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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

1 R.F. Broude

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.

1 R.F. Broude

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

1 R.F. Broude

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

1 R.F. Broude

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?

1 R.F. Broude

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

1 R.F. Broude

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.