

Wilmington Trust Co. v Hellas Telecom. Fin., S.C.A.
2016 NY Slip Op 30792(U)
April 27, 2016
Supreme Court, New York County
Docket Number: 653363/2011
Judge: Marcy Friedman
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK – PART 60

PRESENT: Hon. Marcy Friedman, J.S.C.

WILMINGTON TRUST COMPANY, as Trustee
 and CORTLANDT STREET RECOVERY CORP.,

Plaintiffs,

– against –

HELLAS TELECOMMUNICATIONS FINANCE,
 S.C.A. and HELLAS TELECOMMUNICATIONS
 I S.à.r.l.,

Defendants.

Index No.: 653363/2011

DECISION/ORDER

This special proceeding for summary judgment in lieu of complaint was brought by Wilmington Trust Co. (WTC or Judgment Creditor), the indenture trustee, and Cortlandt Street Recovery Corp. (Cortlandt), an assignee for collection, to recover payment of principal and interest on PIK Notes, from issuer Hellas Telecommunications Finance, S.C.A. (Hellas Finance) and guarantor Hellas Telecommunications I S.a.r.l (Hellas I) (together, Judgment Debtors). By decision dated September 16, 2014, this court granted summary judgment to plaintiff WTC. (Cortlandt Street Recovery Corp. v Hellas Telecommunications, S.a.r.l., 47 Misc 3d 544, lv to renew granted 2015 WL 498875 [Feb. 5, 2015] [adhering to prior decision].) Judgment in favor of WTC and against both Hellas defendants in the amount of \$565 million was entered on November 18, 2014. The September 16, 2014 decision also granted motions to dismiss the claims of plaintiffs in three separate actions against the Judgment Debtors and other Hellas entities as well as specified TPG and Apax entities and their principals. These claims alleged that the Judgment Debtors and other Hellas entities transferred the proceeds of the PIK Notes and

Subordinated Notes (Sub Notes) by means of fraudulent conveyances to the specified TPG and Apax entities and principals.

After entry of judgment in this proceeding, WTC purportedly served CPLR Article 52 post-judgment enforcement subpoenas with restraining notices on certain TPG/Apax entities and one individual principal (the subpoenaed TPG/Apax entities). Subpoenas duces tecum were addressed to: T3 Partners II, L.P.; TPG Partners IV, L.P.; TPG GenPar IV, L.P.; T3 GenPar II, L.P.; T3 Parallel II, L.P.; TPG Advisors II, Inc.; TPG Capital – New York, Inc (TPG New York); Apax Partners L.P.; and John Megrue (CEO of Apax Partners L.P.). Information subpoenas with restraining notices were addressed to all of the above TPG/Apax entities, except Apax Partners L.P., and to three additional TPG affiliates: TPG Troy, LLC; T3 Troy, LLC; and TPG Advisors IV, Inc.¹ The subpoenaed TPG/Apax entities were not parties to this special proceeding. They were defendants in at least one of the three plenary actions arising out of the default on the Notes. The plenary actions however, named numerous additional TPG/Apax entities and individual principals as defendants. All of the movants seek to quash both subpoenas and to vacate the restraining notices.

Background

The first of the PIK Note actions (Index No. 651693/10) (Cortlandt I) was commenced solely by Cortlandt against Hellas I, Hellas Finance, and their parent, Hellas Telecommunications, S.a.r.l. (Hellas), as well as Apax Partners, LLP and TPG Capital, L.P. Cortlandt I was dismissed on the ground that Cortlandt lacked standing, because it was an assignee of a right of collection, not of title to the claims. (Cortlandt Street Recovery Corp., 47 Misc 3d at 547, 555.) The second of the Cortlandt actions on the PIK Notes (Index No.

¹ The subpoenaed TPG entities are collectively referred to as TPG. Apax Partners, LLP and Megrue are collectively referred to as Apax.

653357/11) (Cortlandt II) was brought by WTC and Cortlandt. (Id. at 548.) The caption of this action did not name the Hellas entities that were defendants in Cortlandt I. According to the complaint in Cortlandt II, these entities were “not defendants in this case,” although they were included in the definition of defendants “in anticipation of and to facilitate consolidation of the two cases.” (Cortlandt II Compl. at ¶ 12.) Instead, the action was brought against numerous Hellas, Apax, and TPG entities, and their principals, including all of the subjects of CPLR Article 52 subpoenas in this proceeding: Hellas Telecommunications II, S.C.A. (Hellas II); Hellas Telecommunications Co-Invest Ltd.; Hellas Telecommunications Employees Ltd.; TCW HT-Co-Invest I L.P.; TCW HT Co-Invest II L.P.; TPG Capital-N.Y.; Apax Partners, L.P.; TPG Partners IV, L.P.; TPG Advisors IV, Inc.; TPG GenPar IV, L.P.; TPG Advisors II, Inc.; T3 GenPar II, L.P.; T3 Partners II, L.P.; T3 Parallel II, L.P.; Apax Partners Europe Managers Limited; Apax Europe VI GP Co. Limited; Apax Europe VI GP, L.P.; Apax Europe VI-A, L.P.; Apax Europe VI-I, L.P.; Troy, L.P. Inc.; Apax WW Nominees Ltd.; TPG Troy, LLC; T3 Troy, LLC; David Bonderman; James Coulter; Martin Halusa; John Megrue; Giancarlo Aliberti; and Matthias Calice. Cortlandt II was dismissed as to all moving defendants on the grounds that Cortlandt was not the real party in interest, and that WTC also lacked standing, as it was an indenture trustee that not authorized to bring the asserted fraudulent conveyance claims. (Cortlandt Street Recovery Corp., 47 Misc 3d at 569-571.) The final action (Index No. 653181/11), on the Sub Notes, was brought only by Cortlandt against the Hellas and TPG/Apax entities and principals named as defendants in Cortlandt I and II. (Id. at 550.) The Sub Notes action was dismissed as to all moving defendants due to Cortlandt’s lack of standing.² (Id. at

² The Sub Notes action and Cortlandt II have been stayed as to Hellas II while the bankruptcy of Hellas II proceeds in the Southern District of New York.

490.)

In the three actions that pleaded fraudulent conveyance claims, Cortlandt and/or WTC alleged that TPG Capital, L.P. and Apax Partners, LLP formed a group of interrelated Hellas entities to acquire a profitable corporation known as TIM Hellas Telecommunications, S.A. (Cortlandt II Compl. at ¶¶ 1-2.) The new parent company, Hellas, was owned by a large number of private equity investment funds – various TPG/Apax entities referred to in the complaint as the “Private Equity Defendants” – which held securities consisting of convertible preferred equity certificates (CPECs) and preferred equity certificates (PECs).³ (Id. at ¶¶ 4, 16, 26, 113-114.) Hellas borrowed approximately €1.5 billion through the issuance of the PIK Notes and Sub Notes, and allegedly distributed approximately €1.2 billion of the proceeds to these Private Equity Defendants. (Id. at ¶¶ 135-136.) More particularly, the Cortlandt II complaint alleged that Hellas II issued CPECs and PECs to Hellas I, Hellas I issued CPECs and PECs to Hellas, and Hellas issued CPECs and PECs to the Private Equity Defendants. (Id. at ¶¶ 136-137.) At the time the PIK Notes were issued, in December 2006, each Hellas entity redeemed the CPECs held by its shareholders – first Hellas II, then Hellas I, and finally Hellas – resulting in a payment to the Private Equity Defendants of over €973 million. (Id.) Hellas also redeemed PECs held by the Private Equity Defendants for approximately €212 million. (Id. at ¶ 138.) The redemptions were allegedly made at substantially overvalued rates and created a €1 billion deficit, leaving the Hellas entities unable to pay their creditors, including the holders of the Notes. (Id. at ¶¶ 139-141.) The complaint further alleged that the Private Equity Defendants were alter egos of the Hellas entities. (Id. at ¶ 184.)

