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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PRESCIENT ACQUISITION GROUP, INC.,
d/b/a Prescient Capital Corp.,
Plaintiff, 05 CIV. 6298
vs. (PKC) (AJP)
MJ PUBLISHING TRUST, MJ-ATV
PUBLISHING TRUST and MICHAEL
J. JACKSON
Defendants.

-----x
November 20, 2006
10:10 a.m.

DEPOSITION OF RICHARD F. BROUDE, taken by
Defendant, at the offices of BAKER & MCKENZIE,
1114 Avenue of the Americas, New York, New York,
10036, before Eleanor Greenhouse, a Shorthand
Reporter and Notary Public by and for the State
of New York.

GREENHOUSE REPORTING, INC.
363 Seventh Avenue - 20th Floor
New York, New York 10001
(212) 279-5108

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2 has done such an analysis in this instance.

3 You may answer.

4 A. I have not done anything like that
5 kind of an analysis here.

6 Q. Well, tell me now, thinking about
7 it.

8 MR. DAVID: Objection. Calls for
9 the witness to speculate. You can go
10 ahead.

11 A. I don't have an opinion. I think
12 that --

13 Q. That's fine. If you don't have an
14 opinion, that's fine.

15 Look at page 10 of your report. At
16 the top you refer to a number of different
17 factors. Do you see that?

18 A. Do you mean in the carryover
19 paragraph?

20 Q. Correct.

21 A. Yes.

22 Q. Which of those do you think applies
23 in this case?

24 A. Number 1, number 4, and generally
25 number 6, which is sort of a catchall.

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2 My question is, is it the most meaningful?

3 MR. DAVID: The Court will
4 ultimately determine that.

5 A. Every situation is idiosyncratic.
6 This is a very important consideration. In all
7 fraudulent -- pardon me, in all actual intent
8 transactions, is it the most meaningful
9 consideration? No.

10 Q. In this particular transaction, is
11 it the most meaningful?

12 A. I'm not going to assign a ranking in
13 this transaction of which of the badges of fraud
14 present in this case is the most meaningful.
15 Certainly it is a very important consideration.

16 Q. Look at page 10 of your report. You
17 have three bullet points there; right?

18 A. Yes.

19 Q. The third bullet point is the one
20 about reasonably equivalent value; correct?

21 A. You're right.

22 Q. Could you please read the second
23 sentence after those three bullet points?

24 A. "The third badge is at once the
25 most subtle and the most meaningful."

1 R.F. Broude

2 Q. By the third badge, do you mean the
3 one relating to reasonably equivalent value?

4 A. Yes, counselor.

5 Q. Why, two minutes ago, did you tell
6 me that you could not place a ranking on these
7 badges, and in your report, you said that that
8 was the most meaningful?

9 A. The report is a more accurate
10 statement of my position.

11 Q. Why is it the most meaningful?

12 A. Because of the fact that before the
13 transactions occurred, a creditor, including
14 Prescient, of the MJ Trusts, with a judgment,
15 could have sought to satisfy that judgment from
16 the catalog in the case of the MJPT Trust, or
17 from the Sony -- or from the interest in the Sony
18 agreement, joint venture, from the other trust.
19 Following the transaction, a creditor of the
20 Jackson trusts, including Prescient, would have
21 been unable to satisfy its judgment from the
22 assets which then reposed in the trusts, which
23 were the beneficial interests in the New Horizon
24 Trust.

25 Q. Is the phrase "reasonably equivalent

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2 something that you read carefully or that you
3 reviewed less closely?

4 A. More towards the less closely than
5 the read carefully.

6 Q. Did you rely in any way on the
7 Sony/ATV operating agreement in forming your
8 opinion?

9 A. No.

10 Q. If you look on page 11, the last
11 sentence on the page says, "Before the New
12 Horizon transaction, the Trusts could have sold
13 the assets which they owned." And then it
14 continues on the top of 12.

15 What is the basis on which you make
16 the statement that the trusts could have sold the
17 assets that they had?

18 A. It was a general statement based
19 upon the ability of an owner to sell property
20 that the owner owns.

21 Q. But owners also can enter into
22 agreements that limit their ability to sell
23 assets; right?

24 A. Correct.

25 Q. Did you review the agreements to

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2 which the MJ Trusts were party to see if there
3 were any such restrictions on their ability to
4 sell assets?

5 A. No, I didn't.

6 Q. Do you think that's relevant to your
7 conclusion that the MJ Trusts -- that the MJ
8 Trusts could have sold their assets prior to the
9 refinancing?

10 A. Yes.

11 Q. So why didn't you look at those
12 agreements to see if there were such
13 restrictions?

14 A. Because I didn't. I should have.

15 Q. The parenthetical on that same page
16 we were just reading, that says -- let me just
17 read the whole sentence so it will make sense.
18 "Before the New Horizon transaction, the Trusts
19 could have sold the assets which they owned
20 (being required to pay off the existing debt to
21 do so, of course, unless the debt were assumed by
22 the purchaser)."

23 In the case of the Bank America
24 loans, could the debt have been assumed by the
25 purchaser without the consent of the lender?

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2 Section 11, that has MJ Publishing Trust
3 identified as the additional debtor?

4 A. Yes.

5 Q. And in Exhibit 6, MJ-ATV is
6 identified as the additional debtor?

7 A. Yes.

8 Q. And am I correct that in doing your
9 analysis, you did not take either of these
10 documents into consideration?

11 A. Oh, yes, that is correct.

12 Q. Let's stay on page 11, again, your
13 statement that prior to the transfer, a judgment
14 in favor of Prescient against the trusts would
15 permit Prescient, as a judgment creditor, to
16 execute upon the assets, the music library and
17 the 50 percent interest in Sony/ATV. Did you
18 look to see whether there were any contractual
19 restrictions on the ability of the MJ Trusts to
20 sell the catalogs?

21 A. No.

22 Q. What role did Warner Brothers Music
23 play in connection with the catalogs owned by the
24 MJ Trusts?

25 A. I don't know.

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2 involuntary transfer.

3 Q. Is there a definition of involuntary
4 transfers or levies in Section 3.3, yes or no?

5 A. No.

6 Q. Prior to the April 13, 2006
7 financing, there was a debt of \$272 million
8 involving the MJ Publishing Trusts and the MJ-ATV
9 Publishing Trust; is that correct?

10 A. Yes.

11 Q. And as a result of the April 13,
12 2006 financing, there was a new debt in place for
13 \$300 million; is that correct?

14 A. Yes.

15 Q. Part of the \$300 million went to pay
16 the original \$272 million notes; is that correct?

17 MR. BLOOM: Objection. If you know.

18 A. Yes.

19 Q. The \$272 million loan was antecedent
20 or prior to the \$300 million loan; correct?

21 A. Yes.

22 Q. Under bankruptcy law, Section 272,
23 subdivision (a), fair consideration --

24 A. Excuse me.

25 MR. ZASLOWSKY: I think you mean

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2 Debtor/Creditor Law.

3 Q. Under Debtor/Creditor Law 272
4 subdivision (a), fair consideration is given for
5 property or obligation when an exchange for such
6 property or obligation as a fair equivalent
7 therefor and in good faith property is conveyed
8 or an antecedent debt is satisfied.

9 MR. BLOOM: Was that a quote?

10 Q. Do you understand that to be the
11 law?

12 A. If that's what the statute says,
13 that's what it says, counsel.

14 Q. And you agree with me that the use
15 of \$300 million to pay a \$272 million debt is, in
16 fact, a payment of an antecedent debt within the
17 definition of Debtor/Creditor Law Section 272,
18 subdivision (a)?

19 A. Yes.

20 Q. In your report --

21 MR. BLOOM: I'm going to give you
22 five more minutes. I know you're the
23 second to go --

24 MR. WHITAKER: I really don't have
25 much more.