

Verizon New England v Global Naps, Inc.

2009 NY Slip Op 32689(U)

November 12, 2009

Supreme Court, New York County

Docket Number: 105243/09

Judge: Walter B. Tolub

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

PRESENT: WALTER B. TOLUB
Justice

PART 15

VERIZON NEW ENGLAND, INC.,

INDEX NO. 105243/2009

Judgment Creditor,

- v -

MOTION DATE 6/5/09

GLOBAL NAPS, INC., GLOBAL NAPS NETWORKS, INC.,
GLOBAL NAPS NEW HAMPSHIRE, INC., GLOBAL NAPS
REALTY, INC., FERROUS MINER HOLDINGS, LTD, and
FRANK GANGI,

MOTION SEQ. NO. 001

Judgment Debtors.

FILED

NOV 17 2009

NEW YORK COUNTY CLERK'S OFFICE

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Motion Sequences 001, 002, and 003 are consolidated and are

~~This motion~~ is decided in accordance with the accompanying memorandum decision.

Dated: 11/12/09

WALTER B. TOLUB, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

PRESENT: Hon. Walter Tolub

PART 15

Index Number : 105243/2009

VERIZON NEW ENGLAND

vs.

GLOBAL NAPS

SEQUENCE NUMBER : 002

QUASH SUBPOENAS, FIX CONDITIONS

INDEX NO. _____

MOTION DATE 6/5/09

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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 is consolidated with motion sequence 001 and 003 and

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

NOV 17 2009

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/12/09

W
WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

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

PRESENT: Hon. Walter Tolub

PART 15

Index Number : 105243/2009
VERIZON NEW ENGLAND
 vs.
GLOBAL NAPS
 SEQUENCE NUMBER : 003
 QUASH SUPOENAS, FIX CONDITIONS

INDEX NO. _____
 MOTION DATE 11/5/09
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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 is consolidated with motion sequence 002 and 001 and

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

NOV 17 2009

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/12/09

W
WALTER TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO 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 15

-----X

VERIZON NEW ENGLAND, INC.,

Judgment Creditor,

Index No. 105243/09

Mtn Seq. 001, 002
003

-against-

GLOBAL NAPS, INC., GLOBAL NAPS NETWORKS,
INC., GLOBAL NAPS NEW HAMPSHIRE, INC.,
GLOBAL NAPS REALTY INC., FERROUS MINER
HOLDINGS, LTD., and FRANK GANGI

Judgement Debtors.

-----X

FILED
NOV 17 2009
COURT OF APPEALS
STATE OF NEW YORK

WALTER B. TOLUB, J.:

Motion sequence 001, 002, and 003 are consolidated and are resolved in the following memorandum opinion.

This is an action which stems from the Congressionally ordered breakup of the Bell Telephone monopoly, and the ensuing battle between telecommunications carriers for fees assessed in connection with use of their communications networks.

The Judgment Debtors are national providers of telecommunication services. Global NAPs, Inc. ("Global NAPs) is what is known as a Competitive Local Exchange Carrier ("CLEC"). Verizon New England, Inc. (Verizon), a descendent of Bell Telephone, is what is known as an Incumbent Local Exchange Carrier ("ILEC").

As part of the ordered breakup of Bell Telephone, Congress enacted laws and authorized FCC regulations which required

ILECs to allow CLECs to "interconnect" to the Bell telecommunications network. The new laws and regulations were crafted to allow new CLECs to compete with existing carriers on the existing telecommunications networks, thereby fostering competition. What resulted however, were mounting tensions between carriers, and feuds over which carrier was required to pay access charges to the other for telephone calls and other transmissions traveling over their respective networks.

The underlying action styled, *Global NAPs, Inc. v. Verizon New England, et al.*, Civil Action Nos. 02-12489(RWZ) and 05-10079(RWZ) in the U.S. District Court for the District of Massachusetts (Affirmation of Anne M. Coyle, Exhibit 1) represents one such example of the battle between telecommunications carriers on the issue of access charges.¹ On January 29, 2009, Verizon obtained a \$57,716,714 judgment against judgement debtors Global NAPs, Global NAPs Networks ("Global Networks"), Global NAPs Realty, Inc. ("Global Realty") (collectively, "the Global Entities"), parent company Ferrous Miner Holdings ("Ferrous"), and the owner of these entities, Frank Gangi.² This judgment was obtained after a three day

¹ The underlying action is presently on appeal to the United States Court of Appeals for the First Circuit.

² A second judgment was obtained against Global NAPs, Global Networks, and Global Realty and Ferrous by another ILEC, the Southern New England Telephone Company ("SNET") in the United States District Court for the District of Connecticut, styled,

* 6]

evidentiary hearing during which the Judgment Debtors unsuccessfully argued that all of their financial records had been destroyed when a laptop computer, the Judgment Debtors' sole repository of financial data, had been purposefully destroyed (Affirmation of Anne M. Coyle, Exhibit 3). This action³ to enforce the judgment followed.⁴

At present, there are three motions before the court, all of which seek to quash information subpoenas issued by Judgment Creditor Verizon. By motion sequence 001, the Global Entities move for an order quashing information subpoenas dated April 6, 2009, which were served on their customers: CommPartners, LLC ("CommPartners"); Transcom Enhanced Services, Inc. ("Transcom"); PointOne Operating Co. ("PointOne"), IDT Domestic Telecom, Inc. ("IDT"), and iBasis, Inc. ("iBasis") (collectively, "the

Southern New England Telephone Co. v. Global NAPs Inc., et al, Case No. 04-2075 (July 7, 2008). This judgment is on appeal to the United States Court of Appeals for the Second Circuit.

³ As part of its collection process, Verizon, in addition to the instant action, filed the action captioned, Verizon New England, Inc. v. Convergent Networks, Inc., NY County Index No. 600743/2009 (The "Convergent" action). The Convergent action claims fraudulent transfer of equipment by the Global Entities to Convergent. SNET commenced a similar action in the District Court in December of 2008. A third action involving the claim of fraudulent transfer of equipment to Convergent was commenced in March of 2009 in the Massachusetts Superior Court in Middlesex County.

⁴ The judgment remains unpaid. No bond has been posted and the Judgement Debtor's motion for a stay of execution was denied (Affirmation of Anne M. Coyle, Exhibit 5)

Customers").⁵ Alternatively, the Global movants seek a protective order: (1) limiting the production of information from October 2008 through the present; (2) striking the first information request; and (3) limiting the scope of the subpoenas and restraining notice so that they do not include entities and individuals wrongly defined as "Judgment Debtors" and "GNAPs Related Entities."

By motion sequence 002, the Global Entities move for an order quashing the information subpoenas dated March 27, 2009. Alternatively, the Global Entities move for an protective order (1) limiting the production of information from October 2008 through the present; (2) limiting the subpoenas to information concerning the actual Judgment Debtors; (3) and limiting the restraining notices so as not to preclude the Global Entities from taking such actions as are reasonable and necessary to the ongoing and continued ordinary operation of business.

By motion sequence 003, non-party Convergent Networks, Inc.,⁶ "Convergent" seeks an order quashing the information

⁵According to the papers, CommPartners and IDT have been customers of the Judgment Debtors since 2005. Transcom and PointOne have been customers of the Judgment Debtors since 2003. iBasis was a customer of the Judgment Debtors from 2003 through early 2008.

⁶Convergent is in the business of servicing, maintaining, manufacturing, and selling telecommunications switches for the Global Entities since 1998.

subpoena and vacating the restraining notice dated on March 27, 2009. Alternatively, non-party Convergent seeks an order limiting the (1) limiting the production of information from October 2008 through the present; (2) setting aside Request 1 and Request 11 because they request information outside of Convergent's knowledge; (3) limiting the subpoenas to information concerning the actual judgment debtors; and (4) limiting the Restraining notices so as not to preclude Convergent from taking reasonable steps to operate its business.

Discussion

The court notes that to date, the entire judgment awarded earlier this year remains unsatisfied. The court additionally notes, and the parties concede, that on May 14, 2008 in the turnover proceeding (the Convergent Action), Hon. Richard Braun ruled from the bench that Convergent was subject to this court's jurisdiction.

As a judgment creditor, it is well established that Verizon, under New York law, is permitted a broad range of inquiry either through the judgment debtor, or any third person capable of illuminating the debtor's property (CPLR 5523; Raji v. Bank Sepah-Iran, 139 Misc2d 1026 [NY Sup Ct 1988]; see also Siemens & Haslke GmbH v. Gres, 77 Misc2d 745 [NY Sup Ct 1973]; Frankel v. Frankel, 89 AD2d 654 [3rd Dept 1982]). Contrary to the arguments advanced by the respective movants, there is nothing presented in

the papers supporting the claims that these subpoenas should be further limited by this or any other court because they are overbroad, or threaten the viability of individual businesses. All of the companies in each of the subpoenas are either directly or indirectly owned by Judgment Debtor Frank Gangi, who, by virtue of the outstanding judgment, owes Verizon nearly \$58 million dollars. Information related to the transfer of funds or assets to companies owned or controlled by Mr. Gangi during the pendency of the litigation and post-judgment enforcement period, is therefore absolutely relevant to Verizon's collection efforts.

As such, it is

ORDERED that the relief sought by the respective moving parties motion sequence 001, motion sequence 002, and motion sequence 003, each of which sought to quash various subpoenas issued by Judgment Creditor Verizon New England, Inc., is denied; and it is further

ORDERED that the parties subject to each of the information subpoenas provide responses to said outstanding demands within sixty days of service of a copy of this order with notice of entry.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 11/12/09

FILED

NOV 17 2009

NEW YORK
COUNTY CLERK'S OFFICE

W. Tolub

HON. WALTER B. TOLUB, J.S.C.