

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

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21 BY: ADAM M. ABENSOHN
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KEVIN S. REED
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CORY STRUBLE

23 -AND-
24 NATALIA VESELNITSKAYA

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1 (Case called)

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

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

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

15 My experience tells me and the advice of the jury
16 administrator -- who I trust very dearly -- tells me that we
17 all might be better off if we selected our jury on Tuesday, May
18 16, and started the trial on Tuesday, May 16. The jury
19 administrator assures me that I will have a fresh panel. I
20 would not move to Tuesday if I was going to get rejects from
21 Monday. But it will be a fresh and animated panel. So unless
22 things change materially, plan on jury selection on Tuesday,
23 May 16. We'll save ourselves a lot of aggravation, because
24 otherwise we'll be sitting around into the afternoon waiting to
25 get started.

SOUTHERN DISTRICT REPORTERS P. C.

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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

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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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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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