United States District Court
for the
Southern District of Florida

Eike Batista, and others, Appellants, v. Bernardo Bicalho Alvarenga Mendes, and others, Appellees.	Appeal from the United States Bankruptcy Court for the Southern District of Florida District Case No. 17-24308-Civ-Scola (BKC Docket No. 17-16113-RAM)

Order Dismissing Appeal for Lack of Jurisdiction

This matter is before the Court on the Appellants MMX Mineração e Metalicos S.A. ("MMX"), Centennial Asset Mining Fund, LLC, and Eike Batista's (collectively, "Appellants") appeal of the Bankruptcy Court's Order Denying Objection to Recognition and Motion to Dismiss Chapter 15 Case. (*See* Notice of Appeal, ECF No. 1). After reviewing the parties' briefs, the record on appeal, the relevant legal authorities, and for the reasons explained below, the Court **dismisses** this appeal for lack of jurisdiction.

The foreign debtor, MMX Sudeste Mineração S.A. (the "Debtor"), through its duly appointed judicial administrator, Bernardo Bicalho Alvarenga Mendes ("Trustee"), commenced a proceeding for recognition of a foreign proceeding under Chapter 15 of the Bankruptcy Code, 11 U.S.C. §§ 1501-1532, which the bankruptcy court granted. (*See* BKC ECF No. 9.) The Appellant MMX, the parent company of the Debtor, filed an objection to the order of recognition and a motion to dismiss, arguing that a debtor under Chapter 15 must meet the requirements under 11 U.S.C. § 109(a), relying upon the court's decision in *In re Barnet*, 737 F.3d 238 (2d Cir. 2013). The bankruptcy court denied the motion to dismiss, stating in its order that it "declines to apply the holding of *In re Barnet*, that an entity that is the subject of a foreign proceeding must have property in the United States to have the foreign proceeding recognized under Chapter 15." (*See* Order, BKC ECF No. 33 at 2.) Thereafter, the Appellants filed a notice of appeal of the bankruptcy court's Order. (*See* BKC ECF No. 44.)

Pursuant to 28 U.S.C. § 158(a), the district courts have jurisdiction to hear appeals from final judgments and orders, and interlocutory orders of the bankruptcy judges, with prior leave of court. 28 U.S.C. § 158(a)(1),(3). The Appellants did not seek leave to appeal; rather they assert that the Court has jurisdiction pursuant to § 158(a)(1). Although the parties do not appear to dispute that this Court has jurisdiction, the Court is obligated to consider jurisdiction "even if it means raising the issue *sua sponte*." *In re Donovan*, 532

F.3d 1134, 1136 (11th Cir. 2008) (citing *AT&T Mobility, LLC v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 494 F.3d 1356, 1359 (11th Cir. 2007)).

The Appellants contend that the bankruptcy Order is a final appealable order under the flexible interpretation of finality in the context of bankruptcy appeals.[1] However, upon review, the Court disagrees.

While the Appellants are correct that finality is a more flexible concept in bankruptcy, the increased flexibility "does not render appealable an order which does not finally dispose of a claim or adversary proceeding." *In re Donovan*, 532 F.3d at 1136. Indeed, to be final, "a bankruptcy court order must completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief." *Id.* at 1136-37 (quoting *In re Atlas*, 210 F.3d 1305, 1308 (11th Cir. 2000)) (internal quotations omitted). Generally, an order denying a motion to dismiss is not a final appealable order. The Appellants nonetheless contend that the Order completely resolves the dispute between the parties on a fundamental and discrete issue of law. (*See* ECF No. 9 at 9 n.3.) However, the same could be argued with respect to virtually any order denying a motion to dismiss, as many involve discrete issues of law the determination of which affects the continuation of a case. Furthermore, the Court declines Appellants' urging the Court to apply the same concepts applied in *In re Dolan*, 550 B.R. 582, 588 (S.D. Fla. 2016) (Middlebrooks, J.), as the orders appealed in *In re Dolan* completely resolved the dispute between the parties and left the bankruptcy court with nothing further to do. Such is not the case here, where the bankruptcy proceedings continue. As a result, the Court does not view the Order as a final appealable order under 28 U.S.C. § 158(a)(1).

Accordingly, the Court **dismisses** this appeal for lack of jurisdiction. The oral argument scheduled for April 24, 2018 is canceled, and the Clerk of Court is directed to **close** this case.

Done and ordered at Miami, Florida, on April 2, 2018.

Robert N. Scola, Jr.
United States District Judge

[1] The Appellees do not address the issue of jurisdiction in their response brief, thus the Court assumes their agreement with the Appellants' jurisdictional statement.