³ The complaint expansively defined Private Equity Defendants as over 30 TPG/Apax entities and their principals. (See Cortlandt II Compl. at ¶¶ 27-49.)

The post-judgment enforcement subpoenas seek specific information related to the CPEC and PEC redemptions that were at issue in the fraudulent conveyance actions; information about the “Weather Sale” (the 2007 sale of Hellas to Weather Investment SpA); disclosure of an October 5, 2005 Shareholders Agreement for “Hellas Telecommunications”; and disclosure of a July 15, 2005 Consulting Services Agreement and of any payments made to Hellas I or to the affiliates of TPG or Apax pursuant to that agreement (estimated to be €15 million). The subpoenas also generally inquire into the relationships between and among the Judgment Debtors, other Hellas entities, and the subpoenaed TPG/Apax entities and their affiliates. They further seek a wide range of information about the internal structure, organization, and finances of the subpoenaed TPG/Apax entities and their affiliates.

The subpoenas duces tecum request four broad categories of documents:

- “(1) Documents concerning all payments each of the Judgment Debtors, Sponsors or Hellas Entities made to Apax, TPG and/or their Affiliates relating to the CPEC Redemption.
- (2) Documents concerning all payments each of the Judgment Debtors, Sponsors or Hellas Entities made to Apax, TPG and/or their Affiliates relating to the Weather Sale
- (3) Documents concerning any payments of approximately €15 million made by or on behalf of any of the Judgment Debtors or Hellas Entities to Apax, TPG and/or their Affiliates.
- (4) All agreements to which Apax, TPG and/or their Affiliates has/had concerning any of the Judgment Debtors, including without limitation, the shareholders agreement(s) described in the Offering Memorandum for the PIK Notes on page 157, all redemption agreements, stock purchase agreements and all documents executed in consummating issuance of the PIK Notes on or about December 21, 2006.”

(Subpoena Duces Tecum to TPG and Apax, respectively [Stamell Aff., Exs. A, B].)

The Information Subpoenas pose nine broad questions:

- “(1) Identify any agreement(s) or contract(s) Apax, TPG and/or their Affiliates has/had with each Judgment Debtor. . . .;
- (2) Has any Judgment Debtor, Sponsor, or Hellas Entity made any

payments to Apax, TPG and/or their Affiliates? If so, identify (i) the date and amount of each such payment; (ii) the name and address to which each such payment was made; and (iii) all bank accounts used for such payment, including the account number, the name of the bank, the location of the bank and the current amount in the account(s);

(3) Has Apax, TPG and/or their Affiliates made payments to any person or entity from money received from any Judgment Debtor, Sponsor, or Hellas Entity? If so, identify (i) the date and amount of each such payment; and (ii) the name and address to which each such payment was made;

(4) For each of the Apax and TPG entities, identify during the time period of January 2006 to December 2007 (i) each entity's ownership in an entity that had an ownership in a Hellas Entity; (ii) any entity that had an ownership in Apax and TPG; (iii) each entity's sibling companies; (iv) each entity's divisions; and (v) each entity's stockholders, partners, members, or other principals;

(5) Identify all officers and directors of for each of the Apax and TPG entities during the time period of January 2006 to December 2007, including each of their positions and their current office addresses;

(6) For each of the Apax and TPG entities, identify any insurance agreement(s) under which any person carrying on an insurance business may be liable to satisfy part or all of the Judgment or to indemnify or reimburse for payments required by a Judgment Debtor or made to satisfy the Judgment. . . . ;

(7) For each of [sic] Apax and TPG entities, identify any agreement(s) under which any person may be liable to satisfy or to provide funds to satisfy part or all of the Judgment or any other liability of a Judgment Debtor or to indemnify or reimburse the Garnishees for legal expenses or any payments required or made to satisfy such a liability. . . . ;

(8) Identify the amount of each Apax and TPG entity and individual's liabilities and equity, the most recent balance sheet available and state the date for which the information is calculated. (The balance sheet or financial statements may be produced in lieu of answering the question.);

(9) Identify the accountants that have prepared financial statements for Apax and TPG since 2006."

