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LUXURY ASSET LENDING, LLC	:	
	:	COURT OF COMMON PLEAS
	:	PHILADELPHIA COUNTY
v.	:	
	:	MAY TERM, 2018
PHILADELPHIA TELEVISION	:	
NETWORK, INC., et al	:	
	:	No. 000074
Defendants	:	Motion Control No. 18120452

Reply of Defendant Philadelphia Television Network, Inc. in further Support of Petition to Strike, Vacate, Open or Stay Foreign Default Judgment and to Reconsider Stay or Vacate Prior Orders Appointing Receiver and Entering Purported Stipulation

I. Introduction and General Response

This is not a case about an unpaid loan and a heel-dragging debtor. There was no loan and there is no debt. It is a case about deliberate concealment of a scheme, involving California "lenders" and a former officer and director of defendant Philadelphia Television Network, Inc. "PTNI", to take all its assets as a Philadelphia television station, in support of their failed money-laundering venture to retrieve Libyan-sourced currency from Ghana. The method of this fraudulent scheme was to contrive and conceal secret papers pretending that the station "borrowed" money, which in fact went to the Libya-Ghana venture, and then to conceal that the station was sued and defaulted for those alleged "loans," giving no notice or opportunity to defend, all in complete violation of law and requirements of due process.

This concealment completely explains why PTNI's Petition comes now before this Court. As soon as PTNI was able to put these pieces together for itself in 2018, PTNI immediately

began its legal fight to undo the scheme, first through extensive and still-ongoing proceedings before the FCC, and now by its current Petition before this Court.

Newport makes a pitch that Richard Glanton and Curt Weldon are honorable, with strong resumes. PTNI calls to this Court's attention there are also many reputable and objective sources that question these statements and cast strong shadows over their actions and reputations. *See, e.g.,* New York Times, August 7, 1993 "Jury says Philadelphia Lawyer [Glanton] Harassed Woman" [and found him liable for defamation); The Telegraph, November 14, 2011 "Billion Dollar Art Heist: When art becomes a political pawn." (Barnes Foundation "as an instrument of his own glorification" and he was sacked); The Atlantic, June 2018 "Former GOP Congressman Embroiled in the Russia Probe"; The Sunlight Foundation, June 11, 2008 "From Russia with Love"; The Washington Post, October 17, 2006 "Homes Raided in Rep. Weldon Influence Probe".[1] Even plaintiff Luxury Asset Lending sued Glanton for fraud, including fraud as to PTNI's Shareholder Agreement, Petition Ex. 8, pp. 15-23.

And plaintiff Luxury Asset Lending itself was cited, fined and reached a settlement agreement with California Commissioner of Business Oversight in 2018 for failure to file reports. A copy is attached to this Reply as **PTNI Exhibit 11** [continuing from the numbers of the Exhibits attached to PTNI's Petition, which ended at 10]. And Brian Roche, principal to both LAL and Newport, has been the subject of various lawsuits, including one currently pending in the Eastern District of Pennsylvania, under the Telephone Consumer Protection Act of 1991, Shelton v. National Student Assist LLC et al at 2:18-cv-02545-MSG.

II. Vacating Improperly Entered and Defective Judgments

[1] Links for these articles can be found at:
https://www.nytimes.com/1993/08/07/us/jury-says-philadelphia-lawyer-harassed-woman.html
https://www.telegraph.co.uk/culture/tvandradio/8882314/Billion-Dollar-Art-Heist-When-art-becomes-a-political-pawn.html
https://www.theatlantic.com/politics/archive/2018/06/former-gop-congressman-embroiled-in-the-russia-probe/562343/
https://sunlightfoundation.com/2008/06/11/from-russia-with-love/
http://www.washingtonpost.com/wp-dyn/content/article/2006/10/16/AR2006101600545.html?noredirect=on

The threshold question is whether this Court should *vacate* or *strike*[2] the foreign default judgment, as docketed by this Court on May 4, 2018, entered against PTNI under the Uniform Enforcement of Foreign Judgments Act, 42 Pa.C.S. § 4306 (the "Act"), and the requirements of state law and due process that are built into answering that question. PTNI submits that as a matter of law and as enforced under and through the Act, there was no valid foreign judgment, and none that could be docketed here, because of lack of meaningful notice to PTNI. *See, e.g., Perkins v. TSG, Inc.,* 390 Pa. Super. 303, 306-07, 568 A.2d 665, 666-67 (1990) (Maryland transferred judgment docketed in Pennsylvania must be vacated or struck because notice address used in Maryland was not 'reasonably calculated to provide appellant with notice of the suit' thereby denying his due process rights, such that the Maryland judgment was not entitled to full faith and credit."). *See also* the other United States Supreme Court and Pennsylvania cases cited in PTNI's Memorandum of Law at pp. 5-6. And as PTNI pointed in its Memorandum of Law at p.7, this result does not conflict with, but is entirely consistent with California law and principles of due process enforceable both in California and before this Court, because California itself requires diligent search and use of true and ongoing mailing addresses of a person or business before a default judgment is taken, even if initial service of process might have been allowed to a different address. *See, e.g., Slusher v. Durrer*, 69 Cal. App. 3d 747, 755-756, 138 Cal. Rptr. 265 (1977).

Newport ignores all of these precedents and instead contends that it would have been too late for PTNI to contest the default judgment in California and that PTNI should have done so. This is both irrelevant and wrong. It is irrelevant to the question whether to vacate the transferred judgment in Pennsylvania, which turns on the Act and considerations of compliance with state law and due process, and not on any timetables of California court procedure. And it

[2] Pennsylvania cases say the preferred terminology for a transferred judgment that may not be enforced in Pennsylvania is to "vacate" the Pennsylvania docketing of the judgment, rather than to "strike" the transferred judgment; however, a decision "striking" that judgments under the Act may also be affirmed because it has the same effect, i.e., rendering the judgment as entered in Pennsylvania null and void. *See, e.g., Tandy Computer Leasing v. Demarco* 388 Pa. Super. 128, 144-45 564 A.2d 1299, 1307-08 (1989)(collecting and discussing cases on this point).

is wrong under California law and proceedings. *See* Cal Code Civ. Proc 473.5(d) (challenge to default judgment for lack of notice under that section may be brought up to two years from entry of the judgment – which in this case would mean April 2019); *and see* Cal Code Civ. Proc. 473 (d) (parties or court sua sponte may set aside void judgments, with no time limit). And even in the case cited by Newport, the court permitted challenges to judgments, including default judgments, beyond six months, if based on lack of meaningful notice and indications of deliberateness, which California considers to be a form of "extrinsic fraud" that can be brought at any time. *Manson Iver York v. Black* (2009) 176 Cal. App. 4th 176. While, PTNI may well also choose to go to California to contest the docketing of the judgment there, it is also well settled that it is not required to do so for this Court to grant relief. *Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 706 (1982) ("A defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding.").

Newport's next attempt to divert attention is to devote pages to the irrelevant point that Pennsylvania requires litigants in cases brought from the start in Pennsylvania to seek equitable relief promptly, if they are non-suited or defaulted for their own failure to plead after having been properly and duly noticed of a Complaint. But this is not PTNI's situation, and it is not the relief PTNI is seeking.

Turning then to the key question of the inadequacy of notice to PTNI, the record plainly shows a complete failure to meet the California, Pennsylvania and federal due process standards that require diligent efforts to seek and serve the true business addresses of a defendant before taking and entering a default judgment, and which forbid as "chicanery" and "constructive fraud" the reliance on inadequate addresses that might sustain service of process but do not provide meaningful notice to the defendant.

PTNI's sole business address, and principal place of business since August 2006 has been 2 Johns Lane, Lafayette Hill, PA, which is also PTNI's address for tax purposes, including communications to and from the IRS, and for its license and other filings with the FCC, as well as

all general purposes Petition ¶¶ 4, 130, Cliett Affidavit to this Reply, attached as PTNI Exhibit 12, ("Cliett Aff") ¶¶ 2. This address was at all times well known to defendant Richard Glanton, as the location of the PTNI business for all that time. Cliett Aff, PTNI Ex 12 ¶ 2. PTNI's business address was never at Richard Glanton's home, at Snowden Lane, Princeton New Jersey. *Id*. and Petition ¶ 82.

Newport's own documents bates stamped and very recently produced by Newport to the undersigned counsel, and to defendants Cliett, et al in November 2018, repeatedly and specifically show, in LAL's and Newport's own records and knowledge, that 2 Johns Lane, Lafayette, Hill, PA is the business and principal address of PTNI. See Cliett Aff, PTNI Ex 12 ¶ 4 and Cliett Aff Ex B [documents as stamped and produced by Newport] at Newport 44-50 [FCC Ownership Report 3/21/2018, Johns Lane]; Newport 442 [FCC Report 2014, Johns Lane]; Newport 206-09 [Letter 5/24/2010, Johns Lane]; Newport 238 [Complaint 8/2/2010, Johns Lane]; Newport 328 [UCC Financing Statement 9/22/16 , Johns Lane]; Newport 341-347: [Letter and email 12/6/2017, Johns Lane]; Newport 667, 672-76 [2010 proof of service, Johns Lane]; **and last but not least, Newport 684 [Luxury Asset Lending's own 4/10/17 UCC Financing Statement with the PA Dept. of State against PTNI, showing PTNI's address as Johns Lane, Lafayette, Hill**.

PTNI formerly had leased office space at 1515 Market Street, Philadelphia Pennsylvania; however that lease expired in 2004, and PTNI moved first to 4335 Kelly Drive, Philadelphia, PA under a two-year lease through July of 2006, and then moved all business and administrative offices to 2 Johns Lane, Lafayette Hill, PA in August 2006 where it has been since that time. PTNI has not in many years received any forwarded mail or deliveries addressed to 1515 Market Street, and specifically has not received anything from LAL or Newport or their counsel or the courts addressed to 1515 Market Street, *with one and only one suspicious exception*, being the receipt at 2 Johns Lane, Lafayette Hill on November 23, 2018, of a UPS delivery of Newport's ex parte Emergency Petition to Appoint Receiver, which had labels showing *both* the 1515 Market Street and the 2 Johns Lane addresses, and which had been filed *four days earlier* before this Court, on November 19, 2018. Petition ¶¶130, 171; PTNI Ex. 12 Cliett Aff. ¶5 and Cliett Aff Ex D. Newport

repeatedly makes this sounds as though PTNI was getting many notices, as if they had been magically served to and then forwarded from 1515 Market Street to 2 Johns Lane. But PTNI received none of them. PTNI Ex. 12, Cliett Aff ¶5 . Instead, Newport's contention shows the lengths of Newport's concealment and misdirection. Cliett states in his attached Affidavit at ¶6 as follows:

