

# US Assets Not Needed For Ch. 15 Recognition, 11th Circ. Says

By **Clara Geoghegan**

Law360 (April 3, 2024, 8:52 PM EDT) -- U.S. bankruptcy courts can grant Chapter 15 recognition in cases where someone doesn't live, work or own assets in the U.S., the Eleventh Circuit ruled Wednesday, holding that being an "eligible debtor" as defined under Chapter 15 of the Bankruptcy Code isn't a prerequisite for U.S. acknowledgment of a foreign bankruptcy.

U.S. Circuit Judge Barbara Lagoa, writing for the unanimous panel, said a Florida bankruptcy court was correct when it recognized the U.K. bankruptcy of Talal Al Zawawi, an Omani businessman who was placed into bankruptcy after failing to make payments on a \$34.1 million (£24.1 million) judgment in his divorce.

The Eleventh Circuit explained that based on its 1988 ruling *In re: Goerg*, which held debtor eligibility requirements in Chapter 1 of the bankruptcy code aren't required for a U.S. court to grant ancillary assistance to a foreign court under Chapter 15's predecessor, the U.K. case can be recognized even if Al Zawawi doesn't live, work or own assets in the U.S.

"Because we are bound by that decision and understand its reasoning to be sufficiently applicable to the question presented in this case, we are compelled to respond in the same manner today," Judge Lagoa wrote in the published opinion.

Al Zawawi holds shares in Qapa Investing Corp. NV, a company incorporated in Curaçao that owns Florida entities that own an estimated \$94 million of real estate in Winter Park, according to the opinion.

In 2019, a U.K. court gave Al Zawawi's ex-wife Leila Hammoud a £24.1 million judgment as part of their divorce. Hammoud went back to the courts roughly a year later alleging her ex-husband hadn't made any payments on the judgment. In June 2020, a U.K. court deemed Al Zawawi bankrupt and appointed three joint trustees to the case.

The trustees — Hannah Davie, Colin Diss and Michael Leeds — in 2021 asked a Florida bankruptcy court to recognize the U.K. case under Chapter 15. Chapter 15, which was implemented in 2005 and replaced Section 304 of the Bankruptcy Code, recognizes insolvency or bankruptcy cases in another country and allows representatives of the foreign bankruptcy to investigate assets located in the U.S.

Leeds is no longer a trustee or foreign representative in the case, according to counsel for the other two trustees.

The bankruptcy court recognized the U.K. case over objections from Al Zawawi. He had argued that he couldn't be a debtor under Chapter 1 section 109(a) of the Bankruptcy Code, which defines a debtor eligible for bankruptcy as someone who "resides or has a domicile, a place of business, or property" in the U.S.

The bankruptcy court held that under *Goerg*, the trustees only needed to meet the recognition requirements of Chapter 15 and not Chapter 1's eligibility requirements. A district court upheld the bankruptcy court's ruling and Al Zawawi appealed to the Eleventh Circuit in 2022.

On appeal, Al Zawawi argued that the lower courts ignored the plain language of the Bankruptcy Code. His interpretation, Al Zawawi argued, was supported by the Second Circuit's 2013 decision *In*

re: Barnett that held Chapter 1 applies to Chapter 15.

The trustees urged the Eleventh Circuit to uphold the rulings, arguing that even if the court agreed that Chapter 1's definitions must be met for a foreign proceeding, Al Zawawi's interests in Qapa Investing were enough to make him a qualified debtor.

In its opinion, the Eleventh Circuit agreed with Al Zawawi that under a plain language read of the Bankruptcy Code, Chapter 1's eligibility requirements must be met under Chapter 15.

But, the court held, its prior ruling in Goerg, which asked similar eligibility questions but was based on Section 304, the international bankruptcy process Chapter 15 replaced, applied to the case.

"We are differently situated from the Second Circuit in that we are bound by prior precedent that states that Chapter 1's debtor eligibility language does not apply to cases ancillary to a foreign proceeding," Judge Lagoa wrote, adding that while Section 304 and Chapter 15 are different they have the same purpose.

Leyza F. Blanco of Sequor Law PA, who represented the U.K. trustees in the appeal, said the court's ruling is an "important step forward" for Chapter 15 and its objectives and might draw new Chapter 15 petitions to the Eleventh Circuit.

"Given that south Florida is the gateway to Latin America for the United States, foreign representatives in proceedings where there are no assets in the United States but who may simply need assistance with discovery in our courts, may now unequivocally be recognized if they meet the requirements of Chapter 15," Blanco said in a statement to Law360.

Diss, one of the court-appointed trustees, likewise praised the decision.

"This is a landmark decision demonstrating the power and usefulness of Chapter 15 when used as a cross border insolvency tool in international asset tracing and recovery," Diss told Law360.

Counsel for Al Zawawi did not respond to a request for comment Wednesday.

U.S. Circuit Judges Robert J. Luck, Barbara Lagoa and Gerald Bard Tjoflat sat on the panel for the Eleventh Circuit.

The joint trustees are represented by Leyza F. Blanco, Juan J. Mendoza and Christopher A. Noel of Sequor Law PA.

Al Zawawi is represented by Nicholas A. Shannin of Shannin Law Firm PA and Kenneth D Herron Jr. of Herron Hill Law Group PLLC.

The case is Talal Qais Abdulmunem Al Zawawi v. Colin Diss, et al., case number 22-cv-11024, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Alex Hubbard.

*Update: This story has been updated with comments from the court-appointed trustee and with additional case information.*