(Information Subpoena to TPG and Apax, respectively [Stamell Aff., Exs. G, H].)

The subpoenas define "Affiliate" to mean "any person or entity under common control with, or controlling, any such person." The term "Sponsors" is defined as the following entities:

Troy L.P., Inc.; Apax W.W. Nominees Ltd.; TPG Troy, LLC; T3 Troy, LLC; Hellas Telecommunications Co-Invest Ltd.; Hellas Telecommunications Employees Ltd.; TCW HT Co-Invest I, L.P.; and TCW HT Co-Invest II, L.P.

Analysis

As an initial matter, all of the subpoenaed TPG entities, except TPG New York, assert that this court lacks personal jurisdiction over them. In particular, these TPG entities claim that they are not subject to jurisdiction because they are Delaware entities with their principal place of business in Texas. (TPG/Apax Memo. In Support at 17.) In opposition, judgment creditor WTC claims that the TPG entities consented to personal jurisdiction in New York.

By stipulation dated June 5, 2012, the TPG entities that are the subject of the subpoenas consented to litigate claims on the PIK Notes in New York, and to the discontinuance of an action against them on these Notes in the federal court in Delaware. This stipulation provided in pertinent part:

“The entities referred to herein as the TPG DE [Delaware] Defendants will submit themselves to personal jurisdiction in the Supreme Court of the State of New York in the New York PIK Notes Action [referred to above as Cortlandt II], and any related or substitute action, suit or proceeding filed in New York concerning the same acts, transactions or occurrences in which the New York PIK Notes Action may be consolidated or continued, and will withdraw and not renew or reassert in any form that part of the Motion to Dismiss claiming that the New York Supreme Court does not have personal jurisdiction over them.”

The parties merely assert that this special proceeding is or is not a related action, and do not address the proper construction of this provision. For example, they do not analyze the claims in the Cortlandt II PIK Note action and the claims in this proceeding in order to address whether they are related. Nor do they discuss whether the consent to jurisdiction applies only to a related proceeding with which Cortlandt II could have been “consolidated or continued” and, if

so, how such action could have been consolidated with a motion for summary judgment in lieu of complaint.⁴

The court need not, however, reach this issue, or the other asserted jurisdictional objections,⁵ as it holds that the subpoenas must be quashed in any event. As discussed further below, TPG and Apax fail to demonstrate that Article 52 subpoenas may not seek any documents or information about alleged fraudulent conveyances that occurred prior to entry of the judgment. In contrast, they persuasively argue that the subpoenas at issue are grossly overbroad.

The court rejects the subpoenaed TPG/Apax entities' contention that discovery into alleged fraudulent conveyances is barred by the prior decision of this court dismissing WTC's fraudulent conveyance claims. Although this court found in its prior decision that WTC, as indenture trustee, lacked authorization under the indenture to bring the claims asserted in Cortlandt II, the circumstances have now changed. TPG and Apax do not dispute that WTC as judgment creditor may employ the post-judgment enforcement mechanisms afforded under Article 52. WTC is entitled to investigate the whereabouts of the judgment debtors' assets, including those assets alleged to have been fraudulently transferred, to the extent any other

⁴ It is noted that even if personal jurisdiction could be exercised over the Delaware TPG entities, a serious question would exist as to the permissibility of out-of-state service of Article 52 enforcement subpoenas upon them. (See Siegel, NY Prac § 509 [5th ed]; Bank of America, N.A. v Susan Goodman Inc., 2014 WL 986915 [Sup Ct, New York County Mar. 7, 2014, No. 650128/11] [this court's decision discussing limits on extraterritorial service].) The parties have not, however, addressed this issue on this motion.