> At 4pm on December 26, 2018, I spoke with UPS customer service (Felix, employee number NPT1FCG) re the delivery of the package with tracking #1Z7F9A890108290566 to 2 Johns Lane on November 23 that contained the receivership petition. UPS states that the package label was created on 11/19/18 by the shipper Bernstein-Burkley PC [i.e. counsel for Newport] out of Pittsburgh PA.; UPS picked up the package on 11/20/18; the first attempt to deliver was on 11/21/18, but the address was incorrect - 1515 Market Street; UPS informed shipper and shipper provided updated information on the same day [i.e. Newport's counsel told UPS to deliver it to 2 Johns Lane]; UPS then delivered the package on 11/23/18.

Of course, all of this meant PTNI did not find out about the emergency receivership petition until the day after Thanksgiving, four days after its filing. In sum, there never was and never could be forwarding to PTNI from 1515 Market Street. And this also means that Newport's counsel, who themselves caused a one-time delivery of one item to 2 Johns Lane, because they did not succeed in sending it to 1515 Market Street, have misled this court into believing that the opposite happened and that, magically, all notices actually arrived at 2 Johns Lane because there were somehow magically forwarded from the 1515 Market Address that PTNI had left in 2004 and that Newport's counsel had itself tried and failed to use on November 19.[3]

As also set out in the Petition, and despite and concealing all of the above, LAL and Newport sent none of the notices to PTNI's actually known address at 2 Johns Lane, instead sending them either to self-interested co-conspirator Richard Glanton's home address, at

[3] Newport makes a similar false leap in saying that because LAL/Newport filed UCC financing statements against PTNI using a Johns Lane address, PTNI got notice of those filings. On the contrary, there was no copy or notice ever received by PTNI or at its Johns Lane address. Cliett Aff. PTNI Ex 12 at ¶7. *Newport's position instead shows it knew and used Johns Lane as PTNI's true address, but nevertheless deliberately avoided sending notices there.*

Snowden Lane, Princeton, NJ, and or purported to the office PTNI had not had since 2004 at 1515 Market Street, Philadelphia, PA. PTNI did not receive these notices. **LAL, Newport and Glanton have thus avoided their due process obligation to use diligence to find and provide effective notice to PTNI at its true business address, which in turn has taken away any meaningful opportunity by PTNI to defend, and which means that the judgment as entered by this Court on May 4, 2018, and all the following orders which are built thereon must be vacated.**

PTNI has also contended in the Petition and in its Memorandum of Law, that neither LAL nor Newport were "judgment creditors" presenting valid judgments in their favor on May 4, 2018, which is a specific requirement under the Act, and were therefore were ineligible to have an effective transferred judgment under the Act. This is a separate and independent ground to vacate. No valid "judgment creditor" sought the docketing of the foreign judgment before this Court on May 4, 2018 for two reasons. First, there was a purported assignment from LAL to Newport *before* LAL as plaintiff filed and received the foreign judgment with this Court on May 4, 2018, *and* second, because Newport did not even exist as an entity on May 4, 2018, or at the time of the purported assignment from LAL, and was not formed until July 25, 2018.

Newport's only response is to contend that it existed because, despite previously getting judgment and assignment rights before this Court and before the California courts as a California LLC that was created and newly formed only on July 25, 2018, that Newport is somehow, at the same time, also a Montana Limited Liability Company that was formed on July 8, 2010. Answer to Petition ¶112. In the first place, it is legally impossible for the party before this Court to be both of two different LLC's formed at two different times in two different states, and to switch from claiming one to the claiming the other *after* getting judgment and assignment rights in its favor.

But even if this were possible, Newport's own documents submitted to this Court to support its contention, which are at its Exhibit I, show that the Newport Investment Group, LLC

that was formed in Montana on July 8, 2010 is "inactive dissolved" and that the dissolution occurred on April 26, 2016. The status of that entity therefore rejects and does not support Newport's existence on the date of the purported assignment from LAL in April 2018, or on the date of the docketing of judgment as "judgment creditor" before this Court on May 4, 2018, or on the date this Court entered a purported stipulation in favor of non-existent Newport to recognize the assignment on May 10, 2018. As of all those dates, there was no legal existence to either this now-purported Montana LLC, nor was there any legal existence to any California LLC, because that entity was not formed until July 25, 2018, at which time it was formed as a new entity in California, and not as a continuation or transfer of any other pre-existing entity. [4]

In sum, there was no valid judgment creditor capable of seeking and obtaining, or enforcing a judgment in its favor before this Court on May 4, 2018, and Newport in particular was not capable to be recognized by this Court as assignee thereof on May 10, 2018, or the beneficiary of either the order of May 4, 2018 or May 10, 2018. Nor could LAL uphold a judgment in its own right, because, as set out in the Petition, the exemplified judgment records it submitted to this Court were outdated and therefore concealed to this Court, and did not show the assignment to Newport. Therefore LAL was not a proper "judgment creditor" and LAL gave Court a defective record for entry of judgment, which violated the Act and requires vacating the judgment. *See* PTNI Memorandum of Law at p.8.

Thus, even if the judgment met the requirements of due process and California procedure, which as incorporated into review under the Act, which it does not, it must still be vacated for these additional defects under the Act, and which defects also violate all applicable principles of standing and party-in interest. And since the judgment as docketed before this

[4] Newport's Exhibit I raises some further confusion, by adding pages *pertaining to yet another Montana entity* that is *not* referred to in Newport's Answer to the Petition, and which entity was also called Newport Investment Group, LLC , but which was formed on September 20, 2016 under a different entity number. According to these same records, even this entity was voluntarily dissolved on February 14, 2018, with notice of dissolution by the state occurring on February 24, 2018. Tthe record shows an apparent reinstatement of this second Montana LLC occurred very recently on December 18, 2018, but even so, it did not exist at the time of and could not have been the judgment holder or assignee in California or Pennsylvania, which events were in April and May 2018, nor could it magically turn into the California LLC on July 25, 2018, and which time neither of the Montana LLC's existed.

Court on May 4, 2018, must be vacated for the reasons set out above, it is a nullity, and there is necessarily no basis for the further enforcement proceedings by this Court, including the orders of May 10, 2018 and November 19, 2018, all of which must also be vacated for the same reason.

PTNI also submits to this Court, as set out in the Act and cases citing to the Act, that the remedy discussed above does not displace other and additional remedies of reopening, staying or vacating judgments available generally to persons seeking relief from judgments in Pennsylvania. 42 Pa.C.S § 4306(b). It is for this reason that PTNI also submits, separate and in additiona to what is set out above, that even if this Court does not vacate the judgment for the reasons set out above, that it should nevertheless stay or reopen it and the subsequent orders of this Court, and for this reason PTNI sets out the following additional points relevant to this contention.

III. Reasons Additionally Supporting Reopening, Staying or Other Relief

Nowhere in their Answer to PTNI's verified Petition, nor in their Memorandum of Law does Newport contend Cliett or any other disinterested officer, shareholder or director ever authorized, approved or consented to any "loans" or obligations by PTNI, which PTNI denies in detail in the Petition and in the attached Cliett Affidavit at PTNI Ex 12. And nowhere does Newport contend any such "loan" proceeds went to or benefitted PTNI,[5] which PTNI also denies in detail in the Petition and in the attached Cliett Affidavit. And nowhere does Newport specifically deny that funds went instead to a Ghana-Libya currency venture that did not involve PTNI, to the extent the funds did not go to "loan" fees to LAL's and Newport's affiliates, as detailed extensively in the Petition and the Cliett Affidavit. And nowhere does Newport specifically deny the active participation of LAL and Newport, including the active participation of their principal Brian Roche, in both the Ghana-Libya venture and the effort to turn it all into a means to take PTNI's assets, as detailed extensively in the Petition and the Cliett Affidavit. In

[5] In response to the specific document requests by Cliett et al in the California litigation for evidence of wiring and funding of "loan" proceeds allegedly made as to PTNI, the only document Newport provided was a page of wiring instructions to Ghana, and with no documentation showing the source of funds or the amount wired. *See* Cliett Aff., PTNI Ex 12 at Ex B at Newport p. 399.

sum, and as detailed in the Petition and the Cliett Affidavit, there were two levels of scheme, both highly improper and unenforceable. First there was an improper Ghana-Libya currency venture, which had nothing to do with PTNI, and second there was a scheme, in concert with Richard Glanton, to recover from that venture's debacle and rescue Richard Glanton from personal bankruptcy, by "agreeing" **among themselves** dismiss Glanton's bankruptcy and instead turn on and take all of PTNI's assets from all of its shareholders, even though PTNI had no idea it was even a "borrower" and got nothing from any alleged "loans".

Newport instead says, repeatedly and without other specific denial, that these matters are "wild." The dictionary generally defines "wild" as meaning uncontrolled or unrestrained; however, the Petition's averments are controlled and careful, backed up with many documents from the participants themselves. What was "wild" was the outrageous conduct of the participants and their investors LAL and Newport. Newport also says, again repeatedly and without other specific denial, that these matters are "hearsay" and that they were not "privy," but neither is true. The evidence is definitive, clear and admissible.

