FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SAN FERNANDO VALLEY DIVISION

In re: Victory Entertainment Inc., Debtor. Howard M. Ehrenberg, Plaintiff, v. Agassi Halajyan and HALA Enterprises, LLC, Defendants.	CHAPTER 7 Case No.: 1:18-bk-11342-VK Adv. No.: 1:20-ap-01056-VK **MEMORANDUM OF DECISION** **Hearing:** Date: April 7, 2021 Time: 2:30 p.m. Place: Courtroom 301 21041 Burbank Blvd. Woodland Hills, CA 91367

I. BACKGROUND

On May 25, 2018, Victory Entertainment, Inc. ("Debtor") filed a voluntary chapter 11 petition. On September 27, 2018, the Court entered an order converting Debtor's case to a chapter 7 case [Bankruptcy Docket, doc. 108]. Howard M. Ehrenberg was appointed the chapter 7 trustee (the "Trustee").

On May 24, 2020, the Trustee filed a complaint against Hala Enterprises, LLC ("Hala") and Agassi Halajyan (together, "Defendants"). On January 22, 2021, the Trustee filed a second amended complaint (the "SAC") [doc. 36]. On February 5, 2021, Defendants filed a motion to dismiss the SAC (the "Motion") [doc. 37]. Plaintiff opposed the Motion [doc. 44].

On April 7, 2021, the Court held a hearing on the Motion. At that time, the Court issued a ruling on the Motion [doc. 47]. However, the Court took under advisement the issue of whether Mr. Halajyan and Debtor's principal, who are alleged to be first cousins, qualify as "relatives" under 11 U.S.C. § 101(45). Through this decision, the Court holds that first cousins qualify as "relatives" that are related within the second degree of consanguinity under the common law.

II. ANALYSIS

A. The Relevant Statutes and Current Case Law

Pursuant to 11 U.S.C. § 547(b)—

> [T]he trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—
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> …
>
> (4) made—
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> (A) on or within 90 days before the date of the filing of the petition; or
>
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an *insider*….

(Emphasis added). Under 11 U.S.C. § 101(31)(B)(vi), the term "insider" includes, if the debtor is a corporation, a "relative of a general partner, director, officer, or person in control of the debtor." Finally, pursuant to 11 U.S.C. § 101(45), "[t]he term 'relative' means individual related by affinity or consanguinity within the third degree as determined by the common law…."

Whether a first cousin qualifies as a relative "within the third degree as determined by the common law" appears to be a matter of first impression in the Ninth Circuit. The Bankruptcy Code does not clarify *which* common law applies to the determination. In fact, currently, only

the Advisory Committee Notes to Federal Rule of Bankruptcy Procedure ("FRBP") 5002 provide any clarity to interpreting this statute. Those notes provide—

> A relative is defined in § 101(34)[1] of the Code to be an "individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree." Persons within the third degree under the common law system are as follows: first degree--parents, brothers and sisters, and children; second degree--grandparents, uncles and aunts, first cousins, nephews and nieces, and grandchildren; third degree--great grandparents, great uncles and aunts, first cousins once removed, second cousins, grand nephews and nieces, great grandchildren. Rule 9001 incorporates the definitions of § 101 of the Code.

FRBP 5002 Advisory Committee Notes; *see also In re Christensen*, 2014 WL 1873401, at *8 (Bankr. D. Utah May 8, 2014) ("[T]he advisory committee note lays out which persons are related by the first, second, and third degree under the common law system.").

Courts that have addressed this issue appear to agree that "common law," for purposes of 11 U.S.C. § 101(45), refers to *state* law instead of federal law. *See In re Olympia Office LLC*, 562 B.R. 8 (Bankr. E.D.N.Y. 2017); *In re Harvey Goldman & Co.*, 2011 WL 3734912 (Bankr. E.D. Mich. Aug. 24, 2011); *In re Gray*, 355 B.R. 777 (Bankr. W.D. Mo. 2006); *In re Herbison*, 1998 WL 35324197 (Bankr. W.D. Tenn. March 24, 1998); *and In re Hydraulic Indus. Prods. Co.*, 101 B.R. 107 (Bankr. E.D. Mo. 1989). However, the courts disagree regarding whether state civil law or state common law applies. *Id*. In *Olympia Office*, for instance, the court believed application of state civil law was appropriate, which provided that first cousins were related in the fourth degree of consanguinity; as a result, the cousins were not considered statutory insiders. *Olympia Office*, 562 B.R. at 14. On the other hand, in *Gray*, the court applied Missouri common law, pursuant to which law first cousins would be related in the second degree of consanguinity and deemed statutory insiders. *Gray*, 355 B.R. at 781. As highlighted by these cases, the differences in the common law of each state, as well as the conflicting common and civil law within each state, results in courts assigning varying degrees of kinship to the same relatives.

