

Judge: Paul B. Snyder  
Location: Tacoma  
Chapter: 15  
Date of Hearing: 7/06/06  
Time of Hearing: 9:00 am  
Response Date: 6/30/06

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10 UNITED STATES BANKRUPTCY COURT  
11 WESTERN DISTRICT OF WASHINGTON

12 In re:  
13 Petition of HO SEOK LEE as Court-Appointed  
14 Manager of YOUNGCHANG CO. LTD,  
15 Debtor in Foreign Bankruptcy.

No. 06-40043  
MOTION FOR PERMANENT  
INJUNCTION

16 Ho Seok Lee on behalf of Young Chang requests that this court issue a permanent  
17 injunction, pursuant to 11 U.S.C. § 1521 , enforcing Young Chang's Korean Reorganization  
18 Plan and preventing Samick Musical Instruments Company Ltd. or any subsidiary thereof  
19 from recovering in U.S. courts amounts in excess of what it was permitted to receive under  
20 the Plan.  
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1 I. FACTS

2 *Entities involved in this action*

3 Young Chang Co., Ltd. is one of Korea's largest piano manufacturers. Declaration of  
4 Ho Seok Lee ("Lee Decl."), previously filed in support of Petitioner's Application for  
5 Recognition of Foreign Proceeding, at ¶ 3. A N D Music Corporation is a Delaware  
6 corporation, Young Chang's wholly-owned subsidiary and its distributor of pianos for North  
7 America, Central America and South America. Lee Decl. at ¶ 4. It is located in Lakewood,  
8 Washington. *Id.*

9 Samsung Mfg. Co., ("Samsung") a Korean corporation, is a wholly-owned subsidiary  
10 of (or is wholly-controlled by) Korean piano manufacturer Samick Musical Instruments  
11 Company, Ltd. ("Samick Korea"). *Id.* at ¶ 5. Samick Korea is a long-time business rival of  
12 Young Chang. *Id.*

13 Samick Korea's distributor in North America is a wholly-owned California  
14 corporation, Samick Music Corp. ("Samick America"). *Id.* at ¶ 6. Samick America is a  
15 sister corporation to Samsung, with common ownership. *Id.*

16 The entities involved, then, are these:

17 *Young Chang Co., Ltd.* (Korean corporation)

18 Subsidiary: *A N D Music Corp.* (Delaware corporation)

19 *Samick Musical Instruments Company Ltd.* (Korean corporation)

20 Subsidiary: *Samsung Mfg. Co., Ltd.* (Korean corporation)

21 Subsidiary: *Samick Music Corp.* (California corporation)

1                   ***Samick Korea's Attempted Takeover of Young Chang and A N D Music***

2                   In March 2004, Samick Korea acquired 26.5% of Young Chang's stock. Samsung  
3                   acquired an additional 22.08% of Young Chang's stock. This stock ownership gave Samick  
4                   Korea control over Young Chang. *Id.* at ¶ 7.

5                   Samick Korea then installed its own slate of directors and officers for Young Chang,  
6                   and took steps to merge Samick Korea and Young Chang into one company. *Id.* at ¶ 8.

7                   Between April and June, 2004, Samick Korea announced that Samick America and A  
8                   N D Music would begin operating out of the same location in the City of Industry, California.  
9                   Samick Korea directed A N D Music to move from its location in Lakewood, Washington to  
10                  the Samick America building in City of Industry, California. Samick Korea also installed its  
11                  own officers and directors to run A N D Music. *Id.* at ¶ 9.

12                                   ***Loan Agreements between Samsung and Young Chang***

13                  Young Chang borrowed 1.1 billion Korean Won from Samsung around June 11,  
14                  2004. Samick Korea was in control of Young Chang at this time. That Loan Agreement had  
15                  a one year term, and came due on June 10, 2005, and did not provide for any security for the  
16                  loan. *Id.* at ¶ 10.

17                  Young Chang borrowed an additional 1.0 billion Korean Won on June 14, 2004.  
18                  That Loan Agreement was also for a one-year term, maturing on June 13, 2005, and did not  
19                  provide any security for the loan. *Id.* at ¶ 11.

20                  There exist other versions of loan documents, also dated June 11 and June 14, 2004,  
21                  respectively, but with maturity dates of August 31, 2004, and providing for an assignment of  
22                  about \$1.8 million (U.S.) of Young Chang's accounts receivable due to it from A N D Music  
23

1 Corp. as security for the loans. Young Chang contends that Samsung Mfg. Co.  
2 representatives caused these versions of the loan documents to be prepared and executed in  
3 August 2004, backdating them to June 11 and June 14, 2004. *Id.* at ¶ 12.

