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Prescient Acquisition Group, Inc. d/b/a Prescient Capital Corp.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCIENT ACQUISITION GROUP, INC.
d/b/a Prescient Capital Corp.,

Plaintiff,

-against-

MJ PUBLISHING TRUST, MJ-ATV PUBLISHING
TRUST, NEW HORIZON TRUST, and MICHAEL
J. JACKSON,

Defendants.

05 Civ. 6298 (PKC)

**SECOND AMENDED
COMPLAINT**

Prescient Acquisition Group, Inc. d/b/a Prescient Capital Corp., by its attorneys,
Altman & Company P.C., for its Complaint against defendants MJ Publishing Trust, MJ-ATV
Publishing Trust, and Michael J. Jackson, alleges as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract, quantum meruit, and fraudulent conveyance to recover more than \$48 million in fees due Prescient pursuant to a written agreement to provide financial advisory services to Michael Jackson and his various companies, including but not limited to MJ Publishing Trust and MJ-ATV Publishing Trust. MJ Publishing

Trust and MJ-ATV Publishing Trust are trusts formed by pop music icon Michael Jackson for the purpose of holding title to rights to certain intellectual property, including libraries of songs written by Michael Jackson and by the Beatles. In November 2004, Don Stabler, the duly authorized agent and representative of the trusts and Michael Jackson, engaged Prescient to secure refinancing of their then existing \$272,500,000 debt owed to Bank of America. Prescient did that and much more. Prescient secured funding to refinance the Bank of America debt and secured a commitment for \$537,500,000 in financing to enable Mr. Jackson to exercise his "Put Option" to purchase the 50 percent interest in the entity known as Sony/ATV Publishing Trust LLC that he and his trusts do not currently own.

2. Pursuant to the terms of its engagement, Prescient secured commitments and funding of financing for the trusts and Mr. Jackson through an intermediary, Transitional Investors LLC, from a New York-based investment fund, Fortress Investment Group LLC. In February 2005 Fortress committed to hundreds of millions of dollars in financing. In June 2005, Fortress paid off the Bank of America debt and has since made additional advances of more than \$3 million to the trusts and Mr. Jackson pursuant to a restructured loan on new terms. In a written statement quoted on page one of The Wall Street Journal on June 8, 2005, Mr. Jackson's spokeswoman, Raymone K. Bain, stated that "the [new] agreement with Fortress will provide greater financial strength and flexibility for Mr. Jackson."²⁰⁵

3. Prescient's written agreement provides that it is entitled to a fee of nine percent of "the principal amount funded or committed." That written agreement further provides that Prescient is entitled to its nine percent fee if at any time within 18 months of the termination of the agreement a funding is consummated with any "Investors/Lenders introduced to [MJ Publishing Trust] by Prescient."

4. Prescient has demanded immediate payment of \$24,822,000, representing its fee from the refinancing of the bank of America debt and the \$3.3 million advance and informed Mr. Jackson and his trusts of its claim for a total of \$48,375,000 based on the amounts committed by Fortress. Mr. Jackson and the trusts have nevertheless failed and refused to pay Prescient its fees. Instead, during the pendency of this action, MJ Publishing Trust and MJ-ATV Publishing Trust, together with their financiers, have formulated a plan to transfer substantially all of their assets to New Horizon Trust, a recently formed Delaware trust. Those transfers will, if consummated as planned, constitute fraudulent conveyances that on information and belief will leave those defendants judgment proof.

PARTIES

5. Plaintiff Prescient Acquisition Group, Inc. ("Prescient") is a corporation formed and existing pursuant to the laws of the State of New York with its principal place of business in the State of New Jersey. It has done business in the name of Prescient Capital Corporation. Mr. Darien Dash has at all times controlled Prescient and was its pre-incorporation promoter.

6. Defendant MJ-ATV Publishing Trust ("MJ-ATV") is, on information and belief, a trust formed by Michael Jackson pursuant to the laws of the State of Delaware with its principal place of business in the State of California. On information and belief, MJ-ATV holds title to rights in certain intellectual property, including a fifty percent interest in a library of songs written by the Beatles and an option to purchase the remaining fifty percent interest in that Beatles library from its partner, Sony/ATV Music Publishing Trust LLC.

7. Defendant MJ Publishing Trust ("MJPT") is, on information and belief, another trust formed by the entertainer Michael Jackson pursuant to the laws of the State of

Delaware with its principal place of business in the State of California. MJPT, like MJ-ATV, was formed for the purpose of providing financing for Mr. Jackson. On information and belief Michael Jackson at all times used MJ-ATV and MJPT as instrumentalities for his sole benefit and specifically to hold his assets and finance his living costs and obligations. Mr. Jackson and his agents sometimes referred to MJ-ATV and MJPT interchangeably. They and others described MJPT as the entity that held the rights to the Beatles and Michael Jackson song libraries and the rights to the remainder of the Beatles library. On information and belief those two trusts have even exchanged, assigned, and/or assumed the obligations and/or rights of each other pursuant to financing and/or security agreements. Thus, except where otherwise indicated, references herein to MJPT are to both of those trusts collectively. On information and belief, MJ-ATV and MJPT transact substantial business in the State of New York and in this District.

8. Defendant Michael J. Jackson is a singer, songwriter, investor and pop icon. His primary residence is, on information and belief, located in the State of California. Mr. Jackson, through his various professional endeavors, transacts substantial business in the State of New York and in this District.

9. Defendant New Horizon Trust is on information and belief a trust formed and existing pursuant to the laws of the State of Delaware with its principal places of business in California and Delaware. On information and belief New Horizon Trust, which defendants MJPT, MJ-ATV, and Michael Jackson beneficially own and of which MJPT and MJ-ATV are the beneficiaries, was recently formed to hold assets previously owned by MJPT and MJ-ATV.

10. Non-party Fortress Investment Group LLC is, on information and belief, a Delaware limited liability company which maintains its principal place of business in the State, City and County of New York. Fortress is a financial services business. Non-party Fortress

Credit Corp. (collectively, with Fortress Investment Group LLC hereinafter referred to as "Fortress") is, on information and belief, a Delaware corporation which is wholly owned by Fortress Investment Group LLC. On information and belief, Fortress Credit Corp. is engaged in the business of lending money and otherwise providing financing throughout the United States and specifically in the State of New York.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332, as the plaintiff's states of citizenship (New York and New Jersey) are diverse from those of the defendants (Delaware and California) and the amount in controversy exceeds \$1,000,000. Venue is proper here pursuant to 28 U.S.C. § 1391 because the defendants transact substantial business in this District and a significant part of the events that give rise to Prescient's claims took place in the State of New York and in this District.

FACTS

12. As of 2004, MIPT owed Bank of America ("BOA") approximately \$272,500,000. On information and belief, those borrowings were secured by the trusts' valuable intellectual property assets and real property. The defendants sought to refinance that debt. In addition to the refinancing or "taking BOA out of the picture," the defendants also sought moneys to exercise the option on the remaining interest in the Beatles library that they did not already own and thereby to acquire complete ownership of that library. On information and belief, one of the reasons the defendants wanted to remove BOA from being their lender was because of certain covenants and limitations put in place under the terms of the BOA credit facilities and the repeated notices of default that BOA sent to them. Those covenants, default notices, and limitations became onerous on the defendants and caused them to engage Prescient

to assist in securing a new lender.

13. On or about November 17, 2004, Prescient and MJPT entered into a written agreement (the "Agreement") pursuant to which MJPT retained Prescient as its financial advisor and exclusive agent. Prescient's pre-incorporation promoter, Darien Dash, executed the agreement for, and in the name of, Prescient Capital Corporation, an entity which he intended to incorporate formally in the near future. Prescient understood that the main purposes of its engagement were to seek to procure financing to replace BOA's loans and, to the extent possible, to fund the acquisition of the remainder of the Beatles library.

14. The Agreement provides that, upon Prescient's procuring of financing through any lender or introduction to a new qualified lender during the six-month term of the Agreement, MJPT will pay Prescient a fee of nine percent of "the principal amount funded or committed." It also provides that "[i]f [MJPT] shall within 18 months immediately following the termination of this Agreement consummate a Funding with any Investors/Lenders introduced to [MJPT] by Prescient, [MJPT] shall pay to Prescient a fee with respect to such Funding calculated in accordance with this Agreement." Pursuant to the Agreement, MJPT is also to pay Prescient "the reasonable fees and expenses of legal counsel retained by Prescient to enforce this agreement."

15. Upon execution of the Agreement, Mr. Dash, acting for Prescient and in its name, undertook efforts to find financing for the defendants by, among other things, contacting potential sources of financing. Upon its formal incorporation as Prescient Acquisition Group, Inc. in early 2005, Prescient ratified the Agreement by continuing its performance under it (and later, also by demanding defendants' performance). In the course of its search, Prescient came into contact with Transitional and through it, Fortress. Prescient therefore introduced the

defendants to Fortress. Fortress thereafter paid off and refinanced MJPT's debts to BOA. It funded or committed an amount in excess of \$300,000,000. Fortress also committed to fund a total of \$537,500,000 in order not only to pay off the BOA debt but also to enable the defendants to acquire the remainder of the Beatles library from Sony/ATV Music Publishing Trust LLC.

16. Prescient has demanded that MJPT pay it pursuant to the Agreement. MJPT has failed and refused to pay Prescient to this day.

FIRST CLAIM FOR RELIEF

**(For Breach of Contract)
(Against MJPT and MJ-ATV)**

17. Prescient incorporates by reference the allegations contained in paragraphs 1 through 16 of this Complaint.

18. Acting pursuant to its contract, Prescient obtained financing for MJPT and MJ-ATV. Those entities therefore became liable to Prescient under the Agreement. In the event that MJ-ATV is not deemed an original party to the Agreement, it nonetheless accepted the terms of the Agreement through its actions by seeking and accepting the benefits of Prescient's actions with knowledge that Prescient performed those actions pursuant to the Agreement, under which it was to receive specific consideration.

19. MJPT's and MJ-ATV's failure to pay the money they owe Prescient, which on information and belief is more than \$45,000,000, constitutes breach of the Agreement. In consequence of that breach of contract, Prescient has been damaged in an amount to be determined at trial, for which MJPT and MJ-ATV are liable.

20. In consequence of their breach of the Agreement, MJPT and MJ-ATV are also liable to pay Prescient its reasonable attorneys fees and expenses incurred in this action and

in otherwise enforcing the Agreement.

SECOND CLAIM FOR RELIEF

**(For Unjust Enrichment)
(Against MJPT, MJ-ATV, and Michael Jackson)**

21. Prescient incorporates by reference the allegations contained in paragraphs 1 through 20 of this complaint.

22. Prescient performed services for each of the defendants at their request. Each of the defendants knowingly accepted the benefits of Prescient's services with knowledge that Prescient expected to be paid for its work. The services performed by Prescient for each of the defendants, for which the defendants have failed and refused to pay, are reasonably worth millions of dollars, and the benefit of those services to each of the defendants was worth millions of dollars. The defendants have not paid those moneys, though Prescient has demanded payment. The defendants may not retain the benefits of those services in equity and good conscience without paying to Prescient an amount to be determined at trial.

23. By reason of the foregoing, each of the defendants is liable to Prescient in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF

**(For Fraudulent Conveyances)
(Against All Defendants)**

24. Prescient incorporates by reference the allegations contained in paragraphs 1 through 23 of this complaint.

25. Defendants are currently planning the imminent transfer of the substantial assets of MJPT and MJ-ATV to New Horizon and have exchanged draft contracts with Citigroup, Fortress Investment Group, and affiliated entities providing for those transfers. The

transfers are extraordinary and not conducted in the ordinary course of those trusts' business.

On information and belief the defendants are effecting the transfers with the intention of putting their assets beyond the reach of Prescient and other of their creditors.

26. The defendants are planning, and unless enjoined will effect, the foregoing asset transfers with knowledge of Prescient's claims against them. On information and belief, MIPT and MJ-ATV are not receiving fair consideration in exchange for their assets and those transfers will render them insolvent and unable to pay any judgment that Prescient obtains against them. The transfers constitute "fraudulent conveyances."

27. By reason of the foregoing, those fraudulent conveyances should be avoided and Prescient should be awarded the attorneys' fees it incurs in avoiding them. Further, because Prescient's remedies at law will be inadequate if those conveyances are completed, the defendants should be preliminarily and permanently enjoined from consummating them or otherwise dissipating their assets pending the resolution of this action.

WHEREFORE, plaintiff Prescient Acquisition Group, Inc. demands judgment against each of the defendants in amounts to be determined at trial, plus interest thereon, for its

attorneys fees and costs, the avoidance of the defendants' fraudulent conveyances,
an injunction against those conveyances, and such further relief as the Court deems just and
proper.

New York, New York
April 3, 2006

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