

companion cross motion for default. As offered is the Declaration of Feng ZHU (aka Frank Wenfeng) (the “Feng Decl.”), the acting Director of HCHKV, in support of the HCHKV Entities’ efforts to plead and protect themselves in this action.

The Trustee argues that good cause for additional time to plead has not been shown while simultaneously ignoring the simple language posited on the first page of the motion – *to wit*:

HCHKV is completing the process of re-staffing its board and management team in order to protect its interests in the within proceeding. Undersigned counsel has only recently been retained and is in the process of reviewing the extensive file and complicated allegations.

The HCHKV board and corporate status has only recently been reconstituted such that the HCHKV Entities have regained the ability to protect themselves by hiring counsel and appearing in this action. *See Ex. A - Feng Decl.* Undersigned counsel is currently drafting an Answer while also reviewing hundreds of pleadings/motions from multiple dockets, thousands of pages of related filings, and a global fact pattern that has sparked multiple, protracted and complex disputes.

Simply put, the HCHKV Entities have appeared in this action and seek merely to protect their remaining interests. Indeed, as the Assignor in the ABC Action,¹ HCHKV (i) retains the right to challenge the Assignee’s actions, (ii) retains the right to receive any potential surplus funds, and/or (iii) could be subject to exposure from creditors who are not made whole. *See e.g. Enter. Fixture Co. v. Lieberman*, 240 A.D. 214 at 220 (App. Div. 1st Dept 1934), in assignor’s suit challenging assignee’s actions, the appellate court overturned the trial court’s denial of debtor/assignor’s motion to strike assignee’s defense:

The plaintiff [assignor] has a direct interest in the proper execution of the trust. Moreover, it has an interest in requiring that the assets transferred to the

¹ The abbreviations used in the Adversary Proceeding Complaint are used herein when/where possible.

administration of the trust, the plaintiff is entitled to maintain an action to secure their removal even before the trust is fully executed. It need not wait until the trustees have dissipated such assets as remain.

Id. at 220, internal citations omitted). *See also New York v. United States Reporter*, 283 F.2d 829 at 831-32 (2d Cir 1961) (“Under long-standing New York decisional law, an assignee for the benefit of creditors takes title to the debtor's estate and holds as trustee for all the creditors. The court supervises the trustee and orders distribution of the settled estate to the creditors so that the estate is said to be in *custodia legis*. All that the assignor owns after his assignment is completed is the right to have refunded to him whatever remains after the creditors have been satisfied”), *citing* N.Y. Debtor and Creditor Law §§ 8, 15, 20, (other case citations omitted). *See also Freeman v. Marine Midland Bank-New York*, 419 F. Supp. 440 at 447 (EDNY 1976) (a general assignment for the benefit of creditors . . . is distinguishable from a federal bankruptcy proceeding in that no discharge from the assignor's debts is obtainable in an assignment for the benefit of creditors. After a claim is allowed the debtor-assignor continues to remain liable for the unpaid balance of the debt, and the creditor may resort to and pursue such remedies as may be available), *citing* 28 N.Y. Jur. Insolvency §7, *Pavone Textile Corporation v. Bloom*, 90 N.Y.S.2d 785 (N.Y. Sup.Ct. 1949), *aff'd.* 302 N.Y. 206, *aff'd.* 342 U.S. 912.

* * *

Since all motions, efforts and arguments are now being made before this Court, the HCHKV Entities rights must be asserted and protected as part of the current action.² Respectfully, a default is clearly not warranted, and no party will be prejudiced by a short extension to allow the HCHKV Entities time to draft and file an Answer.

² HCHKV is in the process of issuing a corporate resolution preventing Assignee’s appointed counsel from representing the HCHKV Entities in this action and/or potentially limiting their role to ensuring only that the terms of the Settlement Agreement are honored.

Dated: September 6, 2023
Redding, Connecticut

HOLY CITY HONG KONG VENTURES, LTD.
HCHK TECHNOLOGIES, INC.
HCHK PROPERTY MANAGEMENT, INC., and
LEXINGTON PROPERTY AND STAFFING,
INC.,

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Court's CM/ECF system.

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