

Fairfield Sentry Ltd. (In Liquidation) v. Theodoor GGC Amsterdam, Adv. Pro. No. 10-ap-03496-CGM

Plaintiffs' Hand-Up #1 (Chronology Of U.S. And BVI Proceedings As Of 3/17/2021 Conference)

Date	U.S. Event	BVI Event
2008		
December 11, 2008	Bernard L. Madoff arrested in New York	
2009		
February 27, 2009, April 21, 2009, and April 23, 2009		Liquidation proceedings of Fairfield Lambda, Fairfield Sentry, and Fairfield Sigma commenced in Eastern Caribbean Supreme Court, High Court (“ <u>BVI Court</u> ”)
Beginning September 2009		In light of limitations periods, Liquidators file redeemer actions in BVI Court, asserting common law claims based on mistake as to NAV (Net Asset Value) used to calculate redemption payments. No BVI action concerns a redemption payment later targeted in or a subject of a U.S. action
2010		
April 12, 2010		Liquidators granted “sanction” (authority) by BVI Court to commence redeemer actions in United States
Beginning April 2010	Liquidators commence filing redeemer actions in New York State Supreme Court, asserting common law restitutionary claims	
June 14, 2010	Liquidators file petitions for recognition under Chapter 15 of the Bankruptcy Code	

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July 22, 2010	Bankruptcy Court grants Chapter 15 recognition; decision affirmed by District Court on September 16, 2011 and by Second Circuit on April 16, 2013	
Beginning August 2010	All further U.S. redeemer actions filed in Bankruptcy Court for the Southern District of New York, rather than New York state court	
September 2010	Liquidators remove New York state court actions to District Court for the Southern District of New York, which refers actions to Bankruptcy Court	
October 2010	Certain Defendants move to withdraw the reference and for remand of, or abstention as to, the removed actions	
Beginning October 2010	Liquidators enter into extensions of move/answer deadline with defendants; extensions continue into Spring 2011	
November 22, 2010	District Court denies motion to withdraw the reference	
December 9, 2010		BVI Court grants Liquidators sanction to amend U.S. redeemer complaints to add statutory avoidance claims under BVI Insolvency Act of 2003
December 2010 to January 2011	Liquidators amend U.S. complaints to include BVI statutory avoidance claims, where redemptions fall within applicable 2-year BVI lookback (“vulnerability”) period	

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2011		
April 18-20, 2011		BVI Court hears BVI redeemer action defendants' applications for trial of "preliminary issues." Over Liquidators' objection, BVI Court orders trial of preliminary issues, including on (i) whether defendants gave "good consideration" for redemption payments by surrendering their shares; and (ii) whether certain periodic statements of NAV issued by Fund administrator Citco constitute "certificates" that render NAV final and binding (even if incorrect) under Article 11 of the Funds' Articles.
May 23, 2011	Bankruptcy Court denies Defendants' remand/abstention motions	
July 14, 2011	Defendants appeal denial of remand/abstention motions and obtain stay of removed actions	
July 28-29, 2011		BVI Court holds trial on the Preliminary Issues
September 16, 2011		BVI Court issues judgment on Preliminary Issues, finding that (i) Citco's periodic statements of NAV do not constitute "certificates" under Article 11 of the Funds' Articles of Association, but (ii) Defendants gave "good consideration" for their redemption payments
September 19, 2011	Granting Defendants leave to appeal Bankruptcy Court ruling on remand/abstention, District Court proceeds to merits and reverses Bankruptcy Court ruling that removed actions were "core" proceedings for abstention analysis, and, <i>inter alia</i> , directs Bankruptcy Court to determine if removed actions can be timely adjudicated in state court (the " <u>Abstention Decision</u> ")	

Date	U.S. Event	BVI Event
September 27, 2011		BVI Court hears application for summary judgment by certain BVI defendants in light of Preliminary Issues ruling
October 5, 2011	Conference before Bankruptcy Court regarding status of U.S. litigation in light of BVI Court developments	
October 10, 2011		BVI Court grants summary judgment in favor of certain defendants in BVI redeemer actions
October 18, 2011 <i>Note: shading reflects effective pendency of stay of U.S. actions</i>	Bankruptcy Court orders stay of U.S. redeemer actions pending resolution of Liquidators' appeals of (i) adverse BVI Court decisions, and (ii) the District Court's Abstention Decision; stay carves out filing of new actions, service of process, settlements, dismissals; amended stay order entered October 19, 2011	
October 24, 2011	Liquidators seek leave to appeal Abstention Decision to Second Circuit	
December 5, 2011		Eastern Caribbean Court of Appeal (" <u>ECCA</u> ") grants Liquidators (i) permission to appeal BVI Court "good consideration" ruling and summary judgment, and (ii) sanction to proceed with U.S. redeemer actions pending determination of the appeals
December 7, 2011		Certain U.S. redeemer action defendants file in the BVI Court applications under Section 273 of the BVI Insolvency Act, seeking an order of the BVI Court barring the Liquidators from continuing prosecution of U.S. redeemer actions (the " <u>Section 273 Applications</u> ")
December 14, 2011	Liquidators request lift of stay in light of ECCA sanction order	

