



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
January 25, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No. 22-14240-mkn
)	
MIOMNI GAMING LTD,)	Chapter 7
)	
Debtor.)	
<hr/>		
SBC NEVADA, LLC, a Nevada limited liability company,)	Adv. Proc. No. 22-01166-mkn
)	
Plaintiff,)	
vs.)	Date: January 19, 2023
)	Time: 2:30 p.m.
MIOMNI HOLDING CO., a Foreign Holding company, et al.,)	
)	
Defendants.)	

ORDER ON EMERGENCY REQUEST FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND STAY RELIEF¹

On January 19, 2023, the court heard the Emergency Request for Temporary Restraining Order, Preliminary Injunction and Stay Relief (“TRO Motion”) brought in the above-captioned

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the Clerk of Court. All references to “AECF No.” are to the number assigned to the documents filed in the above-captioned adversary proceeding as they appear on the docket maintained by the Clerk of Court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

1 adversary proceeding. The appearances of counsel were noted on the record. After the hearing,
2 the matter was taken under submission.

3 **BACKGROUND²**

4 On November 30, 2022, Miomni Gaming LTD (“Debtor” or “Gaming”) filed a voluntary
5 Chapter 7 “skeleton” petition. (ECF No. 1). Attached to the petition is a “Certificate of
6 Resolutions of MIOMNI GAMING LIMITED (Company No. 7730346)” dated November 30,
7 2022, that is signed by Michael Venner and Andrew Watt as directors. Also attached to the
8 petition is a list stating the names and addresses of certain creditors, including SBC Nevada,
9 LLC (“SBC”). No schedules of assets and liabilities (“Schedules”) or statement of financial
10 affairs (“SOFA”) is attached to the petition. The Chapter 7 case was assigned to Troy S. Fox to
11 serve as the Chapter 7 bankruptcy trustee (“Trustee”). Notice of the Chapter 7 bankruptcy was
12 entered and served, setting a meeting of creditors under Section 341(a) for December 28, 2022
13 (“341 Meeting”).³ (ECF No. 2).

14 On December 14, 2022, Debtor filed a motion to extend to January 4, 2023, the deadline
15 to file its Schedules and SOFA. (ECF No. 11). That motion was noticed to be heard on January
16 18, 2023. (ECF No. 12).

17 On December 23, 2022, SBA commenced the above-captioned adversary proceeding
18 (“SBC Adversary”) against four separate defendants: Miomni Holding Co. (“Holding”), Miomni
19 Sports LTD. (“Sports”), and Miomni LTD. (“Limited”), as well as the Debtor. (ECF No. 16).
20 SBC’s complaint (“Adversary Complaint”) is styled as six separate claims: recovery of
21 intentional fraudulent transfers under Section 548(a)(1)(A),⁴ recovery of constructive fraudulent

22
23 ² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the
24 docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case.
25 See Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R.
711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this case, the
underlying bankruptcy case and public records.”).

26 ³ The 341 Meeting subsequently was continued from December 28, 2022, to January 13,
27 2023, and then to February 8, 2023.

28 ⁴ Outside of bankruptcy, judgment creditors may seek to avoid transfers by a defendant to
third-parties by initiating civil actions to recover fraudulent transfers under Nevada’s version of

1 transfers under Section 548(a)(1)(B), recovery based on successor liability, imposition of
2 injunctive relief, relief from the automatic stay to pursue the SBC Adversary, and a
3 determination of alter ego status between the Debtor, Holding, Sports, and Limited. (AECF No.
4 1).⁵

5 On December 23, 2022, SBC also filed the instant TRO Motion, to which is attached
6 separate documents marked as exhibits 1 through 11.⁶ (AECF No. 3). The supporting
7 Declaration of John A. Fortin, Esq. (“Fortin Declaration”) also was filed. (AECF No. 5).

8 On January 4, 2023, an order was entered granting SBC’s request to shorten time so that
9 the TRO Motion could be heard on January 19, 2023. (AECF No. 13).

10 On January 11, 2023, Debtor filed its Schedules and SOFA. (ECF No. 18).

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16 the Uniform Fraudulent Transfer Act. See Nev.Rev.Stat. 112.210. In such actions, the judgment
17 debtor that transferred assets typically is named as a defendant along with the alleged transferees.
18 It is not clear why the Debtor was named as a defendant in the Adversary Complaint inasmuch as
19 the Debtor initiated the Chapter 7 proceeding.

18

19 ⁵ An initial scheduling conference for the SBC Adversary was set for May 11, 2023.
(AECF No. 10).

20

21 ⁶ SBC’s eleven marked Exhibits consist of (1) a Miomni Partnership Term Sheet with
22 SBC dated 2-6-16, (2) a Miomni Partnership Term Sheet with SBC dated 5-26-16, (3) a
23 complaint filed on March 4, 2019, in the Eighth Judicial District Court for Clark County (“State
24 Court”) by SBC against the Debtor (“SBC State Lawsuit”), (4) findings of fact and conclusions
25 of law entered by the State Court on May 2, 2022 in the SBC State lawsuit, (5) entity information
26 from the Nevada Secretary of State reflecting the formation of Sports on March 15, 2022, (6)
27 judgment interrogatory responses dated September 14, 2022, from Wynn Law Vegas, LLC, (7) a
28 press release on March 8, 2022, by Wynn Las Vegas regarding the Debtor, (8) a draft transcript
of an examination taken of Andrew Watt by SBC on December 20, 2022 under FRBP 2004
 (“2004 Examination”), (9) judgment interrogatory responses dated September 30, 2022, from
 Stations Casinos LLC, (10) judgment interrogatory responses dated August 12, 2022, from
 Gaughan South LLC, and (11) a printout as of December 22, 2022, of the Nevada Gaming
 Control Board’s list of Active Registered Associated Equipment Manufacturers and Distributors.

1 On January 13, 2023, Debtor filed an opposition to the TRO Motion. (AECF No. 17).
2 Attached to that opposition (“Debtor Opposition”) are separate documents marked as exhibits 1
3 through 8.⁷

4 On January 16, 2023, the Trustee filed a response to the TRO Motion (“Trustee
5 Response”). (AECF No. 18).

6 On January 17, 2023, Debtor filed the Declaration of Andrew Watt in opposition to the
7 TRO Motion.⁸ (AECF No. 24).

8 On January 17, 2023, SBC filed an omnibus reply (“SBC Reply”) in support of the TRO
9 Motion.⁹ (AECF No. 25).

10 On January 19, 2023, an order was entered granting the Debtor’s motion to extend time,
11 authorizing the Schedules and Statements to be filed on January 11, 2023. (ECF No. 21).

12 On January 19, 2023, SBC filed the Declaration of Ryan J. Works, Esq. (AECF No. 26)
13 to authenticate the exhibits attached to the TRO Motion, or to obtain judicial notice of certain
14 documents. Additionally, the declaration includes a revised Exhibit 8 consisting of a final

15 ⁷ Debtor’s eight marked Exhibits consist of (1) a docket sheet from a prior proceeding in
16 a Connecticut Chancery Court entitled Delaware North iGaming v. Miomni Gaming LTD, (2) a
17 letter dated May 3, 2022, from counsel for Delaware North iGaming to the Debtor, (3) a
18 judgment entered by the State Court on May 27, 2022 in the SBC Lawsuit in favor of SBC
19 against the Debtor in the total amount of \$6,587,950.05 (“State Judgment”), (4) an order by the
20 Nevada Supreme Court entered December 27, 2022, dismissing without prejudice the appeal of
21 the State Judgment, (5) letters exchanged from September 6, 2022 to November 25, 2022,
22 between the Debtor and the Revenue and Customs Authority of the United Kingdom, (6) a letter
23 dated November 20, 2022, from the Debtor to Lloyds Bank, (7) a license agreement dated
24 November 18, 2014 and effective November 28, 2014, between the Debtor and Holdings
25 (“License Agreement”), and (8) minutes of a meeting held by Holdings on August 31, 2022, for
26 relinquishment of licensing rights. Section 11.1 of the License Agreement specifies that its
27 construction is governed by the laws of England.

24 ⁸ The declarant attests that the materials attached to the Debtor Opposition are copies of
25 the subject documents.

26 ⁹ SBC represented that it intended to supply a copy of a transcript of the continued 341
27 Meeting that took place on January 13, 2023, “demonstrating why Holdings, Sports, and Limited
28 should not be permitted to frolic and detour with no oversight of the corporation based on their
past misconduct.” SBC Reply at 7 n.6. While SBC subsequently filed a final copy of the
December 20, 2022 examination transcript of Andrew Watt, no copy of any 341 meeting
transcripts have been filed.

1 version of the 2004 Examination transcript of Andrew Watt.

2 APPLICABLE LEGAL STANDARDS

3 The legal standard for a temporary restraining order (“TRO”) is substantially identical to
 4 the standard for a preliminary injunction. See Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush &
 5 Co., Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001); Oregon Firearms Federation, Inc. v. Brown,
 6 2022 WL 17454829, at * 6 (D. Ore. Dec. 6, 2022). The standard for preliminary injunctive relief
 7 in this circuit recently was described as follows:

8 A preliminary injunction is ‘an extraordinary and drastic remedy, one that
 9 should not be granted unless the movant, *by a clear showing*, carries the
 10 burden of persuasion.’ ” Fraihat v. U.S. Immigr. and Customs Enf’t, 16 F.4th
 11 613, 635 (9th Cir. 2021) (quoting Lopez v. Brewer, 680 F.3d 1068, 1072 (9th
 12 Cir. 2012) (internal citations omitted)). The Supreme Court has explained that
 13 to obtain an injunction, a plaintiff “must establish that he is likely to succeed
 14 on the merits, that he is likely to suffer irreparable injury in the absence of
 15 preliminary relief, that the balance of equities tips in his favor, and that an
 16 injunction is in the public interest.” Winter v. Nat. Res. Def. Council, Inc.,
 17 555 U.S. 7, 24 (2008). The Ninth Circuit uses a “ ‘sliding scale’ approach to
 18 preliminary injunctions.” All. for the Wild Rockies v. Cottrell, 632 F.3d 1127,
 1131 (9th Cir. 2011). Under that approach, “ ‘serious questions going to the
 merits’ and a balance of hardships that tips sharply towards the plaintiff can
 support issuance of a preliminary injunction, so long as the plaintiff also
 shows that there is a likelihood of irreparable injury and that the injunction is
 in the public interest.” Fraihat, 16 F.4th at 636 (quoting All. for the Wild
 Rockies, 632 F.3d at 1135) (cleaned up).

19 Barren v. Dzurenda, 2023 WL 36180, at *1 (D. Nev. Jan. 3, 2023) (Silva, J.). See also Fallon
 20 Paiute-Shoshone Tribe v. U.S. Department of the Interior, 2022 WL 3031583, at *2 (9th Cir.
 21 Aug. 1, 2022).

22 Where a moving party seeks relief that alters the status quo, a higher burden must be met.
 23 As also was recently described:

24 An even more stringent standard is applied where mandatory, as opposed to
 25 prohibitory preliminary relief is sought. The Ninth Circuit has noted that
 26 although the same general principles inform the court's analysis, “[w]here a
 27 party seeks mandatory preliminary relief that goes well beyond maintaining
 the status quo pendente lite, courts should be extremely cautious about
 issuing a preliminary injunction.” Martin v. International Olympic
 28 Committee, 740 F.2d 670, 675 (9th Cir. 1984); see also Committee of Cent.
American Refugees v. Immigration & Naturalization Service, 795 F.2d 1434,

1 1442 (9th Cir. 1986). Thus, an award of mandatory preliminary relief is not
 2 to be granted unless both the facts and the law clearly favor the moving party
 3 and extreme or serious damage will result. See Garcia v. Google, Inc., 786
 4 F.3d 733, 740 (9th Cir. 2015) (quoting Anderson v. United States, 612 F.2d
 5 1112, 1114 (9th Cir. 1979)).

6 Iden v. Nurse Stark, 2022 WL 18231858, at *3 (D. Nev. Nov. 3, 2022) (Baldwin, MJ).

7 DISCUSSION

8 The State Judgment in favor of SBC represents over two-thirds of the claims appearing in
 9 the Schedules. The same Schedules disclose little in the way of liquid assets available to the
 10 Trustee for the payment of any claims. SBC, however, maintains that property may be recovered
 11 for the benefit of the bankruptcy estate from non-debtor entities, including Holdings, Sports, and
 12 Limited. The Adversary Complaint alleges that those entities are in possession and control of the
 13 Debtor’s assets and will divert those assets to the detriment of the bankruptcy estate. Although a
 14 response to the Adversary Complaint has yet to be filed by any named defendant, SBC seeks
 15 extraordinary relief before the merits of its claims can be adjudicated. The Trustee in the case
 16 has not intervened in the SBC Adversary and has not joined in the instant request.