[1] 11 U.S.C. § 101(34) is now 11 U.S.C. § 101(45).

Despite this lack of uniformity, the courts which have considered this have rejected application of any other common law, such as federal common law or English common law.[2] However, a review of Congressional records, as well as case law published near the time of the original drafting of this language, reveals that, for purposes of the Bankruptcy Code, Congress intended *English* law on consanguinity to apply.

B. Legislative History

When a statute is ambiguous, as it is here, courts may look to legislative history. *In re Del Biaggio*, 834 F.3d 1003, 1010 (9th Cir. 2016). Prior to consulting the relevant Congressional records, the Court must determine the first instance Congress used the term "consanguinity within the third degree as determined by the common law."

The first three iterations of the Bankruptcy Code (the Bankruptcy Act of 1800, the Bankruptcy Act of 1841 and the Bankruptcy Act of 1867) did not use the phrase "consanguinity within the third degree as determined by the common law." Bankr. Act of 1800; Bankr. Act of 1841; Bankr. Act of 1867. In 1898, Congress repealed the Bankruptcy Act of 1867 and passed the Bankruptcy Act of 1898 (the "Act of 1898"). The phrase appears twice in the Act of 1898. Section 35(a), regarding qualifications of referees, provided—

> Individuals shall not be eligible to appointment as referees unless they are respectively…
>
> (3) not related by *consanguinity or affinity, within the third degree as determined by the common law.*

(Emphasis added). In addition, Section 59(e), regarding who may file and dismiss petitions, provided—

> In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him *by consanguinity or affinity within the third degree, as determined by the common law*, and have not joined in the petition, shall not be counted.

[2] In *Harvey Goldman*, the court referenced *Black's Law Dictionary*, which defined "common law" as "all the statutory and case law background of England and the American colonies before the American Revolution." *Harvey Goldman*, at *8. Despite this definition, the court did not assess English law, holding instead that state common law supplies the applicable "common law." *Id*., at *8-9.

(Emphasis added). On June 22, 1938, Congress passed an amendment to the Act of 1898. The amendment added a formal definition for the term "relative."

> (27) 'Relatives' shall mean persons related by affinity or consanguinity within the third degree as determined by the common law and shall include the spouse.

Bankruptcy Act of 1898, amendments., 52 Stat. 840 (June 22, 1938). This definition would be adopted in the next iteration of the bankruptcy code, the Bankruptcy Reform Act of 1978, with a minor adjustment that included individuals in a step or adoptive relationship. Bankr. Reform Act of 1978. The current Bankruptcy Code adopted that definition. 11 U.S.C. § 101(45).

As such, because the Act of 1898 included the first use of the phrase, the Court must consult the relevant Congressional records related to passage of that Act. From July 22, 1890 through July 28, 1898, Congress held hearings related to the Act of 1898.[3] Although these records do not reflect a discussion of which "common law" was applicable to consanguinity, Congress did refer to "the common law" when discussing other parts of the Act of 1898. *See, e.g.* 30 Cong. Rec. (Apr. 20, 1897), p. 765 ("At common law – I speak now of the statute of Elizabeth as if it were part of the common law, because its ancient provisions were brought over here by our ancestors to the states that introduced the common law…."); *and* 25 Cong. Rec. (Oct. 24, 1893), p. 2803 ("I know that the Constitution says 'proceedings under the common law.' The bankruptcy proceeding is a common law proceeding. Bankruptcy was known to the common law. The first English bankruptcy act was in the reign of Henry VIII, and that, under our decisions, is made a part of the common law, and, indeed, British statutes become common law

