SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ROBERT R. REED** **PART** **43**

Justice

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BRAVIA CAPITAL HONG KONG LIMITED,

Plaintiff,

- v -

HNA GROUP CO., LIMITED and HNA GROUP NORTH AMERICA LLC,

Defendants.

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INDEX NO. 652320/2021

MOTION DATE N/A, 10/07/2021

MOTION SEQ. NO. 005 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 79, 82

were read on this motion to/for ORDER OF ATTACHMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 89, 90, 91, 94, 95, 96, 97, 98

were read on this motion to/for MODIFY ORDER/JUDGMENT.

Motion sequence nos. 005 and 008 are consolidated for disposition herein.

In motion sequence no. 005, plaintiff Bravia Capital Hong Kong Limited (Bravia) moves, pursuant to CPLR 6201, for a prejudgment order of attachment on $10 million of the assets owned by defendants HNA Group Co., Limited (HNA) and HNA Group North America LLC (HNA NA) (together, defendants). In motion sequence no. 008, defendants move, pursuant to CPLR 6314, to vacate the temporary restraining order granted in connection with Bravia's motion for an order of attachment.

BACKGROUND

Bravia is an investment and investment advisory firm incorporated in Hong Kong where it maintains its principal place of business (NY St Cts Elec Filing [NYSCEF] Doc No. 49, first amended and supplemental complaint [FAC], ¶ 11). HNA is a conglomerate incorporated in the

People's Republic of China and maintains its principal place of business in Haikou City, Hainan Province (*id.*, ¶ 12). HNA and its affiliates and subsidiaries manage and control 100% of the equity in nonparty Ingram Micro (Ingram), an indirectly held subsidiary of HNA (*id.*, ¶¶ 3 and 12). HNA NA is an HNA subsidiary incorporated in New York and maintains its principal place of business in New York, New York (*id.*, ¶ 13).

Between 2011 and 2018, Bravia furnished services to HNA and its affiliates pursuant to several agreements (the Service Agreements) (*id.*, ¶ 15). HNA and its affiliates then defaulted on paying Bravia to which they owed more than $70 million (*id.*, ¶ 16). In August 2019, Bravia and HNA entered a global settlement resolving their disputes (*id.*, ¶ 17). As consideration for the settlement, Bravia and its affiliate authorized the release of 10,190,057 shares worth $120 million in Cronos Ltd. that had been held in trust to Global Sea Containers, Ltd., an indirect subsidiary of HNA (NYSCEF Doc No. 67, Rinarisa Coronel Defronze [Defronze] aff, ¶ 9).

In connection with the global settlement, Bravia and defendants executed a "Payment and Indemnity Agreement" (the PI Agreement) dated August 20, 2019 regarding the Service Agreements set forth in an attached schedule (NYSCEF Doc No. 50, FAC, exhibit A at 1 and 15). The PI Agreement contemplates the sale of Ingram, and defines the term "Ingram Sale" as:

> "any transaction or series of transactions involving a disposal, transfer or a change in control in, all or a material part (meaning for these purposes twenty per cent. or more) of a direct or indirect ownership interest in Ingram Micro (including but not limited to a sale, transfer or other disposal of all or a material part of the assets or business of Ingram Micro), in each case, to a person that is not an Affiliate of HNA"

(*id.* at 2 [Section 1.1]). HNA agreed to pay Bravia a $10 million "Termination Amount" within 5 business days after the sale is completed (NYSCEF Doc No. 50 at 2-3 [Sections 1.1 and 2.2]). The

agreement also discusses the funds from which the Termination Amount may be paid and the disclosures to be made to Bravia. Section 2 reads, in pertinent part:

> "2.3 HNA shall or shall cause its Affiliates (being the direct parties to the Ingram Sale) to:
>
> 2.3.1 prior to the date of the completion of the Ingram Sale, enter into an escrow agreement (the 'Escrow Agreement') with other relevant parties to the Ingram Sale and a reputable financial institution headquartered in the United States or Europe that is in the business of providing escrow services but is not an Affiliate of HNA, which agreement shall contain a distribution waterfall in respect of the consideration for the Ingram Sale which provides that Bravia shall be paid the entire Termination Amount; and
>
> 2.3.2 procure that the sale and purchase agreement pursuant to which the Ingram Sale occurs (the 'Ingram SPA') provides that the consideration (other than a portion of which that may be paid directly to and held by HNA or its relevant Subsidiary as initial deposit if the parties to the Ingram Sale enter into such a deposit arrangement, provided that such deposit shall not be more than ten per cent (10%) of the proposed consideration) for such sale shall be transferred to the escrow agent in accordance with the terms of the Escrow Agreement; and, on receipt of the full Termination Amount from the escrow agent, HNA's payment obligation under clause 2.2 shall be discharged provided that the parties acknowledge that any failure by HNA or its Affiliates to comply with the terms of clauses 2.3.1 or 2.3.2 and/or the failure by the escrow agent or any other party to comply with the terms of the Escrow Agreement shall not relieve HNA of its primary payment obligation in respect of the Termination Amount set out in clause 2.2 and such obligation shall remain until Bravia has received payment of the Termination amount in full.
>
> 2.4 HNA hereby undertakes that it shall: (1) notify Bravia in writing immediately after the Ingram SPA is entered into by the relevant parties thereto; (2) notify Bravia immediately of the proposed date of closing under the Ingram SPA, (iii) notify Bravia in writing immediately following completion occurring under the terms of the Ingram SPA; and (4) prior to completion occurring under the terms of the Ingram SPA,

> provide Bravia with bi-weekly update reports on the bidding and closing process"

(*id.* at 4-5). Although the PI Agreement does not list the type of information to be included in the bi-weekly reports, Bravia alleges the reports should include basic information such as the identities of the parties to the sale and the escrow agent and an expected timeline for closing the sale and distributing the proceeds (NYSCEF Doc No. 49, ¶ 26). Once Bravia received the Termination Amount, the Service Agreements and the rights and obligations of each party would terminate (*id.* at 4 [Sections 3.1.1 and 3.1.2]). In addition, HNA NA agreed to furnish Bravia "with a guarantee in respect of the Termination Amount" (*id.* at 10 [Section 10.1.2]). Finally, the PI Agreement stipulates that Bravia and defendants consent to jurisdiction in New York (*id.* at 12 [Section 14.1]).

Defendants, as "guarantors," executed an "Unconditional Guarantee" (the Guarantee) dated August 20, 2019. The Guarantee states that each guarantor "jointly and severally, as primary obligor and not merely as surety, hereby absolutely, unconditionally, and irrevocably ... guarantees to Bravia ... the prompt and complete payment by HNA or its Affiliates of the Termination Amount" and that each guarantor shall pay the Termination Amount within five business days of delivery of a written notice from Bravia (NYSCEF Doc No. 51, FAC, exhibit B at 3 [Sections 2.1.1 and 2.1.2]). Upon payment of the Termination Amount, the Service Agreements shall terminate (*id.* at 1).

Bravia alleges that it learned from news reports in 2020 that HNA was engaged in discussions to sell Ingram to nonparty Platinum Equity (NYSCEF Doc No. 49, ¶ 31). On August 28, 2020, Bravia sent HNA a letter requesting information on the status of the proposed sale (*id.*, ¶ 32). In response, HNA acknowledged that negotiations were ongoing but otherwise offered little substantive information (*id.*, ¶ 33). In December 2020, HNA and Platinum Equity announced they had agreed to a sale of Ingram for $7.2 billion (*id.*, ¶ 36). Disclosures from nonparty HNA

Technology Co., Ltd. (HNA Tech), another HNA subsidiary, made under Chinese securities law to the Shanghai Stock Exchange indicated that the sale would close by July 2, 2021 (*id.*, ¶ 37). Bravia alleges that HNA has failed to furnish the bi-weekly reports or to contact it to arrange payment (*id.*, ¶ 38).

Bravia commenced this action on April 8, 2021 seeking specific performance of HNA's contractual duty to provide update reports (*id.*, ¶ 41). Shortly after bringing the action, Bravia by letter on April 29, 2021 demanded assurances from HNA that it would perform its contract obligations, but HNA did not respond (*id.*, ¶¶ 42-43). Further communications between counsel failed to yield additional information about the Ingram Sale (*id.*, ¶¶ 44-49).

After deposing a corporate representative from Ingram, Bravia filed the FAC on June 22, 2021 pleading two causes of action for anticipatory repudiation of the PI Agreement and Guarantee and for specific performance of defendants' contractual obligation to furnish the bi-weekly reports.

On June 28, 2021, Bravia moved by order to show cause for an order of attachment on defendants' assets in the amount of $10 million and for an order temporarily restraining defendants and all garnishees, including nonparty JPMorgan Chase & Co. (JPMC), from selling, assigning, transferring or interfering with any property up to the amount of $10 million in their possession. The court granted the temporary restraining order (the TRO) on June 30, 2021 (NYSCEF Doc No. 79). Defendants move to vacate the TRO.

DISCUSSION

A. Motion Sequence No. 005

In support of its motion for a prejudgment order of attachment, Bravia tenders an affidavit from Defronze, Chief Legal Counsel and Chief Administrative Officer for Bravia and nonparty Bravia Capital Partners, Inc., who avers that Bravia inserted the provisions requesting update

reports on the Ingram Sale and payment of the Termination Amount directly from the sales proceeds held in escrow because "HNA previously attempted to stiff Bravia at the closing of a prior transaction" (NYSCEF Doc No. 67, ¶¶ 1 and 14). Defronze avers that Bravia only learned of the sale to Platinum Equity from news reports (*id.*, ¶ 15), and that HNA Tech's sworn disclosures to the Shanghai Stock Exchange show that 84.5% of its shareholders have approved the sale (NYSCEF Doc No. 67, ¶¶ 19-20; NYSCEF Doc No. 71, Defronze aff, exhibit 4). Defronze states that defendants, though, have failed to provide Bravia with bi-weekly reports and have engaged in obstructionist delay tactics (*id.*, ¶¶ 20-29). In addition, an HNA Tech chart detailing where proceeds from the sale will be disbursed reflects distributions to intermediary consultants, creditors in China and nonparty Tianjin Tianhai Logistics Investment Management, Co. Ltd. (Tianjin), a Chinese company that is an indirectly controlled subsidiary of HNA, but does not mention Bravia (*id.*, ¶ 30). Defronze concludes that defendants do not intend to pay Bravia. Defronze avers that, apart from the proceeds to be held by JMPC in escrow, Bravia has been unable to confirm whether defendants maintain other New York assets that would satisfy a potential money judgment against them (*id.*, ¶ 31).

Bravia also relies on excerpts from June 11, 2021 deposition of Ingram's Chief Financial Officer, Michael Zilis (Zilis). Zilis confirmed that the Ingram Sale would close on July 2, 2021 with JPMC possibly acting as a "paying agent" charged with distributing the proceeds from the transaction (NYSCEF Doc No. 64, Englander affirmation, exhibit B at 20 and 28). Zilis also testified that neither Bravia nor the "Bravia matter" were mentioned in the "merger agreement" (the Merger Agreement) under which Ingram will be sold (*id.* at 30-31).

In addition, Bravia wrote directly to JPMC on June 14, 2021 asking it to confirm that it would set aside $10 million from the Ingram Sale (NYSCEF Doc No. 65, Andrew M. Englander

[Englander] affirmation, exhibit C). JPMC responded by letter on June 18, 2021, writing that it was "not in a position to share any confidential information with third parties" about its client HNA NA and its affiliates (NYSCEF Doc No. 66, Englander affirmation, exhibit D).

Defendants oppose. First, they assert that Bravia cannot show that either defendant has an assignable or transferrable interest in the proceeds from the Ingram Sale because neither is a party to the transaction with Platinum Equity. Zilis testified that, in addition to Ingram, the parties to the Merger Agreement included three HNA entities – HNA Tech, Tianjin and nonparty GCL Investment Management, Inc. (GCL)[1] – and two Platinum Equity entities (NYSCEF Doc No. 64 at 32-33). Defendant argues Bravia ignores the well-established precept that a corporate parent and its subsidiary are distinct legal entities, and claims that Bravia has not pled any facts to support piercing the corporate veil to treat the parties to the Merger Agreement as defendants' alter egos. Second, defendants contend that Bravia is not likely to succeed on the merits of its anticipatory repudiation of contract claim because it has not pled facts demonstrating an unqualified and clear refusal to perform the parties' agreement. As to HNA NA, defendants assert that CPLR 6201 (1) is inapplicable because it is organized in New York. Regarding CPLR 6201 (3), defendants posit that Bravia's submissions fail to show that they have assigned, disposed of, encumbered or secreted property or that they intend to defraud their creditors or frustrate a potential money judgment. Last, defendants argue that Bravia only speculates that they will not be able to satisfy a potential judgment.

[1] HNA owns a direct interest in HNA Tech (NYSCEF Doc No. 68, Defronze aff, exhibit 1). HNA Tech owns 100% of nonparty Shanghai Jirong Supply Chain Management Co., Ltd., which owns a 99% interest in nonparty Shanghai Detong Investment Management Co., Ltd. (Detong) (*id.*). Detong owns a 0.001% interest in nonparty Shanghai Biaoji Investment Partnership with that entity owning a 99.98% interest in Tianjin (*id.*). HNA owns the remaining 0.02% interest in Tianjin (*id.*). Tianjin owns a 100% interest in GCL (*id.*). GCL owns a 100% interest in nonparty GCL Investment Holdings, Inc., which owns a 100% interest in Ingram (*id.*).

CPLR 6201 sets forth the grounds for granting an order of attachment, and provides, in relevant part, that:

> "An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when:
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> 1. the defendant is a nondomiciliary residing without the state, or is a foreign corporation not qualified to do business in the state; or
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> ...
>
> 3. the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts ..."

"Any debt or property against which a money judgment may be enforced as provided in section 5201 is subject to attachment" (CPLR 6202). Property subject to attachment includes "any debt, which is past due or which is yet to become due, certainly or upon demand of the judgment debtor, whether it was incurred within or without the state" (CPLR 5201 [a]) and "any property which could be assigned or transferred, whether it consists of a present or future right or interest and whether or not it is vested" (CPLR 5201 [b]). Under CPLR 6212 (a), "[a] plaintiff seeking an order of attachment must show the probability of its success on the merits of its cause of action, that one or more grounds for attachment provided for in CPLR 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff" (*Reed Smith LLP v LEED HR, LLC*, 156 AD3d 420, 420 [1st Dept 2017]). Where there is more than one defendant, the plaintiff must show the grounds for an attachment as against each defendant (*see Ford Motor Credit Co. v Hickey Ford Sales*, 62 NY2d 291, 302 [1984]). The plaintiff must post an undertaking in an amount fixed by the court (*see* CPLR 6212 [b]). The court may also grant the plaintiff a temporary restraining order prohibiting a garnishee from transferring assets (*see* CPLR 6210).

At the outset, Bravia has not established that CPLR 6201 (1) is applicable against HNA NA. CPLR 6201 (1) applies to non-domiciliaries residing without the state and to foreign corporations not qualified to do business here. HNA NA is an entity incorporated in New York where it maintains its principal place of business (NYSCEF Doc No. 49, ¶ 13).

Bravia cites CPLR 6201 (3) as an alternative ground for the attachment. Under CPLR 6201 (3), the plaintiff must show that the "defendant has concealed or is about to conceal property with the intent to defraud creditors or to frustrate the enforcement of a judgment" (*Abacus Fed. Sav. Bank v Lim*, 8 AD3d 12, 13 [1st Dept 2004]). "[F]raudulent intent must be proven, not simply alleged or inferred, and the facts relied upon to prove it must be fully set forth in the moving affidavits" (*id.*, citing *Eaton Factors Co. v Double Eagle Corp.*, 17 AD2d 135, 136 [1st Dept 1962]; *Societe Generale Alsacienne De Banque, Zurich v Flemingdon Dev. Corp.*, 118 AD2d 769, 773 [2d Dept 1986] [stating that "[a]ffidavits containing allegations raising a mere suspicion of an intent to defraud are insufficient"]). Fraudulent intent is not lightly inferred (*see Waltzer v Trasdescape & Co., L.L.C.*, 31 AD3d 302, 305 [1st Dept 2006]). "[I]t must appear 'that such fraudulent intent really existed in the mind of the defendants, and not merely in the ingenuity of the plaintiffs'" (*Rosenthal v Rochester Button Co.*, 148 AD2d 375, 376 [1st Dept 1989] [citation omitted]; *accord Societe Generale Alsacienne De Banque, Zurich*, 118 AD2d at 773).

Here, Bravia has failed to proffer sufficient evidence of the requisite intent to defraud on the part of HNA NA (*see Waltzer*, 31 AD3d at 305 [stating that the plaintiff had failed to show the defendant had intended to fraudulently transfer his property]; *P.T. Wanderer Assoc. v Talcott Communications Corp.*, 111 AD2d 55, 56 [1st Dept 1985] [reasoning that the plaintiff had offered only conclusory allegations of an intent to defraud]). Crucially, Bravia has not alleged or shown that HNA NA is engaging in the type of conduct described in CPLR 6201 (3). Nor has Bravia

shown that HNA NA is in receipt of or is entitled to receive any of the proceeds from the Ingram Sale from JPMC. HNA NA is not a party to the Merger Agreement, and Bravia has not alleged that HNA NA is an alter ego of any of the parties to that agreement. Thus, it could not have entered an escrow agreement or a sale and purchase agreement and directed payment of $10 million from the proceeds to Bravia. Bravia contends that HNA NA never intended to perform under the PI Agreement and Guarantee, but "[g]eneral allegations that defendant entered into a contract while lacking the intent to perform it are insufficient to support the claim" (*New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 318 [1995]). Furthermore, the obligations described in Sections 2.3.1, 2.3.2 and 2.4 of the PI Agreement are imposed upon HNA, not HNA NA. Bravia's complaints that defendants' responses to its queries were deficient or that defendants obstructed or ignored its other requests are insufficient to infer the requisite fraudulent intent.

The cases cited by Bravia in support of the motion are inapposite. In *Societe Generale Alsacienne De Banque, Zurich*, the Court observed that the individual defendant had actively misled the plaintiff by making specific misstatements, presenting plaintiff with a check from a closed bank account and attempting to remove his funds from an account at a different bank (118 AD2d at 773). In *Bank of Leumi Trust Co. of N.Y. v ISTIM, Inc.* (892 F Supp 478, 483 [SD NY 1995], *rearg denied* 902 F Supp 46 [SD NY 1995]), the defendant requested that the plaintiff transfer the balance of its bank account in New York to the Netherlands, closed its only U.S. office, and removed its assets from New York, among other actions. On this motion, Bravia has not pointed to similar conduct from HNA NA sufficient to infer that it is about to assign, dispose of, transfer or secrete its assets or otherwise render itself judgment-proof. Bravia's motion insofar as it seeks a prejudgment order of attachment against HNA NA is denied.

