

Alberto v GPB Capital Holdings, LLC

2026 NY Slip Op 30193(U)

January 15, 2026

Supreme Court, New York County

Docket Number: Index No. 651143/2023

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE

PART

60M

Justice

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JOHN THOMAS ALBERTO, JAMES L. AUDINO, CHANDRA BALRAJ, RONALD E. BARFIELD, WENDY G. BARRY, TERESA J. BOMASTER REVOCABLE LIVING TRUST DTD NOVEMBER 18, 2009, JAMES BOMASTER, PHYLLIS BOMASTER, CHRISTOPHER BOOTHROYD, ROSEMARY BRANDT, MKB INVESTMENTS, LTD., JANIS M. BRIDGES, CHRIS BRISNER, JNJM, LLC, KAREN BUSS, ROBERT BUTKUS, RONALD B. CAPSTRAW, JAN F. CAPSTRAW, DONALD K. CARVER, JOSEPH CAVEGN, ADAM CHERRY, KARA KRAMER, CYNTHIA CHILTON, MICHAEL E. CHILTON, VICTOR CHOA, ALLISON CHOA, JOHN PAUL CIRELLI, PAOLO COPPOLA, JOAN CORDING, MARC E. CROUCH, JOE P. DAMICO, JOHN DEGREGORIO, ELDON R. DOANE REVOCABLE TRUST DTD OCTOBER 3, 1943, KIRSTEN DOLAN, JENNIFER DOLCE, CHARLES DOLCE, PHILLIP L. EBERLE, ROBIN L. EDGAR, LINDA R. ENGBRETSON, THE LUCY BURKARD ENTREKIN TRUST DTD JANUARY 10, 2003, WILLIAM ETHIER, TRUBY ETHIER, STEPHEN L. EYNARD, LEWIS L. FALBO, PRISCILLA J. FERNICOLA, NANCY FIAMINGO, FRANK J. FIAMINGO, DENNIS A. FIRSCHING, RONALD L. FISCUS, KATHLEEN R. FISCUS, JOSEPH FLACCO, PATRICIA FLAHERTY, STEPHEN FLAHERTY, GERALDINE FORRAI, DAVID D. FORREST, SANDRA FORREST, GREGORY E. GAUER, SUSAN GAUER, MARLENE G. GERZEMA, THOMAS G. GIBBONS, CHRISTIA L. GIBBONS, PAMELA A. GIBSON, RICHARD N. GLASER, MARY E. GLASER, STEVE C. GOCHE, ANNSTARIA L. GOCHE, JEFFREY L. GORDON, MARY A. GOTSTEIN, KENNETH G. GREGORY, ROBERT O. GROSS, ALAN N. HAGEN, KEVIN L. HART, JILANE L. HART, RICHARD HATHAWAY, JOHN G. HIGGINS, MICHAEL L. HIPKINS, SHIRLEY R. HIPKINS, IRA HOSID, ELLEN HOSID, HOWARD KIMBALL, JOSEPH M. INSALACO, JEANETTE M. INSALACO, PAUL D. ISENBERG, SHIRLEY M. JACKSON, THOMAS J. JACKSON, THOMAS B. JAHNCKE, RODNEY D. JOHNSON, CECILIA D. JONES, ALAN KAMIS 1985 REVOCABLE TRUST DTD JUNE 16 1985, STEVEN R. KASSMAN, LEVI E. KEHN, CRAB LEGACY, LLC, ERIC M. KENNEDY, JOHN M. KERR, ROBERT V. KESSLER, MICHAEL L. KETTWICK, WAYNE T. KEVERN, KIMBERLY A. KEVERN, BRUCE I. KINSELLA, ARTHUR I. KLANSKY, MARLENE KLEIN, WILLIAM E. KLUCHER, ALISON S. KONEFES, CHARLES W. KONSANKE REVOCACABLE LIVING TRUST, THE MARK G. KONSANKE TRUST DTD MARCH 20, 2004 TRUST, ANDREW J. KUBERT, ANDREW