[3] 21 Cong. Rec. (July 22, 1890); 21 Cong. Rec. (July 23, 1890); 21 Cong. Rec. (July 24, 1890); 25 Cong. Rec. (Oct. 23, 1893); 25 Cong. Rec. (Oct. 24, 1893); 25 Cong. Rec. (Oct. 25, 1893); 25 Cong. Rec. (Oct. 26, 1893); 25 Cong. Rec. (Oct. 30, 1893); 25 Cong. Rec. (Oct. 31, 1893); 25 Cong. Rec. (Nov. 2, 1893); 26 Cong. Rec. (Dec. 5, 1893); 26 Cong. Rec. (Dec. 7 1893); 26 Cong. Rec. (Dec. 8 1893); 26 Cong. Rec. (July 16, 1894); 26 Cong. Rec. (July 17, 1894); 27 Cong. Rec. (Jan. 25, 1895); 27 Cong. Rec. (Jan. 26 1895); 27 Cong. Rec. (Jan 28, 1895); 27 Cong. Rec. (Jan 29, 1895); 27 Cong. Rec. (Feb. 18, 1895); 28 Cong. Rec. (Apr. 16 1896); 28 Cong. Rec. (Apr. 21, 1896); 28 Cong. Rec. (Apr. 29, 1896); 28 Cong. Rec. (Apr. 30, 1896); 28 Cong. Rec. (May 1, 1896); 28 Cong. Rec. (May 2, 1896); 29 Cong. Rec. (Jan. 11, 1897); 29 Cong. Rec. (Feb. 10, 1897); 29 Cong. Rec. (Feb. 15, 1897); 29 Cong. Rec. (Feb. 25, 1897); 30 Cong. Rec. (Mar. 23, 1897); 30 Cong. Rec. (Apr. 5, 1897); 30 Cong. Rec. (Apr. 6, 1897); 30 Cong. Rec. (Apr. 8 1897); 30 Cong. Rec. (Apr. 13, 1897) ; 30 Cong. Rec. (Apr. 14, 1897) ; 30 Cong. Rec. (Apr. 20, 1897) ; 30 Cong. Rec. (Apr. 21, 1897) ; 30 Cong. Rec. (Apr. 22, 1897); 31 Cong. Rec. (Feb. 10, 1898); 31 Cong. Rec. (Feb. 15, 1898); 31 Cong. Rec. (Feb. 16, 1898); 31 Cong. Rec. (Feb. 17, 1898); 31 Cong. Rec. (Feb. 18, 1898); 31 Cong. Rec. (Feb. 19, 1898); 31 Cong. Rec. (Feb. 21, 1898); 31 Cong. Rec. (Feb. 28, 1898); 31 Cong. Rec. (Mar. 1, 1898); 31 Cong. Rec. (Mar. 2, 1898); 31 Cong. Rec. (Mar. 3, 1898); 31 Cong. Rec. (June 15, 1898); 31 Cong. Rec. (June 17, 1898); 31 Cong. Rec. (June 22, 1898); 31 Cong. Rec. (June 24, 1898); 31 Cong. Rec. (June 28, 1898).

in our country evendown to the reign of Queen Elizabeth, subsequent to the reign of King Henry VIII.").

In one particularly illuminating discussion, while debating whether to pass uniform, federal bankruptcy laws, Congressman William A. Stone noted—

> We borrow our common law from England, and underlying our codes of State law the principles of the common law as complied by Sir William Blackstone are found. Naturally we look to England as a guide in the matter of a bankrupt law, and while it is admitted that England has a bankrupt law, yet it is a fact that it has been found almost an impossibility in that country to obtain a law that was satisfactory to the people and that worked good results to debtors and creditors alike.

28 Cong. Rec. (Apr. 29, 1896), p. 4574. Congressman Stone then proceeded to argue that, unlike England, the United States should not adopt a uniform federal bankruptcy law, arguing instead that states should pass their own individual state bankruptcy laws. *Id*., at 4574-77. As a counterargument, Congressman James Austin Connolly argued in favor of establishing uniform laws of bankruptcy, asserting that uniformity would promote equal treatment of creditors across the country instead of providing a windfall to local creditors better able to take immediate action against the debtor. *Id*., at 4383. Congressman Connolly further noted that a national, uniform bankruptcy law made sense in a country where "[c]ommerce has abolished State lines." *Id*., at 4584. As evidenced by the eventual passage of the Act of 1898, Congress opted for uniform, federal bankruptcy laws.

From these records, it is evident that, at the time Congress passed the Act of 1898, Congress understood the "common law" to be the law of England. Moreover, the records indicate that Congress intended to implement a uniform, national system of bankruptcy. That system remains intact today.

