

Matter of Bank of N.Y. Mellon Trust Co., N.A.

2024 NY Slip Op 32735(U)

August 5, 2024

Supreme Court, New York County

Docket Number: Index No. 153442/2023

Judge: Andrea Masley

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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

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THE BANK OF NEW YORK MELLON TRUST COMPANY,
N.A., AS INDENTURE TRUSTEE FOR 2036 NOTES,

Petitioner.

INDEX NO. 153442/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 21, 36, 37, 38, 39, 40

were read on this motion to/for MISCELLANEOUS.

In this Article 77 Special Proceeding, petitioner, the Trustee, in its capacity as Indenture Trustee for 2036 Notes, seeks, pursuant to CPLR 7701, judicial instructions regarding the assertions by certain noteholders of the Indenture (Noticing Holders) and opposed by Embarq, L.L.C., the issuer of certain notes under the Indenture (Embarq).

In the related matter *Embarq, L.L.C. v The Bank of New York Mellon Trust Company, N.A., et al.*, Index No. 651404/2023, (Related Action), Embarq sought a declaration that

“The liens and guarantees provided by Embarq’s Unrestricted Subsidiaries are not Liens upon the Property of Embarq or its Restricted Subsidiaries under the Indenture;”

“A guarantee is not a ‘Lien’ as that term is defined in the Indenture;

“The liens and guarantees from Embarq’s Unrestricted Subsidiaries are not subject to the Equal and Ratable Lien Covenant and do not constitute a default under the Indenture;”

“No liens or guarantees provided under the Parent Debt documents constitute a default or Event of Default under the Indenture, and”

“the Parent Debt does not trigger a default or Event of Default under any other provision of the Indenture.” (Related Action, NYSCEF 2, Complaint at 19.)

The court ordered that “the briefing on the pending motions for summary judgment in the related matter ... shall be filed herein as those parties’ Submissions and Responses” to the petition in this special proceeding. (NYSCEF 21, Amended OSC [mot. seq. no. 001].)

On April 14, 2024, the court issued a decision on the parties’ summary judgment motions in the Related Action, adjudging and declaring “that the liens and guarantees provided by Embarq, LLC’s Unrestricted Subsidiaries: are not Liens upon the Property of Embarq, LLC or its Restricted Subsidiaries under the Indenture; are not subject to the Equal and Ratable Covenant; and do not constitute a default under the Indenture.” (Related Action, NYSCEF 108 & 109, Decision and Order [mot. seq. nos. 006 & 007].)

The court denied defendants’ motion for summary judgment and dismissed their counterclaims in their entirety. (*Id.* at 21.) As the briefing on the pending motions for summary judgment in the Related Action has been filed as submission and responses in this action, the court adopts the directions in the April 14, 2024 decision in as much as they are applicable to this action.

Accordingly, it is

ORDERED and ADJUDGED that the petition is granted to the following extent:¹

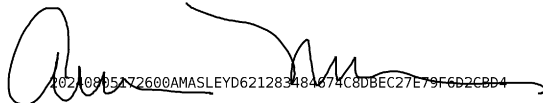
¹ For purposes of this Order and Judgment, the court adopts all defined terms set forth in the petition and decision in the Related Action, as applicable. Capitalized terms used herein, unless otherwise defined, shall have the meanings set forth in the petition and decision in the Related Action.

1. all holders of notes or other securities issued pursuant to the Indenture (Noteholders) and any other parties claiming an interest in the Indenture (each an Interested Person, and all such persons collectively, Interested Persons) have been provided with approved notice that was the best notice practicable; was reasonably calculated to put Interested Persons on notice of this action; constituted good and sufficient service for all purposes under the CPLR; satisfied, and was in accordance with, CPLR 308(5), 311(b), and 311-a(b), as may be applicable; and satisfied federal and state due process requirements and other applicable law. All such persons have been given the opportunity to be heard in opposition to the Petition (see NYSCEF 21, Amended OSC ¶ 6.);
2. the court has jurisdiction over the subject matter of this Article 77 proceeding, all parties to this proceeding, the Indenture, and all Noteholders, Interested Persons, and other parties claiming rights in the Indenture and shall retain jurisdiction to enforce the terms of this Final Order and Judgment;
3. The Trustee is instructed that the liens and guarantees provided by Embarq's Unrestricted Subsidiaries are not Liens upon the Property of Embarq or its Restricted Subsidiaries under the Indenture, are not subject to the Equal and Ratable Covenant, and do not constitute a default under the Indenture;
4. All objections to the Trustee's conduct in connection with the subject matter of the petition are overruled, and any objections or claims related to the Trustee's conduct in connection with the subject matter of the petition that have not been raised are waived;
5. Any actions taken (or omissions made) by the Trustee in accordance with this

court's instructions comply with all applicable duties under, and are fully authorized and protected by, the Indenture.

6. All Noteholders and any other parties claiming rights in the Indenture are barred from asserting claims against the Trustee with respect to such Trustee's administration of the Indenture in accordance with the court's instructions; and it is further

ORDERED that the Clerk of New York County is directed to enter this Order and Judgment in favor of petitioner.



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8/5/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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