As against HNA, however, Bravia has satisfied CPLR 6201 (1). Bravia has established, and HNA does not dispute, that HNA is a Chinese corporation that is not licensed to do business in New York (NYSCEF Doc No. 67, ¶ 3). Thus, Bravia must establish the probability of its success on the merits of its claims and that the amount demanded exceeds all counterclaims.

The second cause of action pleads a claim for specific performance. An order of attachment, however, is unavailable on a cause of action for specific performance (*see* CPLR 6202). Bravia, therefore, has not met is burden on this cause of action.

The first cause of action is predicated upon an anticipatory repudiation of the PI Agreement and the Guarantee. The FAC alleges that defendants have obstructed Bravia's enforcement of the PI Agreement, misrepresented and concealed their knowledge about the Ingram Sale, failed to furnish with bi-weekly reports, failed to ensure that the sale documents reflected payment of the Termination Amount, and failed to arrange for payment of the Termination Amount from the sales proceeds in escrow (NYSCEF Doc No. 49, ¶ 75).

An "[a]nticipatory repudiation occurs 'when, before the time for performance has arisen, a party to a contract declares [its] intention not to fulfill a contractual duty'" (*Condor Funding, LLC v 176 Broadway Owners Corp.*, 147 AD3d 409, 411 [1st Dept 2017] [citation omitted]; *DeLorenzo v Bac Agency*, 256 AD2d 906, 907-908 [3d Dept 1998] [stating that an anticipatory repudiation occurs "where there is a renunciation of the contract in which the repudiating party has indicated an unqualified and clear refusal to perform with respect to the entire contract"]). "A repudiation can be either 'a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach' or 'a voluntary affirmative act which renders the obligor unable or apparently unable to perform without such a breach'" (*Norcon Power Partners v Niagara Mohawk Power Corp.*, 92 NY2d 458, 463 [1998]

[citations omitted]). The statement that a defendant has no intention of performing must be "'positive and unequivocal'" (*Princes Point LLC v Muss Dev. L.L.C.*, 30 NY3d 127, 133 [2017] [citation omitted]). "[T]here must be a definite and final communication of the intention to forego performance before the anticipated breach may be the subject of legal action" (*Rachmani Corp. v 9 E. 96th St. Apt. Corp.*, 211 AD2d 262, 267 [1st Dept 1995]). "[A] party repudiates a contract when it 'voluntar[il]y disable[s] itself from complying' with its contractual obligations" (*Computer Possibilities Unlimited v Mobil Oil Corp.*, 301 AD2d 70, 77 [1st Dept 2002], *lv denied* 100 NY2d 504 [2003] [citation omitted]).

As applied here, Bravia has not demonstrated its probability of success on the merits on this cause of action. Bravia argues that HNA's failure to ensure that the transaction agreements for the Ingram Sale included clauses providing for payment of the Termination Amount as set forth in Sections 2.3.1 and 2.3.2 of the PI Agreement renders it incapable of performing, but an alleged breach of these sections does not cancel HNA's payment obligation. As stated above, the PI Agreement expressly provides that HNA's failure to comply with either Sections 2.3.1 or 2.3.2 "shall not relieve HNA of its primary payment obligation in respect of the Termination Amount set out in clause 2.2 and such obligation shall remain until Bravia has received payment of the Termination [A]mount in full" (NYSCEF Doc No. 50 at 4 [Section 2.3.2]). Thus, in the event the Termination Amount is not paid from the proceeds of the Ingram Sale held in escrow, HNA must pay Bravia from some other source.