#### 4 ***The Unwinding of Samick Korea's Takeover***

5 The Korean Fair Trade Commission ("FTC") took action in August 2004 to unwind  
6 Samick Korea's takeover of Young Chang on the basis that it was a violation of Korea's  
7 antitrust laws, and in September 2004 ordered that it be unwound. The Seoul High Court  
8 early this year stayed the FTC's ruling, but at the present time Young Chang and A N D  
9 Music are operating independently of Samick Korea control. *Id.* at ¶ 13.

10 The Korean FTC ordered Samick Korea and Samsung Mfg. Co., Ltd. to transfer and  
11 divest all of their shares of stock in Young Chang within one year. The Korean FTC also  
12 froze the voting rights of Samick Korea in Young Chang. This allowed the original  
13 management of Young Chang to regain control of the company. *Id.* at ¶ 14.

#### 14 ***Bankruptcy of Young Chang, Appointment of Bankruptcy Court Manager***

15 Young Chang became insolvent on or about September 21, 2004, and filed a petition in  
16 bankruptcy under Korea's Company Reorganization Act (the "CRA") on or about September  
17 24, 2004. The Korean Bankruptcy Court secured all the assets of Young Chang as of October  
18 8, 2004, and froze all of Young Chang's liabilities. *Id.* at ¶ 15. Under the CRA, all parties  
19 who desire to participate in the Korean bankruptcy are provided an opportunity to assert such  
20 claims and to introduce evidence in support of that claim. *Id.* at ¶ 19. Samsung filed its claim  
21 for the 2.1 billion Korean Won due from Young Chang, in Young Chang's reorganization  
22 proceeding, claiming to be a secured party. *Id.* at ¶ 20.  
23

1           Since October 20, 2004, the court-appointed manager, Ho Seok Lee, has held all of the  
2 decision-making power for Young Chang, and is operating Young Chang with the Korean  
3 bankruptcy court's consent. *Id.* at ¶ 17. In the Korean bankruptcy action, Young Chang and  
4 Ho Seok Lee filed an objection to Samsung's assertion that its claims in the bankruptcy  
5 proceeding were secured. *Id.* at ¶ 21.

6           Young Chang on December 20, 2004 filed a separate civil action against Samsung  
7 Mfg. Co. in the Incheon District Court, contesting the validity of the versions of the loan  
8 agreements which include the assignment of Young Chang's \$1.8 million (U.S.) of accounts  
9 receivable due from A N D Music Corp. as security. *Id.* at ¶ 22. The determination of  
10 whether the purported assignments for security will be made in this civil action, rather than by  
11 the Bankruptcy Court. *Id.* In September 2005, the Incheon District Court in Young Chang's  
12 civil action against Samsung found that the supplemental loan agreements were valid. Young  
13 Chang has appealed that decision, and the appeal is pending as of the date of this motion. *Id.*  
14 at ¶ 25.

15           On February 28, 2005, Ho Seok Lee submitted a Reorganization Plan for Young  
16 Chang to the Incheon District Court, Department of Bankruptcy. *Id.* at ¶ 23. That court  
17 approved the plan on July 26, 2005. Copies of that plan, both in Korean and translated to  
18 English, are Lee Decl. Exhibit 1. A certificate from translator Ann Sook Jeon is included.

19           Young Chang's Reorganization Plan provides two alternate schedules for Young  
20 Chang's payment to Samsung Mfg. Co., depending on whether those claims are secured, or  
21 unsecured. If it is determined that the purported assignment is void, such that Samsung is an  
22 *unsecured* creditor, then Young Chang is obliged to pay only 40% of the 2.1 billion Korean  
23

1 Won loans over a 5 year period, during years 6-10 of the Plan. *Id.* at ¶ 24. If Samsung found  
2 to be a *secured* creditor, then Young Chang must pay 90% of the loan amount, evenly in  
3 payments over 5 years, during years 2-6 of the Plan and an additional 10% in stock. *Id.*

4 On April 29, 2005, Samsung filed suit against A N D Music in Superior Court of  
5 Pierce County, Washington to recover those accounts receivable that A N D Music owes  
6 Young Chang (*Samsung Mfg. Co., Ltd., a Korean corporation v. A N D Music Corp*, Pierce  
7 County Superior Court Case No. 05-2-07400-6). Samsung alleges that its loans were secured  
8 by those accounts receivable as stated the supplemental loan documents contested in the  
9 Korean civil action. *Id.* at ¶ 26. Trial in the Pierce County case is presently set for December  
10 11, 2006.

