



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
July 11, 2023

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:	)	Case No. 22-14240-mkn
	)	
MIOMNI GAMING LTD,	)	Chapter 7
	)	
Debtor.	)	
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SBC NEVADA, LLC, as Successor in	)	Adv. Proc. No. 22-01166-mkn
Interest to the Estate Claims of Miomni	)	
Gaming, Limited,	)	
	)	
Plaintiff,	)	Date: March 29, 2023
	)	Time: 9:30 a.m.
vs.	)	
	)	
MIOMNI HOLDING CO., a Foreign	)	
holding company, et al.,	)	
	)	
Defendants.	)	

**ORDER ON DEFENDANT MIOMNI SPORTS LTD. [’S] MOTION TO DISMISS<sup>1</sup>**

On March 29, 2023, the court heard Defendant Miomni Sports Ltd.[’s] Motion to Dismiss (“Sports Dismissal Motion”) brought in the above-captioned adversary proceeding. The

<sup>1</sup> 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 “FRCP” are to the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

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

### 3 **BACKGROUND<sup>2</sup>**

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”). (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, SBC 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), recovery of constructive fraudulent  
22 transfers under Section 548(a)(1)(B), recovery based on successor liability, imposition of  
23 injunctive relief, relief from the automatic stay to pursue the SBC Adversary,<sup>3</sup> and a

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24 <sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
25 docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case  
26 See Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R.  
27 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this case, the  
underlying bankruptcy case and public records.”).

28 <sup>3</sup> It is not quite clear whether the Adversary Complaint seeks relief from stay to  
commence the very same SBC Adversary (in which case filing the complaint without prior relief

1 determination of alter ego status between the Debtor, Holding, Sports, and Limited. (AECF No.  
2 1).

3 On December 23, 2022, SBC filed an Emergency Request for Temporary Restraining  
4 Order, Preliminary Injunction and Stay Relief on Order Shortening Time (“First TRO Motion”)  
5 along with a supporting declaration of John A. Fortin, Esq. (“First Fortin Declaration”). (AECF  
6 Nos. 3 and 5).

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

9 On January 4, 2023, a Certificate of Service was filed by SBC attesting that the  
10 Adversary Complaint and Summons were served by first class mail on January 4, 2023, along  
11 with the First TRO Motion and supporting documents (“January 4 Certificate”). (AECF No. 16).

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

13 On January 13, 2023, Debtor filed an opposition to the First TRO Motion. (AECF No.  
14 17). Attached to that opposition (“First TRO Opposition”) are separate documents marked as  
15 exhibits 1 through 8.

16 On January 16, 2023, the Trustee filed a response to the First TRO Motion. (AECF No.  
17 18).

18 On January 17, 2023, Debtor filed the Declaration of Andrew Watt (“First Watt  
19 Declaration”) in support of its opposition to the First TRO Motion. (AECF No. 24).

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

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

24 On January 19, 2023, SBC filed the Declaration of Ryan J. Works, Esq. (“First Works  
25 Declaration”) (AECF No. 26) to authenticate the exhibits attached to the First TRO Motion, or to  
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27 \_\_\_\_\_  
28 might be void as a violation of the automatic stay) or if SBC might actually seek relief from stay  
to continue prosecution of certain prepetition litigation that was pending in the Eighth Judicial  
District Court, Clark County, Nevada, at the time the Chapter 7 petition was filed.

1 obtain judicial notice of certain documents. Additionally, the declaration includes a revised  
2 Exhibit 8 purportedly consisting of a final version of the 2004 Examination transcript of Andrew  
3 Watt. After the First TRO Motion was heard on January 19, 2023 (“First TRO Hearing”), the  
4 matter was taken under submission.

5 On January 25, 2023, an order was entered denying the First TRO Motion (“TRO  
6 Denial”) primarily because SBC lacked standing to assert causes of action belonging to the  
7 Chapter 7 estate. (AECF No. 27).

8 On January 26, 2023, the Trustee brought a Motion to Sell Causes of Action Free and  
9 Clear of All Claims, Encumbrances, and Interests (“Sale Motion”) to which the Trustee attached  
10 his supporting declaration (“Trustee Sale Declaration”) along with an executed Purchase and  
11 Sale Agreement (“Sale Agreement”).<sup>4</sup> (ECF No. 24). By the motion, the Trustee sought to sell  
12 the Estate Claims<sup>5</sup> to SBC.

13 On January 27, 2023, the court entered an order shortening time (“OST”) so that the Sale  
14 Motion could be heard on February 8, 2023. (ECF No. 27). The OST and the Sale Motion were  
15 served on the initial and additional lists of creditors filed by the Debtors, including the Debtor  
16 and its bankruptcy counsel of record. (ECF No. 29).

17 On February 8, 2023, the court heard the Sale Motion (“Sale Hearing”).

18 On February 8, 2023, SBC filed in the SBC Adversary a Three Day Notice of Intent to  
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20 <sup>4</sup> The Trustee’s declaration attached to the Sale Motion attested, *inter alia*, that “I have  
21 determined that the assets of this estate include certain potential avoidance and recovery claims  
22 including but not limited to preferential transfers, fraudulent transfers, unauthorized post-petition  
23 transfers, and related alter ego claims (the “Estate Claims”).” Trustee Sale Declaration at ¶ 4.  
24 The Sale Motion sought to transfer the bankruptcy estate’s claims to SBC and to divide their  
proceeds, if any, with the Chapter 7 estate pursuant to a specific formula. See Sale Agreement at  
Section 1.03.

25 <sup>5</sup> Any cause of action or other property of the bankruptcy estate that is not administered  
26 by the Trustee likely would be administratively abandoned under Section 554(c) when the  
27 Chapter 7 case is closed. A bankruptcy debtor that does not receive a discharge may be revested  
28 with property of the bankruptcy estate that is abandoned. Under such circumstances, neither the  
automatic stay nor a discharge injunction would prevent a prepetition creditor from pursuing  
alter ego or similar derivative claims.

1 Take Default (“Three Day Notice”) and a Certificate of Service with respect to all of the named  
2 defendants except the Debtor. (AECF Nos. 30 and 31).

3 On February 9, 2023, an order was entered authorizing the Trustee to sell the Estate  
4 Claims to SBC (“Sale Order”). (ECF No. 34).

5 On February 15, 2023, SBC filed and served a Notice of Dismissal of Miomni Gaming  
6 Ltd. Without Prejudice From Adversary Proceeding, dismissing Miomni Gaming Ltd from  
7 SBC’s Verified Complaint filed in the SBC Adversary. (AECF No. 32 and 33). The Notice of  
8 Dismissal did not apply to any of the remaining defendants named in the Adversary Complaint,  
9 i.e., Holdings, Sports, and Limited.

10 On February 16, 2023, Sports filed in the SBC Adversary its Motion to Dismiss (“Sports  
11 Dismissal Motion”) which was noticed to be heard on March 29, 2023. (AECF Nos. 34 and 42).

12 On February 17, 2023, SBC filed another Emergency Request for Temporary Restraining  
13 Order, Preliminary Injunction on Order Shortening Time (“Second TRO Motion”), along with  
14 another supporting declaration of Ryan J. Works, Esq. (“Second Works Declaration”) (AECF  
15 Nos. 35 and 36). A request to have the Second TRO Motion heard on shortened time was filed,  
16 along with the supporting declaration of John A. Fortin (“Second Fortin Declaration”). (AECF  
17 Nos. 37 and 38).

18 On February 17, 2023, Debtor filed opposition to having the Second TRO Motion heard  
19 on shortened time, along with the supporting Declaration of A.J. Kung, Esq. (“First Kung  
20 Declaration”), asserting that there is no basis for an expedited hearing. (AECF No. 40).

21 On February 22, 2023, Sports, as an asserted “party-in-interest,” filed a Motion for  
22 Reconsideration of the Court’s Order Granting Trustee’s Motion to Sell Causes of Action Free  
23 and Clear of All Claims, Encumbrances, and Interests; Alternatively, Motion for Relief from  
24 Order Pursuant to FRCP 60(b) (“Sale Reconsideration Motion”).<sup>6</sup> (ECF No. 42). By that

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25  
26 <sup>6</sup> The court heard the Sale Reconsideration Motion on March 29, 2023. At the hearing,  
27 Sports argued that it is a party-in-interest in this bankruptcy case even though Sports is not a  
28 creditor. While Sports certainly is interested in whatever claims of the bankruptcy estate may  
hold against it and the other Miomni Entities, status as an interested observer does not  
necessarily equate to status as a party-in-interest. If every potential target defendant of a claim  
held by a bankruptcy estate is a party-in-interest, then each such defendant would have standing

1 motion, Sports seeks relief from the Sale Order.<sup>7</sup> Attached to the motion are copies of ten  
2 separate documents marked as Exhibits “A” through “K,” as well as a supporting Declaration of  
3 Michael Venner (“First Venner Declaration”) and a separate Declaration of Andrew Watt  
4 (“Second Watt Declaration”).

5 On February 23, 2023, SBC filed a “Notice of Change of Caption and Notice of  
6 Dismissal of Debtor From Adversary Proceeding.” (AECF No. 44).

7 On February 23, 2023, SBC filed a Request for Entry of Default Against Miomni  
8 Holding Co. and Miomni Ltd. Under Local Bankruptcy Rule 7055 (“SBC Adversary Default  
9 Request”) along with a supporting Affidavit of John A. Fortin, Esq. (“Third Fortin Declaration”)  
10 (AECF Nos. 45 and 46).

11 On February 23, 2023, a document was filed styled as “Miomni Sports, Ltd.’s Response  
12 to Request for Entry of Default Against Miomni Holdings Co. and Miomni Ltd. Under Local  
13 Bankruptcy Rule 7055 (“Sports Default Response”) to which is attached a supporting  
14 Declaration of A.J. Kung, Esq. (“Second Kung Declaration”) (AECF No. 47).

15 On February 24, 2023, the SBC Adversary Default Request was granted by the clerk of  
16 the court pursuant to Local Rule 7055 with respect to defendants Holdings and Limited (“Entry  
17 of Default”). (AECF No. 48).

18 On February 24, 2023, SBC filed in the SBC Adversary a Notice of Entry of Default  
19 (“Default Notice”) along with a Certificate of Service. (AECF Nos. 49 and 50).

20 On February 28, 2023, Sports filed a Motion for Stay of Sale Order [ECF 34] on  
21 Requested Shortened Time (“Sale Stay Motion”). (ECF No. 45).

22 On February 28, 2023, a “Defendants’ Miomni Ltd.’s & Miomni Holdings Limited  
23 (Erroneously Named as ‘Miomni Holding Co.’) Special Appearance for the Limited Purpose of

24 \_\_\_\_\_  
25 to seek dismissal of the bankruptcy case or other relief purely as a litigation strategy. Thus, it is  
26 unclear whether Sports even has standing to seek reconsideration of the Sale Order.

27 <sup>7</sup> Sports alleges that it tendered an offer to the Trustee to purchase the Estate Claims for  
28 the total amount of \$50,000, which was not contingent upon any outcome. The absence of a  
contingency is not surprising given the unlikelihood that Sports would pursue the Estate Claims  
against itself or the other Miomni Entities.

1 Moving to Set Aside Defaults & Motion to Dismiss Adversary Complaint as to Miomni  
2 Holdings Limited” was filed in the SBC Adversary (“Holdings & Limited Dismissal Motion”).  
3 (AECF No. 53). Attached to the motion is a declaration of A.J. Kung, Esq. (“Third Kung  
4 Declaration”), a declaration of Michael Venner (“Second Venner Declaration”), and a  
5 declaration of Andy Watt (“Third Watt Declaration”). (AECF No. 53). The Holdings & Limited  
6 Dismissal Motion was noticed to be heard on April 12, 2023. (AECF No. 54).

7 On March 2, 2023, Holdings and Limited filed in the SBC Adversary an amended motion  
8 for stay of proceedings related to defaults (“Holdings & Limited Default Stay Motion”), to which  
9 is attached another declaration of A.J. Kung, Esq. (“Fourth Kung Declaration”). (AECF No. 62).  
10 An amended request to have the Holdings & Limited Default Stay Motion heard on shortened  
11 time was also filed. (AECF No. 63).

12 On March 2, 2023, orders were entered shortening time so that the Second TRO Motion  
13 filed by SBC and the amended Holdings & Limited Default Stay Motion could be heard on  
14 March 29, 2023. (AECF Nos. 65 and 66).

15 On March 8, 2023, a stipulated order was entered granting a continuance of the reply  
16 deadline for the Sports Dismissal Motion from March 22, 2023, to March 25, 2023. (AECF No.  
17 70).

18 On March 10, 2023, the Trustee filed a timely response in connection with the Sale  
19 Reconsideration Motion (“Trustee Reconsideration Response”). (ECF No. 53).

20 On March 15, 2023, SBC filed its opposition to the Sale Reconsideration Motion (“SBC  
21 Reconsideration Opposition”). (ECF No. 54).

22 On March 15, 2023, Holdings, Sports, and Limited filed opposition to the Second TRO  
23 Motion. (AECF No. 72).

24 On March 15, 2023, SBC filed opposition to the Sports Dismissal Motion (“SBC Sports  
25 Dismissal Opposition”) as well as to the Holdings & Limited Default Stay Motion (“SBC  
26 Holdings & Limited Default Opposition”). (AECF Nos. 73 and 74).

27 On March 22, 2023, SBC filed a reply in support of its Second TRO Motion along with a  
28 supporting declaration of Ryan J. Works, Esq. (“Third Works Declaration”). (AECF Nos. 77

1 and 78).

2 On March 24, 2023, Sports filed a reply to the SBC Sports Dismissal Opposition (“Sports  
3 Dismissal Reply”). (AECF No. 79).

4 On March 24, 2023, Holdings and Limited filed its reply to the SBC Holdings & Limited  
5 Default Opposition. (AECF No. 80).

6 On March 24, 2023, Sports filed an omnibus reply in support of its Sale Reconsideration  
7 Motion (“Sports Reconsideration Reply”). (ECF No. 57).

8 On March 29, 2023, the court held a combined hearing regarding the Sports Dismissal  
9 Motion, as well as the Sale Reconsideration Motion, the Sale Stay Motion, the Holdings &  
10 Limited Default Stay Motion, and the Second TRO Motion. The court took all of the matters  
11 under submission.<sup>8</sup>

## 12 DISCUSSION

13 By its current motion, Sports seeks to dismiss the SBC Adversary on ground that SBC  
14 lacked standing to prosecute the Estate Claims at the time the SBC Adversary was commenced  
15 on December 23, 2022. There is no dispute that the court reached the same conclusion when it  
16 entered the TRO Denial on January 25, 2023, i.e., that SBC lacked standing to pursue those  
17 claims. There is no dispute that the Trustee filed the Sale Motion on January 26, 2023. There is  
18 no dispute that the Sale Motion was heard on February 8, 2023. There is no dispute that SBC  
19 filed its Three Day Notice on February 8, 2023. There is no dispute that the Sale Order  
20 authorizing the Trustee to sell the Estate Claims to SBC was not entered until February 9, 2023.  
21 There is no dispute that the Sports Dismissal Motion was not filed until February 16, 2023.  
22 There is no dispute that the Sale Reconsideration Motion was not filed until February 22, 2023.  
23 There is no dispute that a stay of the Sale Order has not been entered.

24 In response to the current motion, SBC maintains that it already had constitutional  
25 standing to pursue the Estate Claims when it commenced the SBC Adversary and that any  
26 prudential standing deficiency has been cured by its purchase of the Estate Claims from the  
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28 <sup>8</sup> Separate orders with respect to all of the matters are entered contemporaneously  
herewith.



1 Trustee. SBC argues that ratification, joinder or substitution under FRCP 17(a) allows it to  
2 proceed with on the Adversary Complaint as the real party in interest. It maintains that relief  
3 from any standing deficiency under FRCP 17 is appropriate if (1) the requesting party makes a  
4 request within a reasonable time, (2) the requesting party made an understandable mistake rather  
5 than a strategic decision, and (3) the opposing party would not be prejudiced. See SBC Sports  
6 Dismissal Opposition at 9:17 to 14:23, citing Dunmore v. U.S., 358 F.3d 1107, 1112 (9th Cir.  
7 2004) (emphasis added).<sup>9</sup> In this instance, SBC maintains that by acquiring the Estate Claims  
8 from the Trustee, it now has standing to pursue the claims by ratification or substitution under  
9 FRCP 17. Compare Mutuelles Unies v. Kroll & Linstrom, 957 F.2d 707, 713 (9th Cir. 1992)  
10 (“A proper ratification pursuant to Rule 17(a) requires the ratifying party to: 1) authorize  
11 continuation of the action; and 2) agree to be bound by the lawsuit’s results.”)

12 In its reply, Sports argues that a lack of standing at the inception of the proceeding cannot  
13 be rectified by resort to FRCP 17. See Sports Dismissal Reply at 7:7-16, citing United States for

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14  
15 <sup>9</sup> In Dunmore, the Ninth Circuit panel discussed whether an individual who originally  
16 lacked standing to prosecute a claim could become the real party in interest pursuant to FRCP  
17 17. The decision involved an individual Chapter 7 debtor (Dunmore) who commenced an  
18 administrative action to obtain a federal income tax refund. He intentionally did not schedule the  
19 action in his bankruptcy proceeding. After he received his Chapter 7 discharge and after his  
20 administrative claim was denied by the Internal Revenue Service (“IRS”), Dunmore filed a civil  
21 action in a U.S. district court to obtain his income tax refund. The IRS sought dismissal of the  
22 refund action on grounds that the refund claims were undisclosed property of the Chapter 7  
23 estate over which Dunsmore lacked standing. By stipulation, the district court transferred the  
24 civil action to the bankruptcy court which reopened the Chapter 7 case. Thereafter, the Chapter  
25 7 trustee abandoned the tax refund claims to Dunmore and the tax refund action proceeded to  
26 trial in the bankruptcy court. Due to Dunmore’s failure to prosecute the refund claims at trial,  
27 the bankruptcy court dismissed the claims with prejudice. On appeal, the Ninth Circuit  
28 concluded that Dunmore had constitutional standing because his alleged overpayment of taxes  
and denial of a refund constituted an injury in fact caused by the defendant that could be  
addressed by a favorable court decision. 358 F.3d at 1111-12. The circuit panel reversed and  
remanded the case, however, because there were inadequate factual findings on whether  
Dunmore would have prudential standing as a real party in interest under FRCP 17(a) to pursue  
the refund claims in light of the Chapter 7 trustee’s abandonment. Id. at 1112. The circuit  
observed: “We assume without deciding that when the bankruptcy trustee abandoned the refund  
claims...the abandonment could constitute the estate’s ratification of Dunsmore’s lawsuit. This  
ratification would have the same effect as if the estate itself had originally commenced the  
action, so long as Dunmore’s decision to sue in his own name represented an understandable  
mistake and not a strategic decision.” Id. (Emphasis added.)

1 Use & Benefit of Wulff v. CMA, Inc., 890 F.2d 1070, 1074-75 (9th Cir. 1989).<sup>10</sup> Additionally,  
 2 Sports reiterates arguments as to the merits of the Estate Claims that it has raised in connection  
 3 with its Sale Reconsideration Motion. Id. at 11:18 to 13:15.

4 The court has considered the written and oral arguments presented by counsel. For the  
 5 reasons stated below, the court will granted the Sports Dismissal Motion without prejudice to the  
 6 filing and service of an amended Adversary Complaint.

7 First, the court previously concluded that the SBC commenced the SBC Adversary  
 8 without having standing to prosecute the Estate Claims for which injunctive relief was sought.  
 9 See TRO Denial at 7:14-22. Of the six claims for relief framed by the Adversary Complaint,  
 10 five of them concerned claims held by the Chapter 7 estate or arising from the commencement of  
 11 the bankruptcy case. Id. at 2:20 to 3:4. Because the successor liability claim alleged in the  
 12 Adversary Complaint might not be controlled by the Trustee,<sup>11</sup> the court simply denied the TRO  
 13 Motion rather than addressing SBC’s standing to pursue the successor liability claim.<sup>12</sup>

14 Second, before the Sale Order was entered, SBC filed the Three Day Notice when it still  
 15

16 <sup>10</sup> In Wulff, the Ninth Circuit panel addressed whether the assignment of a claim for relief  
 17 under FRCP 17(a) could relate back under FRCP 15(a) to revive a claim that was barred by the  
 18 applicable statute of limitations. 890 F.2d at 1075. After Wulff was decided in 1989, however,  
 19 the Ninth Circuit later clarified that the holding in Wulff did not supersede the relief available  
 20 under FRCP 17(a) that permits a real party in interest to assign a claim or ratify a third party’s  
 21 pursuit of a claim. See Arab Monetary Fund v. Hashim (In re Hashim), 379 B.R. 912, 924  
 (B.A.P. 9th Cir. 2007), citing Mutuelles Unies v. Kroll & Linstrom, supra. In the instant case,  
 there is no suggestion that prosecution of the Estate Claims otherwise would be barred by the  
 statute of limitations, or that another exception to the application of FRCP 17 would apply.

22 <sup>11</sup> Relief based on “alter ego” status is not the equivalent of the determination of  
 23 successor liability. Compare Gardner v. Eighth Judicial District, 133 Nev. 730, 736 (Nev. 2017)  
 24 (alter ego analysis for limited liability company) with Village Builders 96, L.P. v. U.S.  
Laboratories, Inc., 121 Nev. 261, 268 (Nev. 2005) (application of doctrine of successor liability).  
 25 See also Everictory Electronic (B.V.I.) Co., Ltd. v. Invision Industries Inc., 2012 WL 2030177,  
 26 at \*2 (C.D.Cal. June 4, 2012), citing Butler v. Adopts Media, LLC, 486 F.Supp.2d 1022, 1063-  
 71 (N.D.Cal. 2007) (“Successor liability, agency, and alter ego are three distinct concepts that  
 arise in distinct circumstances.”).

27 <sup>12</sup> Sports argues that in absence of standing, the court lacked subject matter jurisdiction  
 28 over the SBC Adversary, requiring dismissal under FRCP 12(h)(3). See Sports Dismissal Reply  
 at 14:15 to 15:5.

1 did not have standing to prosecute the Estate Claims. Although SBC was not required by FRCP  
2 55(a) to provide the Three Day Notice, see Hawaii Carpenters' Trust Funds v. Stone, 794 F.2d  
3 508, 512 (9th Cir. 1986), the Three Day Notice was premature. Like its initial commencement of  
4 the SBC Adversary, SBC jumped the gun.<sup>13</sup>

5 Third, SBC's reliance on FRCP 17 for a ratification, substitution or joinder is misplaced.  
6 It appears that SBC's "request" for relief under FRCP 17 has been made within a reasonable time  
7 and that little prejudice would result. At the First TRO Hearing, however, SBC previously  
8 acknowledged that it intentionally commenced the adversary proceeding without cooperation of  
9 the Trustee because it believed it had no choice. Instead of obtaining that cooperation or  
10 acquiring the Estate Claims, SBC made a strategic decision to pursue fraudulent transfer claims  
11 under Section 548 without standing to do so.<sup>14</sup> Additionally, at the Sale Hearing, SBC  
12 represented that it could be substituted as the real party in interest pursuant to "Rule 7017(f)"  
13 simply by amending the caption to the Adversary Complaint. That representation was incorrect  
14 because it ignored the circuit's guidance under Dunmore on which SBC now relies.<sup>15</sup> As a  
15 result, FRCP 17 does not apply and cannot rectify the prudential standing deficiency that existed  
16 when the SBC Adversary was commenced.

17 Fourth, the Estate Claims have been acquired by SBC pursuant to the Sale Order and the  
18 Sports Reconsideration Motion has been denied. Subject to the requirements of the Sale

19 \_\_\_\_\_  
20 <sup>13</sup> Rule 3.5A of the Nevada Rules of Professional Conduct directs Nevada attorneys not to  
21 cause a default to be entered without first inquiring about the intentions of opposing counsel to  
22 proceed. It is not clear from the record whether prior to the filing of the Three Day Notice  
23 SBC's counsel was aware that Holdings, Sports or Limited were attempting to retain Nevada  
24 counsel to respond to the Adversary Complaint. Regardless of whether the Three Day Notice  
25 was required in this matter, however, it was transmitted by SBC before it had prudential standing  
26 to pursue the Estate Claims.

27 <sup>14</sup> It is uncertain whether SBC expressed to the Trustee that there were post-petition  
28 actions being taken by the named defendants that necessitated an imminent commencement of  
the SBC Adversary. While Debtor did not include its Schedules and SOFA when it filed its  
Chapter 7 petition on November 30, 2022, it is not clear whether SBC even contacted the Trustee  
before filing the Adversary Complaint on December 23, 2022.

<sup>15</sup> The court expressly inquired whether SBC would bring a separate motion under FRCP  
17 but was informed by SBC that a separate request would not be necessary.

1 Agreement, SBC now may pursue the Estate Claims without reliance on FRCP 17. SBC now  
2 has standing to prosecute the Estate Claims directly in its own name for the benefit of itself as  
3 well as the Chapter 7 estate. In other words, SBC is now has the real party in interest standing  
4 that it lacked when it initially commenced the Adversary Proceeding.

5 Under these circumstances, dismissal of the Adversary Complaint is appropriate, but  
6 without prejudice. SBC may file an amended adversary complaint as the real party in interest to  
7 assert the Estate Claims. Nothing prohibits the Trustee from seeking to join in the amended  
8 complaint, if any.

9 **IT IS THEREFORE ORDERED** that Defendant Miomni Sports Ltd.[’s] Motion to  
10 Dismiss, Adversary Docket No. 34, be, **GRANTED WITHOUT PREJUDICE TO THE**  
11 **FILING OF AN AMENDED COMPLAINT.**

12 **IT IS FURTHER ORDERED** that an amended complaint, if any, must be filed **no later**  
13 **than fourteen calendar days** from the entry of this order.

14  
15 Copies sent via CM/ECF ELECTRONIC FILING

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

20 INCORP SERVICES, INC.  
c/o MIOMNI SPORTS LTD.  
21 3773 HOWARD HUGHES PKWY., SUITE 500S  
22 LAS VEGAS, NV 89169-6014

23 MATTHEW C. ZIRZOW, ESQ.  
LARSON & ZIRZOW  
24 c/o MIOMNI GAMING LTD.  
25 850 E. BONNEVILLE AVE.  
LAS VEGAS, NV 89101  
26  
27  
28

1 VERDEMAR HOUSE  
2 c/o MIOMNI HOLDINGS LIMITED  
3 230 PARK VIEW  
4 WHITLEY BAY  
5 TYNE AND WEAR  
6 NE26 3QR

7 TROY FOX  
8 601 S TENTH ST., SUITE 202  
9 LAS VEGAS, NV 89101

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