

Pala Assets Holdings Ltd v Rolta, LLC
2021 NY Slip Op 32454(U)
November 23, 2021
Supreme Court, New York County
Docket Number: Index No. 652798/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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PALA ASSETS HOLDINGS LTD, PINPOINT MULTI-
 STRATEGY FUND, VALUE PARTNERS FIXED INCOME
 SPC - VALUED PARTNERS CREDIT OPPORTUNITIES
 FUND, and VALUED PARTNERS GREATER CHINA
 HIGH YIELD INCOME FUND,

Plaintiffs,

- v -

ROLTA, LLC, ROLTA INDIA LTD, ROLTA
 INTERNATIONAL INC., ROLTA UK LTD, ROLTA MIDDLE
 EAST FZ-LLC, ROLTA AMERICAS LLC, and ROLTA
 GOLBAL B.V.,

Defendants.

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INDEX NO. 652798/2018

MOTION DATE N/A

MOTION SEQ. NO. 022

**DECISION + ORDER ON
 MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 022) 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 811, 812, 813, 816, 818 were read on this motion to/for POST JUDGMENT OTHER.

Upon the foregoing documents, it is

Plaintiffs make nine requests for relief in motion 022 by OSC. This motion arises from the court's appointment of Robert W. Seiden as receiver (NYSCEF 684) to give effect to this court's Turnover Order of October 20, 2020 (NYSCEF 389) in satisfaction of the judgment of September 2, 2020 (NYSCEF 350.)

Defendant Rolta International Inc. (RII) was located in the state of Georgia before it closed. (NYSCEF 828, November 15, 2021 Tr 19:17-18.) RII's bankruptcy petition was dismissed January 26, 2021. (*Id.* 16:11-17:1.) Defendants' attorney Allerdig informed the court that he and his firm Thompson Hine LLP, which appeared in this matter on September 13, 2021 (NYSCEF 697), gathered, scanned, and sent RII's documents to the Receiver and plaintiffs while the physical documents are stored in 300 boxes in storage. (NYSCEF 828, November 15, 2021 19-20:1.)

On September 13, 2021, the Receiver "convened a special meeting of the shareholders of [RII] at which he exercised his power and voted to remove all current directors of [RII] and appointed [Mr. Sorial as] a new Director." (NYSCEF 749, Geoffrey

J. Derrick Aff ¶6; Nov. 15, 2021 Tr. 7:2.) Defendants' counsel [John Allerding] attended this meeting. (*Id.*) However, “[o]n September 24, 2021, approximately an hour before the scheduled Court conference held that afternoon and without any prior discussions with Plaintiffs or the Receiver, Mr. Allerding emailed [plaintiffs] a cover letter purporting to enclose the share certificates of [RCL] Limited.” (*Id.*, ¶7.) “According to a document that Defendants later provided, titled ‘Minutes of the Board of Directors of [RIL] Held on September 14, 2021,’ the day after the special shareholders meeting, the former directors (K.K. Singh and Sateeth Dasari) purported to conduct a board meeting, at which they claimed to have ‘resolved’ to transfer the [RCL] shares to Plaintiffs. Prior to September 24, 2021, neither Defendants nor counsel apprised Plaintiffs or the Receiver of these intended actions.” (*Id.*, footnote 2).

Defendants challenge the Receiver's appointment of a new director and argue that the shares of RIL, a Delaware corporation, reside in India and cannot be transferred out of India. (NYSCEF 828, Tr 24:25:25-25:1.) Defendants opine that the only way to dispossess defendant Rolta India of its shares of RIL is to initiate a civil proceeding in India. (*Id.*, Tr 24:15-21.) “Rolta India cannot transfer its property without proceedings being initiated in India.” (*Id.*, Tr 25:4-6.) Apparently, until Rolta India transfers its shares of RIL to the Receiver, it will not recognize the new director appointed by the Receiver. Accordingly, one issue before the court on this motion is who is leading RIL.

Rolta Canada LLC (RCL) is a subsidiary of RIL. (*Id.*, Tr 13:18-19.) RCL had \$36,177.55 in the bank which was turned over to the Receiver. (*Id.*, Tr. 20:14-16; 27:15-18.) Meanwhile, RCL had debts of \$2,275 to Jeff Norris, an employee who restructured his employment with RCL to become an independent contractor and has since resigned (*Id.*, Tr. 14:2-8; 20:18-24) and \$11,000 to Sujeenthiran Sabanathan, RCL's sole employee who provided either “managerial services” or was a bookkeeper. (*Id.*, Tr. 14:8-13; 23:18-23.) According to draft financial statements provided to the Receiver, RCL has accounts receivable of \$24 million and unrealized loss of \$1.4 million. (*Id.*, Tr. 32:18-25; 33:8-9.) The issue presented here is whether RCL has meaningful assets to apply to the \$220 million owing to plaintiffs. (NYSCEF 389.)

In his September 24, 2021 letter to plaintiffs and the Receiver, Allerding also summarized the status of RCL “and customers that may be affected by the transfer of ownership of [RCL],” including Elections Ontario, a “major customer . . . for whom [RCL] does critical development work.” (NYSCEF 752, Allerding Letter at 2.) “Elections Ontario is a Canadian government entity and has had a contract with [RCL] since 2012, by which [RCL] provides critical election management software for Ontario's elections (the next scheduled election is June 2022); and (ii) that Elections Ontario was unaware on September 24, 2021, that [RCL] had no employees or Directors remaining and had been trying in vain to reach Rolta.” (NYSCEF 749, Geoffrey J. Derrick Aff, footnote 4.) Allerding's letter further states that the person who manages RCL's contractors had resigned effective that same day. (NYSCEF 752, Allerding Letter at 2.) Allerding asserts that after Sabanathan's departure, “there will be no staff at [RCL]; only contractors.” (*Id.*)

Plaintiffs argue that since this court's October 2020 turnover order, defendants have destroyed RCL instead handing over worthless RCL shares on September 21, 2021. Defendants insist that "it is Plaintiffs that have alienated [RCL]'s contractors." (NYSCEF 770, John C. Allerding Aff, ¶¶ 21- 38.) Rather, Allerding explains that RCL has operated since prior to the Turnover Order with only two employees, utilizing the services of independent contractors to perform services for its clients. (*Id.* ¶ 21.) One of these employees, Sabanathan, recently resigned to take what he viewed as more desirable employment with another company. (*Id.* ¶ 25.) Allerding insists that there is nothing on the record to suggest that his departure was "orchestrated" by defendants or their counsel. (*Id.*) The other employee, Norris, resigned at some point in 2021 to restructure his employment relationship as that of an independent contractor. (*Id.* ¶ 27.) Norris remained available to provide services to the company in that role and was willing to do so until plaintiffs and/or the Receiver refused to direct RCL to pay Norris \$2,275 for the services he rendered on behalf of RCL in September 2021. (*Id.* ¶¶ 28-35.) According to Allerding, plaintiffs and the Receiver alienated Norris and another of RCL's independent contractors through their actions and non-actions related to RCL. (*Id.* ¶¶ 36-37). Allerding provided plaintiffs and/or the Receiver with the following: (1) the contact information for each independent contractor that perform services for RCL; (2) a list of all RCL's customers as well as contact information for some customers; (3) a recommendation provided by Sabanathan of a local managed services provider that could assume Sabanathan's role with RCL; and (4) the location of all of RCL's contracts.

At argument on November 15, 2021, the court learned that defendants,¹ represented by Thompson Hine LLP are taking direction from Kamal K. Singh, Chairman, CEO, managing Director and founder of Rolta India Ltd. (NYSCEF 362, Rolta India Limited's 2018-19 Annual Report, at 145.) According to RII's leader Pulsani at the contempt hearing, Singh was the chairman of Rolta India and all of its subsidiaries. (NYSCEF 701, April 28, 2021 Tr 30:5-7.)

Each of plaintiffs' requests is addressed in turn:

1. Plaintiffs seek a declaration that plaintiffs, the Receiver, and the new director of RII appointed by the Receiver shall have no liability to RCL, its customers, vendors, employees, or anyone else for any claims or losses resulting, whether directly or indirectly, in whole or in part, from any acts or omissions of defendants or their agents, representatives, or counsel. (NYSCEF 746, OSC ¶1.)

This request is denied without prejudice in the absence of any law to support this request.

¹ On November 14, 2021, Thompson Hine LLP was relieved as counsel of record for defendants Rolta, LLC and Rolta Americas LLC because RII transferred its membership interests in Rolta, LLC and Rolta Americas LLC to plaintiffs. (NYSCEF 733, Aff. Zaytsev ¶4; NYSCEF 817, Order.)

2. *Plaintiffs seek a declaration that defendants shall indemnify plaintiffs, the Receiver, and the new director of RII appointed by the Receiver for any claims or losses resulting, whether directly or indirectly, in whole or in part, from any acts or omissions of Defendants or their agents, representatives, or counsel relating to RCL. (NYSCEF 746, OSC ¶12.)*

This request is denied without prejudice in the absence of any law to support this request.

3. *Plaintiffs seek a declaration that defendants are liable to plaintiffs for any diminution in value of [RCL] since the Court's October 20, 2020 Turnover Order. (NYSCEF 746, OSC ¶13.)*

This is a fact issue that requires discovery and a hearing. To that end, defendants shall make the principal of Rolta India Ltd., Kamal K. Singh, available for a deposition within 2 weeks of this order. This deposition is long overdue and appropriate. According to Pulsani "I would say that [Singh] is -- he's a typical founder promotor entrepreneur who runs a tightly controlled ship. He likes to be very deeply involved in the business operations. He likes to make all the decisions. We try to keep him away from making day-to-day decisions. He used to have quarterly management meetings where -- the entire list of people you see there would actually fly to Mumbai and be there for a week to talk to him about the business that they were responsible for, talk about the performance of that business and the goals for the business, and then he would provide very specific direction at those meetings." (NYSCEF 701, April 28, 2021 Tr 94:1-12.)

4. *Plaintiffs seek an order directing defendants to provide plaintiffs and the Receiver (i) copies of all of RCL's contracts, whether with other Rolta entities (including Rolta India Limited) or with third parties (including customers and vendors), to be sent electronically or by express mail or courier, (ii) an accounting of all funds transferred from RCL prior to the attempted transfer of RCL's shares to plaintiffs, and (iii) access to all individuals employed by, or under the control of, defendants that perform or performed any work for or on behalf of RCL. (NYSCEF 746, OSC ¶14.)*

Plaintiffs' request is granted. Defendants have provided plaintiffs with 49,000 pages of RCL documents and the names of independent contractors and directed customer complaints to plaintiffs and the Receiver. (NYSCEF 828, November 15, 2021 Tr 17:8-13; 19:10-11.) Plaintiffs characterize the 49,000 documents as an irrelevant document dump. (*Id.*, Tr 28:25-29:1-25.) Rather, over the course of "two to three months," defendants have gathered 2.7 million pages from RCL's laptops, could services and cellphones. (*Id.*, Tr 17:1-18:7.) However, defendants admit that these documents have not been turned over to the Receiver, except for 49,000 pages, as defendants intend to do a privilege review. (*Id.*, Tr. 18:25-19:9.) Defendant's' time to do a privilege review is long over. Within 10 days, defendants shall produce the 2.7 million pages to plaintiffs immediately in an electronic searchable format. The RCL documents belong to the Receiver now. Likewise, within 10 days, defendants shall provide the

Receiver with copies of all responsive RCL documents in their possession. Again, Pulsani's testimony that Singh was involved in all subsidiaries suggests that he and Rolta India would have communications with RCL.

At argument on November 15, 2021, the court was informed that all RCL contracts are "in physical form" located at RCL's office. (NYSCEF 828, Tr. 35:3-7.) Accordingly, the court ordered defendants to immediately inform the Receiver of the address of RCL's office and provide the keys to the Receiver.

On November 17, 2021, Allerding reported to the court by email that he "provided the Receiver and the Judgment Creditors with the address for [RCL]'s offices.² Next, we were able to confirm that Mr. Sabanathan had keys to [RCL]'s office. We contacted Mr. Sabanathan and requested that he send the keys to the Receiver via overnight mail. The keys were deposited with Federal Express (in Canada) yesterday for shipment to the Receiver. We provided the Receiver and the Judgment Creditors with the transaction receipt as well as a shipment summary with a tracking number so that they can track the package." (Nov. 17, 2021 email.) While the court appreciates Allerding's efforts, defendants remain responsible for production of any RCL documents in their possession and which shall be produced within 10 days of this decision..

5. Directing defendants to provide such support (including provision of services, software, intellectual property licenses, financial records and documents) as is necessary to allow RCL to comply with its contractual obligations and tax reporting obligations arising on or after October 20, 2020. (NYSCEF 746, OSC ¶15.)

Plaintiff's request is granted. Defendants remain responsible for production of any RCL documents in their possession and shall comply with this order within 10 days of this order which includes the requested documents e.g. licenses and financial documents. Likewise, defendants shall provide any necessary support to effectuate the transfer of RCL to the Receiver consistent with the order appointing the Receiver.

6. Plaintiffs seek an order that RII's agents, representatives, and counsel to follow the instructions of the new director of RII appointed by the Receiver. (NYSCEF 746, OSC ¶16.)

The issue before the court is who is in charge of RII. Defendants' objection here is that the Receiver has yet to file the judgment in India. The court rejects defendants' singular reliance on the law of India. RII is a Delaware corporation whose shares are thus located in Delaware. (Del Code Ann TI 8 § 169.) Defendants fail to raise any other challenge to the process or procedure followed by the Receiver based on the relevant law of Delaware. Therefore, consistent with the order of appointment of the Receiver, (NYSCEF 684) plaintiffs' request is granted.

² This email shall be filed in NYSCEF.
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7. Plaintiffs seek an order that the Receiver can abandon the shares of RCL without any liability to it, the plaintiffs or the new director of RII appointed by the Receiver, if the Receiver or plaintiffs determine on or before November 29, 2021, in his or their sole discretion, (i) that the shares of RCL have no or only nominal market value, (ii) that the liabilities or potential liabilities of RCL exceed its assets, (iii) that the shares cannot be sold or otherwise liquidated for cash within a reasonably soon timeframe, or (iv) that for any other reason it would not be in the plaintiffs' best interest to turn over the shares to plaintiffs or to sell them to a third party. (NYSCEF 746, OSC ¶7.)

Plaintiffs' request is denied without prejudice in the absence of law to support this request.

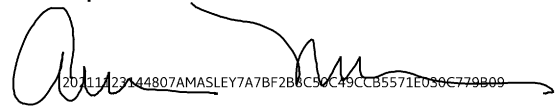
8. Plaintiffs seek an order that defendants (i) cover the sole Director of RII, whom the Receiver appointed at a special meeting of the shareholders of RII on September 13, 2021, under defendants' existing liability insurance policy for directors and officers issued by New India Assurance or any other insurance carrier through which defendants have liability insurance policy for directors and officers, with such coverage being retroactive to the September 13, 2021 appointment, and (ii) provide plaintiffs and the Receiver a copy of that policy and proof of such coverage. (NYSCEF 746, OSC ¶8.)

Plaintiffs' request is granted. Defendants shall deliver to the Receiver copies of any and all D&O insurance policies for RCL, RII, and for defendants to the extent that such policies cover RII and RCL. Consistent with the order appointing the Receiver, defendants shall cooperate with the Receiver and the new RII Director to ensure that he is covered by any relevant insurance policies.

9. Plaintiffs seek an order that the Receiver can engage Ishita Farasaiya, Esq. and her law firm Aureate Advocates and Solicitors to advise the Receiver on any issues related to the law of India. (NYSCEF 746, OSC ¶9.)

This request is granted in the absence of opposition. Within 10 days, the Receiver shall submit the appropriate paperwork to the Fiduciary Office at 60 Centre Street.

ORDERED that the motion by OSC is granted in part as detailed above.



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<u>11/23/2021</u> DATE					<u>ANDREA MASLEY, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER	
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART		
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE	