

Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.

2006 NY Slip Op 30063(U)

January 13, 2006

Supreme Court, New York County

Docket Number: 0603315/3315

Judge: Helen E. Freedman

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

PRESENT: HELEN E. FREEDMAN
Justice

PART 39

Gryphon Dom. VI, LLC
Plaintiff,

INDEX NO. 603315/02

MOTION DATE _____

APP Intl. Fin. Co., P.V.
Defendant

MOTION SEQ. NO. 24

MOTION CAL. NO. _____

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 _____

FILED
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Cross-Motion: Yes No

The five motions numbered 24, 25, 26, 27, and 28 are consolidated for joint disposition.

These motions concern information subpoenas and subpoenas *duces tecum* that the plaintiffs-judgment creditors (the "Judgment Creditors") served on non-parties White & Case LLP ("White & Case"), Schnader Harrison Segal & Lewis LLP ("Schnader Harrison"), and Jones Day (collectively, the "Firms"), which are law firms that represent the defendants-judgment debtors in assorted matters. After numerous disputes arose between the Judgment Creditors and the Firms, this Court appointed Justice Beverly S. Cohen (ret.) as Referee to supervise discovery. See order dated January 3, 2005.

Justice Cohen addressed the discovery issues in two orders dated March 7, 2005. In the first (the "Discovery Order"), she directed the Judgment Creditors to narrow the scope of their discovery requests by revising their original subpoenas (the "Original Subpoenas") pursuant to her instructions, and to serve the revised subpoenas (the "Revised Subpoenas") on the Firms. The Discovery Order contains further rulings about the scope of discovery and the manner in which the Firms would respond to the Revised Subpoenas. In her second order (the "Costs Order"), Justice Cohen addressed who would bear the cost of responding.

The Judgment Creditors and each of the Firms now separately move for orders vacating or modifying Justice Cohen's rulings. The Judgment Creditors request that this Court set them aside and reinstate the Original Subpoenas. Conversely, the Firms seek further restrictions on the Judgment Creditors' discovery requests. This written order supplements and, to the extent that there is a conflict, supersedes the prior oral directives of the Court.

Motion by the Judgment Creditors – The motion to set aside the Revised Subpoenas is denied and Justice Cohen's rulings are confirmed, except to the extent that they are modified or

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

supplemented as set forth below. The Original Subpoenas were overly broad and burdensome. Under CPLR 5223, post-judgment discovery is limited to information that is "relevant to the satisfaction of the judgment"; as Justice Cohen recognized, the Judgment Creditors' original requests exceed that scope.

Motions by the Firms – Discovery Order; Indonesian assets: The Firms first object to Justice Cohen's direction that they produce documents and information about assets of the judgment debtors located in Indonesia. The Firms argue that those assets are unavailable to satisfy the judgment in this case, because the Indonesian courts have ruled that the underlying debt obligations are void, and because this Court cannot restrain assets outside of New York. However, the assets may become available later if they are transferred from Indonesia or if the Indonesian courts vacate or modify the existing ruling, and accordingly the Judgment Creditors are entitled to some basic information about them that the Firms possess, pursuant to paragraph 3 of the Discovery Order. The ruling is upheld.

Judgment Debtors' affiliates and owners: The Firms next contend that information about the assets of the Judgment Debtors' "Affiliates" and "Owners" is not discoverable, since those assets are not subject to execution. To the extent that discovery may lead to relevant evidence of recent asset transfers from the judgment debtors to the Affiliates and Owners, however, some discovery about them is appropriate. In the Revised Subpoenas, Justice Cohen appropriately narrowed the scope of discovery about Affiliates" and "Owners, but the value of this information to the Judgment Creditors may still be outweighed by the burden on the Firms to produce it. Accordingly, thirty days after entry of this order, or when the total costs of a Firm's compliance with the Revised Subpoenas reaches \$ 10 thousand (whichever is earlier), the Firm shall report to Justice Cohen on its efforts to comply and the results. Justice Cohen should then evaluate whether further disclosure about Affiliates and Owners is warranted.

Financial Records: The Firms claim that the documents Judgment Creditors seek concerning Debtors' "Financial Records", as defined in the Revised Subpoenas, are over-broad and duplicative. Production of these documents may overburden the Firms. Accordingly, Justice Cohen's ruling with respect to Financial Records is modified as follows: the Firms shall first produce Financial Records that reflect the assets or the financial condition of the Judgment Debtors from January 1, 2003, and then report back to Justice Cohen on their efforts and results. Justice Cohen can then determine whether further discovery of Financial Records is needed.

Date Restrictions: Justice Cohen's ruling, as set forth in paragraph 6 of the Discovery Order, is confirmed.

Publicly Available Information: The Firms do not need to produce documents and information about property, legal actions, insurance claims, financial statements, and liens and encumbrances that are publicly available to the Judgment Creditors.

Privileged Documents: The Firms question the need for them to respond to any discovery requests on the ground that production would be a waste of time, because "most, if not all" of the responsive information and documents that they possess are privileged and exempt from disclosure. That claim amounts to an assumption, since the Firms have not yet reviewed their files, and have not submitted the privilege log for which the Discovery Order calls. The Firms' attempt to avoid production on this ground is denied.

Deadline for Production: The Firms' request that their deadline for responding be postponed until 30 days after any further appeal of this Order and Justice Cohen's orders is denied and Justice Cohen's ruling is confirmed.

Costs Order: Billing Rates: The Firms ask to be reimbursed for responding to the Revised Subpoenas at their usual rates for legal services. However, Justice Cohen examined the issue and determined that "the majority of the work can be accomplished by a small amount of lowest level associates and largely by paralegals and ordinary office clerks," and directed the Firms to respond as economically and efficiently as possible. Accordingly, the Costs Order is modified only to the extent that, as described above, each Firm shall report to Justice Cohen when its interim bill reaches \$ 10 thousand. At that time, Justice Cohen can determine whether any adjustment to the reimbursement rates is warranted.

Undertaking – Finally, the Firms' application for an order requiring the Judgment Creditors to post an undertaking is denied.

Dated: January 13, 2006



 Helen E. Freedman, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

