

Pala Assets Holdings Ltd v Rolta, LLC
2022 NY Slip Op 30996(U)
March 25, 2022
Supreme Court, New York County
Docket Number: Index No. 652798/2018
Judge: Andrea Masley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

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.

-----X

INDEX NO. 652798/2018
 MOTION DATE N/A
 MOTION SEQ. NO. 027

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 027) 894¹, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 914, 915, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 939, 940, 941 were read on this motion to/for HEARING/DISCOVERY.

Upon the foregoing documents, it is

In motion sequence number 027, following the December 22, 2021 deposition of defendants' corporate representative Kamal K. Singh, Chairperson, CEO, Managing Director and Founder of Rolta India Ltd, plaintiffs move for the following relief: (1) ordering defendants to produce all documents concerning any adjustments made in

¹ Parties are reminded, yet again, to use NYSCEF numbers to identify exhibits and documents in the docket. (See NYSCEF 894, n 1 [Transcript and exhibits to Klazen Affirmation are not identified by NYSCEF numbers].) Counsel's insistence on using exhibit numbers instead of NYSCEF numbers is astonishing in this 2018 case with 27 motions and 943 documents filed in NYSCEF. (See NYSCEF 920 [Exhibits attached to Allerding Affirmation are not identified by NYSCEF number in the Allerding Affirmation.]) In the future, counsel shall e-file exhibits prior to e-filing affirmation that references them or re-file affirmation with NYSCEF numbers.

Rolta India's books relating to the offsetting liabilities between Rolta International, Inc. (Rolta International) and Rolta India Limited (Rolta India) that are the subject of the Settlement Agreement between Rolta International and Rolta India dated March 31, 2021, and all documents relating to the Advance Payment and Default Obligations as defined in the Settlement Agreement; (2) ordering defendants to produce all documents reflecting any funds that Rolta Private Limited (RPL) and Rolta Overseas Private Limited (ROPL) held for, received from, or transmitted to Rolta India or its subsidiaries, as well as documents sufficient to show the ownership in such entities; (3) ordering defendants to produce all communications with counsel concerning the Turnover Order [NYSCEF 389], the March 5, 2021 Order granting plaintiffs' motion for appointment of a Receiver [NYSCEF 493], the April 16, 2021 Receiver Order [NYSCEF 544], or the June 22, 2021 Receiver Order [NYSCEF 667]; (4) ordering defendants to produce all Rolta-related communications that Singh sent or received through his Rolta email account, his Gmail account or any other platform by which he has conducted Rolta-related communications; and (5) ordering defendants to produce Singh for an evidentiary hearing.

Thompson Hine LLP's request to renew its motion to be relieved as counsel to Rolta International, Inc. (NYSCEF 732, October 18, 2021 Proposed OSC [motion sequence no. 021]), filed as a cross motion by OSC to this motion 027, will be addressed separately on its return date of April 20, 2022. (See NYSCEF 943.)

In the fall of 2020, the court entered judgments in favor of plaintiffs in the amount of \$183,196,227.71 and \$25,763,000, with each defendant held jointly and severally liable for the full amount. (NYSCEF 350, September 2, 2020 Judgment; NYSCEF 387,

October 16, 2020 Decision and Order.) Thereafter, on October 22, 2020, the court issued the Turnover Order. (NYSCEF 388, Short Form Order, NYSCEF 389, Order; NYSCEF 391, Oct. 22, 2020 Tr.) The Order required defendants to turn over “all cash on hand” including the funds that appeared in the prior year’s annual report. (NYSCEF 389, Order at 2.) The court directed defendants to turn over all cash within one week of the Order and turn over all shares and ownership interests sufficient to satisfy the judgment within 30 days of the Order. (NYSCEF 391, Oct. 20, 2020 Tr at 32-34.) The judgments remain unpaid.

Plaintiffs have vigorously searched for defendants’ assets to satisfy these judgments. At plaintiffs’ request, the court appointed Robert Seiden as receiver on August 24, 2021. (NYSCEF 683, Decision; NYSCEF 684, Order appointing Receiver.) In motion sequence number 012, plaintiffs moved for contempt against Singh. A court has the power to levy contempt sanctions on corporate “principal[s] and officer[s]” in their personal capacities where they are “responsible for [the corporation’s] affairs and as such may be held personally liable for its contempt.” (*773 Fulton LLC v Brooklyn Cigar Bar Lounge Corp*, 66 Misc 3d 1231[A], 2020 NY Slip Op 50331[U], *15 n 5 [Civ. Ct., Kings County 2020] [citations omitted].) As long as the corporate officer “was properly served with the contempt motion and had knowledge of the terms of the subject orders of which she was in violation, the court [i]s empowered to find her in contempt without plaintiff commencing a special proceeding.” (*Kozel v Kozel*, 161 AD3d 700, 701 [1st Dept 2018], citing *Citibank, N. A. v Anthony Lincoln-Mercury, Inc.*, 86 AD2d 828, 829 [1st Dept 1982].) In the absence of evidence of service of the motion upon Singh, the contempt hearing proceeded against Singh’s alleged co-conspirator

Pulusani. On December 21, 2021, the court found Pulusani in contempt of court and penalized her \$1,130,000. (NYSCEF 852, Decision and Order [mot. seq. no. 012].)

In motion sequence number 022, plaintiffs requested a variety of relief in support of its ongoing efforts to find defendants' assets to satisfy the judgments. (NYSCEF 746, Notice of Motion.) The motion was resolved on the record on November 15, 2021 (NYSCF 828, Tr.) and by a written decision. (NYSCEF 833, Decision and Order [mot. seq. no. 022].) At argument, the court directed defendants to produce a corporate representative with knowledge. (NYSCEF 828, Tr at 36:14.)² Singh was produced on December 21, 2021 as defendants' corporate representative.

Plaintiffs' motion is granted as to their first request to produce all documents concerning any adjustments made in Rolta India's books relating to the offsetting liabilities between Rolta International and Rolta India that are the subject of the Settlement Agreement between Rolta International and Rolta India dated March 31, 2021, and all documents relating to the Advance Payment and Default Obligations as defined in the Settlement Agreement. Defendants admit that the Settlement Agreement violates this court's restraining notice pursuant to CPLR 5222(b). (NYSCEF 871, Dec. 14, 2021 Tr at 47:5-6.)

At argument on March 22, 2022, defendants claim they never received such a request. Defendants also object to this request to the extent that it calls for the production of privileged documents which is addressed below. On December 15, 2021,

² Since that motion is now disposed, any issues arising out of that deposition or otherwise, constitute new issues seeking new relief necessitating new motions. Parties cannot file cross motions on motions that are disposed. In New York County Supreme Court, a new motion gets a new sequence number.

the court directed defendants to produce “all agreements mentioned in the settlement between [Rolta International] and Rolta India Limited [and] any document concerning the settlement or its reversal.” (NYSCEF 850, Decision and Order [mot. seq. no. 025].)

Defendants claim to have complied with the court’s request and object to producing more documents, both of which undermine defendants’ claim to never have received this request for documents. Therefore, the court rejects defendants’ objection.

During the December 14, 2021 conference, defendants admitted that documents concerning Rolta International’s defaults were relevant to the Settlement Agreement. (NYSCEF 871, Dec. 14, 2021 Tr at 64:18-66:4.) Therefore, the court rejects defendants’ objection, if any, on the basis of relevance.

The court rejects defendants’ objection to producing additional documents. Defendants’ initial production, if any, is obviously inadequate as evidenced by defendants’ failure to produce documents such as those that show that Rolta International actually defaulted on its debt obligations which resulted in the Settlement Agreement, to name but a few deficiencies. Likewise, defendants failed to produce the minutes of the May 11, 2019 Rolta India board meeting at which the board allegedly agreed to modification to the advance payment and supply agreement that is the subject of the Settlement agreement. (NYSCEF 897, March 29, 2021 Board Minutes.) Plaintiffs are not required to take defendants’ word that the Settlement Agreement was unwound. Indeed, plaintiffs have cause to believe that the alleged cancellation of the Settlement Agreement may be a fiction. Singh admitted that Rolta International cannot collect from Rolta India on an approximately \$188 million debt even though the Settlement Agreement acknowledged this debt existed but purported to offset it against

other obligations, and the Settlement Agreement was “cancelled.” (See e.g. NYSCEF 871, Dec. 14, 2021 Tr. at 418:15-420:2; 229:7-230:7; 405:21-406:2; 454:17-22.)

Likewise, defendants’ assertion that Rolta India exercised a right of setoff does not rob plaintiffs of their right to test that assertion. (*Id.* at 383:21-385:7; 391:11-393:9.)

Accordingly, defendants shall produce the relevant documents by April 8, 2022.³

Because defendants failed to comply with this court’s December 2021 order, if defendants fail to comply with this directive again, defendants shall be fined daily in the amount of \$500 which fine shall double each business day until such time that responsive documents are produced.

The court is also directing defendants to produce all documents concerning the CAD \$24 million receivable that is listed on Rolta Canada’s financial statement for the year ending March 31, 2021. At his deposition, Singh initially testified that he had no knowledge about the receivable but, upon further questioning, testified that almost the entire amount—approximately US \$16.5 million (or roughly CAD \$20.5 million)—constitutes a debt that was owed by Rolta India to Rolta Canada. (NYSCEF 871, Tr. at 449:22-453:18.) He later testified, however, that Rolta Canada can no longer collect on this debt from Rolta India but was vague as to why. (See *Id.* at 453:19-455:7.)

Accordingly, defendants shall produce any relevant documents by April 22, 2022.

Plaintiffs’ motion is also granted as to their second request to produce all documents reflecting any funds that RPL and ROPL held for, received from, or transmitted to Rolta India or its subsidiaries, as well as documents sufficient to show the

³ This date is selected because defendants informed the court on March 22, 2022, that they are already working on this production.

ownership in such entities. At the deposition, defendants admitted that RPL and ROPL hold funds that belong to Rolta India. (*Id.* at 118:11-159:12, 351:16-352:3.) This appears to be plaintiffs first request for these documents. Plaintiffs have not identified such a request made at the Singh deposition. Plaintiffs stated at argument of this motion on March 22, 2022 that by letter on December 17, 2021, plaintiffs requested the production of documents, but that letter is not before the court. Accordingly, defendants shall produce responsive documents by April 22, 2022.

Plaintiffs' motion is granted as to their third request to produce all communications with counsel concerning the Turnover Order [NYSCEF 389], the March 5, 2021 Order granting plaintiffs' motion for appointment of a Receiver [NYSCEF 493], the April 16, 2021 Receiver Order [NYSCEF 544], or the June 22, 2021 Receiver Order [NYSCEF 667]. Singh, defendants' corporate representative, intentionally placed the subject matter of counsel's advice in issue and selectively disclosed that advice, effecting a subject matter waiver under New York law. (See *Orco Bank, NV v Proteinas Del Pacifico, SA*, 179 AD2d 390 [1st Dept 1992].) Once waived, privilege cannot be unwaived. (*In re Penn Cent. Commercial Paper Litig.*, 61 FRD 453, 467 [SDNY 1973]; see also *In re Steinhardt Partners, L.P.*, 9 F3d 230, 235 [2d Cir 1993] ["The client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality to obstruct others, or to invoke the privilege as to communications whose confidentiality he has already compromised for his own benefit."] [citation omitted].) In *Deutsche Bank Trust Co. of Ams. v Tri-Links Inv. Trust*, the Appellate Division, First Department reaffirms that "[a]t issue waiver of privilege occurs where a party affirmatively places the subject matter of its own

privileged communication at issue in litigation, so that invasion of the privilege is required to determine the validity of a claim or defense of the party asserting the privilege, and application of the privilege would deprive the adversary of vital information.” (43 AD3d 56, 64 [1st Dept 2007] [citations omitted].) “Moreover, selective disclosure is not permitted[.]” (*Id.* [citations omitted].)

Singh admitted he became aware of this court’s Turnover Order “immediately” after it was issued. (NYSCEF 896, Singh Depo Tr. at 58:6-17.) He understood that the Turnover Order required that “shares of the companies to be turned over and cash of the companies to be turned over.” (*Id.* at 59:12-21.) When asked why Rolta India has not complied with the Turnover Order, Singh repeatedly testified that it was based on advice Rolta India received from legal counsel:

Q. So did you receive specific legal advice from your counsel, whether in India or elsewhere, stating that you did not – that Rolta India did not have to comply with orders from the New York court unless they had been domesticated in India.

A. Yes, please.

(*Id.* at 305:23-304:5.) As Singh summarized toward the end of the deposition: “I . . . have given testimony, time and again, in these nine hours, that whatever steps were taken by us on behalf of Rolta India were taken because of the legal advice we had, and we took that and consciously based on that.” (*Id.* at 482:23-483:4.) Throughout the deposition, Singh volunteered what the advice purportedly was. (*Id.* at 66:1-19; 302:14-303-4; 305:23-306:12; 307:25-308:18; 328:5-331:21; 338:10-339:3; 457:14- 23; 458:22-460:9.) Singh was repeatedly advised not to reveal the content of attorney-client communications, and his counsel even instructed Singh not to answer on certain occasions. (*Id.* at 56:2-5, 62:21-25, 70:18-71:3, 121:23-122:2.) Accordingly, defendants shall produce responsive documents by April 22, 2022.

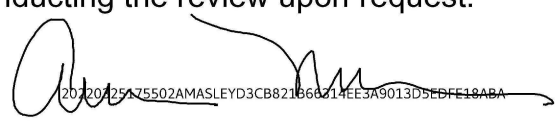
Plaintiffs' motion is granted as to their fourth request to produce all Rolta-related communications that Singh sent or received through his Rolta email account, his Gmail account, or any other platform by which he has conducted Rolta-related communications including What's Up or WeChat or any other such communication application. Defendants object that this request is burdensome. The court agrees, and thus, the production shall be limited to communications after May 2016 when defendants defaulted which resulted in the filing of this action in June 2018. Accordingly, defendants shall produce responsive documents by April 22, 2022.

Plaintiffs' motion is denied as to their fifth request to produce Singh for an evidentiary hearing. Defendants have no objection to continuing Singh's deposition, but object to an evidentiary hearing before this court in the absence of a factual claim or issue to be resolved by the court in service of a requested remedy. Effectively, plaintiffs are requesting court supervision of a deposition. Having reviewed Singh's deposition transcript, the court finds it unnecessary as plaintiffs did a fine job asking direct questions and following up. Singh's rambling, sometimes incoherent, responses speak for themselves. However, plaintiffs may request appointment of a Special Master to supervise the deposition and make rulings in real time if they are so advised. (See CPLR 4212; Special Masters, 22 NYCRR §202.14.)

While plaintiffs identify a number of issues for such a hearing, e.g., whether defendants stripped their U.S. assets and moved them to India or whether defendants undermined the Receiver's authority, there is no request for relief based on such findings of fact, e.g., contempt. As discussed above, in motion sequence number 012, plaintiffs moved for contempt against Singh. Plaintiffs may restore motion 012 for

contempt with an order to show cause setting a new deadline for service on Singh and a new date for the contempt hearing and perhaps alternate service. If the court finds that Singh avoided or deceived defendants' creditors, then he may be personally subject to severe penalties. (See *Pacific Alliance Asia Opportunity Fund LP v Kwok O Wan*, Supreme Court, NY County 652077/2017, NYSCEF 1184, Decision [imposing a fine of \$134 million for Kwok's utter contempt for this court and failure to pay the \$120 million judgment at 4].)

At argument on this motion on March 22, 2022, the court was informed that defendants served a privilege log with 10,000 items listed. Whether this is hyperbole or not, it is time for this court to address the privilege log which defendants often assert as opposition to plaintiffs' discovery requests. By March 31, 2022, defendants shall provide the court with its privilege log by filing it in NYSCEF, if it has not already done so, and by emailing it to pitafit@nycourts.gov. By March 31, 2022, plaintiffs shall provide the court with a list of 25 specific line objections to the privilege log, without prejudice to plaintiffs providing more objections in the future. Plaintiffs shall file such documents in NYSCEF and email them to pitafit@nycourts.gov. The court will review the objections and conduct an in-camera review of the documents. Defendants will provide the documents directly to the law clerk conducting the review upon request.



20220325175502AMASLEYD3CB821666214EE3A9013D5EDFE18ABA

3/25/2022
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	
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