

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 15
)	
SKYPOWER CORP.,)	Case No. 09-12914 (P14)
)	
Debtor in a Foreign Proceeding.)	Related to Docket No. <u>3</u>

ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING

This matter coming before the Court on the *Chapter 15 Voluntary Petition* [Docket No. 1] and the *Verified Petition of KPMG Inc., as Foreign Representative of SkyPower Corp., for Recognition of Foreign Main Proceeding Pursuant to 11 U.S.C. §§ 1515 and 1517 and Relief Pursuant to 11 U.S.C. §§ 1520 and 1521* [Docket No. 3] (collectively, the "Petition") of KPMG Inc., the duly authorized foreign representative (the "Foreign Representative") of SkyPower Corp. ("SkyPower") in the proceeding (the "Foreign Proceeding") with respect to SkyPower before the Ontario Superior Court of Justice (Commercial List), for (i) recognition of the Foreign Proceeding as a foreign main proceeding pursuant to sections 1515 and 1517 of title 11 of the United States Code (the "Bankruptcy Code") and (ii) relief pursuant to sections 1520 and 1521 of the Bankruptcy Code; and the Court having reviewed the Petition and the Martin Declaration¹ and having considered the statements of counsel with respect to the Petition at a hearing before the Court (the "Hearing"); and appropriate and timely notice of the filing of the Petition and the Hearing having been given; and no other or further notice being necessary or required; and the Court having determined that the legal and factual bases set forth in the Petition and all other pleadings and proceedings in this case establish just cause to grant the relief ordered herein, and after due deliberation therefore,

¹ Capitalized terms not otherwise defined herein shall have the meaning given to them in the Petition.

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

C. The Foreign Representative is the duly appointed "foreign representative" of SkyPower within the meaning of section 101(24) of the Bankruptcy Code.

D. This chapter 15 case was properly commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code.

E. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Rule 2002(q) of the Federal Rules of Bankruptcy Procedure.

F. The Foreign Proceeding is a "foreign proceeding" pursuant to section 101(23) of the Bankruptcy Code.

G. The Foreign Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

H. Ontario, Canada is the center of main interests of SkyPower, and accordingly the Foreign Proceeding is a "foreign main proceeding" pursuant to section 1502(4) of the Bankruptcy Code, and is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1).

I. SkyPower maintains assets in the United States that are not subject to the stay in place in the Foreign Proceeding. Thus, SkyPower and/or its assets in the United States are susceptible to attack in the United States by one or more creditors, at the expense of all other creditors.

J. The Foreign Representative is entitled to all the automatic relief available pursuant to section 1520 of the Bankruptcy Code without limitation.

K. The Foreign Representative is further entitled to the discretionary relief expressly set forth in section 1521(a) and (b) of the Bankruptcy Code.

L. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520 and 1521 of the Bankruptcy Code.

NOW, THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

1. The Foreign Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

2. Sections 361 and 362 of the Bankruptcy Code shall hereby apply with respect to SkyPower and the property of SkyPower that is within the territorial jurisdiction of the United States.

3. Section 552 of the Bankruptcy Code shall hereby apply to property of SkyPower that is within the territorial jurisdiction of the United States.

4. Pursuant to section 1521(a)(6), all prior relief granted to SkyPower or the Foreign Representative by this Court pursuant to section 1519(a) of the Bankruptcy Code shall

be extended and that certain *Order Granting Provisional Relief* [Docket No. ___] shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

5. All entities (as that term is defined in section 101(15) of the Bankruptcy Code), other than the Foreign Representative and its expressly authorized representatives and agents, are hereby enjoined from:

- (1) execution against SkyPower's assets;
- (2) taking or continuing any act to obtain possession of, or exercise control over SkyPower or any of its property;
- (3) taking or continuing any act to create, perfect or enforce a lien or other security interest, set-off or other claim against SkyPower or any of its property;
- (4) transferring, relinquishing or disposing of any property of SkyPower to any entity (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative;
- (5) commencing or continuing of an individual action or proceeding concerning SkyPower's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a); and
- (6) declaring or considering the filing of the Foreign Proceeding or this chapter 15 cases a default or event of default under any agreement, contract or arrangement;

provided, however, in each case, such injunction shall be effective solely within the territorial jurisdiction of the United States.

6. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (a) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, or (b) staying the exercise of any rights that are not subject to stay arising under section 362(a) pursuant to paragraph (6), (7), (17) or (27) of section 362(b) or pursuant to section 362(o).

7. The Foreign Representative may exercise the rights and powers of a trustee under and to the extent provided by section 1520 of the Bankruptcy Code.

8. The Foreign Representative is hereby authorized to examine witnesses, take evidence, seek production of documents, and deliver information concerning the assets, affairs, rights, obligations or liabilities of SkyPower, as such information is required in the Foreign Proceeding under the law of the United States.

9. The administration or realization of all or part of the assets of SkyPower within the territorial jurisdiction of the United States shall be entrusted to the Foreign Representative and that the Foreign Representative is hereby established as the exclusive representative of SkyPower in the United States.

10. The Foreign Proceeding shall be granted comity and given full force and effect.

11. No action taken by the Foreign Representative, SkyPower or each of their successors, agents, representatives, advisors or counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of or in connection with the Foreign Proceeding, this Order, or this chapter 15 case, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the right or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

12. A copy of this Order, conformed to be true and correct, shall be served, within 3 business days of entry of this Order, by regular U.S. mail upon: (i) all persons or bodies authorized to administer foreign proceedings of the debtor; (ii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (iii) all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of

the petition; (iv) the Office of the United States Trustee; and (v) such other entities as the Court may direct.

13. Such service shall be good and sufficient service and adequate notice for all purposes.

14. This Court shall retain jurisdiction with respect to: (i) the enforcement, amendment or modification of this Order; (ii) any requests for additional relief or any adversary proceeding brought in and through this chapter 15 case; and (iii) any request by an entity for relief from the provisions of this Order, for cause shown as to any of the foregoing and provided that the same is properly commenced and within the jurisdiction of this Court.

Dated: Sept 15 2009
Wilmington, Delaware


UNITED STATES BANKRUPTCY JUDGE