

Wimbledon Fin. Master Fund, Ltd. v Sage Group Consulting, Inc.

2018 NY Slip Op 32007(U)

August 17, 2018

Supreme Court, New York County

Docket Number: 654559/2017

Judge: Jennifer G. Schechter

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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: PART 54

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WIMBLEDON FINANCING MASTER FUND, LTD.,

Index No.: 654559/2017

Petitioner,

DECISION & ORDER

-against-

SAGE GROUP CONSULTING, INC., PARMJIT
"PAUL" PARMAR, AARON A. GRUNFELD and
LAW OFFICES OF AARON A. GRUNFELD,

Respondents.

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JENNIFER G. SCHECTER, J.:

This is yet another special proceeding brought by Wimbledon Financing Master Fund, Ltd. (Wimbledon) to enforce its judgment against Arius Libra, Inc. (Arius Libra). Familiarity with the related proceedings and the contours of the fraud involving Arius Libra and Gerova Financial Group, Ltd. (Gerova) is assumed.¹ In its petition (Dkt. 84),² Wimbledon alleges an October 3, 2011 fraudulent transfer of \$700,000 from the Arius Libra loan proceeds to respondent Sage Group Consulting, Inc. (Sage).³ Wimbledon claims this transfer was both constructively and intentionally fraudulent under Debtor and Creditor Law (DCL) §§ 273, 274, and 276 because it was made by Arius Libra, an insolvent corporation, to pay debts of Gerova. Wimbledon also seeks to hold respondent

¹ See generally *Wimbledon Fin. Master Fund, Ltd. v Weston Capital Mgmt. LLC*, 2017 WL 3024259, at *2-12 [Sup Ct, NY County 2017], *mod.*, 160 AD3d 596 [1st Dept 2018].

² References to "Dkt." followed by a number refer to documents filed in this action on the New York State Courts Electronic Filing system (NYSCEF).

³ The amended petition also alleges a second \$100,000 transfer to respondent Aaron A. Grunfeld. That transfer is not at issue in this decision (*see* Dkt. 87 [5/24/18 stipulation noting settlement with Grunfeld, staying the time for him to respond]).

Parmjit “Paul” Parmar liable because the transfer to Sage was made to satisfy Gerova’s debt to Parmer. Neither Sage nor Parmar, who are represented by counsel, answered (*see* Dkt. 89 [setting final response deadline, after multiple adjournments, of August 2, 2018]).

Wimbledon is entitled to judgment (CPLR 409; *see Gonzalez v City of New York*, 127 AD3d 632, 633 [1st Dept 2015] [“a special proceeding is subject to the same standards and rules of decision as apply on a motion for summary judgment, requiring the court to decide the matter upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised”]). The claims asserted in this action are virtually identical to those asserted against other recipients of Arius Libra loan proceeds in consideration for Gerova debts, on which this court (Kornreich, J.) granted judgment to Wimbledon (*see Wimbledon Fin. Master Fund, Ltd. v Wimbledon Fund, SPC*, 2016 WL 7440844 [Sup Ct, NY County Dec. 22, 2016] [*Class C*], *aff’d*, 162 AD3d 433 [1st Dept 2018]).⁴ In *Class C*, the court held that: (1) Arius Libra was insolvent in 2011 (*see Class C*, 2016 WL 7440844, at *5); (2) transfers of Arius Libra’s loan proceeds to repay Gerova debts lack consideration to Arius Libra and thus are constructively fraudulent (*see id.*); (3) such transfers by parties aware of Arius Libra’s insolvency and the circumstances of Bergstein’s scheme have sufficient badges of fraud and thus are intentionally fraudulent (*see id.* at *6); and (4) the imposition of liability under DCL § 276 entitles the petitioner to its reasonable attorneys’ fees under DCL § 276-a (*see id.*). The Appellate Division affirmed (*see Wimbledon*, 162 AD3d 433).

⁴ The legal standards governing constructive and intentional fraudulent conveyances are set forth in *Class C* and are not repeated here (*see Class C*, 2016 WL 7440844, at *4, *6).

The transfer to Sage here is materially identical to the transfers in *Class C* because it occurred (1) when Arius Libra was insolvent; (2) in consideration for Gerova debts; and (3) by parties with knowledge of Arius Libra's financial condition and Bergstein's scheme. Sage and Parmar, who defaulted, have not submitted proof to the contrary. Nor could they. Parmar was an Arius Libra insider (he was on its board)⁵ and was involved in the scheme to make Wimbledon falsely believe that Arius Libra was acquiring a medical billing company from Parmar's company (Pineboard) (*see Wimbledon*, 2017 WL 3024259, at *11 ["Arius Libra was falsely represented as a company that would acquire medical billing assets from a company called Pineboard, which was controlled by Parmar, who would be appointed CEO. Pineboard ... was a sham because it was formed by Bergstein (who appointed Jam as its first president, secretary and director) as a vehicle for repaying millions of dollars he owed Parmar for unrelated debts"]). In *Class C*, the court noted that "[t]he very purpose of Arius Libra appears to have been to take the Loan proceeds, default on the Loan, and permit Wimbledon to lose its assets, which were pledged to guaranty repayment of the Loan" and that "[w]hile the Loan proceeds were supposedly used to 'unwind' Gerova's debts, that fact is not license for [respondent] to prioritize payment to its insiders ... or to pay off Gerova's debts with Arius Libra's assets without regard to Arius Libra's solvency or the rights of its creditors" (*Class C*, 2016 WL 7440844, at *6).

⁵ While lack of consideration is sufficient to establish that the subject transfer is constructively fraudulent, equally dispositive is that Parmar was an Arius Libra insider, which renders transfers to him in bad faith (*see Class C*, 2016 WL 7440844, at *6 [collecting cases]).

This petition only reinforces these conclusions. Based on the reasoning set forth in *Class C* and the materially identical allegations made in this proceeding, it is

ORDERED that Wimbledon's amended petition is granted against Sage and Parmar, and the Clerk is directed to enter judgment in favor of Wimbledon and against Sage and Parmar, jointly and severally, in the amount of \$700,000, plus 9% pre-judgment interest from October 3, 2011 to the date judgment is entered; and it is further

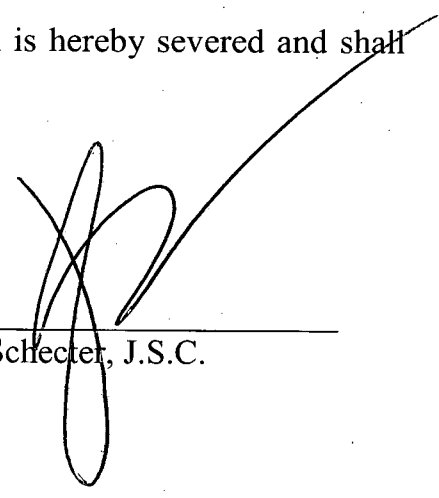
ORDERED that Wimbledon's claim for reasonable attorneys' fees against Sage and Parmar is hereby severed and referred to a Special Referee to hear and report; and it is further

ORDERED that within 7 days of the entry of this order on NYSCEF, Wimbledon shall serve a copy of this order with notice of entry, as well as a completed information sheet, on the Special Referee Clerk at spref-nyef@nycourts.gov, who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date and notify all parties of the hearing date; and it is further

ORDERED that the balance of the amended petition is hereby severed and shall continue.

Dated: August 17, 2018

ENTER:



Jennifer G. Schechter, J.S.C.