

**ARIZONA STATE UNIVERSITY**  
**CORPORATE & BUSINESS LAW JOURNAL FORUM**

---

---

VOLUME 3

MARCH 2022

NUMBER 20

---

---

***COMMENTARY***

*Eros STX Subsidiary Files Bankruptcy*

BY LILLY HARRIS\*

FSO Jones, a subsidiary of global entertainment company Eros STX, recently filed for Chapter 11 bankruptcy on February 28, 2022.<sup>1</sup> Notably, FSO Jones owns the rights to the *Greenland* sequel, *Greenland: Migration*, which is currently in the pre-production phase.<sup>2</sup> Eros STX representatives stated, “[a]lthough pre-production of this sequel is going well, we determined that it was necessary for FSO Jones to seek bankruptcy relief to protect the value of that entity for all of our stakeholders while we continue to work toward closing our strategic alternatives for this company.”<sup>3</sup>

Chapter 11 bankruptcy is a form of relief available under the Federal Bankruptcy Code for business enterprises.<sup>4</sup> Chapter 11 bankruptcy is designed to enable a company to reorganize its assets and liabilities in order to continue operating in a profitable manner.<sup>5</sup> Chapter 11 is an alternative to other types of bankruptcy which involve liquidation of company assets, though sometimes liquidation occurs. Contrary to popular belief, insolvency is not a prerequisite for a business to enter into Chapter 11 bankruptcy.<sup>6</sup> Many companies file for Chapter 11 to take advantage of the protections provided for under the Bankruptcy Code,

---

\* J.D. Candidate, Class of 2023, Sandra Day O’Connor College of Law at Arizona State University.

<sup>1</sup> Jeremy Hill, *Eros STX Puts Gerald Butler Disaster Movie Rights in Bankruptcy* (Mar. 1, 2022, 12:54 PM MST), <https://www.bloomberg.com/news/articles/2022-03-01/eros-stx-puts-gerald-butler-disaster-movie-rights-in-bankruptcy>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> THOMAS J. SALERNO, JORDAN A. KROOP & CRAIG D. HANSEN, *THE EXECUTIVE GUIDE TO CORPORATE BANKRUPTCY* at 9 (2010).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 11.

such as the automatic stay, the ability to accept or reject executory contracts, and the ability to sell assets free and clear of interest.

FSO Jones' indication that they filed bankruptcy in order to protect the value of the company may be an allusion to the automatic stay. Once the bankruptcy petition is filed, the automatic stay will protect the Chapter 11 debtor from the collection efforts of its creditors.<sup>7</sup> Among other things, creditors may not sue, enforce a judgment or lien against, or obtain control over property of a Chapter 11 debtor.<sup>8</sup> FSO Jones' entrance into bankruptcy will protect them from creditors and lawsuits for as long as the bankruptcy lasts, which could span months or years.

FSO Jones may also have filed bankruptcy in order to escape contracts that they no longer wish to perform under. The Bankruptcy Code provides that debtors may generally assume or reject executory contracts.<sup>9</sup> An executory contract is a contract where "the obligations of both the bankrupt [debtor] and the other party to the contract are so far unperformed that the failure of either to complete performance could constitute a material breach excusing the performance of others."<sup>10</sup> In other words, a Chapter 11 debtor has a choice to either cancel or reaffirm any contractual obligation where neither party has substantially performed its end of the deal. To place this into context, consider the Weinstein Company's Chapter 11 bankruptcy proceedings. In that production company's bankruptcy, one issue was whether their contract with the producer of *Silver Lining's Playbook* was executory.<sup>11</sup> The Third Circuit found that the contract was not executory because the producer had no remaining material obligations.<sup>12</sup> Unlike the Weinstein Company case, where *Silver Linings Playbook* had already been released for six years, *Greenland: Migration* is in the pre-production phase.<sup>13</sup> Therefore, it is likely that numerous contracts connected to *Greenland: Migration* are executory, and FSO Jones will have the choice to either assume or reject them.

FSO Jones may also have filed bankruptcy in order to sell their assets free and clear of encumbrances. The Bankruptcy Code permits debtors to sell assets free and clear of interest in the property under certain circumstances.<sup>14</sup> This allows the Chapter 11 debtor to obtain competitive prices for the assets it chooses to sell because purchasers can buy the assets without their existing debts. In the Weinstein Company bankruptcy, the production company sold its assets free and clear of

---

<sup>7</sup> 11 U.S.C. § 362.

<sup>8</sup> 11 U.S.C. § 362(a).

<sup>9</sup> 11 U.S.C. § 365(a).

<sup>10</sup> SALERNO et al., *supra* note 4, at 110.

<sup>11</sup> In re Weinstein Company Holdings, 997 F.3d 497 (3rd Cir. 2021).

<sup>12</sup> *Id.* at 501.

<sup>13</sup> *Id.* at 507; Hill, *supra* note 1.

<sup>14</sup> 11 U.S.C. § 363(f).

interest to another production company, Spyglass.<sup>15</sup> Thus, Spyglass was only responsible for obligations which occurred after the sale and did not need to cure pre-existing defaults.<sup>16</sup> FSO Jones may take advantage of this same provision in order to sell some of their assets free and clear of interest for a profitable price.

Ultimately, *Greenland* super-fans need not worry about *Greenland: Migration's* fate. FSO Jones's bankruptcy is not necessarily indicative of insolvency. They may have truly filed for bankruptcy to take advantage of the numerous debtor-friendly provisions in the Bankruptcy Code, including the automatic stay, ability to reject executory contracts, and ability to sell assets free and clear of interest.

---

<sup>15</sup> Weinstein Company Holdings, *supra* note 11, at 502.

<sup>16</sup> *Id.* at 503.