Furthermore, Bravia has not identified an unequivocal statement or affirmative act by HNA purporting to repudiate either the PI Agreement or the Guarantee. Critically, Bravia has not demonstrated that the actions complained of constitute a definite, final and unequivocal communication of an intent not to perform. For instance, whether defendants sought an extension

of time to respond to the original complaint is not indicative of a repudiation. Bravia complains that defendants have thus far failed to reveal any substantive information on the Ingram Sale, but these actions center on conversations between the parties' attorneys after litigation had commenced (NYSCEF Doc No. 67, ¶¶ 25-28). In any event, the statements do not exhibit a positive and unequivocal intent to forego their performance. The omission of Bravia's name in HNA Tech's public disclosures also does not dispositively reflect an intent to forego performance of the PI Agreement or the Guarantee because, as explained above, defendants are contractually obligated to pay Bravia whether the payment comes from the funds held in escrow or not. Enforcement of the Guarantee also depends on whether Bravia receives the full $10 million, not whether HNA or its affiliates failed to insert a payment provision in favor of Bravia in the Ingram Sale contracts. These actions also fail to establish fraudulent intent (*see Waltzer*, 31 AD3d at 305), as Bravia has not put forth any facts showing that HNA has assigned, disposed of, encumbered or secreted property. Likewise, HNA is not a party to the Merger Agreement, and Bravia has not alleged that HNA is an alter ego of any party to that agreement.

Nor has Bravia adequately demonstrated that HNA is in financial distress such that it will not likely be able to pay a money judgment (see *Mitchell v Fidelity Borrowing LLC*, 34 AD3d 366, 366 [1st Dept 2006], citing *Rosenthal*, 148 AD2d at 377). "Attachment is a 'harsh' remedy, and is construed narrowly in favor of the party against whom the remedy is invoked" (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 59 [1st Dept 2013] [citation omitted]; *Siegel v Northern Blvd. & 80th St. Corp.*, 31 AD2d 182, 183 [1st Dept 1968] [same]). Therefore, it is incumbent upon the plaintiff to show a real, identifiable risk that the defendant will not be able to satisfy a money judgment (*see VisionChina Media Inc.*, 109 AD3d at 60). Here, Defronze avers that "HNA Ltd. is among a host of HNA Group entities in a government led

reorganization in China" (NYSCEF Doc No. 67, ¶ 32). This statement, however, is insufficient to imply that HNA will not be able to satisfy a judgment against it. Additionally, Defronze's statement that Bravia has been unable to confirm whether HNA owns other assets in New York is not sufficiently specific as to what efforts Bravia undertook to locate its assets in the state. Thus, Bravia has not made the necessary showing for a prejudgment order of attachment.

In view of the foregoing, the court need not address whether the amount demanded exceeds all counterclaims known to Bravia (CPLR 6212 [a]).

B. Motion Sequence No. 008

Because Bravia's motion for an order of attachment is denied, defendants' motion for an order vacating the TRO is denied as moot.

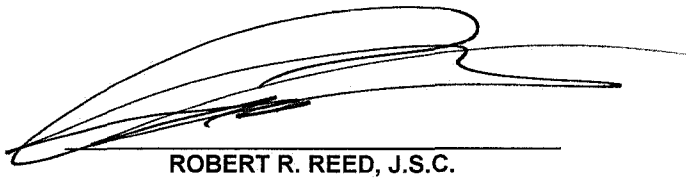
Accordingly, it is

ORDERED that the motion brought by plaintiff Bravia Capital Hong Kong Limited for an order of attachment (motion sequence no. 005) is denied; and it is further

ORDERED the order dated June 30, 2021 temporarily restraining defendants HNA Group Co., Limited and HNA Group North America LLC and all garnishees, including but not limited to JPMorgan Chase & Co. as the escrow agent of the process from the sale of nonparty Ingram Micro, from making or suffering any sale, assignment, or transfer of, or any interference with, any property up to the amount of $10,000,000 in their possession or custody (NYSCEF Doc No. 79) is hereby vacated in its entirety; and it is further

ORDERED that the motion brought by defendants HNA Group Co., Limited and HNA Group North America LLC to vacate the temporary restraining order dated June 30, 2021 (motion

sequence no. 008) is denied as moot.



12/14/2021
DATE

ROBERT R. REED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED	X	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE