

16-132-cv

United States v. Prevezon Holdings, Ltd.

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

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5 August Term, 2015
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7 (Argued: June 9, 2016

Decided: October 17, 2016)

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9 Docket No. 16-132-cv
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13 UNITED STATES OF AMERICA,

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15 *Plaintiff-Petitioner,*

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17 v.

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19 PREVEZON HOLDINGS LTD., PREVEZON ALEXANDER, LLC,
20 PREVEZON SOHO USA, LLC, PREVEZON SEVEN USA, LLC,
21 PREVEZON PINE USA, LLC, PREVEZON 1711 USA, LLC,
22 PREVEZON 1810 LLC, PREVEZON 2009 USA, LLC, PREVEZON 2011 USA,
23 LLC,

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25 *Defendant-Respondent,*

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27 v.

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29 HERMITAGE CAPITAL MANAGEMENT LTD.,

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31 *Movant-Petitioner.*¹

¹ The Clerk of the Court is respectfully directed to amend the caption as above.

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Before: POOLER, LOHIER, and CARNEY, *Circuit Judges*.

Appeal from United States District Court for the Southern District of New York (Thomas P. Griesa, *J.*) from the denial of Hermitage Capital Management Ltd.'s motion to disqualify counsel for Prevezon Holdings Ltd., Prevezon Alexander, LLC, Prevezon Soho USA, LLC, Prevezon Seven USA, LLC, Prevezon Pine USA, LLC, Prevezon 1711 USA, LLC, Prevezon 1810 LLC, Prevezon 2009 USA, LLC, and Prevezon 2011 USA, LLC.

This case presents the “extraordinary circumstances” necessary to grant a writ of mandamus. We hold that the district court abused its discretion in denying the motion to disqualify. Accordingly, we grant the petition for a writ of mandamus and instruct the district court to enter an order disqualifying John Moscow and BakerHostetler LLP.

Writ granted.

JACOB W. BUCHDAHL (Cory S. Buland, *on the brief*), Susman Godfrey LLP, New York, NY, *for Movant-Appellant Hermitage Capital Management Ltd.*

1 PAUL MONTELEONI, Assistant United States
2 Attorney (Cristine Phillips, Margaret Garnett, Assistant
3 United States Attorneys, *on the brief*), for Preet Bharara,
4 United States Attorney for the Southern District of
5 New York, for *Plaintiff-Appellee the United States of*
6 *America.*

7
8 MICHAEL B. MUKASEY (Jennifer F. Mintz, Jarrod L.
9 Schaeffer, *on the brief*), Debevoise & Plimpton, LLP, New
10 York, NY, for *Defendants-Appellees Prevezon Holdings Ltd.,*
11 *Prevezon Alexander, LLC, Prevezon Soho USA, LLC,*
12 *Prevezon Seven USA, LLC, Prevezon Pine USA, LLC,*
13 *Prevezon 1711 USA, LLC, Prevezon 1810 LLC, Prevezon*
14 *2009 USA, LLC, and Prevezon 2011 USA, LLC.*

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17 POOLER, *Circuit Judge:*

18 Appeal from United States District Court for the Southern District of New
19 York (Thomas P. Griesa, J.)² from the denial of Hermitage Capital Management
20 Ltd.'s ("Hermitage") motion to disqualify counsel for Prevezon Holdings Ltd.,
21 Prevezon Alexander, LLC, Prevezon Soho USA, LLC, Prevezon Seven USA, LLC,
22 Prevezon Pine USA, LLC, Prevezon 1711 USA, LLC, Prevezon 1810 LLC,
23 Prevezon 2009 USA, LLC, and Prevezon 2011 USA, LLC (together, "Prevezon").

24 This case presents the "extraordinary circumstances" necessary to grant a
25 writ of mandamus, as Hermitage is without other viable avenues for relief and

² On April 29, 2016, this case was reassigned to the Honorable William H. Pauley, III, United States District Court for the Southern District of New York.

1 the district court misapplied well-settled law. Accordingly, we grant the petition
2 for a writ of mandamus and instruct the district court to enter an order
3 disqualifying John Moscow and BakerHostetler LLP from representing Prevezon
4 in this matter.

5 BACKGROUND

6 I. The underlying fraud.

7 The underlying litigation arises out of a 2013 civil forfeiture action (the
8 “Forfeiture Action”) brought by the United States alleging that Prevezon
9 received the proceeds of a complex, sweeping scheme that defrauded the
10 Russian treasury of roughly \$230 million (the “Russian Treasury Fraud”). The
11 government alleges Prevezon laundered portions of the fraud proceeds in New
12 York by buying various real estate holdings in Manhattan. We draw much of the
13 background section from the second amended complaint, and note that the
14 accuracy of the government’s allegations remains untested.

15 Hermitage, an investment advisory firm, is a victim of the Russian
16 Treasury Fraud. Hermitage advised the Hermitage Fund, an investment fund
17 that focused on investments in Russia. A group of corrupt Russian officials and
18 other individuals known as the “Organization” raided Hermitage’s Moscow

1 office and the office of its Russian law firm in 2007. During the raid, the
2 Organization stole corporate documents, including the official seals, of portfolio
3 companies controlled by the Hermitage Fund. This practice is known in Russia
4 as “reiderstvo,” or corporate raiding. The Organization used the stolen
5 documents to fraudulently transfer ownership of the portfolio companies to
6 members of the Organization. The Organization then forged faked contracts with
7 sham companies, creating the illusion that the portfolio companies owed nearly a
8 billion dollars to the sham companies. The sham companies sued the portfolio
9 companies. Lawyers purporting to represent the portfolio companies appeared
10 in these actions and admitted the portfolio companies’ full liability.

11 The fraudulent legal proceedings yielded judgments worth roughly \$973
12 million for the Organization. The Organization then used the sham judgments to
13 apply for tax refunds on behalf of the portfolio companies on the ground that the
14 judgments represented losses that were equal to the profits reported by the
15 portfolio companies in the previous tax year. Since the faked losses fully offset
16 the profits, the portfolio companies were entitled to a refund of the taxes paid on
17 those profits. Two days after the refund applications were filed, refunds of
18 roughly \$230 million were paid out by the Russian treasury to bank accounts

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