

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
Aleksandr Vitalievich Sabadash,

Case No.: 2:23-bk-15574-NB
Chapter: 15

Debtor.

**MEMORANDUM DECISION REAFFIRMING
RECOGNITION OF FOREIGN
PROCEEDING, BUT ALSO
SUBSTANTIALLY LIMITING FOREIGN
REPRESENTATIVE'S POWERS**

Hearing:
Date: May 14, 2024
Time: 2:00 p.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012
(or via ZoomGov per posted procedures)

Mr. Sabadash has filed briefs (dkt. 73, 86, collectively, the "Reconsideration Motion") and supporting papers (dkt. 74-79, 86-88, 91) seeking reconsideration of this Bankruptcy Court's Memorandum Decision (dkt. 67, the "Recognition MemDispo") granting Mr. Gaava's petition for recognition of the Russian Bankruptcy Proceeding of Mr. Sabadash.¹ Mr. Gaava has filed opposing briefs (dkt. 80) and supporting papers (dkt. 81, 83, 85). For the reasons set forth below this Court reaffirms its recognition of the foreign proceedings but also substantially limits Mr. Gaava's powers.

¹ Capitalized terms are defined in the Recognition MemDispo (unless defined otherwise herein).

1 **(1) STANDARDS FOR RECONSIDERATION**

2 This Bankruptcy Court “may relieve a party ... from a final judgment, order, or
3 proceeding” for various reasons including “mistake ... or excusable neglect” or “newly
4 discovered evidence that, with reasonable diligence, could not have been discovered
5 [within the 14 day period for relief under Rule 59(b), Fed. R. Civ. P., incorporated by
6 Rule 9023, Fed. R. Bankr. P.], or “any other reason that justifies relief.” Rule 60(b)
7 (Fed. R. Civ. P., incorporated by Rule 9024, Fed. R. Bankr. P.) (emphasis added). Mr.
8 Sabadash appears to focus on two things: some factual developments that occurred
9 after the Recognition MemDispo was issued (newly discovered evidence) and matters
10 on which this Bankruptcy Court applied the law to the facts in a manner that he
11 perceives as erroneous.

12 On the one hand, even if a party has not established grounds to excuse it from
13 having raised legal or factual issues before, federal courts have their own flexibility in
14 striving to reach the legally correct ruling on the facts presented. Accordingly this
15 Bankruptcy Court approaches the issues with an open mind. See, e.g., *In re White*
16 *Crane Trading Co., Inc.*, 170 B.R. 694, 700 (Bankr. E.D. Cal. 1994).

17 On the other hand, as Mr. Gaava argues:

18 Reconsideration “is an extraordinary remedy, to be used sparingly in the
19 interests of finality and conservation of judicial resources” (*Carroll v.*
20 *Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)) and “should not be granted,
21 absent highly unusual circumstances, unless the district court is presented
22 with newly discovered evidence, committed clear error, or if there is an
23 intervening change in controlling law.” *Id.* (quoting *Kona Enterprises, Inc.*
24 *v. Estate of Bishop*, 229 F. 3d 877, 890 (9th Cir. 2000)) (also noting that
reconsideration “may not be used to raise arguments or present evidence
for the first time when they could reasonably have been raised earlier in
the litigation.”). [Gaava Brief (dkt. 80) pp. 2:6–13.]

25 **(2) MR. GAAVA STILL HAS STANDING**

26 The parties do not dispute that, as Mr. Sabadash points out (dkt. 86, p. 1:7-9), a
27 Russian appellate court reversed an order that was an alternative basis for this
28 Bankruptcy Court's ruling that Mr. Gaava has standing. See Recognition MemDispo

1 (dkt. 67) p. 5:14-16. To that extent, Mr. Sabadash's Reconsideration Motion will be
2 granted.

3 But Mr. Gaava still has standing. Regardless which party's translation this
4 Bankruptcy Court uses, the Russian appellate court's ruling does not undermine an
5 earlier ruling of the Russian lower court. That earlier ruling, as interpreted by this
6 Bankruptcy Court, authorized Mr. Gaava to file legal actions in courts in the United
7 States of America. *Id.* p. 5:4-14. See also dkt. 81 Ex. 3 (redlined translation of Russian
8 appellate court ruling, showing both parties' versions) and dkt. 85 (explaining why
9 appellate ruling does not undermine earlier lower court ruling).

