

H53VPREA

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

13 CV 6326 (WHP)

5 PREVEZON HOLDINGS, ET AL,

6 Defendants.

ARGUMENT

7 -----x  
8 New York, N.Y.  
9 May 3, 2017  
5:17 p.m.

10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13  
14 APPEARANCES

15 JOON H. KIM,  
16 Acting United States Attorney for the  
Southern District of New York  
17 PAUL M. MONTELEONI  
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24 RENITA SHARMA

25 CORY STRUBLE

-AND-

NATALIA VESELNITSKAYA

H53VPREA

(Case called)

THE COURT: We have a large agenda this afternoon and I appreciate counsel's accommodation to start at this hour, given the fact that I have a jury trial that's ongoing at the moment.

By my count, there are 14 motions *in limine*. I want to move through all of them and resolve as many of them as I can this afternoon so that the parties will be informed regarding the trial in this case.

Second, and just by way of housekeeping, the jury clerk informs me that there are a large number, at this moment, of criminal cases scheduled for jury selection on May 15. Civil cases by custom take a back seat to jury selection in criminal cases.

My experience tells me and the advice of the jury administrator -- who I trust very dearly -- tells me that we all might be better off if we selected our jury on Tuesday, May 16, and started the trial on Tuesday, May 16. The jury administrator assures me that I will have a fresh panel. I would not move to Tuesday if I was going to get rejects from Monday. But it will be a fresh and animated panel. So unless things change materially, plan on jury selection on Tuesday, May 16. We'll save ourselves a lot of aggravation, because otherwise we'll be sitting around into the afternoon waiting to get started.

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H53VPREA

1 All right. So, as I say, we have a lot of motions *in*  
2 *limine*. You can be assured that I have reviewed all of the  
3 parties' submissions on these motions. I'll say no menial  
4 task. Therefore, I want to move through them. You can advance  
5 arguments that you think need to be amplified, but let's not  
6 reinvent the wheel; you don't have to tell me what's in your  
7 motion papers.

8 I'm going to turn first to Prevezon's motions *in*  
9 *limine*. Let's start with motion *in limine* No. 1, evidence  
10 gathered through the criminal investigation and the MLAT  
11 process.

12 MR. ABENSOHN: Thank you, your Honor.

13 Adam Abensohn for Prevezon.

14 I will say, your Honor, this is the time of day that  
15 I'm usually napping at my desk, so I'll do my best to stay up  
16 for the Court.

17 Thirty-five years ago, your Honor, the Supreme Court  
18 held that the government cannot use its grand jury powers for  
19 purposes of obtaining evidence for use in a civil case. That  
20 was the holding in *United States v. Sells*, which is cited  
21 prominently in our papers.

22 The government spends a lot of time in its briefing  
23 arguing about whether *Sells* remains good law, what the  
24 effective rule change may or may not have been; but, at the end  
25 of the day, the government acknowledges that the core holding

H53VPREA

1 of *Sells* continues to apply.

2 THE COURT: There's not any per se rule or categorical  
3 rule, is there, that says the government may not use evidence  
4 obtained from a grand jury investigation for a related civil  
5 case?

6 MR. ABENSOHN: There is a categorical rule, your  
7 Honor, and I'm quoting the government, that the government may  
8 not use grand jury process for the sole or dominant purpose of  
9 using the information in a civil forfeiture case.

10 THE COURT: Do you believe that the government's  
11 criminal investigation is a sham?

12 MR. ABENSOHN: Your Honor, we don't have enough  
13 insight to know outright if it's a sham, but we certainly know  
14 that they have used grand jury process for the specific purpose  
15 of selecting evidence in this case. There is numerous indicia  
16 of it in the record, including a very straightforward  
17 acknowledgment by the case agent, which I can read to your  
18 Honor. This is Special Agent Hyman, deposed on October 6,  
19 2015. He was asked the following question:

20 "Did you issue grand jury subpoenas in this case?

21 "A. Yes, we did."

22 Now, that's about as direct as it gets. The  
23 government was doing exactly what it says it's not entitled to  
24 do, which is to use grand jury process to collect evidence for  
25 use in a civil forfeiture action.

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H53VPREA

1 Now, there are other clear indicia of this all  
2 throughout the government's briefing. I'm not going to go into  
3 all of them for reasons your Honor has already alluded to,  
4 given our agenda, but there's a few I think worth pointing out.

5 The government has this recurring theme, for instance,  
6 that Agent Hyman didn't have enough time to prepare because of  
7 gamesmanship by prior defense counsel that, in the government's  
8 words, forced Judge Griesa to set an abbreviated schedule.  
9 They raise that in their opposition numerous times; pages 2,  
10 11, 12, 14.

11 Now, respectfully, that doesn't help the government's  
12 position because what the government is doing, in essence, is  
13 not denying that they used grand jury process for purposes of  
14 this case, they are offering an explanation as to why they did  
15 it. They are saying, in so many words, Judge Griesa put it to  
16 us in terms of the schedule, and this was our best option in  
17 the difficult circumstances and limited time that we had.

18 Under *Sells*, however, your Honor, the government did  
19 not have that prerogative; they had the option that we had or  
20 any other civil litigant had, which was to use the standard  
21 tools of civil discovery or to seek appropriate relief from the  
22 Court. They didn't do that. They took it into their own hands  
23 and they used grand jury subpoenas to collect evidence for this  
24 case.

25 There was something else that struck me in the

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