Petition Ex. 5 pp.001-008 and Cliett Aff Ex. E are emails of 9/29/2016 and 9/30/2016 *from party Richard Glanton to party principal Brian Roche and judgment co-defendant Curt Weldon* as well as individuals in Ghana as forwarded to Cliett by Glanton himself, and detailing the Ghana schemes and Glanton's and Curt Weldon's (supposedly) "personal" "borrowings" to support same, through Brian [Roche] as "investor", with the 9/29/2016 version, at Cliett Aff Ex E ,also detailing in the 10th paragraph that the funds derived from sources close to Muammar Gadaffi. These emails completely concealed from Cliett that PTNI was an alleged "borrower" for any of these matters. See Cliett Aff, PTNI Ex 12 ¶8. And Petition Ex. 5 pp. 009-015 are emails from *party principal Brian Roche to party Richard Glanton* of September 22, 2016 and from *judgment co-defendant* Curt Weldon to *party principal Brian Roche* of April 8, 2016, as forwarded by Glanton to Cliett and attached to the Petition. Cliett Aff., PTNI Ex 12 ¶9. Indeed, the April 2016 email from Weldon thanks *Roche for expediting the loan for the Ghana scheme* [i.e. meaning, but not saying and at the time concealing from Cliett and PTNI, the "loans" that

are now claimed to have become obligations of PTNI] and attaching a photograph taken by Weldon himself of the currency in Ghana. And the September 22, 2016 email *from Roche to party Glanton and judgment co-defendant Weldon* not only attaches and adopts the prior communication of April 8, 2016 but also describes how "we [i.e. LAL and Roche] aren't waiting around for these scammers any longer".

And Petition Ex. 5 pp. 016-018 are further emails similarly forwarded to Cliett whose receipt is shown thereon, from *party principal Brian Roche to* party *Glanton and judgment co-defendant Weldon,* and also various persons in Ghana, of Roche's own involvement with the "cargo" involved in the Ghana transactions, the "personal relationship" *that Brian Roche and LAL President Brian Qui*nn claim to have with key persons in Ghana, of arrangements for travel and meetings in Ghana by Roche, Quinn, Glanton and Weldon, and of the "hosting" of persons from Ghana by *Brian Roche and LAL President Brian Quinn* in Newport Beach, California.

Moreover, Petition Ex. 5 pp. 019-021 are emails from *party principal Brian Roche to defendant Richard Glanton and judgment co-defendant Curt Weldon* regarding *Brian Roche's actions in causing* the $30,000 [in purported LAL "loan funds "and though then concealed from PTNI and Cliett would later become the purported and concealed basis for the alleged "oral" obligation to repay LAL $3,300,000 two weeks later]. And still more of the same communications among the same parties appear, as to *Brian Roche as party principal and Brian Quinn as LAL President,* in further emails similarly forwarded to and authenticated by Cliett at Petition 5, Exhibit pp. 019-022, and Cliett Aff, PTNI Ex 12 ¶9.

Finally, Petition Ex 6 is *judgment co-defendant* Curt Weldon's own sworn declaration, with attached emails among Weldon, Roche and LAL President Brian Quinn, regarding plans to satisfy LAL's situation by "liquidation of the TV station", all of which are court documents from the same case in which LAL obtained its default judgment against PTNI [though PTNI did not know about any of this this until 2018, when it learned of the judgment and the undersigned counsel found this Declaration of record in the court files]. The declaration and emails provide that that the Luxury loans were arranged and facilitated by party principal Roche, that the

"entire transaction was a scam" and that Brian Quinn as President of LAL was "fully aware of Roche's efforts to facilitate the transaction and his subsequent threatening conduct." *See* Petition ¶¶ 41-45 and Petition Ex.6.

These documents are not only highly probative, and not only are Roche, Quinn, Newport and LAL very obviously "privy" to them, are also admissible, and not excludable hearsay under Pa. R. Evid 803, 803.1 and 804, because as detailed above, they are opposing parties' and co-conspirator statements, and they are also prior inconsistent statements of both Roche, who has signed the contrary verifications on behalf of both LAL and Newport, and before both this Court and in the California proceedings leading up to the default judgment, and Glanton, who has signed purported stipulations before this Court and in California. The documents are also admissible as statements against interest, statements of identification and recorded recollection by Roche, Glanton and Weldon, and are former testimony as to Weldon's sworn declaration.[6]

Newport also responds by falsely claiming Cliett had "awareness" of the "borrowing of money on behalf of PTNI" from Luxury "four months prior" to the alleged "loans". On the contrary, as set out in detail in the Petition at ¶¶ 18-19, 28, 63-67, 101-109, and 148-151, with verification signed by Cliett, and as further set out in the Cliett Affidavit, PTNI Ex 12 at ¶¶ 10-13 PTNI and Cliett were not so "aware" but instead they learned, in bits and pieces, and without ever learning or being informed that PTNI was itself an alleged "borrower" or obligated to LAL or Newport, only that Glanton was involved in his own personal venture in 2016 and was borrowing money for himself for that venture [and not for PTNI], and that Glanton pledged his own shares in PTNI, which Cliett thereupon specifically disapproved because that pledge violated PTNI's Shareholder Agreement and other governing documents.

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[6] Brian Roche, who signed many of the applicable verifications and declarations for both Luxury and Newport, and actively participated throughout on behalf of both, certainly could have attempted to deny or refute what is set out in these documents, many of them by, to or from him. This Court should not listen to his effort to ignore them by saying they are "wild" and "hearsay". Within these documents are also a number of admissible statements of present sense impression, and of then-existing mental and emotional conditions.