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2012/2013		
January 10, 2012	Bankruptcy Court orders continuation of stay	
January 17, 2012		Additional U.S. redeemer action defendants file Section 273 Applications in BVI Court
January 17-18, 2012		ECCA hears argument on appeal of Preliminary Issues
February 2012		Section 273 Applications adjourned to a date to be later fixed
March 1, 2012	Second Circuit denies Liquidators' petition to appeal Abstention Decision, without prejudice to renewal after Bankruptcy Court proceedings on mandatory abstention	
May 25, 2012	Liquidators move for limited relief from stay to authorize (i) expedited disclosures concerning beneficial owner information, and (ii) certain amendments to complaints (the " <u>Expedited Disclosure Motion</u> ")	
June 13, 2012		ECCA dismisses Liquidators' appeal on "good consideration" issue and dismisses BVI defendants' appeal on the "certification" issue, with the result that BVI defendants preserved their good consideration defense
June 27, 2012	Bankruptcy Court grants Expedited Disclosure Motion	
July 6, 2012	District Court on appeal reverses on Expedited Disclosure Motion and remands to Bankruptcy Court	
July 19, 2012	Bankruptcy Court on remand denies Expedited Disclosure Motion, except to authorize amendment of complaints	

Date	U.S. Event	BVI Event
July 25, 2012		ECCA grants Liquidators sanction to continue prosecution of U.S. redeemer actions pending appeal to Privy Council on Preliminary Issues
October 2012 through February 2013	183 redeemer complaints amended to add contract-based claims seeking return of overpaid redemption amounts. As to 129 remaining actions, where no as-of-right amendment existed, parties entered stipulations preserving positions during pendency of stay.	
2014		
January 14, 2014	Judge Bernstein becomes presiding judge in U.S. redeemer actions	
April 16, 2014		Privy Council delivers <i>Sentry v. Migani</i> [2014] UKPC 9, resolving appeal from Preliminary Issues, ruling that statements of NAV issued by Citco constitute “certificates” under Article 11, and that a binding certificate renders the NAV final and defeats restitutionary claims. Privy Council does not address whether certificates were “given in good faith” under the language of Article 11, an issue not argued as part of Preliminary Issues.
Summer 2014	Liquidators receive evidence that Citco did not issue its certificates of NAV “in good faith”	
October 8, 2014		Following dispute regarding necessity and form of “declarations” to accompany judgment, Privy Council declines to include declarations, and delivers an order finalizing its April 16, 2014 <i>Migani</i> judgment

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2015		
January 19, 2015		Amended Section 273 Applications filed in BVI Court, seeking order of BVI Court barring Liquidators from continuing with U.S. redeemer actions in light of <i>Migani</i>
March 23-26, 2015		Section 273 Applications tried in BVI Court (Leon, J.)
2016/2017		
March 11, 2016		BVI Court (Leon, J.) dismisses the Section 273 Applications
April 6, 2016		BVI Court (Bannister, J.) declines to grant Liquidators sanction to continue with U.S. redeemer claims
June 30, 2016		Reversing Bannister J., ECCA enters order granting Liquidators sanction to prosecute U.S. redeemer actions to final, non-appealable judgments
July 27, 2016	Bankruptcy Court (Bernstein, J.) at status conference directs Liquidators to file their proposed amended complaints on the dockets in all actions, with briefing to follow	
September 2016	Liquidators file proposed amended complaints on dockets	
October 2016 through June 2017	Pursuant to negotiated briefing schedule entered by Bankruptcy Court, parties brief (i) Liquidators' Motion for Leave to amend complaints, and (ii) Defendants' Motions to Dismiss; during the briefing, most defendants withdraw prior motions for remand/abstention	

