

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

In re:)	Chapter 15
)	
)	Case No. 12-10947(CSS)
Elpida Memory, Inc.,)	
)	
Debtors.)	
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OPINION¹

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¹ This Opinion constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

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Date: November 20, 2012

Sontchi, J. 

INTRODUCTION

The issue before the Court, which appears to be a matter of first impression, is what legal standard applies in a Chapter 15 case to the transfer of assets located in the United States pursuant to a “global” transaction previously approved by another Court in a foreign main proceeding. Based upon the plain meaning of the statute supported by the legislative history, this Court must review the transaction to the extent it impacts assets located in the United States under the legal standards governing a transfer by a trustee outside the ordinary course of business, i.e., is the transaction a sound exercise of the trustee’s business judgment.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N) and (O).

STATEMENT OF FACTS²

On February 27, 2012, Elpida Memory, Inc. (“Elpida”) filed a petition for commencement of corporation reorganization proceedings under the Japan Corporate Reorganization Act (Kaishu Kosei Ho) in the Tokyo District Court, Civil Division (the “Tokyo Court”). On March 23, 2012, the Tokyo Court entered its Court Decision on Commencement of Reorganization Proceeding dated March 23, 2012 (the “Commencement Order”). The Commencement Order appointed Messrs. Yukio Sakamoto and Nobuaki Kobayashi as trustees (“Trustees”) for Elpida’s corporate reorganization proceeding in Japan. On March 23, 2012, the Tokyo Court also appointed Mr. Atsushi Toki as examiner of Elpida.

On March 19, 2012, Mr. Sakamoto filed a verified petition pursuant to sections 1504 and 1515 of the Bankruptcy Code commencing this chapter 15 case. On March 21, 2012, the Court entered the Order Granting Provisional Relief, Scheduling Recognition Hearing and Specifying Form and Manner of Notice Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code [Docket No. 25]. On April 24, 2012, the Court entered its Order Pursuant to U.S.C. §§ 105, 1504, 1515, 1517, 1520, and 1521 Recognizing Foreign Representatives and Foreign Main Proceeding [Docket No. 65] (the “Recognition Order”). Under the Recognition Order, the Court recognized Elpida’s reorganization

² The Court has scheduled a hearing on the Rambus Motion and Micron Motion (as defined below) for December 5-6, 2012. Given the necessity that a ruling on the applicable legal standard be entered sufficiently prior to the hearing so that counsel can properly prepare the case for trial, this Court has undertaken to issue this opinion on an expedited basis. As such, the Statement of Facts is not as thorough as the Court would prefer but believes it is sufficient to resolve the issues presently before it.

proceeding in the Tokyo Court as a “foreign main proceeding” and Messrs. Sakamoto and Kobayashi as Elpida’s foreign representatives (the “Foreign Representatives”).³

In mid-September, the Foreign Representatives filed four motions under section 363 of the Bankruptcy Code seeking authorization to enter into four related transactions: (i) Foreign Representatives’ Motion for Approval of the Pledge of Certain United States Registered Patents to Apple Inc. [Docket No. 157] (the “Apple Motion”); (ii) Foreign Representatives’ Motion for Approval of Security Agreements in Connection with Obtaining Postpetition Financing [Docket No. 143] (the “DIP Financing Motion”); (iii) Foreign Representatives’ Motion to Approve Sale of Certain Patents to Rambus Inc. [Docket No. 163] (the “Rambus Motion”); (iv) Foreign Representatives’ Motion to Approve Patent License Agreement and Technology Transfer and License Agreement [Docket No. 165] (the “Micron Motion,” collectively, the “363 Motions”). All of the transactions under the 363 Motions had been previously approved by the Tokyo Court.

The Steering Committee of the Ad Hoc Group of Bondholders (the “Steering Committee”) initially objected to all of the 363 Motions but subsequently withdrew (reluctantly) its objection to the Apple Motion and the DIP Financing Motion. The

³ Messrs. Sakamoto and Kobayashi are both the Trustees of Elpida in the Japan proceeding and the Foreign Representatives of Elpida in the Chapter 15 proceeding. Even though they are the same persons they have different jobs. The Court will refer to these gentlemen as Trustees in connection with actions in Japan and Foreign Representatives for actions in this Court.

Court entered orders granting those motions on October 31, 2012.⁴ The Steering Committee continues to object to the Rambus Motion and the Micron Motion.

The Foreign Representatives also filed related motions under section 107(b) of the Bankruptcy Code to redact confidential information related to the 363 Motions. The motions to seal in connection with the DIP Financing Motion and Apple Motion were granted without objection. In addition, the motion to seal in connection with the Rambus Motion was withdrawn. The Steering Committee continues to object to the Foreign Representatives' Motion Pursuant to Section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1 for Authority to (A) Redact Certain Portions of, and (B) File Under Seal Certain Exhibits to, Foreign Representatives' Motion to Approve Patent License Agreement and Technology Transfer and License Agreement [Docket No. 166] (the "Micron Motion to Seal").

In connection with the Rambus Motion, Elpida is selling certain of its patents, some of which are registered in the United States, to Rambus Inc. ("Rambus") under a Patent Purchase Agreement ("PPA"). Under the PPA, Rambus is granting a royalty-free, perpetual license to Elpida. The PPA was approved by the Japanese Court on August 10, 2012.

In connection with the Micron Motion, Elpida is granting Micron Technology Inc. ("Micron") a license in the patents being sold to Rambus under a Patent License Agreement ("PLA"). Under a sponsorship arrangement between Elpida and Micron

⁴ Order Approving Pledge of Certain United States Registered Patents to Apple Inc. [Docket No. 249]; and Order Approving Security Agreements In Connection With Obtaining DIP Financing [Docket No. 250].

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