX, the Trustee and their counsel. On January 13, 2023, the Court issued an order granting in part the preliminary injunction, enjoining the Debtor in connection with the protest and harassment campaign.
 - The Debtor has appealed the Court's preliminary injunction decision in *Kwok v. PAX & Despins* (3:23-cv-102-KAD). The appeal has been fully briefed since November 22, 2023, no oral argument has been scheduled, and we are awaiting the District Court's decision on the appeal.
 - *Genever US v. AIG* (Adv. Proc. No. 23-05007): Adversary proceeding brought by Genever US against AIG for breach of contract in connection with various insurance policies and seeking a declaratory judgment that AIG must provide coverage under the AIG insurance policies. Genever US moved for partial summary judgment in connection with its claim for a judicial declaration that AIG has a duty to pay its losses in relation to the fire at the Sherry Netherland Apartment, which motion has been fully briefed, and a hearing held of January 30, 2024, after which the Court took the matter under advisement. AIG had previously attempted to appeal the Court's July 2023 preliminary injunction order, but leave to appeal was denied.

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5. Pending Main Case Appeals

- In addition to the adversary proceeding appeals discussed above, the following appeals are pending in the District Court related to rulings entered in the Debtor's chapter 11 case.
 - *Kwok v. Despins* (22-cv-1028-KAD and 23-cv-00153-KAD): The Debtor's appeals of, respectively, (a) the section of the Corporate Governance Order requiring that the Debtor deliver the letter attached as Exhibit B thereto to the Debtor's former UK counsel; and (b) the Court's order holding the Debtor in contempt in connection with his failure to comply with the Corporate Governance Order based on the Debtor's failure to surrender Ace Decade Limited to the Trustee and related issues. After the Debtor and the Trustee each filed briefs in the appeals, but before the Debtor filed reply briefs, the District Court issued orders on December 13, 2023 staying the appeals pending the outcome of the UBS litigation in the United Kingdom, with a joint status report due every ninety (90) days. The next report is due March 12, 2024.
 - *Guo et al. v. Despins* (23-cv-00375-AWT): Consolidated appeal by Mei Guo and HK USA of the Court's order holding them in contempt of court for their failure to comply with the Court orders compelling production of documents and the related order awarding fees based on such failure (which order was stayed on an uncontested basis on June 30, 2023 pending the appeal). This appeal has been fully briefed since September 8, 2023, and we are awaiting the District Court's decision on the appeal.

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6. Other Connecticut District Court Matters

- In addition to the matters discussed previously, the following Debtor-related matters have also been commenced in the district court:
 - *Guo v. Manning* (23-cv-795): Petition filed by Mei Guo on June 20, 2023 for a writ of mandamus requiring an order dissolving the prejudgment remedy orders entered against her in the HK USA Adversary Proceeding. District Court denied Mei Guo's request for a status conference on September 18, 2023, noting that the petition would be taken up on the papers and adjudicated in due course.
 - *Greenwich Land & Ngok v. Despins* (23-mc-00062-OAW): Motion for withdrawal of the reference with respect to the Greenwich Land Adversary Proceeding. The motion has been fully briefed since August 11, 2023, no oral argument has been scheduled, and we are awaiting the District Court's decision.
 - *Guo v. Despins* (23-mc-00093-OAW): Motion by Mei Guo for withdrawal of the reference of the Bombardier Adversary Proceeding to the bankruptcy court. The motion has been fully briefed since November 11, 2023, no oral argument has been scheduled, and we are awaiting the District Court's decision.

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7. Recent Adversary Proceedings

- In the ten days leading up to and including the February 15, 2024 anniversary date, the Trustee commenced 278 avoidance action adversary proceedings (the “Recent Avoidance Actions”).
 - These adversary proceedings generally seek to avoid actual fraudulent transfers and/or post-petition transfers. The total amount sought to be avoided from third parties is currently in excess of approximately \$610 million.
 - Given that the Debtor’s position has always been that he has no assets, virtually all of these adversary proceedings are based on transfers by the Debtor’s alter egos.
 - Some of these transfers were made by entities that the Court has already found to be the Debtor’s alter egos, and some were made by entities with respect to which the Trustee has commenced an adversary proceeding but in which no decision has been rendered regarding alter ego status.
 - One of the Recent Avoidance Actions seeks to avoid transfers **among** the Debtor’s alter egos [Adv. Proc. No. 24-05275]. As the complaint makes very clear, the Trustee has no intention of pursuing this adversary proceeding **if** the Trustee prevails on the other alter ego complaints, but the Trustee needed to file it to protect the estate against the scenario (which the Trustee believes is unlikely) that the Trustee is not able to obtain such other alter ego relief or that such relief is overturned on appeal.
- Given that our investigation is ongoing, it is likely that certain of the complaints filed in the Recent Avoidance Actions will be amended to increase the amounts of the avoidable transfers alleged.

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7. Recent Adversary Proceedings (continued)

- In addition to the Recent Avoidance Actions, on February 15, 2024, the Trustee commenced:
 - An omnibus action alleging that thirty-three (33) entities are the Debtor's alter egos [Adv. Proc. No. 24-05249] (the "Omnibus Alter Ego Action") or owned by him. The entities subject to the Omnibus Alter Ego Action include entities that are well-known to the Court, such as Bravo Luck, G Club Operations, Saraca Media Group, Himalaya International Financial Group, and Rule of Law Foundation.
 - A civil RICO complaint [Adv. Proc. No. 24-05273] (the "Civil RICO Action") against 57 defendants and asserting causes of action for substantive RICO violations (against certain defendants) and conspiracy to violate RICO (against all defendants) based on the following predicate acts:
 - Bankruptcy fraud in violation of 18 U.S.C. § 152;
 - Wire fraud in violation of 18 U.S.C. § 1343;
 - Bank fraud in violation of 18 U.S.C. § 1344;
 - Violation of the National Stolen Property Act of 18 U.S.C. §§ 2314, 2315;
 - Money laundering in violation of 18 U.S.C. §§ 1956, 1957; and
 - Obstruction of justice in violation of 18 U.S.C. §§ 1503, 1507 and 1512.

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7. Recent Adversary Proceedings (continued)

- We are actively attempting to serve each of the complaints filed in the Recent Avoidance Actions, and may eventually need the Court's assistance with service issues.
- One notable issue is the overlap between allegations raised in, on the one hand, the Omnibus Alter Ego Action and the Civil RICO Action, and, on the other hand, the criminal indictment against the Debtor, Yvette Wang, and William Je, and with respect to which a criminal trial is scheduled for May of 2024.
 - Given this overlap, we intend to seek a stay, which would commence after the answer deadlines, of the Omnibus Alter Ego Action and the Civil RICO Action pending the completion of the criminal trial.
 - There will be a “safety valve” feature to the stay of the Omnibus Alter Ego Action to protect the estate against the imminent/potential dissipation and/or transfer of assets by defendants.
- The Trustee may need to file new adversary proceedings during the proposed stay period to reach newly identified assets.
- As to the Recent Avoidance Actions, to the extent the Court is supportive of the mediation process described in point 8, below, any eventual stay would be governed by the mediation order. As to the proceedings that are not so stayed through mediation, the Recent Avoidance Actions based on alter ego rulings already issued by the Court would go forward.
- The stay would not apply to matters that the Court currently has under advisement.

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8. Management of Adversary Proceeding Process

- The Trustee is fully aware that the numerous Recent Avoidance Actions raise important case management and judicial and monetary resources issues. The Trustee is focused on not paralyzing these chapter 11 cases with such issues.
 - Our view is that there is a rational way to divide these 278 Recent Avoidance Actions into “buckets” that could be settled pursuant to a mediation program. Precedents for such a mediation program include Enron and Eastman Kodak, as well as municipal cases such as Puerto Rico and Detroit.
- The Court had already appointed Judge Tancredi to be a mediator in this case in 2023, and our view is that, subject to his availability and willingness to participate, he could serve as the lead mediator for this project.
 - We also plan to seek the implementation of mediation procedures that would allow the Trustee to designate defendants who would be subject to mediation (unless a defendant is excused from mediation by the Court upon a motion seeking such relief).
 - In designating defendants subject to mediation, the Trustee would exclude known Kwok affiliates or associates (who are unlikely to settle based on past experience) and prioritize mediation efforts on defendants who, at first blush, may not have any connection with the Debtor’s schemes.
- The Trustee has also entered into twenty-four (24) tolling agreement stipulations with additional third-party potential defendants that have been signed and entered by the Court. The Trustee intends to deal with potential claims against the tolled parties during the tolling period. The commencement of adversary proceedings against such tolled parties would be another exception to the stay discussed herein.

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9. Other Issues

- The issue of **sealing confidential documents** pursuant to the protective order currently in place has become increasingly problematic, burdensome and costly given that we have received many documents in discovery that have simply been marked “confidential” on a wholesale basis for no apparent reason and/or have been marked confidential because the producing party (for example, a bank) is concerned about retaliation from the Debtor and/or his affiliates,
 - Because of this, many of the recent complaints had to be filed in redacted form.
 - We are in the process of filing a motion to unseal the complaints and to remove the confidentiality designations from the underlying documents. We will try to obtain as much consent as possible, but the motion may be contested.
- The Trustee continues to pursue his **Rule 2004 investigation** and anticipates filing further Rule 2004 Motions and taking further discovery under entered Rule 2004 orders during the coming months.
- The Trustee does not believe it is appropriate to establish a **new bar date** at this time as there are too many uncertain factors that might render this exercise wasteful because yet additional bar dates could have to be established.