11 In mid-May, 2006, Korean corporation Hyundai Development Company (“HDC”)  
12 agreed to purchase Young Chang. Declaration of Michael Yi (aka Wanhee Lee) in support of  
13 Motion for Permanent Injunction (“Yi Decl.”) at ¶ 3. The sale closed on May 29, 2006. Yi  
14 Decl. at ¶ 4. By, June 15, 2006, HDC will pay off all of Young Chang’s creditors in amounts  
15 equal to the present value of the totals in the Reorganization Plan. *Id.* at ¶ 5. By June 20, the  
16 Korean Bankruptcy Court will close Young Chang’s case. *Id.* at ¶ 6.

## 17 II. REQUEST FOR INJUNCTION

### 18 A. The injunction sought by Young Chang is consistent with the purpose of 19 Chapter 15.

20 (a) The purpose of this chapter is to incorporate the Model Law on Cross-  
21 Border Insolvency so as to provide effective mechanisms for dealing with cases of  
22 cross-border insolvency with the objectives of--

22 (1) cooperation between—

23 (A) courts of the United States, United States trustees, trustees,  
examiners, debtors, and debtors in possession; and

1 (B) the courts and other competent authorities of foreign countries  
2 involved in cross-border insolvency cases;

3 (2) greater legal certainty for trade and investment;

4 (3) fair and efficient administration of cross-border insolvencies that protects  
5 the interests of all creditors, and other interested entities, including the debtor;

6 (4) protection and maximization of the value of the debtor's assets; and

7 (5) facilitation of the rescue of financially troubled businesses, thereby  
8 protecting investment and preserving employment.

9 11 U.S.C.A. § 1501(a)

10 The injunction sought by Young Chang seeks to enforce its Korean Reorganization  
11 Plan in the U.S., and prevent Samsung from recovering any amount above what it is permitted  
12 to receive under the Korean Bankruptcy Court's ruling. This is precisely the reason that  
13 Chapter 15 was drafted.

14 **B. 11 U.S.C. § 1521 specifically provides for a permanent injunction barring  
15 further collection action by Samsung.**

16 Upon recognition of a foreign proceeding, whether main or nonmain,  
17 where necessary to effectuate the purpose of this chapter and to protect the  
18 assets of the debtor or the interests of the creditors, the court may, at the  
19 request of the foreign representative, grant any appropriate relief,  
20 including--

21 (1) staying the commencement or continuation of an individual action or  
22 proceeding concerning the debtor's assets, rights, obligations or  
23 liabilities to the extent they have not been stayed under section  
1520(a);

(2) staying execution against the debtor's assets to the extent it has not  
been stayed under section 1520(a);

Chapter 15 is newly enacted and little case law has developed. However, this court  
can look to former section 304 for guidance on whether a permanent injunction is appropriate

1 under section 1521. Former section 304 provided several considerations in determining  
2 whether to grant a permanent injunction, with an emphasis on affording comity to the foreign  
3 bankruptcy proceeding.

4 In determining whether to grant relief under section 304(b), the court shall  
5 be guided by what will best assure an economical and expeditious  
administration of such estate, consistent with:

6 (1) just treatment of all holders of claims against or interests in such  
7 estate;

8 (2) protection of claim holders in the United States against prejudice and  
inconvenience in the processing of claims in such foreign proceeding;

9 (3) prevention of preferential or fraudulent dispositions of property of such  
10 estate;

11 (4) distribution of proceeds of such estate substantially in accordance with  
the order prescribed by this title;

12 (5) comity; and

13 (6) if appropriate, the provision of an opportunity for a fresh start for the  
14 individual that such foreign proceeding concerns.

15 *In re Petition of Kyu-Byung Hwang*, 309 B.R. 842, 845 (Bkrcty.S.D.N.Y.,2004)(citing 11  
U.S.C. § 304(c)).

