

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
BRIDGEPORT DIVISION**

In re:

HO WAN KWOK, *et al.*,

Debtors.

LUC A. DESPINS, CHAPTER 11 TRUSTEE FOR  
THE ESTATE OF HO WAN KWOK,

Plaintiff,

V.

HCHK TECHNOLOGIES, INC., HCHK  
PROPERTY MANAGEMENT, INC.,  
LEXINGTON PROPERTY AND STAFFING,  
INC., HOLY CITY HONG KONG VENTURES,  
LTD., ANTHONY DIBATTISTA, YVETTE  
WANG, and BRIAN W. HOFMEISTER,  
ASSIGNEE FOR THE BENEFIT OF THE  
CREDITORS

Defendants.

**MOTION TO EXPEDITE HEARING ON  
MOTION OF HCHK CREDITORS TO CLARIFY  
TEMPORARY RESTRAINING ORDER**

Creditors Shin Hsin Yu (“Mr. Yu”), 1332156 B.C. LTD (“1332156 B.C.”) and GWGOPNZ Limited (“GWGOPNZ”) (collectively, the “Moving HCHK Creditors”), by their attorneys Pastore LLC, hereby move this Court pursuant to Bankruptcy Rule 9006(c)(1) for entry of an order:

- (a) expediting the deadline to respond to the Moving HCHK Creditors' Motion to Clarify the Temporary Restraining Order ("Motion to Clarify," ECF No. 65) from August 15, 2023 to close of business on August 4, 2023;
- (b) scheduling a hearing on the Motion to Clarify on August 8, 2023, or as soon thereafter as the Court is available to hear the motion; and
- (c) staying any order of this Court authorizing the Assignee to take action in the Assignment Proceedings<sup>1</sup> until the Motion to Clarify has been decided.

Absent such relief, the Assignee has been authorized by this Court to continue to administer the Assignment Proceedings while, contrary to all notions of due process, the Moving HCHK Creditors may be enjoined from exercising their rights in those same Assignment Proceedings. It is patently unfair to allow one party, the Assignee, to maneuver in court while muzzling the very parties whose interests he should be protecting (especially where the Assignee has thus far failed to protect those interests).

In further support of this Motion to Expedite, the Moving HCHK Creditors respectfully state as follows:

### **BACKGROUND**

1. As the Court knows from prior proceedings in this matter, this Adversary Proceeding is closely related to proceedings commenced in New York State Court by the Assignee following the execution of Deeds of Assignment for the Benefit of Creditors by the HCHK Entities (the "Deeds"). The Deeds grant the Assignee certain powers to administer the HCHK Entities' assets for the benefit of the HCHK Entities' creditors, subject to the supervision of the New York

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<sup>1</sup> For the Court's convenience, capitalized terms undefined herein shall have the meaning ascribed to them in the Motion to Clarify.

Court and New York law, including the New York Debtor & Creditor Law, and with the HCHK Entities' assets being *in custodia legis* under the supervision of the New York Court.

2. On June 8, 2023, the Trustee commenced this adversary proceeding by filing a Complaint (ECF No. 1), *Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 4) and several related motions. The Trustee supplemented the Motion for TRO the following day (ECF No. 14).

3. On June 12, 2023, the Court issued the TRO granting in part the Trustee's Motion for TRO and stating in relevant part:

ORDERED: Upon receipt of actual notice of this TRO by personal service or otherwise, (i) the Defendants; (ii) the Defendants' officers, agents, servants, employees, and attorneys; and (iii) any person in active concert or participations with the Defendants and/or the Defendants' officers, agents, servants, employees, and attorneys ... **are temporarily restrained and enjoined from commencing or continuing the Assignment Proceedings (or any other judicial, administrative, or other actions or proceedings with respect to the HCHK Entities and/or their assets)** ... (ECF No. 18) (emphasis added).

4. On June 23, 2023, the Trustee filed a Motion to Compromise (EDF No. 25) seeking the Court's approval pursuant to Bankruptcy Rule 9019 of a Settlement Agreement between the Trustee and the Assignee. In his Motion to Compromise, the Trustee expressly acknowledged that "[t]he Settlement Agreement contemplates that the Assignee will take various actions ... that would otherwise be enjoined under the existing TRO" and requested that the TRO be modified accordingly. (ECF No. 25 ¶ 12).

5. Also on June 23, 2023, the Court issued an Order granting in part the Trustee's Emergency Motion to Adjourn the HCHK Preliminary Injunction Hearing and extending the TRO as to certain Consenting Defendants (comprising HCHK Technologies, Inc., HCHK

Property Management, Inc., Lexington Property and Staffing, Inc., Mr. Anthony DiBattista and the Assignee), which provided in relevant part:

**ORDERED:** Because the Consenting Defendants have consented to the extension of the TRO, ECF No. 18, **the TRO is extended as against the Consenting Defendants, their agents, and those in active concert with the foregoing, through and including the conclusion of the PI hearing in accordance with Fed. R. Civ. P. 65(b)(2) or until further order of the Court;** (ECF No. 27 (emphasis added)).

6. On June 26, 2023, a status conference was held pursuant to the Court's June 23 Order to discuss, among other things, "the TRO and PI Hearing as to Non-Responding Defendants..." (*See* ECF No. 27). As a result of the June 26 status conference, the Court directed that "[n]o further order will be entered at this time." (ECF No. 32). No date has been set for a Preliminary Injunction hearing.

7. On July 17, 2023, the Moving HCHK Creditors moved to intervene in these proceedings to protect their own interests. (ECF No. 60). By Order dated July 28, 2023 (Dkt No. 71) the Court extended until September 15, 2023 the deadline to file a response to the Moving HCHK Creditors' motion to intervene. No hearing date on the motion to intervene has been set.

8. On July 25, 2023, the Moving HCHK Creditors filed their Motion to Clarify (ECF No. 65), asking (a) the Court to make clear that, just as the terms of the Settlement Agreement permit the Assignee to seek relief from the New York Court (ECF No. 55 ¶ 9), the TRO does not enjoin the Moving HCHK Creditors from exercising their rights as creditors in the Assignment Proceedings, (b) the Court to make clear that the TRO has expired as to the Moving HCHK Creditors, or (c) permission from the Court to take certain Requested Actions. The present deadline for responses to the Motion to Clarify is August 15, 2023.

9. On Friday, July 28, 2023, the Court entered an Order (the “July 28 Order,” Dkt No. 70) approving, Pursuant to Bankruptcy Rule 9019, the Settlement Agreement. The Court’s July 28 Order authorized the Assignee to take certain “Authorized Assignee Actions” in the Assignment Proceedings, including seeking his own discharge and closing the Assignment Proceedings while prospectively continuing to administer the HCHK Entities’ assets notwithstanding his discharge. The July 28 Order designates the Trustee, rather than the New York Court, to oversee and control the Authorized Assignee Actions despite the Assignee never seeking nor obtaining the approval of the New York Court to enter into the Settlement Agreement or to transfer control of the HCHK Entities’ assets outside the New York Court’s exclusive supervision.

10. Specifically, the July 28 Order provides that “[t]he Authorized Assignee Actions **shall** consist of,” among other things,

(1) the Assignee seeking relief from the New York Court, subject to the review and prior approval of the Trustee, with respect to (a) the commencement of the Assignment Proceedings; (b) the approval of the retention of the Assignee’s counsel Cole Schotz P.C. and McManimon, Scotland & Baumann, LLC; (c) the approval of the retention of the Assignee’s financial advisor, DLA, LLC; (d) the approval of retention of the Assignee’s appraiser, A. Atkins Appraisal Corp., (e) the procedural consolidation and joint administration of the Assignment Proceedings; and (f) the approval of the Assignee’s efforts to secure the HCHK Entities’ funds by opening accounts with ConnectOne Bancorp, Inc. and depositing such funds across multiple accounts so that the funds in each account are within the federally-insured limit of \$250,000; and (g) the discharge of the Assignee and the closing of the Assignment Proceedings;

...

(3) the Assignee’s continued administration of the HCHK Entities pending a Dispositive Ruling, subject to the prior approval of the Trustee, including by (a) securing the Columbus Circle Offices as well as the Columbus Circle Assets; (b) notifying the landlord and/or sublandlord of the Columbus Circle Offices of the intention to vacate, when appropriate; (c) arranging for the storage and/or disposition of the Columbus Circle Assets; (d) complying with

subpoenas issued by the United States Department of Justice; (e) securing the HCHK Entities' books, records, and other material stored on company devices pending a Dispositive Ruling; (f) cancelling security and utility services at the Columbus Circle Offices; and (g) addressing payroll and termination issues related to the HCHK Entities' three remaining employees and any employee benefit plans; and (4) such other actions as the Trustee and Assignee agree are reasonable and necessary to effectuate the Settlement Agreement, the preservation and transition of the HCHK Entities' assets to the Trustee, and conclusion of the Assignment Proceedings.

### **THE MOTION TO CLARIFY**

11. Simply, the Assignee should not be able to seek the relief in the Assignment Proceedings outlined above while the TRO stifles any opposition. Such a result patently violates all notions of fair play and American jurisprudence.

12. By the Motion to Clarify, the Moving HCHK Creditors request entry of an order clarifying that, consistent with the terms of the July 28 Order as to the Assignee, the Moving HCHK Creditors are not barred by the TRO from exercising their rights in the Assignment Proceedings.<sup>2</sup> The Court's July 28 Order authorizes the Assignee to take certain actions in the Assignment Proceedings. The Authorized Assignee Actions, now subject to the oversight of the Trustee, include "the discharge of the Assignee and the closing of the Assignment Proceedings." Respectfully, the Assignee should not be authorized to act in the Assignment Proceedings while the Moving HCHK Creditors are forced to sit on their hands. The New York Court should have the opportunity to hear from all interested parties before ruling on any requests by the Assignee.

