



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 SECURITIES AND EXCHANGE COMMISSION, :
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 Plaintiff, :
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 v. :
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 GALLEON MANAGEMENT, LP, et al., :
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 Defendants. :
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09 Civ. 8811 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On January 31, 2011, the Court ordered that trial of the remaining defendants in the above-captioned case commence on August 22, 2011 at 9:00A.M. See 01/31/11 Order. That date was picked not only because all the busy counsel in this case -- who had requested numerous adjournments -- indicated that they would be available for trial beginning on that date but also because the Court, notwithstanding its complicated trial schedule, could guarantee its own availability for a trial beginning on that date. However, since the resolution of this matter had been repeatedly frustrated by multiple delays, the Court made clear that this date would remain firm and fixed on the Court's calendar. Correspondingly, summary judgment briefing, if any, was scheduled to begin in early July, with moving papers to be filed by July 8, 2011; opposition papers to be filed by July 22, 2011; and reply papers to be filed by July 29, 2011. A final pre-trial conference, as well as oral argument on any summary judgment motion(s), was set for August 5, 2011 at 4:30P.M. See id.

Notwithstanding the foregoing, on May 24, 2011 the parties jointly called Chambers and requested that the Court adjourn the summary judgment schedule to follow the criminal sentencing of defendant Raj Rajaratnam, which is currently scheduled to take place before the Honorable Richard J. Holwell on July 29, 2011. See United States v. Rajaratnam, 09 Cr. 1184 (RJH). In a subsequent letter submitted May 27, 2011, the SEC explained that it intends to argue in its summary judgment papers that Rajaratnam's criminal conviction precludes him from re-litigating many of the underlying facts and claims at issue in the instant civil proceeding. Specifically, the SEC contends that collateral estoppel will bar Rajaratnam from litigating Claims I and II of the Second Amended Complaint, and will preclude him from disputing that he traded certain securities on the basis of material, non-public information. See SEC Ltr-Br. at 2. In the SEC's view, therefore, following final judgment in the criminal case, only the question of remedies will remain, which itself will depend in part on the amount of criminal forfeiture ordered at sentencing.¹ However, judgment in a criminal case is not considered final until the sentence, see Corey v. United States, 375 U.S. 169, 174 (1963); Berman v. United States, 302 U.S. 211, 212

¹ "[I]f the criminal forfeiture imposed deprives Rajaratnam of all his ill-gotten gains, that forfeiture will likely impact what disgorgement remains for the Commission to seek, if any." SEC Ltr-Br. at 3.

(1937), and the Second Circuit has therefore indicated that collateral estoppel only applies in the criminal context after the defendant has been sentenced. See Sailor v. Scully, 836 F.2d 118, 124 (2d Cir. 1987). Accordingly, the SEC requests that summary judgment practice be adjourned so that it may include its contemplated arguments regarding collateral estoppel in its papers. Id. at 3.

The argument is not without force. However, the Court is not willing, given its own complicated trial schedule, which now extends until 2012, to move the trial from its long-set date of August 22, 2011. Fortunately, there is a way to accommodate the SEC's concerns without moving the trial date. First, the schedule for summary judgment for all parties not affected by the Rajaratnam verdict will remain as previously set. Second, if the SEC, Rajaratnam, or any other party affected by the Rajaratnam verdict wishes to have summary judgment practice after the July 29, 2011 sentence date, they may, in lieu of the aforementioned summary judgment schedule, proceed to summary judgment motion practice on the following expedited schedule: moving papers to be filed by August 3, 2011, opposition papers to be filed by August 9, 2011, no reply papers, oral argument on August 12, 2011 at 4:00P.M., and decision by August 15, 2011.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
June 6, 2011