Still later, Cliett learned that Glanton was purporting to arrange for a transfer of shares in PTNI, and that Glanton now claimed to have a majority of shares in PTNI, which Cliett disapproved because those shares were not transferable under the Shareholder Agreement and because Glanton never owned a majority interest in PTNI. And he later also learned in 2017, that Glanton had filed for personal bankruptcy in New Jersey, and was trying to work out a deal with Luxury and Roche; however he did not learn even then that PTNI was an alleged co-borrower with Glanton, because Glanton's bankruptcy filings specifically omit to state, contrary to Bankruptcy Rule 1007 and Official Bankruptcy Form H, that PTNI was a Co-Debtor with Glanton. This was a clear violation of these requirements, and Glanton's Form H instead shows only his wife and Elected Face, Inc. as codebtors with Glanton on any debts. Attached as Exhibit 13 is Form H, Co-Debtors from Glanton's Bankruptcy Schedules, as produced to the undersigned counsel by Newport.

As set out in the Petition and the Cliett Affidavit, he and PTNI only put the concealed pieces together after he discovered, through happenstance, on or about May 7, 2018, that he was blocked from access to the FCC database he used to maintain PTNI's affairs and then found in looking at the FCC files that Glanton had filed a purported transfer application to Newport. Cliett then discussed all these matters with PTNI's FCC counsel, Jeff Timmons on or about May 17, 2018, who in turn retrieved and reviewed the documentation that went with the transfer application. Through that discussion, Cliett came finally to understand the previously concealed situation, namely that Newport claimed PTNI was a borrower and that Newport had purported security interests, pledges and now a judgment against PTNI. **Once Cliett put together the concealed information, he promptly caused PTNI to resist through opposition proceedings before this FCC, through the removal of Glanton as officer and director of PTNI, and now before this Court. All of this is also there is a time lapse between the commencement of Luxury's concealed action against PTNI in California and PTNI's Petition to this Court.**

Nor are the agreements enforceable as, in Newport's heavily repeated statement, "written" "loan documents." In fact, as set out in the Petition and in LAL/Newport's own California pleadings, and as Newport does not now deny, the alleged obligations *are primarily oral and not written*, since an alleged $3.3 million of the debt is a supposed and unconscionable claim of an oral agreement to advance Glanton of $30,000 in exchange for Glanton *and PTNI* paying back an additional $3,300,000 only two weeks later. And the purported "loan documents" to the extent they are written at all, are intrinsically deeply suspect, for all the reasons listed below in the footnote[7] but most fundamentally of all, for the reasons elaborated in the Petition and the Memorandum of Law, because Glanton was never authorized to sign or agree to any of these "loan documents" on behalf of PTNI (which also received no loan funds) nor to pledge his own shares or any PTNI assets, and doing so was contrary to PTNI's Bylaws and Shareholder Agreement, contrary to Pennsylvania corporate law, contrary to fiduciary obligations protecting the interests of shareholders, and contrary to the Federal Communications Act and federal policy prohibiting the collateralization and pledging of rights related to FCC licenses, as the FCC itself held by its ruling on November 13, 2018.

IV. The Corporate Matters Raised by Newport are Baseless.

Newport contends PTNI has no "standing" to appear, which is odd since PTNI is a named defendant, and since PTNI filed the Petition and this Reply over the

[7] (1) There are no signatures on the documents on the from LAL President Brian Quinn, which are unsigned blanks. (2) There obviously "should" have been a written amendment, or supplement, if the loan amount were to increase by $3,300,000. (3) None of the alleged Luxury Promissory Notes have wiring instructions attached for disbursement of funds, even though those are expressly required by the Notes themselves. (4) The amounts allegedly lent cannot be squared with the separate or total face amounts of the various Promissory Notes allegedly signed on behalf of Glanton, Weldon and PTNI. (5) As noted above in the text, LAL President, Brian Quinn has himself written emails that Roche was unauthorized and that not all funds were truly advanced by LAL or funded by Roche. (6) The purported Promissory Note by Richard Glanton as borrower, and the purported Promissory Note by PTNI signed by Richard Glanton, though both were purportedly signed and dated on April 18, 2016 [which was a Monday] have two different notary publics for Glanton's signature, Sweta Patel on one and Ivan Balev on the other, and it is also odd at best that these show a preparation date by LAL on the previous Saturday. (7) The purported May 2016 documents, unlike the predecessors appear to be robo-signed and not bearing Glanton's actual signature.

verification and with the authorization of PTNI through its long-time President, Treasurer and Director Eugene Cliett, and who is also PTNI's Chief Executive Officer, which additional position he shared with Richard Glanton before Glanton's removal from office. Petition ¶¶ 2, 4, 159 n.6, Cliett Aff, PTNI Ex 12 ¶1. It appears Newport is contending that (i) Glanton is the majority shareholder in PTNI; and (ii) this means Glanton can do whatever he wants with PTNI's assets, including disposing of them all to LAL or Newport, without PTNI's opportunity for defense or objection and even though (iii) Glanton has himself failed to take any position or make any appearance in response to PTNI's Petition.