16 Many of the above factors from *Kyu-Byung Hwang* deal with preserving the assets of  
17 the debtor so as to put all creditors on equal ground. This case is somewhat unique because  
18 HDC will pay off all of the debts of Young Chang at one time, rather than over the longer  
19 period provided by the Reorganization Plan, so other creditors' ability to collect would not be  
20 affected by Samsung pursuing its claims here in the U.S. However, the most crucial factor,  
21 affording comity to the foreign proceeding, favors granting the permanent injunction.  
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1 The common law principal of "comity", recognizing the legislative, executive or  
2 judicial acts of another nation, is universally applied in both federal and state courts. *See, e.g.,*  
3 *Kotera v. Daioh Intern. U.S.A. Corp.*, 179 Or.App. 253, 40 P.3d 506 (2002); *Exxon v.*  
4 *Industrial Risk*, 341 N.J.Super 489 (2001); *John v. Baker*, 982 P.2d 738 (Alaska, 1999); *Agri*  
5 *West v. Koyama Farms, Inc.* 281 Mont. 167, 933 P.2d 808 (1997); *Ransom v. A.B. Dick Co.*,  
6 289 Ill.App.3d 663, 224 Ill.Dec. 753, 682 N.E.2d 314, 322 (Ill.App.Ct.1997); *Belle Island Inv.*  
7 *Co., Ltd. v. Feingold*, 453 So.2d 1143 (Fla.App., 1984); *Caspian Investments, Ltd. v. Vicom*  
8 *Holdings, Ltd.* (S.D.N.Y.1991); *In re Board of Directors of Hopewell Intern. Ins. Ltd.*, 238  
9 B.R. 25 (S.D.N.Y., 1999). The Oregon Court of Appeals in *Kotera v. Daioh Intern. U.S.A.*  
10 *Corp., supra*, summarized the principles courts consider in evaluating whether to grant comity  
11 to a foreign proceeding. In *Kotera* a Japanese party sued a Japanese corporation and others, in  
12 Oregon state courts, for fraud and other claims arising out of the sale of a condominium and  
13 office building. Trial court granted a directed verdict dismissing certain claims, on grounds of  
14 comity, and the plaintiff appealed. In upholding the dismissal on grounds of comity, the  
15 Oregon Court of Appeals explained:

16 Comity is a flexible concept that counsels us to enforce the laws of  
17 other states when, in the circumstances at hand, those laws neither offend  
18 international duty or convenience nor fail to protect the recognized rights  
19 of our citizens." [Citation.] In *Jacobs*, we quoted *Hilton v. Guyot*, 159 U.S.  
113, 16 S.Ct. 139, 40 L.Ed. 95 (1895), in which the Supreme Court further  
defined "comity":

20 "'Comity,' in the legal sense, is neither a matter of absolute  
21 obligation, on the one hand, nor of mere courtesy and good will,  
22 upon the other. But it is the recognition which one nation allows  
23 within its territory to the legislative, executive or judicial acts of  
another nation, having due regard both to international duty and  
convenience, and to the rights of its own citizens or of other  
persons who are under the protection of its laws." [Citation.]

1  
2 A court's invocation of comity in declining to consider an issue is a  
3 matter of discretion, which we review for abuse of discretion. [Citation.].  
4 Relevant considerations include convenience, *id.*, the strength of the  
5 claim's ties to each forum, . . . and the relative expertise of courts in each  
6 forum, see *Kerr v. Miller*, 159 Or.App. 613, 636, 977 P.2d 438, rev. den.  
329 Or. 287, 994 P.2d 122 (1999) ("Because the substance of Kerr's attack  
. . . depends on principles of bankruptcy law, we decline, as did the trial  
court, to revisit the bankruptcy court's ruling."). . . . Similarly, the relative  
convenience of the courts of different nations plays a part in the comity  
determination. . . .

7 *Kotera v. Daioh*, 40 P.3d at 522-523

8 In *In re Board of Directors of Hopewell Intern. Ins. Ltd.*, *supra*, Hopewell International  
9 had entered into a plan of reorganization in Bermuda bankruptcy courts. Very much as in  
10 Samsung's Pierce County case, a creditor, Gold Medal Insurance Company, sought to pursue  
11 Hopewell accounts receivable in the United States. Hopewell filed an ancillary bankruptcy  
12 proceeding in New York under former section 304, seeking an injunction preventing Gold  
13 Medal from commencing any arbitration or judicial proceedings or enforcing any judgments  
14 against Hopewell or its property in this country, and asking the U.S. Court to grant comity to,  
15 and extend, an injunction issued by the Bermuda court preventing a creditor taking any of  
16 those actions in the U.S. The *Hopewell* court explained why comity is particularly important  
17 when foreign bankruptcy proceedings are involved:

18 The fifth factor [in deciding whether to grant an ancillary petition], comity,  
19 is a more wide-ranging concept; it is especially important in the  
20 international insolvency context because "deference to foreign insolvency  
21 proceedings will, in many cases, facilitate 'equitable, orderly, and  
22 systematic' distribution of the debtor's assets". [Citation]. To this end,  
23 Congress explicitly recognized comity as an important principle in  
transnational insolvency situations when it revised the bankruptcy laws.  
[Citation.] Comity, however, is much more than a discrete element or  
factor to be considered as part of a larger analysis; it is a pervasive  
principle of international law which reflects that courts of one nation ought

1 to respect the authority of another nation to legislate over, command and  
2 adjudicate issues concerning its own the citizens. [Citation.]

3 Comity should therefore be accorded to orders and decisions of a  
4 foreign court as well as to foreign statutes as long as "it is shown that the  
5 foreign court is a court of competent jurisdiction, and that the laws and  
6 public policy of the forum state and the rights of its residents will not be  
7 violated." [Citations.] . . .

8 *Hopewell*, 238 B.R. at 66.

9 Korean courts have been found to provide fairness and due process consistent with  
10 that of American courts, and this court should therefore afford comity to the Korean  
11 Bankruptcy Court in this case.

12 Comity is the ultimate consideration in determining whether to provide  
13 relief under § 304. [citations omitted.] The record confirms that Korean  
14 bankruptcy law, and in particular the Company Reorganization Act, is  
15 substantially similar to United States law, does not discriminate against  
16 non-Korean creditors, and comports with American notions of fairness and  
17 due process. The Korean Proceeding provides many of the same  
18 procedural safeguards as would apply in a Chapter 11 case in the United  
19 States. The distribution of proceeds pursuant to Onse's Plan of  
20 Reorganization is substantially in accordance with United States law.  
21 Therefore, affording comity to the Foreign Proceeding is warranted and  
22 appropriate.

23 *In re Petition of Kyu-Byung Hwang*, 309 B.R. 842, 845-46.

The only way to ensure that the parties' issues are settled consistently is to have a  
single court make the determinations. In this case, the single court best equipped to do so is  
the Korean Bankruptcy Court. "It is the foreign court which is in the best position to assess  
where and when claims should be liquidated in order to conserve estate resources and  
maximize the assets available for distribution." *In re Bird*, 229 B.R. 90, 94 (Bkrcty.S.D.N.Y.,  
1999).

1 In the Pierce County case, Samsung seeks to recoup a larger portion of its outstanding  
2 loans than it is entitled to under the Reorganization Plan approved by the Korean Bankruptcy  
3 Court. Such a result would be directly contrary to the ruling of the Korean Bankruptcy Court.

4 Samsung would suffer no prejudice if it were denied the opportunity to pursue its  
5 claims for a second time in Pierce County. Samsung had full access to the Korean civil and  
6 bankruptcy courts to pursue its claims against Young Chang on the loans. Young Chang  
7 spent considerable effort and funds defending against Samsung's claims in its home courts.  
8 Those courts decided that Samsung could recover only a portion of the money that it claimed  
9 was due on the loans. To allow Samsung a second chance to litigate these issues would be  
10 manifestly unfair. This court should, consistent with the purpose of Chapter 15 and principles  
11 of international comity, grant this motion to prevent Samsung from further recovering on  
12 those loans.

13 Dated: May 30, 2006

14  
15 s/ Jason T. Dennett  
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23 Attorneys for Petitioner Ho Seok Lee

**CERTIFICATE OF SERVICE**

I, Nadine Morin, declare as follows:

1. I am a citizen of the United States and a resident of the state of Washington, over the age of 18 years, not a party to the above-entitled action, and am competent to be a witness herein.

2. On May 30, 2006, I caused to be served via U.S. Mail, postage prepaid on:

Stuart R. Dunwoody Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688	Lance N. Jurich, Esq. Leob & Leob LLP 10100 Santa Monica Blvd., Suite 2200 Los Angeles, CA 90067-4164
U.S. Trustee 700 Stewart Street, Suite 5103 Seattle, WA 98101	

the following documents:

- a. Motion for Permanent Injunction;
- b. Declaration of Michael Yi aka Wanhee Lee in Support of Motion for Permanent Injunction;
- c. Proposed Order Granting Motion for Permanent Injunction.

I declare under penalty of perjury of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: May 30, 2006

s/ Nadine Morin