SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

THE FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION, *et al.*, **Plaintiffs** **v.** **HYUN JIN MOON, *et al.*,** **Defendants.**	**2011 CA 003721 B** **Judge Anita Josey-Herring** **Calendar 4**

ORDER

On November 8, 2012, the above-captioned matter came before the Court for a motion hearing on Plaintiffs' Motion for Sanctions, which was filed on October 17, 2012. UCI filed an opposition on October 25, 2012.[1, 2] At the conclusion of the hearing, the Court permitted Plaintiffs to conduct limited discovery and held the motion for sanctions in abeyance until the conclusion of that discovery process. The Court provides the basis for that decision in this Order.[3]

Throughout this action, Plaintiffs have expressed their concern that Defendants may be engaging in self-dealing transactions or committing waste with the assets of UCI (and the entities it controls). These concerns previously resulted in a Rule 30 (b)(6) deposition prior to the case's transfer to the Civil I calendar, which was only partially productive. During the outstanding "taint" discovery process which has consumed this matter for the last ten months, Plaintiffs have made repeated requests for discovery into UCI's assets so that they would be in a position to move for a

[1] The motion was initially scheduled for argument on October 29, 2012. However, the Courthouse was closed on that date due to Hurricane Sandy's effects on the Washington, D.C. metropolitan area.
[2] Plaintiffs filed a motion for leave to reply and UCI filed a motion to file what was in effect a surreply. The Court denied both of those motions on the record on November 8, 2012.
[3] UCI filed "UCI's Motion for an Order Defining the Scope of Sanctions-Related Discovery, with Supporting Points and Authorities" on November 16, 2012. That motion will be denied in a separate Order in all extents except insofar as it requests that the Court issue a written order memorializing its oral findings at the November 8, 2012 hearing. UCI's proposed order bears little resemblance to the Order issued by the Court on the record.

preliminary injunction limiting UCI's ability to transfer those assets. However, the Court denied these requests on each occasion until June 1, 2012.

On May 18, 2012, Plaintiffs requested that the Court order UCI to provide significant advance notice of any sale, transfer, or encumbrance in the amount of $1 million or more. Plaintiffs explicitly stated their concern that UCI might transfer or further encumber two of its largest assets: Central City and the Yeouido project, each valued at approximately $1 billion (US). UCI opposed that request, and the matter came before the Court for a hearing on June 1, 2012. At the hearing, counsel for UCI, Blair Brown, expressed his client's concern that a court order to the effect requested by the Plaintiffs was tantamount to a preliminary injunction, and it would substantially impact UCI's ability to conduct business. Specifically, Mr. Brown stated:

> [Plaintiffs] reference in their papers a piece of property in Korea, the Central City Property, where they content [*sic*] there is a loan that is becoming due at the end of this year in the hundreds of millions of dollars. Well, if we can't take steps to refinance that or sell assets to pay it and refinance it or do whatever it is that is prudently business-like to do, then we will lose that asset and they claim that is not what they want. So we need to be able to sell assets and the discretion and flexibility to sell assets when and under what circumstances we do.

June 1, 2012 Hrg. Tr. at 22:4-14.After the undersigned judge heard argument from all interested parties, the Court ruled as follows:

> Okay, and I've heard from all of the attorneys involved and I will rule in the following way. I think if the plaintiffs want to file an injunction, you are just going to have to do it and I cannot justify effectively giving injunctive relief without having a full hearing on it to look at all the factors. I do think among the important factors, all the factors of course to be considered in an injunction is the likelihood of success on the merits and that sort of characterizes a little bit differently, Mr. Bensfield, from the way you focused. So you just may not be in the position to go forward at this time. I obviously don't know your case the way you do but in terms of my equitable authority and my authority under the Rules of Discovery, I do believe that it is appropriate given the concern raised in the motion that UCI's assets are being dissipated or wasted, I do have the authority to require an interrogatory and because both parties seem agreeable, that a court order is not necessarily needed here. We will have the parties work on an interrogatory that gets to the issue of what assets of UCI are subject to dissipation over time by Mr.