None of these propositions hold water or deny standing to PTNI. Newport's own Answer *does not dispute* the Petition's statement that there are 946 issued and outstanding shares of common stock in PTNI, and *does not dispute* that Glanton was issued 425 of those shares in 1999. See Petition and Answer at ¶¶ 7-9, which statements were also backed by documentary evidence. 425 of 946 is approximately 45%. Newport's Answer does not dispute the averment in the Petition, backed up by documentary evidence including copies of the share certificates, that the other shares issued in 1999 were 347 shares to Cliett, 74 shares to Wister and 100 shares to Moxley. *Id.*

Newport instead appears to contend that in 1999 PTNI could or should have issued a smaller number of shares to Moxley, such that the math would have worked out to be five percent of PTNI stock. PTNI respectfully disagrees that it is lawful or appropriate now to take away some of Moxley's 100 shares issued in in 1999. Each of PTNI's shareholders, *including Richard Glanton and Moxley*, ended up with a higher resulting percentage than each of them had initially expected, and the reason was that because Brady and DSP did not become shareholders. It is unsupportable at law or in equity, to now retroactively re-engineer the issued shares so as to limit Moxley alone to a smaller number of shares, while everyone else gets the benefit of the increased percentage from the absence of Brady and DSP as shareholders.

In any event, no outcome of the above would cause Glanton to own the majority of PTNI's stock. And so they make a second argument, that Diane Moxley is not entitled to vote more than half the Moxley shares. Newport seems to suggest that because her husband Walter Moxley died, the votes on half of the shares need to come from other heirs. But even if Newport prevailed, the result would only go to the voting and counting process for voting, and not result in any majority of stock ownership by Glanton. Moreover, Newport is also wrong about the voting of these shares. Upon Walter Moxley's death, his shares were vested in Diane Moxley as a matter of Pennsylvania decedent's law, as executrix of his estate. Petition ¶¶ 7 and 159 n.6. Walter Moxley was a Pennsylvania resident, and his estate was probated in Pennsylvania, with Diane Moxley serving as executrix. In Pennsylvania, title to personal property, such as stock, passes to the executor or personal representative as of date of death, i.e. to Diane Moxley. 20 P.S. § 301(a). And shares held as fiduciary, such as an executor, may be voted by that fiduciary, i.e. Diane Moxley, under Pennsylvania corporate law. 15 P.S. §§ Section 1760 and 1761(a). [8] ¶

Even if Richard Glanton somehow mustered a majority stake in PTNI's stock, which he has never had, this would not eliminate PTNI's rights, nor its and Glanton's fiduciary obligation to protect the other shareholders and their interests. As PTNI's Petition sets out in detail, Glanton's self-interested and secret pledging of PTNI assets and shares for his own benefit, and also the later "deal" he reached with LAL/Newport to "consent" to a transfer of all of PTNI's assets, all violated and are therefore unenforceable because of his fiduciary obligations and the rights of PTNI's other shareholders under Pennsylvania corporate law, and also violated and are unenforceable because of Pennsylvania corporate law requiring that any transfer of all assets must be approved by shareholders, with dissenter rights afforded to minority shareholders. Petition ¶¶ 53-62, 140-144.

[8] Diane Moxley has made sworn answers to Newport in the California litigation stating that she holds and votes the shares in that capacity, subject to the rights of beneficiaries to share in any proceeds. See Cliett Affidavit, PTNI Ex 12 ¶ 14, and Cliett Aff. Ex. F, attaching the Moxley statement.

Newport is also wrong in contending that PTNI's Shareholder Agreement and Bylaws are not fully signed and therefore somehow do not prohibit Glanton's "loan" agreements or share transfers, which their terms clearly state. Petition ¶¶ 6, 45-52. Newport contends, *albeit* weakly, that the Bylaws were not signed and that the Shareholder Agreement was not signed by all of the shareholders in 1999. These contentions are both wrong and insufficient. First corporate bylaws are generally not signed, but instead are *adopted* by corporate action, as they were by PTNI in 1999. Petition ¶6, and Ex. 4 pp. 14, 43, Cliett Aff. PTN Ex 12 at ¶ 15. Second, the PTNI Shareholder Agreement was specifically known to and recognized by LAL and Glanton going back to 2016 (though they violated it) because they expressly named that same PTNI Shareholder Agreement as being applicable in a number of the purported loan documents themselves. Petition ¶ 51 and Ex. 3 to Petition at pp. 77, 87, 105 and 115. Indeed, counts 11 and 12 of their California Complaint against PTNI allege that Glanton "did not have the right to pledge or assign his ownership interest in the stock he owns in Philadelphia Television Network, Inc" because he "was a signatory and party to a Shareholder's Agreement, pertaining to Philadelphia Television Network, Inc. which explicitly restricted the sale, pledge, transfer, assignment or disposition of any such shares of stock held by Glanton unless done in accordance with the terms of such Shareholder Agreement, which includes a right of first refusal to be given to the remaining shareholders prior to any pledge or assignment of such stock to third parties." (emphasis added). Petition ¶ 79 and Petition Ex 8, p.19. Newport must be estopped from now taking the opposite position in enforcing the same judgment.

Moreover, Pennsylvania corporate law provides that restrictions on share transfers are enforceable against third parties if *either* they knew of the agreement *or* if those restrictions are conspicuously referred to on stock certificates. 15 Pa.C.S. § 1529. Both of these conditions are met here, because the restrictions are conspicuously set out on the share certificates and because, as set out above, LAL/Newport knew of the agreement and the restrictions.