C. Relevant Case Law Near the Time of Passage of the Act of 1898

Aside from "common law" generally referring to the law of England, case law from the era of the passage of the Act of 1898 reveals that courts also used the phrases "common law" and "civil law" to refer to methods of computing degrees of kinship. *See, e.g. Tyler Tap R. Co. v. Overton*, 1878 WL 8780, at *1 (Tex. App. 1878); *McDowell v. Addams*, 45 Pa. 430, 432 (1863);

and Kelsey v. Hardy, 20 N.H. 479, 482 (1846). The "common law" method, also referred to as the "canon law," was "adopted into the common law of descents in England." *McDowell*, 45 Pa. 430 at 432. Courts that employed the "common law" or "canon law" method would compute degrees of kinship as follows: "We begin at the common ancestor, and reckon downwards; and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are said to be related." *Id*. On the other hand, the "civil law" method is computed "from the intestate up to the common ancestor of the intestate, and the person whose relationship is sought after, and then down to that person, reckoning a degree for each person, both ascending and descending." *Id*. The "civil law" method originates from Roman law. *Hillhouse v. Chester*, 3 Day 166, 170 (1808).

As such, aside from their ordinary meanings, "common law" and "civil law" also refer to these methods of computation. Either way, whether Congress meant to refer to general common law or the common law method of computing degrees of kinship, the phrase "common law" would refer to *English* law.

D. English Law on Consanguinity

Approximately six years after passage of the Act of 1898, the Supreme Court of the United States reiterated that "[t]he language of the Constitution and of many acts of Congress could not be understood without reference to the common law," referring, in the next sentence, to "*English* common law." *Schick v. United States*, 195 U.S. 65, 69, 24 S.Ct. 826, 827, 49 L.Ed. 99 (1904) (emphasis added). The Supreme Court of the United States noted that "Blackstone's Commentaries are accepted as the most satisfactory exposition of the common law of England." *Id*.; *see also Washington v. Glucksberg*, 521 U.S. 702, 712, 117 S.Ct. 2258, 2263–64, 138 L.Ed.2d 772 (1997) (noting that Blackstone's Commentaries on the Laws of England "provided a definitive summary of the common law" and served as "a primary legal authority for 18th- and 19th-century American lawyers"); *and Benton v. Maryland*, 395 U.S. 784, 795, 89 S.Ct. 2056, 2063, 23 L.Ed.2d 707 (1969) ("As with many other elements of the common law, [double jeopardy] was carried into the jurisprudence of this Country through the medium of Blackstone, who codified the doctrine in his Commentaries.").

In light of the above, the Court must employ English common law to determine the appropriate degrees of consanguinity for purposes of the Bankruptcy Code. As explained by the Supreme Court of the United States, Blackstone's Commentaries on English Law set forth the relevant law. The Commentaries provide that England employed the "common" or "canon" law method of determining consanguinity. Blackstone, W., Commentaries on the Laws of England, Book 2, Chapter 14. To determine degrees of relation under this method, "[w]e begin at the common ancestor, and reckon downwards; and in whatsoever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are related to each other." *Id*. Using this method, which is the same method described in *McDowell* and other American courts that used the "common law" method, first cousins would be within the second degree of consanguinity.

This result not only comports with the applicable common law, based on the Congressional records and case law at the time of the Act of 1898, but harmonizes 11 U.S.C. § 101(45) with FRBP 5002, which explicitly states that first cousins are within the second degree of consanguinity. As envisioned by Congress when they enacted the Act of 1898, this interpretation of the statute also provides a uniform national application. To hold otherwise would lead to inequitable results. For instance, in the context of preferential transfers, application of state law would allow for recovery of certain transfers between cousins in one state, but shield the same transfer between the same relatives in another state. As such, both the legislative history outlined above and the policy of uniformity require application of English common law to the definition of "relative" under 11 U.S.C. § 101(45).

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III. CONCLUSION

Pursuant to the authorities above, the Trustee's allegation that Mr. Halajyan and Debtor's principal are first cousins, if true, would establish a relationship in the second degree of consanguinity. As a result, if Mr. Halajyan and Debtor's principal are first cousins, Mr. Halajyan will be an insider subject to the one-year recovery period set forth in 11 U.S.C. § 547(b)(4)(B).

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Date: September 29, 2021

Victoria S. Kaufman
United States Bankruptcy Judge