10 **(3) THE LOCATION OF ASSETS**

11 Mr. Sabadash argues that “there is no basis to conclude that Vyborg's claim is
12 Mr. Sabadash's primary asset.” Dkt. 73, p. 4:7-12. Rather, he asserts, his “primary
13 asset is AFB Trading One, Inc., here in California” (“AFB”). *Id.* He cites authority that a
14 bankruptcy court should not refuse to acknowledge the separateness of asset
15 ownership between a debtor and the debtor's corporations. *Id.*

16 But the Recognition MemDispo (dkt. 67 p. 7:6-8:14) did not refuse to distinguish
17 between direct and indirect ownership. In fact, it referred to the “indirect” asserted
18 ownership of Vyborg and/or “indirect” ownership of claims to recover Vyborg. In other
19 words, this Bankruptcy Court has already considered and rejected the proposition that,
20 for purposes of determining the center of main interest (“COMI”), the only thing that
21 matters is direct ownership and that indirect ownership can be ignored. To the contrary,
22 this Bankruptcy Court's interpretation of the law is that a “center” of “main interest” is a
23 more holistic review, for which indirect ownership is an important consideration.

24 Mr. Sabadash's Reconsideration Motion does not point to any manifest error of
25 law or fact, or any newly discovered evidence, change in the law, or other ground for
26 reconsideration. On this issue the Reconsideration Motion will be denied.

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1 **(4) RECENT DEVELOPMENTS WARRANT SOME GREATER LIMITS ON ANY**
2 **TRANSFERS BY MR. GAAVA**

3 As set forth in the Recognition MemDispo (dkt. 67, p. 3:12-14), if recognition of a
4 foreign proceeding would be “manifestly contrary to the public policy of the United
5 States” (11 U.S.C. § 1506), then this Bankruptcy Court may “refuse” to take any action
6 that would otherwise be authorized by Chapter 15 of the Bankruptcy Code. The
7 Recognition MemDispo recognized some possible concerns, namely that “(1) the major
8 (or only) creditors in [the Russian Bankruptcy Proceeding of Mr. Sabadash] are Russian
9 Banks; (2) recognition might enable those Russian banks to seize assets here in the
10 United States; and (3) a key objective of the foreign policy of the United States has
11 been to cut off funding for Russia's war against Ukraine by isolating the Russian
12 financial system from the rest of the world.” Recognition MemDispo (dkt. 67) pp. 9:25-
13 10:3 (citations omitted, emphasis in original).

14 But the Recognition MemDispo went on conclude that, based on the record
15 presented, “it appears that recognition of the Russian Bankruptcy Proceeding would
16 only allow the adjudication of control of assets already in Russia” which would have “no
17 apparent effect” on funding the war in Ukraine. Recognition MemDispo (dkt. 67) p.
18 10:4-8 (emphasis added). The Recognition MemDispo also stated, “[i]n addition, Mr.
19 Gaava's counsel orally offered to limit any order recognizing the Russian Bankruptcy
20 Proceeding to preclude any transfer of assets from the United States absent further
21 order of this Bankruptcy Court.” *Id.* p. 10:8-11 (emphasis added).

22 Mr. Sabadash argues both (i) that there is new evidence, namely the Biden
23 Administration's addition to its sanctions list of the entity that wholly owns one of the
24 banks at issue (IFC, which owns Tavrishesky Bank) (dkt. 73, pp. 2:5-3:6), and (ii) that
25 Mr. Gaava effectively will be able to transfer assets out of the United States, by
26 exercising control over the California corporation (AFB) that holds the claim to recover
27 Vyborg. *Id.* pp. 4:20-5:23. Mr. Sabadash also cites a letter brief filed by the United
28 States Attorney's Office in an unrelated case (dkt. 91, Ex. B to Ex. 1, at PDF pp. 16-22)

1 arguing that, if an entity is subject to sanctions, then even a tiny or indirect benefit to
2 that entity is material and cannot be evaded by using U.S. assets to pay other debts and
3 non-U.S. assets to pay that entity.

4 Before turning to the merits of Mr. Sabadash's arguments under § 1506, this
5 Court must first determine whether he has standing to raise them. Although neither
6 party has addressed this issue, "[t]his Bankruptcy Court has an independent duty to
7 examine its jurisdiction and authority," *In re AWTR Liquidation Inc.*, 547 B.R. 831, 833
8 (Bankr. C.D. Cal. 2016), and the "question of whether a party has standing is a
9 threshold issue" upon which jurisdiction depends. *Matter of E. Coast Foods, Inc.*, 80
10 F.4th 901, 905 (9th Cir. 2023), *cert. denied sub nom. Clifton Cap. Grp., LLC v. Sharp*,
11 144 S. Ct. 1064 (2024).