And it does not matter that there are some blank lines on the Shareholder Agreement. The Shareholder Agreement was signed in 1999, ahead of the closing by which Moxley and

Wister joined as shareholders, by PTNI itself and by all persons who were then shareholders (as well as by DSP, which intended to become a shareholder but ultimately chose not to exercise its warrants). Thus the Shareholder Agreement was signed by **all** persons, including Glanton, who were the empowered to sign, which was then followed by issuance of shares to those persons and to the new shareholders of stock certificates with restrictive legends incorporating the Shareholder's Agreement by reference. Petition ¶¶ 7-9, Cliett Aff, PTNI Ex 12 ¶ 16. This was more than sufficient to make the Shareholder Agreement binding on PTNI, Glanton, and Cliett who were all signatories, as well as upon Wister and Moxley, who became transferees from PTNI when they were issued shares, bound under the terms of the Shareholder Agreement. *See, e.g., Nigel v. Tiernan,* 2015 Pa D & C 5th 64 and LEXIS 20978 (C.P. Pittsburgh)(Shareholder Agreement binding upon non-signatory transferee); *In re Mather Estate,* 410 Pa. 361, 189 A.2d 586 (1963) (restrictive transfer provisions are enforceable against current owners and transferees).

V. The Emergency Receivership Must be Vacated, or at Least Stayed

Following the FCC's ruling, on November 13, 2018, that Newport had violated federal law and policy by purporting to transfer FCC license rights to Newport, which was the purported assignee of LAL as purported "lender" to PTNI, Petition Ex, 10, Newport immediately came to this Court and filed an ex parte emergency application seeking appointment of a receiver, and eventually finding a way to give PTNI notice four days later, well after this Court had entered its order. Newport's "emergency" purportedly justifying that receivership order was false.

The primary basis for emergency and ex parte relief was Newport's assertion that the station would lose its FCC license if it did not soon get back on the air. But now Newport *does not deny* PTNI's averments in the Petition that the station is on the air, and that there was and is no threat to the FCC license, and that Newport knew all along that the station was going back on the air, through its monitoring of the FCC dockets and through its own communications with engineer Goetz, whom the receiver has also now retained. Petition ¶¶ 175-177 and Petition Ex.

10 (FCC on air notice to FCC).[9] It follows from this that there was not, and still is not, any emergency basis for the receivership order, which was an ex parte misrepresentation by Newport, and that even if the judgment against PTNI is not immediately vacated, the receivership should still be vacated, or at least stayed pending the outcome of this Petition.

Nor does Newport contest any of the other deficiencies of the temporary and emergency receivership raised by PTNI, *see* Petition, at ¶¶ 180-189, including Newport's non-party status and non-existence, the lack of notice to PTNI, the lack of bond or security, the granting of non-time restricted powers, the lack of provision for inventory, appraisal, reports or reviewed and approved means for sale and disposition – all in addition to the general defects of the underlying transferred judgment and order giving rise to the receivership. For these reasons as well PTNI submits that the receivership order must be vacated or at least stayed pending disposition of this Petition.

Newport's Answers to the Petition attach docket entries and recite that the FCC thereafter granted fiduciary control of the handling of license-rights to the receiver, though subject always to FCC's total power to approve or disapprove of any transfer of FCC license rights to any third party or acquirer. Newport's implicit theory is completely unjust, i.e. that having won interim and emergency receivership rights on a basis it cannot support, the result must now nevertheless be incontestable.

PTNI opposes the underlying judgment, orders, and receivership through this Petition, and also by filing an opposing response and memorandum of law to the emergency petition to appoint a receiver, a copy of which filings are also attached hereto as PTNI Exhibit 14, and incorporated by reference here. PTNI has also preserved its rights by filing a notice of appeal from the receivership order, which does not take the power of this Court to grant interim or overall relief or reconsideration that would moot that appeal. And before the FCC, PTNI,

[9] The reasons demonstrating a complete lack of any emergency based on "on air" status is more fully set forth in the December 21, 2018 Petition for Reconsideration to the FCC, which is attached to this Reply, and incorporated here by reference.

Eugene Cliett and DSP Investors, LLC have also timely filed on December 21, 2018 a Petition for Reconsideration of the FCC action that recognized the receiver's status. A copy of that Petition for Reconsideration is also attached to this Reply, and incorporated by reference here as PTNI Exhibit 15. There is no doubt that if this Court vacates, reconsiders or stays the judgment, or if this Court reverses or stays the receivership, the FCC would, at a minimum, restore the situation to the status before the receiver was appointed.

CONCLUSION

For all the reasons stated above, and in the Petition and its accompanying Memorandum of Law, and in the Exhibits attached thereto and to this Reply, PTNI respectfully submits that this Court should vacate the prior orders of this Court, dated May 4, 2018, May 10, 2018 and November 2018. In the alternative, PTNI respectfully submits that this Court should reopen and stay the judgment, and permit the parties to develop and present evidence for this Court's consideration to determine any contested factual matters necessary and helpful to this Court's ultimate determination, pursuant to Pa. R. Civ. P. 208.4 (b) and Philadelphia Local Rule 208.3 (b)(2)(F), while vacating or staying the receivership pending disposition of those matters, and granting such other and further relief to PTNI as may be appropriate.

Respectfully submitted,

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