> Preston Moon. [. . .] I will give you an opportunity to consult about an interrogatory and I will give you that timeframe. If you can't agree, then you should submit your own preferred request for an interrogatory based on my ruling.

Id. at 32:17-33:25.

The Court gave the parties until June 8, 2012 to submit a proposed joint interrogatory, but, as the parties were unable to agree on a single interrogatory, the parties submitted dueling interrogatories. The Court modified the two proposals into one final interrogatory, which read as follows:

> Identify any and all sales or transfers of the assets or property of Defendant UCI, its subsidiaries, or entities it controls, the fair market value of which is $1 million or greater, or encumbrances of $1 million or greater placed upon any property of Defendant UCI, its subsidiaries, or entities it controls, which have taken place since May 11, 2011 or are currently pending.

See June 15, 2012 Order at 2. The Court also made modifications to the proposed instructions for answering the foregoing interrogatory, which Plaintiffs titled "Interrogatory 12." One of these modifications required UCI "to provide at least 30-days notice to Plaintiffs before Defendant UCI, its subsidiaries, or entities it controls sell or transfer, or cause to be sold or transferred, any asset or property owned by UCI, or an entity controlled by UCI, with a fair market value of $1 million or greater or place an encumbrance of $1 million or greater on any asset or property." *Id.* at 3. According to Plaintiffs, UCI timely responded to Interrogatory 12, and later supplemented its response on more than one occasion.

However, on October 17, 2012, Plaintiffs filed a motion for sanctions, asserting that UCI violated the Court's June 15, 2012 Order by selling its $1 billion stake in the Central City project to a Korean entity named Shinsegye on or about October 15, 2012.[4] Plaintiffs averred that UCI did not timely supplement their response to Interrogatory 12 to reflect this pending transaction, and requested a wide range of sanctions. In their October 25, 2012 response, UCI asserted that the

[4] The shares were held by four Malaysian holding companies which Plaintiffs asserted were controlled by UCI.

Central City shares were donated to a Swiss nonprofit, Kingdom Investment Foundation ("KIF"), in 2010. Accordingly, since it did not own the shares at the time of the sale to Shinsegye, UCI asserts that it had no need to supplement its response to Interrogatory 12 to reflect the pending sale. The Court called the matter for a hearing on November 8, 2012, after a delay due to inclement weather, and the parties presented their arguments. At the end of the hearing, the Court remained concerned about the relationship of UCI and KIF, especially in light of the apparently contradictory positions taken by UCI and its counsel at the June 1, 2012 hearing and in its October 25, 2012 opposition. Particularly, at the June 1, 2012 hearing, Mr. Brown acknowledged UCI's ownership and/or control of the Central City project,[5] and then disclaimed such ownership or control at least as far back as June 2010 in its October 25, 2012 opposition. These positions are mutually exclusive; either the shares were donated and UCI gave up control of those shares in 2010 or UCI's counsel accurately represented that UCI owned and/or controlled the Central City asset at the June 1, 2012 hearing. At the conclusion of the hearing, the Court found that discovery into the relationship between UCI and KIF is appropriate, including discovery into the donation of the Central City shares:

> [. . .] I have heard from Plaintiff and Defendant on the Plaintiff's motion for sanctions as it relates to the Plaintiff's position that the Defendants sold property in violation of my [. . .] June 15, 2012 order which permitted – well, which resulted in an interrogatory [. . .] that required the Defendants to give 30 day notice prior to disposing of any UCI asset or an asset of one of UCI subsidiaries or an encumbrance on any of UCI's property in excess of a million dollars and the history of why that was ordered is evident from the record from the hearing where that decision was made.
>
> I do believe it's appropriate to do the following under the circumstances.
>
> I don't feel that I am in a position at this time to rule on the motion for sanctions because as is clear from the record there was a statement made by Mr. [Brown] at a previous hearing and I read the transcript from that hearing on June 1st, 2012 at page 22 suggesting that Central City [. . .] was owned by

[5] The hearing transcript of the November 8, 2012 hearing reflects Mr. Brown's and Mr. Salky's explanations of how that June 1, 2012 statement does not equate to an admission of ownership and/or control. The Court found those explanations unpersuasive. The issue at that time was a $350 million loan secured by the Central City shares, and Mr. Brown was referring to the efforts "we" would have to take to service and/or refinance that loan. The Court finds that "we" inescapably includes Mr. Brown's client, UCI.

> UCI and [. . .] that Mr. Brown indicated and Mr. Salky from that statement was not intended to mean what the words of the statement seemed to suggest[.]
>
> [. . .]
>
> I do believe in order to rule on this motion it would be helpful to get further information. I am not in a position to do what I would deem extraordinary. That is to freeze the assets of the Defendant or to prevent them from engaging in transactions except as otherwise indicated in my order at this point without more[.]
>
> [. . .]
>
> Both parties attach to the motion for sanctions and the opposition thereto copies of a newspaper article in the Korean media indicating that there had been a sale by Kingdom Investment Foundation to [. . .] Shensegye which sparked the interest here, given the notice requirement of reporting 30 days in advance any transfer involving an asset or encumbrance in excess of a million dollars. This sale representing something to the order of a billion dollars and therefore I do believe in light of what I heard here, in addition to what I have described, [. . .] it's not clear to me what the nature of the relationship between KIF and UCI is or was back in October of 2012 when KIF sold the property related to, I believe, the Malaysian holding company from Central City to Shinsegye.
>
> Therefore, I'll do the following. I'll order that there be discovery before Judge Levie on a very limited – on some limited issues.

November 8, 2012 Hrg. at 72:10-75:15. The Court therefore agreed to permit discovery into the relationship between UCI and KIF during the relevant time period. The Court went on to state, after the parties disagreed about the relevant time frame, that:

> This is not an academic exercise. It's really meant to resolve the relationship at this point in light of the motion pending before me and I understand merit discovery has been put off for the reasons that I asked Judge Levie to assist in the case and let me just say obviously, you know, I've heard a lot of representations by the different lawyers in the case and it would be a very serious matter, quite frankly, to find to the contrary that misrepresentations have been made before the Court, so there's no way to minimize that, quite frankly, those representations having been made and therefore I did find that the relationship at the time of the sale was what was to be measured.
>
> I do understand the argument that we shouldn't go back beyond that and how that gets into some merit discovery and, quite frankly, I don't know that that overlaps the taint or not and [. . .] I'm not so reactive to think that it ultimately does or doesn't, for that matter, but I do believe it was in this situation to, as I understand it, KIF was established when again? Tell me.
>
> [. . .]

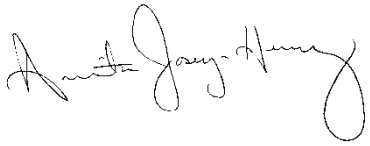
> So I'll increase my order to have it go back to June of 2010 [or when] KIF was established.[6]

Id. at 78:18-79:25. The discovery on this point shall be conducted before Judge Levie, in his role as Special Master and supervisor of the "taint" discovery. While the Court does not find that the information in question is necessarily "tainted," the Court will respect UCI's position as to the importance of limiting the potential taint. Other than to state that the discovery is to be limited, the Court did not state clearly on the record what the limitations on the discovery as to the relationship between UCI and KIF.[7] The Court will permit Plaintiffs the following discovery:

1. A deposition of Mr. Byung Kyu Seo as to the contents of his affidavit, which was attached to the Motion for Sanctions;
2. 5 depositions, not including Mr. Seo;
3. Written discovery, including interrogatories and requests for production (not to exceed 10 of each category).

Judge Levie shall have discretion to modify the existing protocol as necessary to accommodate this additional discovery.

It is this 19th day of November 2012, *nunc pro tunc* to November 8, 2012, SO ORDERED.



Anita Josey-Herring
Associate Judge
(Signed in Chambers)

[6] The Court notes that the transcript appears to have omitted the words "or when" from this final line, which the Court was able to confirm from the recording. Because the question is the relationship of UCI and KIF writ large, the Court will permit discovery on that relationship from KIF's formation.

[7] While it is not the focus of this discovery, the donation of the Central City shares will necessarily be part of the relationship between UCI and KIF. UCI may not object to questions about the donation on the grounds that it is beyond the scope of this discovery.

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