17 The TRO Motion does not include a prayer or conclusion specifying the equitable relief
 18 requested, but does state:

19 “SBC is only interested in obtaining A narrow asset freeze of all current bank
 20 accounts, all future profits and accounts receivable obtained, and a full and
 21 complete accounting of Debtor, Holdings, Sports, and Limited is proper **to**
 22 **ensure that further Fraudulent Transfers do not occur**. SBC is not asking
 23 for this Court to bar the payment of reasonable employee salaries as well as
 24 the reasonable liabilities of the Mionni Entities must pay to third-parties.”

25 TRO Motion at 18:26 to 19:2 (emphasis added).¹⁰ At the emergency hearing, SBC clarified that
 26 it is not seeking an asset freeze but otherwise seeks to enjoin defendants Holdings, Sports, and

27 ¹⁰ The language in the TRO Motion is parroted by one of SBC’s attorneys: “The nature of
 28 relief SBC seeks, a narrow asset freeze of all current bank accounts, all future profits, and
 29 accounts receivable obtained, and a full and complete accounting of Debtor, Holdings, Sports,
 30 and Limited is proper **to ensure that further Fraudulent Transfers do not occur**. SBC only
 31 asks to be compensated its Judgment – nothing more, nothing less. SBC is not asking this Court
 32 to bar the payment of reasonable employee salaries as well as the reasonable liabilities the
 33 Mionni Entities must pay to third-parties.” Fortin Declaration at ¶13 (emphasis added).

1 Limited from using their current bank accounts until the merits of SBC’s claims can be
2 adjudicated. SBC does not, however, seek to prevent payment of the three defendants’
3 employees, as long as the salaries are reasonable. The purpose of the equitable relief apparently
4 is to ensure only that “further Fraudulent Transfers do not occur.”

5 The court has considered the written and oral arguments and representations of counsel,
6 as well as the uncontested exhibits offered by SBC and the Debtor. The court also has
7 considered the written testimony of declarants Fortin and Watt, as well as the Schedules filed in
8 the Chapter 7 case. Based on the evidence presented,¹¹ the court concludes that SBC has failed
9 to meet its burden for numerous reasons.¹²

10 First, property of the Chapter 7 estate includes avoidance claims, see 11 U.S.C.
11 §541(a)(3), as well as alter ego claims. See Unite Here Health v. Gilbert, 2014 WL 2527121, at
12 *5 & n.59 (D. Nev. June 4, 2014); In re Bellardita, 2008 WL 4296554, at *11 (Bankr. E.D. Cal.
13 Sep. 19, 2008).

14 Second, the Trustee has exclusive authority over property of the Chapter 7 estate,
15 including the pursuit of claims for relief. See generally 6 COLLIER ON BANKRUPTCY, ¶704.03
16 (Richard Levin and Henry J. Sommer, eds, 16th ed. 2022). Absent authorization from the court
17 or consent from the Trustee, SBC lacks standing to pursue the fraudulent transfer and alter ego
18 claims asserted in the Adversary Complaint.

19 Third, SBC affirmatively represents that the injunctive relief it requests is specifically
20 designed to prevent the occurrence of further “Fraudulent Transfers” that are avoidable by the
21 Trustee. In other words, any irreparable injury that SBC seeks to prevent would be the actual
22 and proximate cause attributable to claims it does not have standing to assert.

23 Fourth, the burden of proof has not been met with respect to an asset freeze or any
24 similarly described “narrow” relief. On this record, probable success on the merits of the claims
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26 ¹¹ The court also has considered the final version of the transcript of the 2004
27 Examination taken of Andrew Watt that was filed shortly before the hearing.

28 ¹² This conclusion is reached without prejudice to any similar request for injunctive or
other relief being sought by the Trustee on a separate evidentiary record.

1 asserted in the Adversary Complaint has not been established. The authority to exercise any
2 rights under the 2014 License Agreement has not been challenged under any applicable laws of
3 England, although the timing of that exercise may raise serious questions. But even if serious
4 questions have been raised, SBC has not demonstrated that the balance of hardships tips sharply
5 in its favor, particularly because it fails to establish that it has standing to its primary claims. In
6 other words, even under the sliding scale standard that may exist in this circuit, extraordinary
7 relief is not available to a creditor simply because the creditor wants it more than the party with
8 standing, i.e., the Trustee.¹³

9 Fifth, SBC has not sufficiently demonstrated an immediate need for relief, absent even a
10 response to the Adversary Complaint. The natural enemy of the alleged misconduct is the same
11 party that no doubt has standing to pursue the claims: the Trustee. At the hearing, the Trustee,
12 who also is a bankruptcy attorney, confirmed that there are no readily available funds in the
13 estate, but that he is attempting to locate counsel willing to pursue the subject claims. The
14 Chapter 7 trustee also confirmed that he is considering whether to attempt to employ SBC's
15 current attorneys as special counsel, presumably under Section 327(c).¹⁴ The Trustee
16 acknowledged that a sale of the claims under Section 363(b)(1) might be considered, presumably
17 if warranted by his business judgment and upon noticed hearing. Indeed, the Trustee asserts that
18 he already is exercising his business judgment by considering the possibly injurious effects of the
19 requested TRO on the operations of the target defendants.¹⁵

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22 ¹³ Even pop culture recognizes that a party's mere assertion that it wants property more
23 than another party does not entitle the former party to have the property. *See Guardians of the*
24 *Galaxy* [Film], James Gunn director, Walt Disney Studios Motion Pictures (2014), 1:49:12-21
25 (Rocket: "What if I see something that I wanna take and it belongs to someone else?" Rhomann
26 Dey: "Then you will be arrested." Rocket: "But what if I want it more than the person who has
27 it?" Rhomann Dey: "Still illegal.").

28 ¹⁴ "In a case under chapter 7...of this title, a person is not disqualified for employment
under this section solely because of such person's employment by or representation of a creditor,
unless there is objection by another creditor or the United States trustee, in which case the court
shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(c)
(emphasis added).

1 Sixth, mandatory relief cannot be granted to require the non-debtor defendants to provide
2 a “full and complete accounting.” By its terms, the accounting requested by SBC goes far
3 beyond the alleged Fraudulent Transfers, while also altering rather than simply maintaining the
4 status quo. As previously noted, even the Trustee suggests that harm may occur to the estate
5 from disrupting the operations of the defendants.

6 Finally, relief from stay is unnecessary for any claims by SBC against Holdings, Sports,
7 and Limited that are not claims of the estate. If SBC has independent claims against those non-
8 debtor entities that are not property of the estate, the Debtor’s voluntary Chapter 7 petition did
9 not trigger the automatic stay precluding SBC’s pursuit of independent, non-estate claims against
10 those entities. Accordingly, cause for relief from stay under Section 362(d)(1) has not been
11 established.

12 **IT IS THEREFORE ORDERED** that the Emergency Request for Temporary
13 Restraining Order, Preliminary Injunction and Stay Relief on Order Shortening Time, Adversary
14 Docket No. 3, be, **DENIED**.

15 Copies sent via CM/ECF ELECTRONIC FILING

16
17 Copies sent via BNC to:
18 INCORP SERVICES, INC.
19 c/o MIOMNI LTD.
3773 HOWARD HUGHES PKWY., SUITE 500S
20 LAS VEGAS, NV 89169-6014

21
22 ¹⁵ “Finally, to the extent that SBC is seeking to ‘freeze’ the accounts of Sports, Holding,
23 and Limited, the Trustee does have concerns that such relief may kill the proverbial goose laying
24 the golden egg. As noted, this is prime time for football betting. Further, other sports like
25 Hockey and others are coming to their finals in the near future. Freezing such accounts may
26 limit the ability of these entities from operating and if they are no (sic) operating, they may not
27 be able to generate profit. The Debtor indicated that Sports for example has employees who
28 need to get paid so that they will continued (sic) to provide the services needed for Sports to
comply with its contractual obligations. If Sports is unable to pay its employees, they are likely
to quit and Sports will quickly be out of business. To the extent that Sports is an alter ego of the
Debtor, that would significantly reduce the value of the Alter Ego claim to the estate. Further,
such a freeze could entirely kill any profit that Sports may receive, which could hurt the estate if
it is determined that the estate has an interest in any such profits.” Trustee Response at 5:27 to
6:11.

1 INCORP SERVICES, INC.
2 c/o MIOMNI SPORTS LTD.
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