INDEX NO. 651143/2023

MOTION DATE 09/05/2025

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

J. KUBERT AND THERESA M. KUBERT REVOCABLE TRUST DTD, MAY 13, 2016, THE CHERYL J. LABARBA REVOCABLE TRUST DTD 02/08/2011, DJL FAMILY LLC, LADNER FAMILY TRUST DTD JULY 29, 2004, ANDREA J. LEEDS, REA R. LEONARD REVOCABLE LIFETIME TRUST DTD OCT 27, 2003, GARY C. LINN, BARBARA B. LINN, MARC G. LINKSY, THOMAS L. LOHRER, BARBARA E. LOHRER, ANN M. LOW, JOSEPH G. LUJAN, JR. AND MARY LUJAN AGREEMENT OF TRUST DTD DECEMBER 21, 2009, MICHAEL LUNDA, HENRY J. MAHER, JACOB R. MARTIN, JOSE L. MARTINEZ, ALVIN C. MCCOOL, JERRY ANN MCCOOL, ROBERT W. MCGAHIE, JAMES A. MEAD, SHARON A. MEAD, DAWN J. MEINDERS, MEYER JOINT TRUST, JOE G. MICHALETZ, JOHN A. MICHEL, WILLIAM R. MOORE, PHYLLIS MORONEY, RICHARD L. MOTT, DEBRA L. MOTT, MARION E. MURPHY, WILLIAM S. MURPHY, DAVID NORRIS, RUSSELL E. O'CONNELL, THOMAS M. O'HARA, PTBL INVESTMENTS, LTD., THE PAUL OWEN NONEXEMPT TRUST, RONALD E. OXFORD, LINDA K. OXFORD MIRES, PEIPPO FAMILY TRUST DTD SEPTEMBER 14, 2010, DMP SECURITIES LLC, TERESA PRICE, WILLIAM RABETZ, JOSEPH J. RAGLANI, BRUCE RAUPP, DANIEL P. RAUPP, RICHARD R. RECTOR, SUE C. RECTOR, TERRENCE P. REILLY, COR-NRR LLC, COR-KMC LLC, CBR HOLDINGS, LLC, HOLLIS C. RENEGAR, ROBERT A. RENEGAR, TERRENCE REVERE, VIRGINIA G. RHODES, HUMBERTO W. RIOS-DORIA, MICHAEL ROESKE, DAVID J. ROST, ANN M. ROST, KENNETH S. ROSTKOFF, JOAN S. ROVERUD, DOUG N. ROZENDAAL, CHARLES B. RUPP, GAIL RUPP, CLIFTON S. RUSSO, THOMAS J. RYDER, THE FAMILY TRUST DTD JUNE 11, 1937, PHILIP N. SCHROEDER, ROBERT K. SCHROEDER, CHRISTA SCHROEDER, HELEN N. SCOGGIN, THE DONALD F. SEITZ & CO, INC DBP, MARK J. SELDEN, MELODY J. SELDEN, DEAN E. SHEARIN, CAROL L. SHEARIN, HAROLD E. SHERRIEB, LYNDA R. SHERRIEB, SHIMONISHI FAMILY LIVING TRUST DTD NOVEMBER 3, 1983, MICHAEL R. SKALLEY, SHEILA SKLONICK, MARY A. SMITH, DEEZ NUTS LLC, RANDALL B. STOLTZ, KERRY J. STRIPPLING, MICHAEL M. SULLIVAN, LUDWIKA SULLIVAN, STEVE C. SWIFT, GEORGE A. TEBBE, SONDR A. THORELL, SCOTT E. TOURNQUIST, PATRICIA A. TOURNQUIST, JOSEPH S. TROVATO, JOSEPH J. VALERI, BRIAN L. VADERWILT, DEBRA J. VENTEICHER, HARRY W. WAGNER, GEORGE L. WEAVER, JANE P. WEAVER, THE WISE FAMILY TRUST, PELI WU, MARY YEAGER, BRETT YEAGER, YOUNG FAMILY REVOCABLE TRUST, ZADRA LIVING TRUST, DENISE L. ZUPEK

Plaintiff,

- v -

GPB CAPITAL HOLDINGS, LLC,GPB AUTOMOTIVE PORTFOLIO, LP, GPB COLD STORAGE, LP, GPB HOLDINGS, LP, GPB HOLDINGS QUALIFIED, LP, GPB HOLDINGS II, LP, GPB HOLDINGS III, LP, GPB NYC DEVELOPMENT, LP, GPB WASTE MANAGEMENT, LP, ASCENDANT CAPITAL, LLC,ASCENDANT ALTERNATIVE STRATEGIES, LLC,AXIOM CAPITAL MANAGEMENT, INC.,DJ PARTNERS, MR RANGER, LLC,DAVID GENTILE, JEFFRY SCHNEIDER, JEFFREY LASH, MARK MARTINO, DOES 1 TO 50, INCLUSIVE,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257

were read on this motion to/for VACATE STAY.


The court denies the motion to vacate the stay without prejudice for the reasons stated on the record of 01/15/2026. Namely, the court in *Sec v GPB Capital et al*, 21-cv-0000583-MKB-VMS, on 12/7/2023 imposed a stay on “all existing or future civil legal proceedings of any nature. . . involving ...(c) the Receivership Estate or (d) the Receivership Entities or any Receivership Assets, wherever located.” [see EDOC 99]. There is no dispute that this action involves “Receivership Entities.” Accordingly, the federal court is the court whom plaintiffs should ask whether the stay should be lifted in this action so that discovery can proceed (see *Brigade Cavlary Fund, Ltd v Chirico*,__ AD3d __, 243 NYS3d 655 [1st Dep’t December 4, 2025] [“[t]he court presiding over the federal action should first address first address whether discovery in this action should be stayed”]).

Moreover, it would appear that the Texas putative class action (*Kinnie Ma et al, v Acendant Capital, LLC*, Case No. 1:19-CV-01050-ADA is proceeding to partial settlement. The judge in that case has lifted the stay for the limited purpose of approving settlement with certain auditor defendants, who are not defendants here. However, there are many defendants in the Texas action who overlap with the defendants here and there is some indication that settlement

with some overlapping defendants is imminent [see EDOC 258]. Therefore, even if the federal court in the SEC action gives a green light to proceeding in this case, the court cannot determine whether it makes sense to proceed here, rather than in Texas, without knowing whether the plaintiffs here plan to opt out of the Texas class action.

Accordingly, it is

ORDERED THAT the motion is denied without prejudice pending further development of the record.


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<u>1/15/2026</u>			<u>MELISSA A. CRANE, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE