

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

In re:)	Chapter 15
)	
SKYPOWER CORP.,)	Case No. 09-12914 (PJW)
)	
Debtor in a Foreign Proceeding.)	Related to Docket No. 5
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ORDER GRANTING PROVISIONAL RELIEF

This matter coming before the Court on the application (the "Application")¹ of petitioner, 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), pursuant to sections 105(a) and 1519 of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of an order granting provisional injunctive and related relief; and the Court having reviewed the Application and the Martin Declaration and having considered the statements of counsel with respect to the Application at a hearing before the Court (the "Hearing"); and appropriate and timely notice of the filing of the Application 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 Application and all other pleadings and proceedings in this case establish just cause to grant the relief ordered herein, and after due deliberation therefore,

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

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

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. On August 12, 2009, SkyPower, a Canadian corporation, entered into a proceeding under the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36. On August 12, 2009, the Foreign Court entered an Initial Order commencing a proceeding for the corporate reorganization of SkyPower, and the Foreign Representative was appointed as Monitor to oversee the administration of SkyPower's estate.

C. On August 12, 2009, pursuant to the Initial Order, the Foreign Court granted the Foreign Representative authority to file a petition for recognition of a foreign main proceeding under chapter 15 of the Bankruptcy Code. On August 19, 2009, the Foreign Representative filed in this Court a voluntary petition for relief under chapter 15 of the Bankruptcy Code.

D. 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.

E. The Foreign Representative has demonstrated a substantial likelihood of success on the merits that (i) SkyPower is subject to a pending "foreign main proceeding" as that term is defined in section 1502(4) of the Bankruptcy Code, (ii) the Foreign Representative is a "foreign representative" as that term is defined in section 101(24) of the Bankruptcy Code, and (iii) all statutory elements for recognition of the Foreign Proceeding are satisfied in accordance with section 1517 of the Bankruptcy Code.

F. The commencement or continuation of any action or proceeding with respect to SkyPower and the property of SkyPower that is within the territorial jurisdiction of the

United States should be enjoined to permit the orderly administration and restructuring of SkyPower's estate in the Foreign Proceeding and the relief requested either (i) will not cause an undue hardship to any party in interest or (ii) any hardship to a party in interest is outweighed by the benefits of the relief requested.

G. Unless this Order issues, it has been clearly shown that SkyPower will suffer immediate and irreparable injury, loss or damage for which there is no adequate remedy at law. Further, unless this Order issues, SkyPower's assets located in the United States could be subject to efforts by creditors to control, possess, or execute upon such assets and such efforts have a material risk of resulting in SkyPower suffering immediate and irreparable injury, loss, or damage by, among other things, (i) interfering with the jurisdictional mandate of this Court under Chapter 15 of the Bankruptcy Code, (ii) interfering with SkyPower's efforts to administer its estate pursuant to the Foreign Proceeding, and (iii) undermining the Foreign Representative's efforts to achieve an equitable result for the benefit of all of SkyPower's creditors and interest holders.

H. The interests of the public will be served by entry of this Order.

I. The Foreign Representative and SkyPower are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

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

1. While this Order is in effect, all entities (as that term is defined in section 101(15) of the Bankruptcy Code) are hereby enjoined from:

- a) executing against SkyPower's assets;
- b) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against SkyPower, or to recover a claim against SkyPower;

- c) the enforcement of a judgment against SkyPower or against property of SkyPower's estate;
- d) any act to obtain possession of property of SkyPower's estate or of property from SkyPower's estate or to exercise control over property of SkyPower's estate;
- e) any act to create, perfect, or enforce any lien against property of SkyPower's estate;
- f) any act to collect, assess, or recover a claim against SkyPower;
- g) transferring, relinquishing or disposing of any property of SkyPower to any person or entity other than the Foreign Representative; and
- h) the setoff of any debt owing to SkyPower against any claim against SkyPower (collectively, clauses (a) through (i), the "Enjoined Conduct");

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

2. While this Order is in effect, the Foreign Representative and SkyPower shall be entitled to the full protections and rights enumerated under section 1519(a)(1)-(3) of the Bankruptcy Code, including:

- a) entrusting the administration or realization of all or part of SkyPower's assets located in the United States to the Foreign Representative in order to protect and preserve the value of assets that are susceptible to devaluation or otherwise in jeopardy;
- b) the protection prohibiting other entities from transferring, encumbering or otherwise disposing of any assets of SkyPower;
- c) the right and power to examine witnesses, take evidence or deliver information concerning SkyPower's assets, affairs, rights obligations or liabilities; and
- d) the right and power to seek additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550 and 724(a) of the Bankruptcy Code.

3. 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).

4. With respect to any Enjoined Conduct in which SkyPower may have an interest that may become known to the Foreign Representative after the date of entry of this Order (each a "Subsequent Claim"):

- a) when informed of such Subsequent Claim, counsel for the Foreign Representative shall serve upon the holder of such claim a copy of the Supporting Documents and this Order or any extension thereof;
- b) the holder of a Subsequent Claim will have twenty days from service of this Order and the Supporting Documents in which to file a response thereto or otherwise be enjoined from commencing or continuing the Enjoined Conduct involving SkyPower, or its assets or the proceeds thereof; and
- c) on not less than two business days notice to U.S. Counsel (defined below), the holder of a Subsequent Claim may file a motion seeking an order of the Court vacating or modifying the injunction entered in this proceeding with respect to such Subsequent Claim, and any such request shall be the subject matter of a hearing on a date to be scheduled by the Court.

5. Any party in interest may make a motion seeking relief from, or modification of, this Order, by filing a motion on not less than five business days written notice to Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19899 (Attn: Gregory A. Taylor, Esq.) ("U.S. Counsel"), and the Court will hear such motion on a date to be scheduled by the Court.

6. The Application, this Order, and the Supporting Documents shall be made available by the Foreign Representative upon request to U.S. Counsel.

7. The Foreign Representative shall serve copies of this Order in accordance with the provisions of that certain Order Scheduling Hearing and Specifying the Form and

Manner of Service of Notice (the "Scheduling Order"). Service in accordance with the provisions of the Scheduling Order shall constitute fair and sufficient service and notice.

8. Pursuant to Bankruptcy Rule 7065, the provisions of Federal Rule 65(c) are hereby waived, to the extent applicable.

9. This Order shall remain in effect until the earlier of (a) entry of an order recognizing the Foreign Proceeding as a foreign main proceeding in accordance with section 1517 of the Bankruptcy Code or (b) the dismissal or closing of this chapter 15 proceeding.

10. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: August 21 2009
Wilmington, Delaware



THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE