

TRANSLINK COORDINATION, INC., v Translink Am., Inc.
2004 NY Slip Op 30333(U)
June 25, 2004
Sup Ct, NY County
Docket Number: 117663/99
Judge: Stanley L. Sklar
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: STANLEY L. SKLAR
Justice

PART 29

Translink Bostonston Inc.

- v -

Transline America Inc.

INDEX NO. 11763A9

MOTION DATE _____

MOTION SEQ. NO. C 010

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

~~Notice of Motion/~~ Order to Show Cause 1 Affidavits 2 Exhibits 1A

Answering Affidavits 1 Exhibits _____

~~Replying Affidavits~~ ADDITIONAL SUPPORTING AFFIDAVIT

PAPERS NUMBERED

1-14

15

16

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, It is ordered that this motion

MOTION DECIDED IN ACCORDANCE WITH
THE ATTACHED MEMORANDUM DECISION

FILED
JUL 14 2004
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/25/04

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION *J.S.C.*

Check if appropriate: ☐ NN NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 29

-----X

TRANSLINK COORDINATION, INC., f/k/a
TRANSLINK INTERNATIONAL, INC.,

Petitioner,

Index No. 117663/99

-against-

TRANSLINK AMERICA, INC., a/k/a TLA
WORLDWIDE, LTD., GOODRICH
CAPITAL INTERNATIONAL, INC.,
GOODRICH CAPITAL INTERNATIONAL
(US)(the Partnership), GOODRICH
CAPITAL INTERNATIONAL (US)
(the Corporation), ANDREW SHERWOOD,
a/k/a SHERWOOD A. SCHAUB, JR.,
DIANE SHERWOOD, a/k/a DIANE KATHERINE
WELLS, a/k/a DIANE SCHAUB and
GOODRICH & SHERWOOD ASSOC., INC.,
and G & S HOLDING, L.P.,

FILED

JUL 14 2004

NEW YORK
COUNTY CLERK'S OFFICE

Respondents.

-----X

Stanley L. Sklar, J.:

In this action to enforce a judgment, petitioner moves by order to show cause for the following relief: (1) an order requiring respondent judgment debtor G & S Holding, L.P. (G&S Holding) to turn over the stock it owns in respondent judgment debtor Goodrich & Sherwood Associates, Inc. (Goodrich & Sherwood) and in new respondent Whittenwood Associates, Ltd. (Whittenwood) to the Sheriff of New York County, pursuant to the judgment has obtained against G&S Holding; (2) an order permitting petitioner to amend the present petition to include Whittenwood as a

respondent; (3) an order temporarily restraining Whittenwood, pending determination of the present motion, from making any transfers outside of the normal course of business;

(4) an order granting summary judgment against Whittenwood, pursuant to section 273-1 of the New York Debtor and Creditor Law; and (5) an order requiring respondents to respond to petitioner's Third Set of Interrogatories.

At oral argument, petitioner's motion to add Whittenwood as a respondent was granted. The court reserved judgment on the remainder of the present motion.

Petitioner's application for summary judgment against Whittenwood is denied. Summary judgment will not be granted prior to the joinder of issue. CPLR 3212(a); see also *Miller v Schreyer*, 257 AD2d 358 (1st Dept 1999). Therefore, Whittenwood will be afforded the opportunity to answer the petition.

Petitioner is also denied the right to obtain a temporary restraining order against Whittenwood pending the determination of the present order to show cause. This court declined to grant a temporary restraining order on the order to show cause, and petitioner has failed to request a preliminary injunction on the present motion. Petitioner has not attempted to meet the requirements for a temporary restraining order or a preliminary injunction (which would have been the appropriate form of motion, after the temporary restraining order was denied). In any event,

it is unlikely that petitioner could show an imminency of harm at this point, as there has been more than enough time for Whittenwood to make any transfers of property to others which it might have wished to make.

Respondent has raised no valid objections to petitioner's request that G&S Holding turn over its stock in Goodrich & Sherwood and Whittenwood. Petitioner has not requested that Whittenwood turn over its own property, as respondent has claimed, but has properly requested the turnover of property belonging to G&S Holding, a judgment debtor. See CPLR 5225(a). The fact, raised by respondents at oral argument, that G&S Holding may be "put out of business" by this turnover of property is irrelevant, in that petitioner is entitled to do what it must to recover on its judgment, within the confines of the law. Therefore, G&S Holding must turn over the stock it owns in Goodrich & Sherwood, and in Whittenwood, to the Sheriff of the City of New York, in satisfaction of the judgment. Petitioner has also informally requested that any funds remaining in the bank accounts of G&S Holding and Goodrich and Sherman, sums of a most nominal nature, be turned over as well. However, this task should be accomplished by a proper execution on these accounts, carried out by the Sheriff.

Respondents object to petitioner's demand that they respond to petitioner's Third Set of Interrogatories, on the ground that

all of the interrogatories are "contention" interrogatories, which are impermissible.

"Interrogatories which call for opinions or conclusions of law, rather than relevant facts, should be stricken.'" *Mijatovic Noonan*, 172 AD2d 806, 806 (2d Dept 1991); see also *Lakeville Merrick Corp v Town Board, Town of Islip*, 23 AD2d 584 (2d Dept 1965) (interrogatories which ask for a conclusion of fact or law will not be permitted). Petitioner's third interrogatory calls for respondents to set forth all documents upon which they rely to support their contention that certain payments did not render respondents Translink America Inc. and/or TLA Worldwide insolvent. This query calls for respondents to provide support for a conclusion, and is therefore improper. It will, therefore, be stricken. The remaining interrogatories do not suffer from the same infirmity, are permissible, and must be answered.

Accordingly, it is

ORDERED that petitioner's motion is granted, in part, as follows:

(1) respondent G & S Holding, L.P. is directed to turn over to the Sheriff of the City of New York all of the stock it holds in respondents Goodrich & Sherwood Associates, Inc. and Whittenwood Associates, Ltd. within 20 days of receipt of this order with notice of entry; and

(2) respondents are directed to respond to petitioner's

Third Set of Interrogatories, excluding interrogatory #3, within 10 days of receipt of this order with notice of entry.

The motion is in all other respects denied.

In accordance with this court's prior order from the bench, permitting petitioner to add Whittenwood Associates, Ltd. as a respondent, it is

ORDERED that, upon completion of service of the petition upon Whittenwood Associates, Ltd., counsel for petitioner shall serve a copy of this order with notice of entry upon the Clerk of the Court and upon the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein.

Dated: _____

6/25/04

ENTER: _____



J.S.C.

FILED
JUL 14 2004
NEW YORK
COUNTY CLERK'S OFFICE