Supreme Court No. 2018-010

IN THE SUPREME COURT
REPUBLIC OF THE MARSHALL ISLANDS

HIGHLAND FLOATING RATE OPPORTUNITIES FUND, HIGHLAND GLOBAL ALLOCATION FUND, HIGHLAND LOAN MASTER FUND, L.P., HIGHLAND OPPORTUNISTIC CREDIT FUND, and NEXPOINT CREDIT STRATEGIES FUND,
Plaintiffs-Appellants

v.

DRYSHIPS INC., OCEAN RIG INVESTMENTS INC., TMS OFFSHORE SERVICES LTD., SIFNOS SHAREHOLDERS INC., AGON SHIPPING INC., ANTONIOS KANDYLIDIS, and GEORGE ECONOMOU,
Defendants-Appellees

On Appeal from the High Court
H. Ct. 2017-198
Hon. Carl B. Ingram, Chief Justice

REPLY BRIEF OF APPELLANTS

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17 June 2019

INTRODUCTION

What Appellees seek to accomplish here is astonishing. Appellants are the holders of $74 million in Notes issued by UDW, a publicly traded company that at the time was incorporated in RMI. Appellees in this case are the recipients of hundreds of millions of dollars in fraudulent conveyances made between mid-2015 and April 2016. The corporate Appellees are all RMI corporations, and the individual Appellees were the directors and officers of those RMI corporations who directed the fraudulent conveyances at issue. Having transferred out hundreds of millions of dollars to Appellees, UDW was unable to repay its debts—including the Notes—when they came due.

To avoid ever having to repay those debts or face liability for pilfering UDW's cash that would otherwise have been available to repay the Notes, Appellees engaged sophisticated counsel to determine how to best cram down UDW's legitimate debts. As Appellees' counsel of record in this action opined to the Cayman court in his capacity as UDW's RMI law expert, "it would not be possible to implement a formal restructuring of the Scheme Companies' debt obligations in the RMI," because there is "no formal corporate restructuring regime under any statutory, administrative or regulatory framework currently in effect in the RMI." (A.158.) To avoid liquidation, the only remedy to address an insolvent corporation's debts under RMI law, UDW redomiciled to the Cayman Islands, which "does have statutory laws and procedures permitting restructuring." *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 694 (Bankr. S.D.N.Y. 2017).

On March 24, 2017, UDW's board initiated insolvency proceedings in the Cayman Islands with no shareholder vote. Less than six months later, the Cayman court approved a scheme of arrangement that restructured UDW's debts, with the Noteholders slated to receive less than 1% of new equity, and UDW offering to cash out $131 million in outstanding Notes for just 7 cents

on the dollar.[1] Having cleansed its debts through the Cayman Islands restructuring, less than one year later, UDW announced its acquisition by Transocean Ltd. in a reported **$2.7 billion** cash-and-stock deal,[2] from which the Noteholders received nothing.

Appellants initiated this action on August 31, 2017. Appellees moved to dismiss on a number of technical grounds unrelated to the merits of Appellants' underlying allegations. Most notably, Appellees argue that because the UDW Scheme purported to discharge the Notes, Appellants' creditor status and standing to bring the fraudulent transfer claims asserted in the Complaint has been extinguished. That argument, however, ignores the RMI's strong public policy against unilaterally prejudicing a creditor's rights through redomiciliation, reflected in BCA § 128(5). Appellees' argument that the no-action clause contained in the Indenture that governed the discharged Notes still operates to bar Appellants' claims similarly fails because Appellants are the only remaining creditors who can bring these claims. At bottom, the question before this Court is whether it comports with RMI public policy to recognize and enforce a foreign restructuring scheme obtained specifically to avoid the protections afforded to RMI creditors under the BCA, and thereby insulate Appellees from ever having to answer for their use of RMI corporations in an elaborate shell game that facilitated hundreds of millions of dollars in fraudulent conveyances at Appellants' expense. As set forth below and in Appellants' Opening Brief, the answer should be a resounding no.

[1] To date, Appellants have not received any disbursements pursuant to the UDW Scheme because they have refused to waive their ability to pursue their claims in this action.

[2] *Transocean to buy Ocean Rig in $2.7 billion deal*, Reuters (Sept. 4, 2018), *available at* https://www.reuters.com/article/us-ocean-rig-udw-m-a-transocea/transocean-to-buy-ocean-rig-in-2-7-billion-deal-idUSKCN1LK13B.

ARGUMENT

As an initial matter, Appellees misstate the standard of review in claiming that the High Court's factual findings are reviewed for "clear error" only. Joint Response at 21. In making that argument, Appellees misleadingly cite to this Court's decision in *Kramer and PII v. Are and Are*, 3 MILR 56 (2008). In *Kramer*, however, this Court stated a deferential standard for factual findings of the High Court made in connection with a judgment issued following a bench trial, ***not*** in a case decided at the pleadings stage. *Id.* at 60. Dismissal of a complaint at the pleadings stage is always reviewed *de novo*. *See Samsung Heavy Equip. Indus. Co. v. Focus Invs., Ltd.*, RMI S. Ct. No. 2018-02, at 8 (Sept. 6, 2018).

A. The High Court Erred by Recognizing and Enforcing the UDW Scheme to Find That Highland Lacks Standing to Assert Its Claims Against Non-Debtor Third Parties.

As Appellants explain in their Opening Brief, the High Court erred in granting comity to the UDW Scheme—based upon a finding that doing so "would not be against RMI public policy"—because the law of the RMI reflects a clear policy choice to permit only a liquidation of an insolvent company, not a restructuring that allows the company to extinguish its debt over the objection of its creditors.[3] Opening Brief at 19. In response, Appellees argue that the Nitijela's recent adoption of the UNCITRAL Model Law on Cross-Border Insolvency Implementation Act somehow trumps that analysis of unchanged language of the Business Corporations Act. Joint Response at 35. This subsequent development is a complete red herring. *O'Gilvie v. United States*, 519 U.S. 79, 90 (1996) ("We add that, in any event, the view of a later Congress cannot control the interpretation of an earlier enacted statute."). Nowhere do Appellees acknowledge that UDW's RMI law expert (and Appellees' own counsel of record in this action) stated to the Cayman court

[3] Far from abandoning their public policy argument, as Appellees suggest, Appellants continued to press it in their post-hearing briefing. (S.A.640.)

that "it would not be possible to implement a formal restructuring of the Scheme Companies' debts obligations in the RMI of the type contemplated and presented to me in the Joint Instructions." (A.158.) Notably, the Nitijela has not amended the BCA to eliminate the language of BCA § 128(5) or to otherwise provide for debt restructuring as an alternative to a court-supervised liquidation. *See* BCA § 105 (permitting court-supervised liquidation of dissolved corporation); BCA § 106 (establishing procedures for creditor claims).

And even enactment of the Model Law does not eliminate the requirement that a court assess the congruity of a foreign insolvency regime with domestic law. *E.g.*, *In re Vitro S.A.B. de CV*, 701 F.3d 1031, 1044 (5th Cir. 2012) (finding that although it is not necessary for result achieved in foreign bankruptcy proceeding to be "identical" to that which would be had in United States in order for court to grant relief in Chapter 15 case ancillary to foreign bankruptcy proceeding, it "is sufficient if the result is 'comparable'"); *In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010) ("When the foreign proceeding is in a sister common law jurisdiction ***with procedures akin to our own***, comity should be extended with less hesitation, there being fewer concerns over the procedural safeguards employed in those foreign proceedings." (emphasis added)); *accord* 30 MIRC Ch. 7, § 706 ("Nothing in this Act prevents the High Court from refusing to take an action governed by this Act if the action would be manifestly contrary to the public policy of the Republic."). In other words, even if the Model Law somehow applied retroactively to the High Court's determination of whether to recognize and enforce the UDW Scheme,[4] the High Court nonetheless erred by recognizing and enforcing a scheme that is incompatible with the public policy still reflected in RMI statutory law. *See Vitro,*

[4] *McAndrews v. Fleet Bank of Massachusetts, N.A.*, 989 F.2d 13, 15 (1st Cir. 1993) ("It is a settled rule that courts should not apply statutes retroactively when doing so would significantly impair existing substantive rights and, thus, disappoint legitimate expectations.").

701 F.3d at 1036 (affirming bankruptcy court's refusal under Chapter 15 to enforce a Mexican reorganization plan that purported to impose releases of non-debtors on non-consenting creditors, in contravention of U.S. policy). The High Court's conclusory one-sentence analysis that contains no citation to RMI law—"Notwithstanding Highland's arguments, the RMI does not have a policy against restructuring be the restructuring under Chapter 11 of the United States bankruptcy code or the Cayman Islands court-supervised restructuring"—would be plainly insufficient even under the heightened deference imposed by the Model Law that would still require the High Court to consider whether UDW could have achieved a similar result in a court-supervised liquidation under RMI law. (A.30.) Accordingly, the High Court erred by not conducting a proper analysis of RMI law to determine its congruity with the UDW Scheme before granting comity.

B. The High Court Erred by Finding That BCA § 128(5) Does Not Preserve Highland's Creditor Standing.

The High Court additionally erred by imposing a causation requirement into the operation of BCA § 128(5) and then dismissing Appellants' claims on that basis at the motion to dismiss stage by making the factual finding that UDW *could have* gone through liquidation proceedings in the Cayman Islands without redomiciling from RMI first despite the actual facts here that UDW *did* redomicile for the purpose of seeking a Cayman Islands liquidation.

Appellees misleadingly argue in response that "[t]his argument misses the mark because the High Court's opinion did not impose a proximate cause requirement or even include the term 'proximate cause' anywhere in its analysis." Joint Response at 46. But that is precisely how ***Appellees*** characterized it in their motion to dismiss. *See* Joint Motion to Dismiss at 24 ("The fundamental defect in Highland's theory is that UDW's redomiciliation to the Cayman Islands was not the proximate cause of any adverse effects of which Highland complains. . . . Because the redomiciliation was not the proximate cause of any deprivation of shareholder or creditor rights,

BCA Section 128(5) does not apply."); *id.* at 25 ("A presumption exists that any cause of action created by statute incorporates a proximate causation requirement."). Whether or not the High Court used the term "proximate cause," its analysis inappropriately incorporated a causation requirement into BCA § 128(5). (A.31.)

But, even if the High Court did not err in writing a proximate causation requirement into BCA § 128(5), as set forth in Appellants' Opening Brief, Appellants' detailed allegations tracing UDW's decision to redomicile and the consequences thereof present—at minimum—more than a sufficient fact issue to preclude dismissal at this early stage. Opening Brief at 26–28. Consequently, there was no proper basis in the record for the High Court's conclusion that "the record evidence demonstrates that UDW could have restructured its debt through the Cayman Proceedings without redomiciling to the Cayman Islands." (A.31.)

In fact, presented with the same set of facts in the Chapter 15 proceeding in New York, the New York bankruptcy court observed that UDW and its affiliates shifted their from RMI to the Cayman Islands because "[t]he only provisions under RMI law that address financially distressed corporations—the Business Corporations Act and the Uniform Foreign Money–Judgments Recognition Act—contemplate dissolution and, therefore, any insolvency process in the RMI would invariably result in a value-destroying liquidation process." *In re Ocean Rig UDW Inc.*, 570 B.R. at 707. UDW's Cayman counsel bragged on its website that "***as a result of the transfer*** (in the case of UDW) and the registrations (in the case of the [RMI Subsidiaries]), the four companies were able to benefit from the Cayman Islands' scheme of arrangement regime—of which there is no equivalent in the Marshall Islands—and also the well-established statutory framework and highly regarded Court system in the Cayman Islands." *See* Ogier, *Ocean Rig – Schemes of*

Arrangement in the Cayman Islands (Oct. 10, 2017), http://www.ogier.com/publications/ocean-rig-schemes-of-arrangement-in-the-cayman-islands (emphasis added).

The High Court nonetheless reached its contrary conclusion relying solely on the conclusory and untested opinion of Appellees' Cayman counsel. (A.32.) The only example cited by Appellees' Cayman counsel and the High Court to demonstrate the ability of RMI companies to restructure under foreign law without redomiciling out of the RMI was the Cayman restructuring proceedings for UDW's RMI Subsidiaries **in this very case** where, tellingly, the parent company of those entities—UDW—did in fact redomicile rather than attempt to restructure itself in the Cayman Islands as an RMI company. *Id.*; *see also* Ogier, *Ocean Rig – Schemes of Arrangement in the Cayman Islands* (Oct. 10, 2017), http://www.ogier.com/publications/ocean-rig-schemes-of-arrangement-in-the-cayman-islands (characterizing the restructuring of UDW's RMI Subsidiaries as "the first time foreign registered companies have made use of the 'light touch' provisional liquidation process available under the law of the Cayman Islands").

Setting aside that it is completely circular for the High Court to cite that example in the same case where it is being asked to decide whether the RMI should recognize and enforce that restructuring scheme, Appellees have not and cannot cite any authority to support that a Cayman court would exercise its discretionary jurisdiction to wind up a group of solely foreign entities with only a limited nexus to Cayman. (A.570-A.572 at ¶¶ 30-37.) Appellees would have this Court believe that they engaged sophisticated counsel, and then purposely undertook the costly process of redomiciling the parent company, UDW, from RMI to the Cayman Islands, even though the redomiciliation was completely unnecessary. This Court should instead embrace the obvious conclusion that the redomiciliation was actually necessary in order for UDW and, by extension, Appellees to "benefit from the Cayman Islands' scheme of arrangement regime." The High Court

therefore erred by incorporating a proximate cause standard in BCA § 128(5), whether the it used the term "proximate cause" or not, and by making a factual finding at the motion to dismiss stage that was contrary to the real facts of this case. Those errors caused the High Court to incorrectly conclude that BCA § 128(5) does not preserve Appellants' creditor standing.

C. The High Court Erred by Dismissing Highland's Claims with Prejudice Based Upon Its Determination that the Indenture's No-Action Clause Bars Highland's Claims.

Appellees are completely unable to distinguish *Ellington Credit Fund, Ltd. v. Select Portfolio Servicing, Inc.*, 837 F. Supp. 2d 162, 185 (S.D.N.Y. 2011), which establishes that if there is no longer a trust, and therefore no longer a trustee, a no-action clause does not work to bar a claim made by a noteholder. Contrary to Defendants' mischaracterization of the holding in that case, the court in *Ellington* provided two entirely independent bases for its conclusion that the no-action clause did not bar the plaintiffs' claims: (1) plaintiffs alleged they were fraudulently induced, and (2) there was no longer a governing no-action clause (or even a trustee) for the three "closed securitizations." *Id.* at 185. *Ellington* plainly recognizes that when the absence of a trustee renders a no-action clause moot as a matter of practice, then it also renders it moot as a matter of law. There is zero support in *Ellington* for the proposition that Appellants were somehow required to "allege that Defendants fraudulently induced [them] to give up [their] ability to comply with the no action clause as happened in *Ellington*." Joint Response at 29.

Further, none of the policies that support the use of no-action clauses in bond indentures justify the remedy that Appellees seek here, which would be a ***total bar*** to the ability of any plaintiff to bring fraudulent conveyance claims against Appellees. Appellees misleadingly argue that allowing Appellants to proceed with their fraudulent conveyance claims would come "at the expense of UDW and its other former creditors." Joint Response at 31. Appellees point to the Cayman court's observation that "the PCT is a much fairer way of dealing with any claims that

may be properly asserted against officers of UDW and their affiliates." *Id.* However, Appellees have previously admitted that the PCT does not hold any creditor claims, including those asserted by Appellants in this action. (A.963.) This admission renders any further discussion of the PCT largely irrelevant. A no-action clause is designed to channel claims through a centralized trustee or prevent duplicative or frivolous litigation. *See Ellington*, 837 F. Supp. 2d at 185 ("Plaintiffs have bought out the interests of any certificateholders who would otherwise need to be protected from the expense of a frivolous suit and there is no longer a Trustee (or even a trust) through whom such a dispute could be channeled."). It is not meant to completely immunize such claims from judicial review, which is what Appellees seek.

D. The High Court Erred by Dismissing Highland's Constructive Fraudulent Conveyance Claims Based on its Determination That Those Claims Are Not Available Under American Common Law.

The parties agree that a fraudulent conveyance plaintiff can bring a claim alleging a "badge of fraud," which gives rise to a rebuttable presumption of actual intent to defraud. Joint Response at 48. But because Appellants referred in the Complaint to this alternative theory of fraudulent conveyance as "constructive fraud," Appellees argue that it is not cognizable, since "constructive fraudulent conveyance" is a creature of statutory law. *Id.* at 48–49. As Appellants made clear in their Opening Brief, they do not rely on any statutory claim of constructive fraudulent conveyance. Opening Brief at 33. Rather, in the Second, Fourth, and Sixth Causes of Action, Appellants assert claims of fraudulent conveyance under RMI common law, relying on a "badge of fraud" and a presumption of intent to defraud. *Id.* In other words, the parties agree that these causes of action allege fraudulent conveyance under RMI common law, save for the title ("Constructive Fraudulent Conveyance"). But it is the substantive allegations that matter, not the titles of the causes of action. And in each of the three causes of action entitled "Constructive Fraudulent Conveyance," Appellants adequately allege badges of fraud that are cognizable at common law (insider transfers

and grossly inadequate consideration). Such substantive allegations certainly constitute "a short and plain statement . . . showing that the pleader is entitled to relief." MIRCP 8(a)(2). Accordingly, the High Court erred in ordering the draconian remedy of dismissing these causes of action, when instead it could have simply entered an order confirming that Appellants may pursue the Second, Fourth, and Sixth Causes of Action under RMI common law by pointing to a badge of fraud and establishing a rebuttable presumption of intent to defraud.

E. The High Court Erred by Dismissing the Aiding and Abetting Fraudulent Conveyance Claims Based on its Determination That Such a Theory is Not Available Under American Common Law.

The parties agree that RMI law is silent on whether a plaintiff may allege a claim of aiding and abetting fraudulent conveyance. While in the absence of RMI authority, RMI courts look to "[t]he rules of common law, . . . as generally understood and applied in the United States," *see Likinbod v. Keljat*, 2 MILR 65, 66 (1995), American common law often is traced back to English common law, as illustrated by the parties' discussion of the Statute of Elizabeth in this very action. In the absence of any recent U.S. common law decisions on the aiding and abetting issue, this Court can and should look to English common law, which, as discussed in Appellants' Opening Brief, supports an aiding and abetting theory under the concept of "knowing assistance to a fraudulent conveyance." *See* Opening Brief at 34–35.

F. The High Court Erred by Granting the Individual Defendants' Motion to Dismiss for Lack of Personal Jurisdiction.

Appellees fail to resolve the central tension between the High Court's conclusion that "the Individual Defendants have not committed any act expressly aimed at the Marshall Islands" and the High Court's earlier finding under § 251(1)(n) of the RMI long-arm statute that "Highland has adequately alleged common law fraudulent conveyance claims against the Individual Defendants who specifically targeted and affected UDW, an RMI person, depleting UDW of its assets through

the DryShips Loan, the TMS Management Contract, the ORI Cash Transfer, and the Agon Drillship Purchase." (A.83, A.85.) Here, Appellants allege that the Individual Defendants committed the intentional acts of incorporating UDW in the RMI, causing it to transfer tens of millions of dollars to entities controlled by Individual Defendants (thereby driving UDW toward insolvency), and causing it to redomicile to Cayman to pursue restructuring proceedings that it could not have pursued under RMI law. Moreover, Appellants allege that through those proceedings, the Individual Defendants sought to wipe out the debt UDW incurred to Highland while it was an RMI corporation, and attempted to leave Appellants with no ability to recover what they are owed, in contravention of RMI law, *i.e.*, BCA § 128(5). These intentional acts were specifically targeted at and affected an RMI person.

Notwithstanding that conduct, Appellees argue that the Individual Defendants somehow "did not have explicit statutory notice that they were subject to jurisdiction in the RMI," and therefore could not have reasonably anticipated being haled into court in the RMI despite serving as directors and officers of numerous RMI companies. Individual Appellees Response at 11. However, even though long-arm jurisdiction is not automatically available against a director or officer of an RMI company (unlike in Delaware), Delaware courts have held that such an exercise of jurisdiction comports with due process principles, since, "[b]y becoming a director and officer of a Delaware corporation, [the director] purposefully availed himself of certain duties and protections under [Delaware] law." *Hazout v. Ting*, 134 A.3d 274, 292 (Del. 2016). Contrary to Appellees' argument, the Delaware Supreme Court's finding of purposeful availament does ***not*** depend on whether the director had advance statutory notice, prior to accepting the directorship, that he could be sued in Delaware for fraudulent actions undertaken as a director of the corporation. Rather, in deciding that the constitutional inquiry as applied to out-of-state directors was not even

a "close question," the court in *Hazout* explained that where the parties to a transaction understand that the law of the corporation's home jurisdiction will apply to claims arising out of the transaction—such as here, where the parties to this litigation agree that RMI law applies to Appellants' fraudulent conveyance claims—the parties could certainly foresee that they would be subject to litigation in such jurisdiction. *Id.* at 293. This is not an action, for example, where Appellants seek to "drag corporate officers and directors" into the RMI for a cause of action "where the underlying conduct and claims have no rational connection to [the RMI] and provide no rational basis for [the RMI] to apply its own law." *Id.* at 291 n.60. Rather, Appellants' claims specifically arise out of the Individual Defendants' decision to incorporate UDW in the RMI and then affirmatively redomicile it to the Cayman Islands, and are claims governed by RMI law as applied to RMI corporations. Further, the Individual Defendants purposefully availed themselves of the privilege of becoming directors and officers of RMI corporations (including UDW), through which they received benefits under the BCA, including the power to manage UDW and to receive loans and indemnification from UDW. *See, e.g.*, BCA §§ 48, 59, 60, 62; *see also Ryan v. Gifford*, 935 A.2d 258, 273 (Del. Ch. 2007) (finding that officer availed himself of Delaware law due to statutory provisions related to indemnification for corporate officers). And, as discussed above, the Individual Defendants' contacts were even greater than the mere acceptance of director and officer roles, in that the Individual Defendants affirmatively chose to incorporate UDW in the RMI and then to redomicile UDW to Cayman. Indeed, these Individual Defendants took advantage of the privileges of RMI law over and over, until the point when Appellants sought to hold them

accountable for their actions through this lawsuit. Having availed themselves of the benefits of RMI law, the Individual Defendants cannot now escape the consequences.[5]

At a minimum, Appellants are entitled to jurisdictional discovery, having established that the RMI's long-arm statute applies to support the existence of personal jurisdiction over the Individual Defendants in the RMI, and that Appellants' claims are not "clearly frivolous." *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003) (instructing that "courts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff's claim is 'clearly frivolous.'"); *City of Almaty v. Ablyazov*, 278 F. Supp. 3d 776, 809 (S.D.N.Y. 2017) ("Jurisdictional discovery is warranted where, even if plaintiff has 'not made a *prima facie* showing, [they have] made a sufficient start toward establishing personal jurisdiction.'" (quoting *Stratagem Dev. Corp. v. Heron Int'l N.V.*, 153 F.R.D. 535, 547–48 (S.D.N.Y. 1994))). Appellants allege that as directors and officers of RMI companies, the Individual Defendants engaged in a fraudulent scheme to drain UDW of its assets, drive it toward insolvency, and then redomicile the company to a forum that provides corporate restructuring and the discharge of debt. Appellants should be afforded an opportunity to investigate the Individual Defendants' understanding of these transactions and their effects upon UDW in the RMI, and the Individual Defendants' intent in entering into the transactions. *See, e.g., Gualandi v. Adams*, 385 F.3d 236, 244 (2d Cir. 2004) ("In addition, courts generally require that plaintiffs be given an opportunity to conduct discovery on these jurisdictional facts, at least where the facts, for which discovery is sought, are peculiarly within the knowledge of the opposing party."). Accordingly, the High Court

[5] Because the Individual Defendants' acceptance of director and officer roles for RMI companies, including UDW, constitutes purposeful availment, Appellants need not satisfy the "effects test" as an alternative proxy for purposeful availment. *E.g., Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155–56 (9th Cir. 2006).

erred in dismissing Appellants' claims against the Individual Defendants for lack of personal jurisdiction without at least granting leave to conduct jurisdictional discovery.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that the High Court's Dismissal Order be reversed and that the case be remanded for further proceedings.

Dated: 17 June 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I hereby certify that an exact duplicate of the documents filed above were duly served upon the below-named persons on the date below written by sending them a copy by:

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