13. While the Moving HCHK Creditors do not believe that the Court intended the TRO to prohibit them from exercising their New York statutory rights as creditors, nonetheless the

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<sup>2</sup> The Moving HCHK Creditors will agree not to seek any substantive distribution in the Assignment Proceedings, judicially or otherwise, until after this Court enters its final judgment on any *alter ego* questions and/or as to whether the Assigned Assets are (or are not) property of the Debtor's Estate.

Moving HCHK Creditors, out of an abundance of caution and wanting to be entirely respectful of this Court's orders, are concerned that the TRO could potentially be read to enjoin the Moving HCHK Creditors from participating in the Assignment Proceedings, especially in light of the Trustee's allegations in prior filings and the inclusion of broad "Persons Bound" language pursuant to F.R.C.P. Rule 65(d)(2).

14. As such, it is imperative that the Moving HCHK Creditors obtain such clarification to effectively exercise their rights in the Assignment Proceedings. The Moving HCHK Creditors should not be put to the choice of waiving their rights in New York or risking sanctions in Connecticut. The Moving HCHK Creditors are acting out of respect for this Court and the power of its TRO, and respectfully seek this Court's permission to speak and act to protect their rights in New York.

#### **RELIEF REQUESTED**

15. The Moving HCHK Creditors respectfully request that the Court expedite the deadline to respond to the Motion to Clarify from August 15, 2023 to close of business on August 4, 2023 and schedule a hearing on the Motion to Clarify on August 8, 2023, or as soon thereafter as the Court is available to hear the motion.

16. Moreover, the Moving HCHK Creditors respectfully request a temporary stay of those Authorized Assignee Actions enumerated in Section 9 of the July 28 Order until such time as the Motion to Clarify is heard and decided.

**BASIS FOR RELIEF REQUESTED**

17. Pursuant to Bankruptcy Rule 9006(c)(1), the Court may reduce the notice period when requested by motion where cause is demonstrated. Cause exists to consider and determine the Motion to Clarify on an expedited basis.

18. It would be wholly inequitable for the Assignee to act in the Assignment Proceedings, as authorized by the July 28 Order, while the Moving HCHK Creditors stand muzzled by the TRO. To permit the Assignee to proceed while restraining the Moving HCHK Creditors violates all notions of due process.

19. The requested relief will not prejudice the Assignee or the Trustee. The Assignee and the Trustee were served with the Motion to Clarify on July 25, 2023 and, since that time, the Trustee has moved to authorize and compel discovery on the Moving HCHK Creditors and moved to expedite that motion. Indeed, the Assignee and the Trustee have demonstrated their capacity and willingness to act promptly when addressing urgent matters such as these.

**NO PREVIOUS REQUEST**

20. No previous request for the relief sought herein has been made by the HCHK Creditors to this or any other court.



**WHEREFORE**, the Moving HCHK Creditors request that the Court grant this Motion, schedule an expedited hearing on the Motion to Clarify, stay all Authorized Assignee Actions pursuant to Section 9 of the July 28 Order until further order by the Court and grant such other relief as is just and proper.

Dated: August 2, 2023

**MOVING HCHK CREDITORS  
SHIN HSIN YU, 1332156 B.C. LTD AND  
GWGPNZ LIMITED**

By: Joseph Pastore  
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# **Exhibit 1**

## **Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
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## Debtors

LUC A. DESPINS, CHAPTER 11 TRUSTEE FOR  
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HCHK TECHNOLOGIES, INC., HCHK  
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LTD., ANTHONY DIBATTISTA, YVETTE  
WANG, and BRIAN W. HOFMEISTER,  
ASSIGNEE FOR THE BENEFIT OF THE  
CREDITORS

Defendants.

**[PROPOSED] ORDER SCHEDULING EXPEDITED  
HEARING ON MOTION TO CLARIFY**

The Court having considered the motion (the “Motion to Expedite”) seeking an expedited hearing on the Moving HCHK Creditors’ Motion to Clarify and good cause appearing for the relief sought in the Motion to Expedite, it is hereby<sup>3</sup>

ORDERED, that the deadline to respond to the Motion to Clarify shall be August 4, 2023;

and it is further

<sup>3</sup> Capitalized terms undefined herein shall have the meaning ascribed to them in the Motion to Expedite.

ORDERED, that a hearing on the Motion to Clarify shall be held on [\_\_\_\_\_  
\_\_\_\_\_] [\_\_\_\_], 2023 at [\_\_\_\_]:00 a./p.m. (ET) at the United States Bankruptcy Court, District of  
Connecticut, Bridgeport Division, 915 Lafayette Boulevard, Room 123, Bridgeport, CT 06604;  
and it is further

ORDERED, that all Authorized Assignee Actions as described by this Court's Order dated  
July 28, 2023 (ECF No. 70 § 9) are hereby stayed pending further order from the Court.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Hon. Julie A. Manning  
United States Bankruptcy Judge