12 It could be argued that only the United States has standing to assert that
13 recognition of a particular foreign insolvency proceeding should be denied as
14 "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. Courts
15 applying § 1506 have not taken that approach, however, and instead routinely address
16 public-policy objections to recognition raised by parties other than the United States.
17 *See, e.g., In re Iida*, 377 B.R. 243, 259 (9th Cir. BAP 2007) (addressing § 1506
18 objection raised by two Japanese citizens); *In re Ephedra Prod. Liab. Litig.*, 349 B.R.
19 333, 335-37 (S.D.N.Y. 2006) (addressing § 1506 objection raised by personal injury
20 plaintiffs); *In re Rede Energia S.A.*, 515 B.R. 69, 98 (Bankr. S.D.N.Y. 2014) (addressing
21 § 1506 objection raised by an ad hoc group of unsecured noteholders).

22 Section 1506 does not limit the parties entitled to invoke its provisions, and it is
23 relevant to interpreting Congress' intent that it would be impracticable for the United
24 States to monitor every chapter 15 petition to determine whether § 1506 is implicated.
25 Accordingly, and consistent with the foregoing authorities, this Court determines that
26 parties other than the United States have standing to present arguments under § 1506,
27 and that it is appropriate to address the public policy arguments made by Mr. Sabadash
28 and Mr. Gaava. In response to Mr. Sabadash's contention that recognition would

1 circumvent U.S. sanctions against Tavrishesky Bank and therefore violate § 1506, Mr.
2 Gaava argues that Tavrishesky Bank is not the largest creditor in the Russian
3 Bankruptcy Proceeding (dkt. 80, p. 2:18-23 & n. 2) and that, under the applicable
4 federal sanctions rules and policies, “transactions with non-sanctioned entities are only
5 blocked” if a sanctioned entity “has a 50% or greater interest in that non-sanctioned
6 entity.” Gaava Brief (dkt. 80) pp. 2:24-3:4. He appears to reason by analogy that the
7 public policy exception of 11 U.S.C. § 1506 should not apply because the Russian
8 Bankruptcy Proceeding is less than 50% for the benefit of Tavrishesky Bank, and
9 because Mr. Gaava and the bankruptcy estate he is administering are not themselves
10 subject to sanctions.² *Id.* p. 3:5-8.

11 This Bankruptcy Court is not persuaded that the public policy exception should
12 only apply if Tavrishesky Bank were more than 50% of the creditor pool in the Russian
13 Bankruptcy Proceeding or that public policy should be an all-or-nothing tool. Rather,
14 this Bankruptcy Court interprets 11 U.S.C. § 1506 as providing more flexibility.

15 On the one hand, the Russian Bankruptcy Proceeding should be recognized as a
16 foreign main proceeding notwithstanding that one of its creditors, holding a minority
17 claim, is subject to sanctions. Recognition may facilitate the preservation and recovery
18 of assets for the eventual benefit of a large number of creditors in multiple bankruptcy
19 proceedings – not just the Russian Bankruptcy Proceeding, but quite possibly also
20 (i) the insolvency proceedings before the Royal Court of Jersey (United Kingdom) (the
21 “Royal Court”) with respect to Golden Sphinx Limited (Court Ref. 2021/149, Samedi
22 Division), an entity in which Debtor asserts an indirect ownership interest , (ii) other
23 litigation directly or indirectly involving Mr. Sabadash that is pending in the United
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25 ² Mr. Gaava also objects (dkt. 80 p. 3:9-13 & n. 3) to the assertions by Mr. Sabadash that both banks that are
26 creditors in the Russian Bankruptcy Proceeding allegedly are owed by the same person, and that legally they are
27 affiliates (and thus, implicitly, Mr. Sabadash is suggesting that the entire Russian Bankruptcy Proceeding is tainted,
28 not just a minority creditor). Those objections are sustained, but it makes no difference to the outcome of this
Memorandum Decision. See Trubina Decl. (dkt. 76) para. 10 (at p. 3:5-7), Zorkin Decl. (dkt. 78, 79) (authenticating
translations of exhibits to Trubina Decl.), and Gaava Evid. Obj. (dkt. 83) (objecting to statements that “Mikhail
Prokhorov owns both Onexim Group and IFC. Thus, both Tavrishesky Bank and IFC Capital are considered ‘affiliated
entities’ because they fall under the umbrella of a group of companies owned by the same individual.”).

1 Kingdom, and (iii) perhaps the bankruptcy case of *In re Golden Sphinx Limited* (Bankr.
2 C.D. Cal., Case no. 2:22-bk-14320-NB). For example, the former wife of Mr. Sabadash
3 might benefit from recognition of Mr. Sabadash's Russian Bankruptcy Proceeding
4 because she will now have a forum in which to be heard regarding any enforcement by
5 Mr. Gaava of rulings in that Russian proceeding.

6 On the other hand, it is appropriate to limit not only the transfer of tangible assets
7 but also any transfer of control over the Vyborg litigation in any way that would benefit
8 Tavrishesky Bank. That means prohibiting any transfer of control of AFB that would
9 benefit the Russian Bankruptcy Proceeding, because any benefit accruing to that
10 Russian bankruptcy estate presumably will benefit Tavrishesky Bank – *i.e.*, money is
11 fungible, so if control of AFB would generate more assets to pay other creditors in the
12 Russian Bankruptcy Proceeding then that will also increase the dividend to Tavrishesky
13 Bank, which is manifestly against the public policy of the United States. See dkt. 91,
14 Ex. B to Ex. 1, at PDF pp. 16-22. This Court assumes without deciding that, at least
15 theoretically, it might be possible to structure any transfer of control of AFB in a way that
16 would not run afoul of this public policy, but the burden is on Mr. Gaava to establish that
17 any such alternative is viable.

18 In addition, more than just AFB is at stake. It might be necessary for this
19 Bankruptcy Court to limit Mr. Gaava's ability under 11 U.S.C. § 1520(a)(3) to "exercise
20 the rights and powers of a trustee under and to the extent provided by sections 363 and
21 552," or for this Court to impose other appropriate limits upon the relief granted to Mr.
22 Gaava in his capacity as the foreign representative of Debtor's Russian Bankruptcy
23 Proceeding. To provide an opportunity for any parties in interest to argue for such
24 limits, and thereby safeguard the integrity of U.S. sanctions, this Court will prohibit Mr.
25 Gaava from taking any action within the United States to enforce judgments entered
26 against Debtor by the Russian Courts, absent further order of this Court.

27 This approach is consistent with the approach taken in *In re Markus*, No. 19-
28 10096 (MG), 2022 WL 16556623 (Bankr. S.D.N.Y. Oct. 31, 2022) (unpublished

1 disposition). In *Markus*, a recognition order was entered on April 1, 2019, before the
2 onset of the war in Ukraine and the imposition of much more stringent sanctions against
3 Russia. *Id.* at *1–3. On March 15, 2022, the *Markus* court “suspended the Markus
4 [Foreign Representative’s] ability to make any transfers outside the United States in
5 light of newly imposed sanctions against Russia.” *Id.* at *3.

6 **(5) CONCLUSION**

7 Recently expanded sanctions by the Biden Administration have changed the
8 landscape. Although it is still appropriate to recognize the Russian Bankruptcy
9 Proceeding as the COMI, that recognition must be limited so as not to be “manifestly
10 contrary to the public policy of the United States” of sanctioning Tavrishesky Bank. 11
11 U.S.C. § 1506.

12 This Bankruptcy Court will not attempt to predict precisely what Mr. Gaava will or
13 will not be able to do within the bounds of the foregoing limitation. That will depend on
14 the precise circumstances presented, and it might be necessary or appropriate for him
15 to apply to an authority that administers the sanctions. See p. 3 of U.S. Atty letter (Ex.
16 B to Ex. 1 to dkt. 91, at PDF p. 19) (referring to a process for review, licensing, and
17 authorization by the U.S. Department of the Treasury’s Office of Foreign Assets Control
18 (“OFAC”)). These are issues for another day.


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1 Mr. Sabadash is directed, within seven days of the date of entry of this
2 Memorandum Decision on the docket, to draft a proposed order implementing this
3 Memorandum Decision and provide a copy to Mr. Gaava. The parties are then directed
4 to meet and confer regarding any disagreements as to the wording of the proposed
5 order. Not later than 21 days after entry of this Memorandum Decision Mr. Sabadash is
6 directed to lodge his form of proposed order, and if Mr. Gaava disagrees with that form
7 he is directed to lodge his own form within two court days thereafter.

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24 Date: May 14, 2024



Neil W. Bason
United States Bankruptcy Judge