⁵ WTC also argues that jurisdiction exists over the TPG Delaware entities based on a forum selection clause in the PIK Note Indenture. The court declines to consider this argument which is based on the purported incorporation, without any further discussion, of arguments made on a different motion in a different action. (See WTC Memo. In Opp. at 22.)

Apax Partners L.P., the sole subpoenaed Apax entity, does not challenge jurisdiction. Megrue does object to this court's exercise of jurisdiction, on the ground that he resides and is domiciled in Connecticut. (TPG/Apax Memo. In Support at 17, Megrue Aff.)

The court does not reach these cursorily briefed jurisdictional issues. On any further motion to quash subpoenas which may be issued by WTC to non-party out-of-state entities or individuals, this court will require the non-parties to make a prima facie showing that the court lacks jurisdiction over such non-parties, supported by authority addressing both the basis on which WTC asserts jurisdiction and the requirements for proper service of the subpoenas.

judgment creditor would be entitled to do so. Although the trial court has the discretion to quash a post-judgment subpoena where there is a pending fraudulent conveyance action on the same transfer, and to require a plaintiff to use pretrial disclosure devices available in the plenary action, WTC no longer has a fraudulent conveyance action pending in this court or an alternative avenue to pursue discovery. (Compare Stern v Carlin Communications, Inc., 201 AD2d 110, 111 [1st Dept 1994] [quashing subpoena where “there is nothing in issue in the enforcement proceedings that is not also in issue” in a “related pending action to set aside fraudulent conveyances”].)

In arguing that the subpoenas are improper, TPG and Apax further appear to contend that the subpoenas may only seek documents or information about the Debtor’s current assets or post-judgment fraudulent conveyances, and not about any pre-judgment transfers. They thus contend that “rather than seeking information about the extent or whereabouts of the Judgment Debtors’ assets that may be used to satisfy the Judgment, the Information Subpoenas seek extensive information concerning at least 28 non-Debtor entities, including the Movants and their ‘Affiliates,’ that is utterly irrelevant to the question of whether the Debtors have assets available to satisfy the Judgment.” (TPG/Apax Memo. In Supp. at 6-7.) TPG and Apax further claim that the subpoenas duces tecum seek impermissible documents because “the only legitimate subject of an enforcement subpoena [is] the extent or whereabouts of a judgment debtor’s assets currently available to satisfy a judgment.” (Id. at 9.) WTC counters that it may seek information and documents on “the money loaned to the Judgment Debtors that is the subject of the Judgment, funds transferred out of the Judgment Debtors including funds improperly stripped by insiders for their own benefit, and relationships the Judgment Debtors had or have with related entities who may have knowledge of the Judgment Debtors’ property.” (WTC Memo. In Opp. at

1-2.)

TPG and Apax do not cite authority that supports the wholesale preclusion of a judgment creditor's use of Article 52 enforcement subpoenas to seek any information about a judgment debtor's fraudulent conveyances prior to entry of a judgment. Rather, they rely on cases that permit inquiry into transfers during the pendency of the litigation and post-judgment enforcement period, but do not address pre-litigation transfers. (E.g., ICD Group, Inc. v Israel Foreign Trade Co. (USA) Inc., 224 AD2d 293 [1st Dept 1996]; Verizon New England, Inc. v Global Naps, Inc., 2009 WL 4481573 [Sup Ct NY County Nov. 12, 2009].) They also cite limited authority holding that inquiry is not appropriate into transfers to a third-party that were made "significantly before the transaction that gave rise to the underlying action." (See Lupe Dev. Partners, LLC v Pacific Flats I, LLC, 118 AD3d 645 [1st Dept 2014], lv dismissed 24 NY3d 998, affg 2013 WL 4409573 [trial court decision denying inquiry "as this transfer occurred nearly three years before the commencement of this litigation underlying the judgment, [and] plaintiffs have not established that this transfer was intended to conceal assets in contemplation of their judgment"].)

WTC, in contrast, relies on CPLR 5223, which authorizes the judgment creditor to "compel disclosure of all matter relevant to the satisfaction of the judgment." WTC also cites general authority that holds that CPLR 5223 sets forth "a generous standard which permits the creditor a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor's property." (Gryphon Dom. VI, LLC v GBR Info. Servs., Inc., 29 AD3d 392, 393 [1st Dept 2006].) In addition, WTC cites more specific authority permitting inquiry into transfers occurring before the transaction which gave rise to the judgment. (Young v Torelli, 135 AD2d 2d 813 [2d Dept 1987] [permitting inquiry for "one year prior to the date of

the transaction which gave rise to the judgment” into documents relating to a sequence of transfers by judgment debtor to third-parties].)

On this record, however, the parties do not comprehensively brief the authorities on the scope of inquiry into alleged fraudulent conveyances that occurred prior to entry of the judgment sought to be enforced.⁶ They fail to adequately address the authorities on the extent to which a prima facie factual showing must be made that the Judgment Debtors fraudulently conveyed assets, before inquiry is permitted of the non-parties concerning such conveyances. They also do not adequately address the extent to which, or the showing on which, Article 52 enforcement subpoenas may be used to inquire of the non-parties about indirect transfers.

Assuming for purposes of this motion that at least some inquiry into the transfers may be proper, the subpoenas at issue are patently overbroad. For example, WTC seeks documents and information as to indirect transfers to a large group of potential transferees. WTC does not restrict its inquiry to the direct recipients of the redemption payments. As noted above, the Cortlandt II complaint alleged a series of redemptions, culminating in the redemption by Hellas of CPECs issued to and held by its shareholders, the Private Equity Defendants, for €973,657,610. (*Id.* at ¶¶ 113-114, 137.) In making its requests, WTC does not differentiate between entities alleged to have received payments in the CPEC redemption, and subpoenaed TPG/Apax entities that were not CPEC holders and therefore may not have received payments from Hellas in or after the redemption. Rather, WTC seeks information concerning numerous

⁶ There also appears to be authority, which neither party addresses, that inquiry into fraudulent conveyances made prior to the judgment may be made at least where the conveyance involves “financial transactions of the judgment debtor which are relevant with respect to the transaction” that “gave rise to the debt sued upon.” (Gorea v Pinsky, 50 AD2d 713, 714 [4th Dept 1975]; see also Richard C. Reilly, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C5223:2 [criticizing Gorea holding as unduly restrictive].) In any event, the briefing by the parties does not adequately address the extent to which a judgment creditor may inquire into pre-judgment fraudulent conveyances under Article 52.

Hellas entities and all of the affiliates of TPG and Apax, which include more than 28 separate non-debtor entities, many of whose specific roles, if any, in the redemption and other transactions are not explained or discussed. The information sought about these entities is not limited to their financial transactions with the Judgment Debtors. Instead, for example, the information subpoenas demand disclosure of “any payments” received not only by the subpoenaed TPG/Apax entities but also by any of their affiliates, not only from the Judgment Debtors but also from any other Hellas entity or from a “Sponsor” – a category that includes other members of the TPG/Apax corporate groups. (Question 2.) WTC then seeks to track these payments and thus demands disclosure as to whether the recipients of any of the payments transferred them to any subsequent recipients. (Question 3.) They also intrusively seek disclosure of, among other things, the balance sheets or financial statements of each subpoenaed TPG/Apax entity, and the identity of the accountants who prepared them. (Questions 8 and 9.)

WTC does not explain why it cannot, or should not be required to, restrict the information sought, at least in its initial subpoenas, to information regarding the subpoenaed TPG/Apax entities’ direct receipt of the CPEC and PEC redemptions, and/or these entities’ knowledge regarding such direct recipients. Similarly, with respect to the payments in connection with the sale of Hellas to Weather Investment SpA in 2007, and the €15 million payment in connection with the Consulting Services Agreement, WTC fails to explain why it cannot, or should not be required to, at least initially, restrict its inquiry to information regarding the subpoenaed TPG/Apax entities’ direct receipt of such payments, and/or these entities’ knowledge regarding such direct recipients.⁷

Finally, the court is unpersuaded by WTC’s apparent contention that the October 5, 2005

⁷ Nothing herein shall be construed as determining that the Article 52 enforcement subpoenas may properly be used to inquire about such payments.

Shareholders Agreement establishes a sufficient connection between the Judgment Debtors and the subpoenaed TPG/Apax entities to authorize the unrestricted disclosure of information about transfers to these entities and their affiliates. This agreement is made among the parties listed on its Schedule A. This schedule is not attached. While some Hellas entities are signatories, these signatories include Hellas I but not Hellas or Hellas Finance.⁸ Moreover, while eight of the subpoenaed TPG/Apax entities are signatories, the assertion that “[t]he four non-signatory Movants are affiliated with the signatories” is plainly insufficient to establish the requisite relationship with the Judgment Debtors. (Memo. In Opp. at 7.) For example, Apax Partners L.P. and Megrue argue that they are not signatories and are not referenced in the agreement. (Memo. In Reply at 10.) At oral argument, Apax’s counsel stated that his clients never had an ownership interest, managerial role, or contract with Hellas, and the Apax entity had “no involvement” in the investment. (Transcript at 17, 19.) While this attorney’s statement is not evidence, it highlights the need for WTC to make some showing of a connection between the Judgment Debtors’ assets and the subpoenaed entities beyond alleging that they are affiliates of TPG or Apax. In any event, even assuming for purposes of this motion that there was a relationship between some or all of the subpoenaed TPG/Apax entities and Hellas and/or the Judgment Debtors, that relationship, without more, cannot support disclosure of the magnitude sought at this juncture in WTC’s enforcement subpoenas.

The court further finds that the restraining notices must be vacated as WTC does not make a prima facie showing that there was a fraudulent conveyance of the Judgment Debtors’ assets to the subpoenaed TPG/Apax entities. (See e.g. Mohawk Leather Co., Inc. v Marine

⁸ WTC states that Hellas is a signatory to the Shareholders Agreement, but its signature does not appear on the copy provided to the court. (Memo. in Opp. at 1 n 4.) The court notes, however, that the agreement provides for the management of the “Company,” which is defined as “Hellas Telecommunications (formerly Troy), a Luxembourg” s.a.r.l.

Midland Bank, N.A., 125 AD2d 844, 845 [3d Dept 1986]; Blue Giant Equip. Corp. v Tec-Ser, Inc., 92 AD2d 630, 631 [3d Dept 1983]; JSC Foreign Economic Assn. Technostroyexport v International Dev. & Trade Servs., Inc., 295 F Supp 2d 366, 392 [2003] [applying New York law].)

The motion to quash the subpoenas will accordingly be granted. In the event new subpoenas are served, they must be narrowly tailored. In addition, WTC and the non-parties must be prepared to address, with comprehensive authority, the issues that have been raised on this motion and identified by this court with respect to personal jurisdiction; use of Article 52 enforcement subpoenas to obtain information and documents from the non-parties regarding alleged pre-judgment fraudulent conveyances; and the extent of the prima facie showing that must be made by WTC to support use of such enforcement subpoenas as well as to support service of restraining notices on the non-parties.

The branch of the subpoenaed TPG/Apax entities' motion for sanctions will be denied in the discretion of the court.

Accordingly, it is hereby ORDERED that the motion of the subpoenaed TPG/Apax entities to quash the subpoenas and vacate the restraining notices is granted; and it is further

ORDERED that the branch of the motion of the subpoenaed TPG/Apax entities for sanctions is denied.

This constitutes the decision and order of the court.

Dated: New York, New York
April 27, 2016


MARCY FRIEDMAN, J.S.C.