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November 20, 2017		In unanimous 52-page decision, ECCA affirms dismissal of Section 273 Applications, rejecting applicants' effort to bar prosecution of U.S redeemer actions
2018		
January 25, 2018	Bankruptcy Court holds argument on certain issues raised in Motion for Leave and Motions to Dismiss	
August 6, 2018	Bankruptcy Court issues <i>Fairfield I</i> , 2018 WL 3756343 (Dkt. 1723), ruling it has subject matter jurisdiction and that the forum selection clause does not apply to the U.S. redeemer claims; court does not resolve remaining personal jurisdiction arguments	
September 20, 2018	Bankruptcy Court enters stipulated order enabling it to reach balance of Motion for Leave and Motions to Dismiss while preserving unresolved personal jurisdiction issues	
December 6, 2018	Bankruptcy Court issues <i>Fairfield II</i> , 596 B.R. 275 (Dkt. 1743), (i) dismissing common law claims except for constructive trust claims against knowledge defendants, and (ii) issuing various interlocutory rulings, including concerning the extraterritorial application of the Section 546(e) securities safe harbor	
2019		
April 2019	Following parties' negotiation, Bankruptcy Court enters individualized settle orders implementing <i>Fairfield II</i> , which orders dismiss certain claims and provide for second-round motion to dismiss briefing as to non-dismissed claims	

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May 2019	Liquidators initiate District Court appeals of (i) dismissals in <i>Fairfield II</i> of common law claims against non-knowledge defendants; (ii) interlocutory ruling in <i>Fairfield II</i> that Section 546(e) safe harbor can have extraterritorial application; and (iii) interlocutory ruling in <i>Fairfield I</i> on forum selection clause; briefing of latter two issues stayed by order entered by District Court on September 11, 2019	
May 20, 2019		On limited appeal concerning authority of U.S. courts to enter relief on BVI statutory avoidance claims, Privy Council issues <i>UBS AG New York v. Fairfield Sentry Ltd</i> [2019] UKPC 20, which affirms dismissal of Section 273 Applications
Beginning June 2019	Liquidators file operative versions of amended complaints as authorized by <i>Fairfield II</i> ; completed January 15, 2020	
July 29, 2019		Privy Council issues decision in <i>Skandinaviska Enskilda Banken AB v. Conway</i> [2019] UKPC 36 (“ <i>Weaving II</i> ”), concerning, <i>inter alia</i> , finality of NAV in the instance of an investment fund’s fraud or dishonesty of its authorized agent
December 10, 2019	Parties commence appellate briefing in the District Court	
2020		
January 15, 2020	Liquidators file further motion for leave to amend complaints to supplement allegations of defendant knowledge in 29 actions (the “ <u>Further Motion for Leave</u> ”)	

Date	U.S. Event	BVI Event
February 25, 2020	Following Defendants' correspondence seeking expedited dismissal of Further Motion for Leave, Bankruptcy Court directs parties to (i) submit schedule for briefing two Motion to Dismiss issues, i.e., whether Section 546(e) precludes any of the Liquidators' claims (the " <u>Safe Harbor Issue</u> ") and service of process on Swiss Defendants; and (ii) submit briefs regarding court's jurisdiction to entertain Further Motion for Leave as to certain actions where constructive trust claims were previously dismissed (the " <u>Constructive Trust Bar Issue</u> ")	
March 20, 2020 and April 14, 2020	Bankruptcy Court enters orders setting Second Motion to Dismiss briefing based upon exemplar complaints, as to (i) the Safe Harbor Issue and (ii) service of process on Swiss Defendants; Defendants' individualized submissions held in abeyance	
March through June 2020	Parties brief Second Motion to Dismiss and Constructive Trust Bar Issue in the Bankruptcy Court	
April 23, 2020	Parties complete appellate briefing in the District Court	
August 10, 2020	Resolving Constructive Trust Bar Issue, Bankruptcy Court denies Motion for Leave as to certain actions where constructive trust claims were previously dismissed	
December 14, 2020	Bankruptcy Court issues <i>Fairfield III</i> , 2020 WL 7345988 (Dkt. 3062), dismissing BVI avoidance claims, but denying the Second Motion to Dismiss as to constructive trust claims asserted against knowledge defendants	

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2021		
February 23, 2021	Bankruptcy Court denies Defendants' motion for reargument of <i>Fairfield III</i>	
February 25-26, 2021	Bankruptcy Court enters settle orders implementing <i>Fairfield III</i> , providing for dismissal of BVI avoidance claims and requiring parties to submit schedule for final round of motion to dismiss and motion for leave briefing	
March 15, 2021	Parties jointly write District Court (i) seeking lift of appellate briefing stay as to forum selection clause and Section 546(e) extraterritoriality issues, and (ii) advising that parties will submit a proposed briefing schedule	