

AMP Services Limited v Walanpatrias Foundation

2005 NY Slip Op 30347(U)

February 7, 2005

Supreme Court, New York County

Docket Number: 106462/04

Judge: Barbara R. Kapnick

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BARBARA R. KAPNICK**

PART 12

Justice

AMB Services Ltd.

INDEX NO.

108482/04

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

WELFARE PATRIAS FOUNDATION

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

and cross-motion are decided in accordance with the accompanying memorandum decision.

PAPERS NUMBERED
FILED
FEB - 8 2005
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 2/7/05

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

J.S.C.

Check if appropriate: DO NOT POST

BARBARA R. KAPNICK

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 12

-----X
 AMP SERVICES LIMITED as Trustee of
 THE WALTER AND ANNA BRONNER TRUST,
 as assignee of the Estate of HARRY
 JOSEPH, deceased, and as assignee
 of PETER BRONNER, MONICA BRONNER
 KRANEPOOL, ROBERT BRONNER and KARIN
 BRONNER,

DECISION/ORDER

Index No. 106462/04
 Motion Seq. No. 001

Plaintiff,

-against-

WALANPATRIAS FOUNDATION a/k/a
 DORAW and WALANPATRIAS SIFTUNG,
 LEHMAN BROTHERS, INC., LEHMAN
 BROTHERS INTERNATIONAL (EUROPE),
 and DEPOSITORY TRUST & CLEARING
 CORPORATION,

Defendants.

-----X
 BARBARA R. KAPNICK, J.:

This action arises from the allegedly fraudulent transfer of a stock portfolio valued in excess of \$98,000,000.00 (the "Bronner Portfolio") from Lehman Brothers, Inc. ("LBI"), with principal offices in New York, to Lehman Brothers International (Europe) ("LBIE"), with principal offices in London.

Plaintiff, the trustee of the Walter and Anna Bronner Trust (organized under the laws of the Isle of Jersey, officially referred to as the Bailiwick of Jersey) claims that the transfer of approximately \$96,571,351.22 was made for the purpose of thwarting the enforcement of a default judgment in the total amount of \$193,651,984.06 entered in the State of Florida against

Walanpatrias Foundation, a foundation formed under the laws of Liechtenstein.

Plaintiff brought an Order to Show Cause for a preliminary injunction which this Court signed on April 27, 2004 seeking to enjoin the defendants during the pendency of this lawsuit from (1) taking any action to facilitate the transfer to any other financial institution of any investment management account held in the name of Walanpatrias or any entity or individual affiliated with Walanpatrias, including but not limited to the investment management account originally held under account number 739-96019 (the "Doraw Account") and the subsequent transfer designated BKR 229 FFC: 022-35030 and all successor accounts; and (2) transferring, collateralizing, assigning and/or disposing of any securities, cash, and assets including funds received from the sale of any securities held in the Doraw Account or taking any acts that will diminish or jeopardize the value of the assets in the Doraw Account, other than for the purpose of purchasing securities to be held in the Doraw Account.

In signing the Order to Show Cause, this Court issued a temporary restraining order temporarily enjoining the defendants "from taking any action to facilitate the transfer to any other financial institution of any investment management account held in the name of DORAW or Walanpatrias," and

from transferring, collateralizing, and/or disposing of any funds received from the sale of any securities, cash, and assets including funds received from the sale of any securities held in the Doraw Account, or taking any acts that will diminish or jeopardize the value of the assets in the Doraw Account, other than for the purpose of purchasing securities to be held in the Doraw Account.

Defendant Walanpatrias¹ opposes the motion and cross-moves for an order pursuant to CPLR §§ 3211(a)(7) and (a)(8) dismissing the Complaint against it for failure to state a cause of action and/or for lack of personal jurisdiction.

The cross-motion is denied, since plaintiff has now filed a Second Amended Complaint thereby superseding the original Complaint (see, Aikens Construction of Rome, Inc. v. Simons, 284 A.D.2d 946 [4th Dep't 2001]; Hoppenfeld v. Hoppenfeld, 220 A.D.2d 302 [1st Dep't 1995]), and defendant has separately moved (under motion sequence number 003) to dismiss the amended pleading.

The underlying Florida judgment was vacated after the submission of this motion by Order dated August 12, 2004 of the Hon. Mark A. Speiser, a Judge of the Circuit Court, Broward County, Florida, on jurisdictional and other grounds. However, by Order dated September 24, 2004, Judge Speiser directed that his prior Order be "stayed and otherwise rendered without effect until the

¹ The motion with respect to LBI, LBIE, and Depository Trust & Clearing Corporation, and said defendants' cross-motion were resolved pursuant to Stipulation and Order dated May 21, 2004.

Plaintiff's appeal of said Order to the Florida Fourth District Court of Appeal is concluded, an opinion rendered and a mandate issued" to the Circuit Court, a process which is not yet completed.

Given the existence of the stay and the appeal in Florida, and based on all the papers submitted, this Court finds that plaintiff will suffer an "immediate and irreparable injury" (CPLR § 6301) if the assets which are the subject of this action are removed from this Court's jurisdiction at this time.

Accordingly, in order to preserve the "status quo" (see, Matter of the Estate of Chi-Chuan Wang v. King, 8 A.D.3d 10 [1st Dep't 2004]; Gray v. Serbalik, 257 A.D.2d 869 [3rd Dep't 1999]; Mr. Natural, Inc. v. Unadultered Food Products, Inc., 152 A.D.2d 729 [2nd Dep't 1989]), this Court shall grant plaintiff's motion for a preliminary injunction to the extent of continuing the temporary restraining order pending this Court's determination of defendant Walanpatrias' pending motion to dismiss the Second Amended Complaint.

This constitutes the decision and order of this Court

FILED

FEB 8 2005

CLERK OF COUNTY CLERK

Date: February 7, 2005


Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK