UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	Case No. 21-10036(CSS)
EHT US1, INC., et al,	.	
	.	824 Market Street
	.	Wilmington, Delaware 19801
Debtors.	.	
. . . . .	.	Wednesday, May 26, 2021
URBAN COMMONS QUEENSWAY, LLC,	.	Adv. Proc. No. 21-50476(CSS)
	.	
vs.	.	
	.	
EHT ASSET MANAGEMENT, LLC, TAYLOR WOODS, AND HOWARD WU.	.	
. . . . .	.	

TRANSCRIPT OF VIDEO HEARING RE:
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF AND RELATED MOTION TO SEAL
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
CHIEF UNITED STATES BANKRUPTCY JUDGE

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(Appearances Continued)

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(Proceedings commence at 3:00 p.m.)

THE COURT: Good afternoon, everybody. This is Judge Sontchi. I'm getting a little bit of background noise, if someone is in a public place. So, if you're listening on the phone, just make sure you have your telephone on mute, so we don't get any disturbances.

We are here -- whoops, hit the wrong button. Excuse me, I'm sorry.

Okay. We're here in the Urban Commons Queensway, LLC v. EHT Asset Management, LLC, Taylor Woods, and Howard Wu, Adversary Case 21-50476, obviously related to EHT US 1 case, which is 21-10036.

Thank you for your patience, as -- excuse me. As Mr. Kapletz (phonetic) will tell you, we've been busy today in another matter, and I appreciate you being patient and allowing me to kick it back an hour.

So I'm ready to proceed (indiscernible) I guess I'll turn it over to the debtor/plaintiff to set the table.

MR. DEAN: Thank you, Your Honor. Good afternoon. For the record, David Dean of Cole Schotz on behalf of the debtors and debtors-in-possession, we're with co-counsel from Paul Hastings.

First and foremost, Your Honor, I'd just like to thank you for making the time for us today and scheduling this hearing on an expedited basis.

We have two items on the agenda for today. The first is the substantive preliminary injunction motion and the second is the sealing motion that we filed with respect to certain of the exhibits. So I'd like to take the sealing motion first and then hand things over to Mr. Bassett after that to handle the preliminary injunction motion.

THE COURT: (Indiscernible)

MR. DEAN: Your Honor, prior to filing the adversary proceeding, we entered into a confidentiality agreement with the defendants relating to the production of certain documents requested under 2004, and many of those documents were marked by the defendants as confidentiality. Although the debtors didn't agree with the defendants' designations, pursuant to the terms of the proposed order, we initially filed the complaint, the PI motion in its entirety, and all of the related declaration exhibits on the adversary docket under seal.

On conferring with counsel for the defendants over the weekend and yesterday, we subsequently filed the entirety of the complaint and the PI motion pleadings publicly, so those aren't subject to any sealing request, given the fact that we released the entirety of those documents publicly.

As to the exhibits filed with Mr. Farmer's declaration in support of today's motion found at Adversary Docket 4, we reached an agreement with the defendants and Mr.

Schepacarter to seal only the personally identifiable information attached to all of the exhibits, except for Exhibits O and R to the declaration. The proposed redactions I just described were filed under a notice of redaction of exhibits yesterday at Docket Item 13 in the adversary proceeding.

Your Honor, the parties are still attempting to come to an agreement with themselves and with Mr. Schepacarter about the extent of redactions for Exhibits O and R, which are bank ledgers produced by the defendants. The debtors don't believe that anything other than PII should be redacted from those exhibits, but we haven't quite reached an agreement yet on those two.

So what we've proposed to do today, to avoid burdening the Court with a fight over redactions, is to approve the other redactions for the exhibits filed yesterday at Docket Item 13 and the notice of redactions. And then, following this hearing, if the parties and the U.S. Trustee come to an agreement on appropriate redactions for the other two exhibits, then we would propose to file another notice of redaction to cover those two, and then follow that with a sealing order under a COC for the Court's consideration.

If, on the other hand, we can't come to an agreement on the appropriate redactions for these two exhibits, we have proposed that that portion of our sealing

motion with respect to Exhibits O and R be continued to the omnibus hearing scheduled for June 8th. And the request that I just described and the provisions thereof are all reflected in the proposed sealing order filed at Adversary Docket Item 14, which we would request that the Court enter today, Your Honor.

THE COURT: Okay. Thank you, Mr. Dean, thorough as always.

Does anyone wish to be heard in connection with this application.

MR. SCHEPACARTER: Your Honor, this is --

THE COURT: Okay. Yes, mister --

MR. SCHEPACARTER: -- Richard (indiscernible) thank you, Your Honor.

Just for the record, I just wanted to indicate that, with respect to the redactions that were made, I haven't had the opportunity to review all the redactions that were made. But based on Mr. Dean's -- his representation that only the PII is the -- are the items that were redacted, I'm fine with that.

And I do believe that there was a revision that he made. Again, I didn't get a chance to check the order (indiscernible) figuratively been putting out fires today. But it's my understanding that he made some changes to the order that I had requested right about the time he was about

to file the motion to seal (indiscernible) confirm that for me (indiscernible) thank you.

MR. DEAN: That's confirmed, Your Honor. We did add the provision that Mr. Schepacarter asked us to at Paragraph 3 of the filed order.

THE COURT: Okay. And I'm glad it's only figurative fires, Mr. Schepacarter. Only you're the only person I know who puts out real ones.

MR. SCHEPACARTER: I did that over the weekend, so ...

THE COURT: Okay. That's fascinating.

Anyone else wish to be heard?

(No verbal response)

THE COURT: Okay. Happy to sign the order. Did you upload the order, Mr. Dean.

MR. DEAN: We did, Your Honor.

THE COURT: All right. I'll ask my staff to get that signed. I'm remote today, obviously from the background, so I'll ask my staff to get that done.

MR. DEAN: Okay. Thank you very much, Your Honor. And with that, we'll -- I'll turn it over to Mr. Bassett to handle the preliminary injunction motion.

MR. BASSETT: Good afternoon, Your Honor. Nick Bassett from Paul Hastings on behalf of the debtors.

First, I'd like to just start by reiterating what

Mr. Dean said and thanking the Court for making itself available today on an expedited basis. The relief that we're asking the Court to enter is very important to the debtors, and we also think it's critical that it be heard and addressed by this Court on an expedited basis. So we really do appreciate the time and the flexibility.

Before getting into my remarks on the substance, I figured I would address, at the outset, evidentiary issues. And I really hope that and don't think there are any.

As Mr. Dean just said, you know, we have submitted some exhibits with our papers and some additional exhibits in advance of the hearing. I believe the Farmer declaration was submitted to the Court. That contains Debtors' Exhibits A through AA. And then we supplemented that in an exhibit binder that we sent to the Court with Exhibits BB to FF.

I've conferred with Mr. Sensing of the defendants and I think the parties are in agreement that those exhibits, as well as their exhibits, will be allowed to come into evidence for the limited purpose of today's preliminary injunction hearing, of course with both parties reserving all rights and arguments as to the weight, in some cases, if any, that the Court should place on the documents.

THE COURT: What about the --

MR. BASSETT: (Indiscernible)

THE COURT: What about the declaration itself?

MR. BASSETT: The declarations, Your Honor, I think do no more than say these are true and correct of documents that were produced in discovery, so I think there's no issue with those.

THE COURT: Right. I just want to -- okay. Just want to make sure we're clear.

Mr. Sensing, is that correct?

MR. SENSING: Good afternoon, Your Honor. John Sensing. That is correct.

THE COURT: Okay. They're admitted pursuant to the parties' agreement simply for the preliminary injunction hearing.

MR. SENSING: Thank you, Your Honor.

(Exhibits received in evidence)

MR. STULMAN: Your Honor, I did want to note, since you raised it -- this is Aaron Stulman with Potter Anderson, for the record. There is one representation in Mr. Sensing's declaration related to production of documents in connection with 2004. I don't see that as controversial (indiscernible) did want to point that out to you, so ...

THE COURT: Thank you, Mr. Stulman.

MR. BASSETT: And on that -- and on that point, Your Honor, I apologize. We had limited time to document it. If I could address that maybe a little bit later in the hearing and let the Court know if we have any issue with that

particular paragraph.

THE COURT: Okay.

MR. BASSETT: So moving on to the substance, you know, before receiving the defendants' papers a few hours ago, I had an outline that I planned to go through to kind of walk through the different elements of the preliminary injunction test and discuss why we think we've met each one and kind of go through some of the evidence that we cited in our papers. I'm still happy to do that and prepared to do that, to the extent the Court wants, but I figured, because there are a number of arguments raised in the defendants' papers, it may be more useful for everyone if I kind of try to be responsive to the various arguments that they've made.

So, with that in mind, I'll really just kind of start from the top. If you look at the objection, I think the first couple of paragraphs, if not the first sentence, the defendants try to make this about the sale hearing. And they contend that the complaint that we filed and the motion for preliminary injunction filed by the debtors is somehow an effort to collaterally attack their clients' participation in the sale process, the hearing for which is scheduled for this Friday.

And I can tell you that it's a hundred percent not the case, Your Honor. I think the record before the Court, based on the events in this case, should make that abundantly

clear. We filed a motion for 2004 discovery back in January. The defendants responded to that motion in February. We got a hearing as soon as we could, we worked out the issues with discovery as soon as we could. We got an order, I believe, in March. The defendants thereafter produced thousands of documents through two productions in April, they produced a final production on May 18th.

The debtors reviewed those as soon as they could. Then, as soon as we realized, upon our review of the documents, what we had and the claims that the documents gave rise to, we immediately brought that to the attention to the defendants. I sent them a letter last Tuesday outlining in detail the allegations that we were prepared to advance in a complaint with this Court, based on the documents that we received. We asked them to return the funds by last Thursday, in which case we would not have to engage in any unnecessary litigation with the Court. They refused to do so. They refused to even escrow the proceeds.

And we, therefore, did what we said we would do and we filed our complaint and we filed our motion for preliminary injunction for the purpose of obtaining recourse against these defendants for what we believe to be clear fraudulent conduct to recover assets for the benefit of the estate.

Now what you see, again, throughout the remainder

of the objection, Your Honor, is it's thematically consistent. It's deflection, misdirection, and in some cases outright falsehoods. And it's been that way with these defendants, with Mr. Woods and with Mr. Wu, for the last year.

And I want to start -- because I do think it's just important to emphasize this to the Court -- by calling Mr. Farmer, who I believe has access. And if he could, I'd like him to put up the response that Mr. Woods and Mr. Wu filed to our 2004 motion in February and direct the Court to Paragraph 43. And Your Honor, we highlighted the language there, and I think this is just -- it's so important and so compelling because this is what we've been hearing all along, and this is a document submitted with the Court.

In this document, these defendants said Urban Commons, through no fault of its own, made a mistake when applying for the PPP loan at issue; and, once the mistake was discovered, jumped into action to resolve the problem. Your Honor, the documents that we have obtained in discovery, that we've cited to and discussed in details in our papers, make perfectly clear that this statement is 100 percent categorically false. These defendants could not, in good conscience, say that this loan was obtained on behalf of an entity over which they had no authority to act through no fault of their own.

The evidence that we have shows -- and I'm happy to walk through the documents -- it shows beyond doubt that Woods -- Mr. Woods and Mr. Wu started their fraudulent scheme by first fraudulently submitting a loan application to a lender on behalf of an entity, again, that they knew they had no authority to act on behalf of and with blatant misrepresentations about their role and responsibility and ownership over that entity. They then deliberately lied to the PPP lenders thereafter, once the PPP lender began asking questions. They submitted documents that contained objectively entirely false information.

They then immediately ensured that, on May 21st, when the funds came into an account owned by the Debtor Queensway, those funds would be immediately transferred to an account of debtor -- or of Defendant EHT Asset Management. We have bank accounts in the records to show that that, in fact, happened on the same day. They forced -- upon receiving the funds in the account of EHT Asset Management, spent them for their own benefit.

There's all kinds of incredibly damning emails we've cited in our papers, where employees of the defendants, acting at the direction of Messrs. Woods and Wu, noted how they couldn't believe that not a single penny of these PPP loan proceeds were actually used to fund the expenses of the hotels.

And then fifth, Your Honor, after all of this, for the last year, they've lied about it and made excuses. And I think, if you look at what they've said in their papers today, nothing, none of the documentation (indiscernible) none of what they tried to explain contradicts any of those key points. I mean, even their counsel is not saying that Woods and Wu had authority to submit this PPP loan application or that they didn't falsify information on the form. I think that is undisputed.

And I think what's also so important to acknowledge is that the people who were glaringly and noticeably absent from this proceeding and these cases thus far are Mr. Woods and Mr. Wu. The people who could explain themselves aren't here to do it. All you have is counsel telling a story, which, frankly, is one that's make believe, according to the documents that we have.

Now one of the arguments that the defendants make throughout their papers, the themes, if you will, is that, for the last year, they've been trying to, quote/unquote, "fix" the issue by having the loan transferred to a nondebtor entity. In light of what we have seen and in light of what the documents show, the clear claims that we have against these defendants for fraud, I would submit that that argument is absurd. It's like a burglar coming into your house, stealing all of your property, getting caught red-handed, and

then saying he shouldn't be prosecuted criminally or liable civilly because he's been working for the last year to return the property. It doesn't work that way.

And there's also no truth to this argument that the debtors are now somehow trying to seek a windfall for the estate. As we note in our papers, Newtek, the PPP lender, has asserted a proof of claim. And what the defendants appear to be arguing is that, if that claim -- and I'm using totally hypothetical numbers not related to this case -- but if that claim paid out at ten cents on the dollar, that somehow Mr. Woods, Mr. Wu, and the defendants would only be liable for, you know, ten percent of the claim; so, in the case of a 2.4-million-dollar claim, $240,000.

But that's not the way it works. We have asserted claims for fraudulent transfer, we've asserted claims to recover assets that should be property of the estate. We are entitled to claw back those assets, and then they will be distributed *pro rata* to creditors in accordance with the Bankruptcy Code, including Newtek, to the extent that it has a claim.

Now, with that, Your Honor, I don't intend to spend more time today talking about our likelihood of success, other than to note that, under the case law, all we are required to show is that we have a significantly better than negligible chance of prevailing. Based on the volume of

evidence in the record and contained in our papers, I would submit that, frankly, we have a negligible chance of not prevailing. I think we have clearly satisfied that element of the preliminary injunction test. Although, if the Court has questions about particular claims, I'm happy to address them.

Moving, Your Honor, to the irreparable harm issue, I'll address both the legal issues and some factual issues there. Before getting into the variety of factual issues that have been raised, I want to first address the strawman argument that the defendants have raised regarding the Groupo Mexicano case by the Supreme Court in 1999, I believe, which they used to say that there can't be irreparable harm in this case, and that the Court has no power to issue an injunction because money damages are being sought.

You know, that decision, Your Honor, is entirely inapplicable in this case for two key reasons that have been addressed by numerous courts. And I would refer Your Honor to the decision by Judge Gerber in the Southern District of New York in the In Re Soundview Elite case from 2006, which is at 543 B.R. 78, which I think contains a very (indiscernible) analysis of the issue.

In that case, the Court explained that, first, the Groupo Mexicano decision is flatly inapplicable in bankruptcy cases. And Judge Gerber cited to the Third Circuit's

decision in Owens Corning at 449 F.3d 195, from 2005, on that point. It block-quoted the analysis from the Third Circuit, where the Third Circuit held exactly that; that Groupo Mexicano does not apply to bankruptcy.

The second reason this case is inapplicable, as, again, Judge Gerber pointed out in his decision, is that, even if Groupo Mexico could apply in bankruptcy, it does not apply where a plaintiff has asserted, in addition to legal claims seeking damages, equitable claims, including specifically the fraudulent transfer claims. And he cited a Ninth Circuit decision in In Re Focus Media at 387 F.3d 1077 for that proposition. That Ninth Circuit case involved fraudulent transfer claims and other equitable claims, and the Ninth Circuit held that Groupo Mexicano was inapplicable, and the Court did, in fact, have the authority to issue the injunctive relief.

So I think there's no question that the Court does have the power to grant the relief that we've asked that you grant. And we also believe that the record demonstrates that it is appropriate for the Court to do so because we have shown a risk of irreparable harm.

Specifically, you know, we've shown for many of the reasons I already discussed in talking about the evidence that there's a course of conduct by these defendants which shows that they, you know, have not been shy and have not

hesitated to immediately remove assets from the reach of the debtor in the past. They did that in a matter of hours when they received the loan proceeds.

They also, for the last year, have refused to tell us what happened to those assets. They've refused to account for them and they've refused to return them.

You know, in addition to that course of conduct, we also have evidence that these defendants and their associated interests and entities appear to be in some level of financial distress. You know, we have emails and documents from the time last summer, where they indicated that they were desperate for these funds. We now have an involuntary case that was filed last month against Urban Commons, LLC in California. Urban Commons, LLC is not a defendant in this case, but it is the main operating entity of Mr. Woods and Mr. Wu. And the fact that it filed for bankruptcy should not be lost on the Court and the parties, I think, when we talk about whether there is a chance that these defendants may not have the resources to pay a judgment.

And I wanted to point the Courts have, in fact, issued asset-freezing injunctions on, you know, a far less robust record in other cases. I'd point the Court to the Oxford Homes case from a Bankruptcy Court in Maine -- and that's at 180 B.R. 1 -- where the Bankruptcy Court granted an injunction in a fraudulent transfer case. And I think the

key language from that case was that the Court issued that injunction even though there was no threatened or impending disposition of the assets at issue, and that the defendants had not been show to have a predisposition to fraud, to engage in fraud, or to squander. The Court, nevertheless, granted the injunction, recognizing that, under -- in bankruptcy, quote:

"-- cash and cash equivalents are highly susceptible to diversion and loss."

So, you know, not only are we dealing with a situation where you're trying to recover cash and cash equivalents, but we have a record that shows these defendants do have a proclivity to engage in conduct that could result in assets being transferred away from the debtors. And we also have some evidence that these defendants are in potential financial difficulty.

Now, on the facts of the irreparable harm issue, you know, the defendants of course claim in their papers that there isn't sufficient evidence and we haven't shown that, if we were to prevail in this litigation, there's some likelihood that the debtors would be, you know, irreparably harmed and that we would be able to recover on a judgment. You know, on that note, I think it's important to look at the inconsistencies in their papers.

For example, if you look at Paragraph 48 of their

objection, you know, they say there that this $2.4 million is vital for them to continue operating during the global pandemic, you know, not exactly a strong endorsement of their financial condition.

They also, in Paragraph 33 of their papers, talked about the issue of the ten-million-dollar deposit that an entity created by Mr. Woods and Mr. Wu, Constellation Hospitality Group, had submitted to the Court in connection with a bid it plans to make or has made for the debtors' assets at the sale hearing. Then they say that, you know, that shows that, clearly, these defendants do have financial wherewithal. But again, there's contradiction. If you look at Footnote 14, they, you know, stress to the Court, to be clear, this $10 million is not the debtors' money and it is not even money owned by Mr. Woods or Mr. Wu; it is owned by a separate entity, Constellation Hospitality Group. Now there are two problems with that, Your Honor:

First, I think it's pretty clear that Constellation is, in fact, an extension of Mr. Woods and Mr. Wu; it is their vehicle to bid on the debtors' assets.

Second, setting that aside, I think the defendants are, in fact, exactly correct that these are not the debtors' funds. These funds are in deposit in an escrow account, we have no right to them. And once they need to be released from the escrow account, we have no control over what will

happen to those funds. So the idea that they would provide us some comfort about an order of this Court or without some other change to the status quo is just -- it's illusory. That does not give us any comfort that these guys, that Messrs. Woods and Wu have the ability to satisfy a judgment.

Your Honor, before wrapping up, because there were a number of different points raised in the objection, I do want to just tick through my list on a couple of other arguments that have been raised.

First, the defendants argue that our claims are barred by laches, based on the fact that Mr. Tantleff, last summer, had accused the defendants of wrongfully submitting the loan application on behalf of Queensway and, you know, we didn't bring an action at that time.

The response to that, Your Honor, is that we know lot more now than we knew then. At the time, the actions appeared to have been wrongful, but we didn't have the documents that we now have. Also, at that time, Mr. Woods and Mr. Wu were (indiscernible) this was all an enforcement error that was due to a mixup. And they were also telling us that they were working to fix that problem as soon as possible, and once they fixed it, they would have the loan proceeds -- or they'd -- sorry -- they would have the loan obligation transferred to another entity.

That was a different time. And last summer, it may

have, and frankly, you know, probably would have been acceptable to the debtors to have the loan moved to another entity, if the defendants were willing to do that expeditiously. The only problem was that the defense -- that the debtors, at that time, the pre-bankruptcy debtors had no funding really because the defendants had not paid rent under their lease agreements with the debtors; and, therefore, we had no ability and certainly no appetite to commence costly litigation to try to recover these funds at that time. So now we're in bankruptcy and we have a duty and an obligation to try to recover assets that belong to the estate, and that's why we're pursuing these claims now. There's no laches or sitting on our rights that would bar these claims.

They have also argued, Your Honor, that we failed to join indispensable parties. I think that's a nonissue. Neither Urban Commons, LLC, nor any other entity is a transferee who has, you know, been specified as a party whose conduct is necessary as a component to any of our claims. We sued the appropriate responsible parties, including the two individuals who have orchestrated the fraud, the individual who signed the loan application and the entity EHT Asset Management that received the loan proceeds. Those are the only parties who are necessary for the Court to adjudicate these claims.

There's also, similarly, an argument that we can't

pierce the corporate veil and go after Mr. Woods and Mr. Wu. I think that is a -- you know, also a nonissue, Your Honor. We are alleging that Mr. Wood and Mr. Wu personally engaged in fraudulent conduct and they are liable to the debtors for that conduct.

We've also shown in the documents, including Exhibit R attached to the Farmer declaration, that payments of PPP loan proceeds, in fact, went to Mr. Woods and Mr. Wu. So there's no need to pierce the corporate veil in order to hold those two individuals liable.

The defendants also argue that somehow this litigation is inappropriate in light of the stay that we've agreed to with respect to other litigation in this case. That agreement had -- said nothing about preventing us from pursuing our Rule 2004 investigation and certainly nothing about our ability to pursue claims for fraudulent conduct that may have come to light as a result of that investigation. So I think that's a nonissue.

Also, they contend that, to the extent the Court were to grant an injunction, the debtors should be required to issue a bond in the full 2.4-million-dollar amount of the adjustment that we're seeking to recover. I, frankly, don't understand that argument. The whole idea is that the assets would be frozen and would not go anywhere; and, therefore, if we don't prevail, it would distributed back to the

defendants. So I don't understand why they seem to think that they could suffer $2.4 million of harm, such that a bond is necessary.

I think, Your Honor, that's all I have, in terms of an affirmative presentation. And I really did -- I -- my apologies for the maybe somewhat lengthy remarks, but I did want to make sure I addressed the key arguments that the defendants had made. I'm happy to answer any questions and of course respond to anything that defendants' counsel might raise.

(Pause in proceedings)

MR. STULMAN: Your Honor, I think you're muted.

THE COURT: Thank you. Yes, I was looking for something. I was muted and trying to find a document, so I apologize. It's been a long day.

All right. No, I don't have any questions, Mr. Bassett. Thank you very much.

I'll hear from the defendants.

MR. STULMAN: Good afternoon, Your Honor. For the record, Aaron Stulman with Potter, Anderson & Corroon, appearing on behalf of our clients EHT Management, LLC, Howard Wu, and Taylor Woods. Your Honor (indiscernible)

THE COURT: I'm a mess today. I'm sorry. I meant to mute myself.

MR. STULMAN: Not a problem.

THE COURT: (Indiscernible)

MR. STULMAN: I'm joined today, as you're aware, by one of my colleagues, Mr. John Sensing, who will be presenting the substantive argument in opposition to debtors' preliminary injunction motion. Obviously, we, at Potter Anderson, and also our clients, have worked very hard over the weekend and this week to put together our brief and declaration in support in an effort to get it to Your Honor as quickly as possible and in advance of the deadline set forth in the order. So we do hope that you had time to consider that and digest it a little bit before this hearing.

THE COURT: Well, I read it between the hours of 2 p.m. and 3 p.m., so it was a bit much to get -- well, not that it was a bit much. It was a lot to do, but I did it. I don't know if I've digested it yet, but I've certainly read it. And it was very helpful. And I do appreciate you getting it in early, that was excellent.

MR. STULMAN: Yeah, yeah, not a problem at all, Your Honor. We kind of anticipated that you might be (indiscernible) so it was important for us to try to get it in as quickly as possible.

Before yielding the podium to Mr. Sensing, I wanted to provide Your Honor with a little bit of context of where we are and why we're here. And Mr. Bassett alluded to this in his remarks. But as Your Honor is aware, our clients were

the targets of the 2004 motion and, as well, six adversary complaints that were filed at the outset of the cases. I appeared before Your Honor at a few hearings.

Our clients had also filed affirmative adversary complaints, 18 in total, against each of the debtor and nondebtor affiliate entities, asserting claims in excess of $200 million.

With respect to all of the adversary proceedings, the parties did stipulate, as Mr. Bassett noted, to stay the proceedings until 30 days after the sale hearing -- sorry, after entry of the final sale order or order approving the Chapter 11 plan date. In further stipulations, our clients gave up rights in order to kind of get that let's put swords down.

And if Your Honor, you know, was unclear as to what the intent was, at least from our perspective, one of the recitals in the stipulations directly addresses that. It says, and I'll quote:

> "The Urban Commons parties' desire to avoid expedited litigation during the pendency of the sale motion and to allow the debtors to focus on maximizing the value of their estates for the benefit of all constituents."

So, from a (indiscernible) perspective, that was the purpose of entering into the stipulations.

With respect to the 2004 motion, Your Honor, our clients complied with the terms of the order. I believe that we reviewed over 35,000 documents and produced over 12,000 document to the debtors.

Your Honor also may recall arguments from our clients, or various clients, at the bid procedures hearing and Your Honor overruled our objection and set a bid deadline of May 14th. Our clients then worked very hard to put together a bid that they did submit on May 14th, through the entity Constellation Hospitality Group, and tendered, along with that, a ten-million-dollar deposit.

Just (indiscernible) later was when all of this happened. We were informed by the debtors they'd be filing their complaint, we are moving to this hearing to freeze bank accounts of not only the sole corporate entity that's listed, but also the individual clients in their personal capacity. And then, you know, they did in fact file their complaint and their motion, an emergency motion, a motion to shorten.

We rushed over the weekend to try to get our clients' approval to unseal the documents that they had filed under seal, and even, you know, attempted, I guess, to potentially depose our clients on Tuesday, while, at the same time, serving deposition notices on our clients that's set for this Thursday, in connection with the sale hearing, even though, to date, our clients have not presented any evidence

with respect to the sale hearing and does not appear to be -- or at least are not planning on submitting any testimony at Friday's hearing.

So here we are, two days before the sale hearing, our clients have devoted all of their attention to finalizing their plan bid, but now have since been significantly distracted with expedited litigation, similar to what they had bargained for at the outset of the case (indiscernible) stayed until 30 days after entry of the sale order or the plan.

The debtors' actions in filing the complaint, the PI motion, the expedited relief, the noticing of depositions, moving as quickly as possible to get the documents publicly unsealed or publicly available are all litigation gamesmanship type moves that is going to attempt to foreclose any chance of a successful bid by Constellation Hospitality Group. And it -- you know, it is unfortunate (indiscernible) easier today. But I guess, from our perspective, it -- you know, it kind of appears to be somewhat of a -- somewhat of a sideshow.

(Indiscernible) out a potential bid in this matter appears to be inconsistent with the debtors' duty to maximize value, waste judicial resources, and estate resources. And it appears, at least, you know, from our perspective, to be procedurally improper and premature, in light of the fact

that a key entity, Urban Commons, LLC, and the QMLB entity are not included in the complaint.

Under these circumstances and with this context, Your Honor, I think there's enough already to deny the PI motion. But if I haven't convinced Your Honor yet, I would turn it over to Mr. Sensing now, who will (indiscernible) on the preliminary injunction.

THE COURT: Thank you, Mr. Stulman. No, I would like to hear from Mr. Sensing, please.

MR. SENSING: Thank you, Your Honor. Again, for the record, John Sensing of Potter, Anderson & Corroon for the defendants.

And may it please the Court, I appreciate Your Honor hearing my argument today. I've argued many motions for injunctive relief in the Court of Chancery, but I believe this is the first time that I've argued a motion for preliminary injunction in this Court. And Your Honor, this is a motion for preliminary injunction that the Court should deny.

And before I get into the reasons -- and there are many -- why an injunction should not issue here, I do want to briefly discuss the facts. I understand Your Honor has been very busy today. And while Your Honor has certainly read our brief, I know you've been rushed, I understand.

And what Your Honor has heard from Mr. Bassett, in

so many words, is that my clients -- well, really, Urban Commons, Your Honor, who is not a party here, knowingly and deliberately stole 2.4 million from the PPP Program, and we do not believe that's borne out by the evidence. And what has happened, Your Honor -- and again, this is all in our papers, so, if I'm repeating what you've already read, I apologize.

But when Queensway was sold to the Eagle Hospitality REIT in May of 2019, all of the payroll systems -- all of the payroll was supposed to be assigned to another nonparty, which is referred to "QMLB" -- Queen Mary Long Beach -- in the papers. That didn't happen, and Queensway admits that didn't happen, and said the (indiscernible) employees remained at Queensway, even though those employees were supposed to be QMLB's responsibility.

Because of this error, the PPP loan at issue was applied for on behalf of Queensway, instead of QMLB. It was applied for the entity in which these employees were recorded to have been paid, which was Queensway, rather than the actual paying party, which was QMLB. And that was an error and Urban Commons has admitted that and we've admitted that. I -- excuse me, not "we." Urban Commons has admitted that since July of 2020. But that's all that it was, it was a mistake.

And I'm sure Your Honor recalls, last spring, as

COVID was raging, the economy was locked down. The hospitality industry and lots of other industries were in total chaos. They had financially fallen off the cliff. There was tremendous uncertainty as to what would happen to hotels in the United States and throughout the world. And the proverbial ice cube was melting. Many entities in the hospitality industry were simply running out of money. And those facts are not evidence of fraud.

Now, in trying to save this business in these literally unprecedented times, Urban Commons made an error. But the documents that have been cherry-picked by Queensway, they do not demonstrate scienter, and in our view, they do not demonstrate fraud. And Queensway ignores -- and we cite these in our brief, Your Honor -- they ignore internal Urban Commons communications, where Tony Dawn (phonetic) sates that the PPP application for Queensway was made in error. That's internal. If Urban Commons was knowingly engaging in fraud, there's no reason for Mr. Dawn to make that statement.

And Urban Commons has tried to rectify the mistake. Urban Commons has been trying to work to have the loan transferred since July. And Urban Commons has advised the FDA of the issue. Again, these are not actions of somebody who's engaging in fraud. These are actions of folks who have made mistakes and who are trying to fix them.

So, with that background, Your Honor, I want to

turn now to the preliminary injunction motion itself. And I think the single most straightforward reason, maybe the "cleanest," I guess I'll say, to deny the motion is the doctrine of laches, which bars relief here. And Your Honor, this is not a close question. Again, I've litigated a lot of injunction cases in the Court of Chancery. I have never seen a more clean-cut case of laches.

We cited cases in our briefs where injunction motions were denied on the basis of laches, where the delay was a matter of weeks. Queensway delayed over ten months before it sought relief, and that delay has prejudiced the defendants. And that delay and that resulting prejudice is fatal to the issuance of relief today.

Mr. Bassett sort of hand-waved at it, I guess I would say, and said, yes, these things happened, but we didn't know all the facts, we didn't take any discovery. But what Mr. Tantleff did know and what he did in July is he sent a demand letter on July 9th of 2020, accusing Mr. Woods of fraud, claiming the PPP loan was, quote, "objectively fraudulent," and threatening to promptly sue and assert fraud claims.

He was aware, Mr. Tantleff, back in July of Urban Commons' position that this was a mistake; and, in July, he claimed not to believe that. Instead, he demanded that Urban Commons wire the PPP loan proceeds to Queensway by July 13th

of 2020. That didn't happen. But Queensway apparently didn't believe there was an emergency then because they didn't file suit, nor did Queensway believe there was an emergency in January, when it submitted Mr. Tantleff's first-day declaration and when the debtor submitted their 2004 motion, where they have repeated many of the same allegations that are in Mr. Tantleff's July demand, and that are repeated in their complaint; nor did Queensway apparently feel there was an emergency at the time the debtors filed multiple complaints against the master lessees, including Queen Mary Long Beach, at the outset of this bankruptcy case.

And finally, as has been mentioned, Urban Commons, Mr. Woods, and Mr. Wu, they produced documents relating to the PPP loan to Queensway on April 15th. Yet, Queensway didn't file suit, didn't seek a preliminary injunction until last Friday.

So why are we were today, Your Honor? Nothing has really changed with regard to defendants, as compared to last July. As we'll discuss -- as I'm going to discuss a little more later, Queensway really doesn't prevent any evidence of financial hardship on the part of defendants or insolvency. There's no real emergency.

What has happened, as my colleague Mr. Stulman has already explained, was that Mr. Woods and Mr. Wu, through their affiliate Constellation, submitted a Chapter 11 bid on

May 14th. We call that bid the "CHG bid" in our papers. And the debtors, apparently, don't want to complete a transaction with Constellation. So, four days after that bid is submitted, Queensway demands immediate payment of the PPP loan and then they filed suit last Friday.,

Mr. Woods and Mr. Wu would have much rather been focusing on their CHG bid. You've already heard from Mr. Stulman, to focus on bids like that is why the parties agreed to stay litigation for the duration of the sale process. And the motion -- this motion has distracted, candidly, Your Honor; it has distracted my clients during a critical time for the bid. Instead of making the bid as strong as they can, instead of focusing on nailing down perceived issues with the bid, my clients are dealing with phone calls from media outlets. They're spending time on conference calls with me and my colleagues over the weekend and throughout this week, while they're simultaneously trying to finalize the bid. And that's prejudicial, Your Honor. That's prejudicial to the bid, that is prejudicial to my clients.

So Queensway has delayed filing suit. That delay has prejudiced defendants, and laches mandates the denial of this motion. And that's a threshold issue, Your Honor. And if you agree with me, the Court needs go no farther. But there are several other threshold issues that we believe independently bar injunctive relief here.

Briefly, the indispensable party issue, as we sort of said, we state in the papers QMLB is an indispensable party. Urban Commons, I think, is an indispensable party. And we cite several cases to say, if you don't include an indispensable party, you can't issue injunctive relief. It was Urban Commons who was working with the parties to obtain the PPP loan. It was to Urban Commons -- and I think this is telling, Your Honor. It was to Urban Commons to whom Queensway originally issued its litigation threats. It was to Urban Commons who Queensway originally issued the 2004 motion.

And so what should have -- it's true, Urban Commons has had an involuntary petition filed against it. But that doesn't change the fact they're indispensable. But why Queensway didn't -- there was an automatic stay, so they can't just bring them in. But why Queensway did not seek a stay relief motion, even on an emergency basis, was because that would be too late. It would be after the stay hearing by the time they -- after the sale hearing by the time they got relief.

Another issue, Your Honor, regarding Urban Commons. Every single action that Mr. Woods or Mr. Wu took or didn't take was in their corporate capacity on behalf of Urban Commons. And this is in our papers, Your Honor. This is a major problem with Queensway's motion and their argument

today. They are seeking to freeze the assets of individual defendants for actions that they took in their corporate capacity.

Mr. Woods signed the PPP loan in -- on behalf of -- in his capacity for Urban Commons. Mr. Wu didn't sign it at all. And by asking the Court to freeze the assets of those individuals, Queensway is essentially asking the Court to pierce the corporate veil. But there are no veil piercing allegations in the complaint, there's no cause of action.

What this really is, Your Honor, is an attempt -- it's a prejudgment attachment, an attempt to get a prejudgment attachment of $2.4 million. And in our view and as we set forth in our papers, those remedies are limited to those provided under Delaware law, unless another statute governs. And Delaware is clear that you may not have the prejudgment attachment of assets unless it's to ensure the (indiscernible)

So, turning then to the issue of the federal statute governing, Mr. Bassett spent some time talking about Groupo. And I think there was a -- I think the issue and where his argument about Groupo and the cases he cited from New York fall apart is fraudulent transfer is a legal claim per Supreme Court precedent that we cite in our brief, it's not an equitable claim.

They're seeking -- Queensway is seeking today an

injunction based on a legal claim. And we cite multiple cases in our brief that hold a Federal Court has not authority to freeze a defendant's assets to ensure satisfaction of the judgment on legal claims. The cases cited by Queensway either deal with equitable claims or their post-judgment cases; the defendant has already got a judgment, it's seeking the Court's aid in collecting.

Now what I assume Mr. Bassett is going to reply is say, oh, we have a constructive trust claim in our papers. But they don't rely on that for the preliminary injunction, Your Honor. There's, I think, a sentence, and they say, oh, by the way, we have a constructive trust. That is not a reason to issue a preliminary injunction today.

And even if Section 105 provides the Court the power to issue an injunction, such an injunction is not necessary or appropriate here, Your Honor. The fact that you have a debtor in bankruptcy is no reason to grant an asset freeze simply because an adversary complaint seeking money damages has been filed.

So, turning now, Your Honor, to the standard for preliminary injunctions, as we've talked -- I've talked about several sort of threshold issues. The key issue in any injunction case is irreparable harm, and there is no irreparable harm here (indiscernible) as I've said before, this is money damages, Queensway wants $2.4 million. It has

wanted and demanded $2.4 million since July of last year. And almost invariably, and as we cite in our papers, the fact that a plaintiff is seeking money damages, that is almost always fatal to injunctive relief. And there is no reason for the Court to depart from that rule here.

In order from the Court to depart from that general rule, Queensway would have to make a specific showing that the defendants are either insolvent or that they're at risk to abscond. And now Queensway has provided a lot of innuendo, it's done quite a bit of speculation. They have not provided evidence. The defendants -- there's no evidence of absconding. The defendants have been actively involved in these cases. They've been part of the sale process. They've produced over 12,000 documents in response to a Rule 2004 motion. They have asserted their own claims.

Queensway sort of casts aspersions. They say, well, they may secrete assets, they may move assets around. But any plaintiff can make that allegation about any defendant. That is not a reason to issue a preliminary injunction. And again, they're sort of relying on their fraud claim to say, look, these guys are fraudsters and to trust them -- and again, there's no rule that all fraud claimants get asset -- get a pretrial asset (indiscernible) injunction.

Queensway has also speculated that the defendants

are struggling financially. There is nothing in the papers in support of that, Your Honor. You know, there's been talk about Constellation. You know, Mr. Bassett, I think himself in his presentation, said, look, Constellation really is Woods and Wu and they put in $10 million. But you can't pierce the veil, as we've said. Queensway's motion seems to argue that. I think Mr. Bassett disavowed that in his presentation, which I'm happy to hear. But that is a fact that they are able, via Constellation, to put $10 million into escrow. So I think that is evidence that they are not struggling financially. If anything, the record demonstrates that they're financially healthy. There's nothing in the record that they are not.

So, turning briefly to likelihood of success on the merits. Again, as I've discussed, if it's actually fraud, we just don't think there's scienter, we don't think there is intent there.

As to constructive fraud, as we set forth in our papers, we don't think Queensway has made the necessary showing for several elements of the claim.

And turning to balance of equities and the public interest, you know, Mr. Bassett sort of skipped those. I'm happy to rest on my papers there, as well. I do think, again, though, that the public interest supports treating Queensway like any other plaintiff seeking money damages. If

they can prove their claim, if they can obtain the judgment, if they can utilize enforcement and collection mechanisms, they can do so.

Briefly, I'll say on the bond paper -- on the bond issue, we're also happy to rest on our papers. And if Your Honor does not have any questions for me, I will stand down.

THE COURT: Thank you.

MR. SENSING: Thank you, Your Honor.

THE COURT: Reply?

MR. BASSETT: Yes, Your Honor. Thank you. Again, Nick Bassett from Paul Hastings on behalf of the debtors.

I'll address both Mr. Stulman's remarks and Mr. Sensing's, and I -- let me just say that I was fairly surprised by both of them.

THE COURT: You -- it's up to you, but you don't need to address Mr. Stulman's remarks, only --

MR. BASSETT: Thank you.

THE COURT: -- (indiscernible)

MR. BASSETT: Thank you, Your Honor.

As to the merits -- and again, the reason I was surprised by Mr Sensing's remarks is because I, again, heard him start with a recitation of the factual background. And incredibly, in my mind -- and Your Honor, I didn't know what we would find, to be totally honest with the Court, when we got the 2004 productions.

When an associate on our team started feeding me the documents that we found, to be totally honest, my jaw almost hit the floor. I mean, there are incredibly incriminating communications about what Mr. Woods and Mr. Wu were doing to conceal this clearly blatantly fraudulent conduct from the PPP lender and to make sure it didn't come to light.

And I just -- if the Court would indulge me, I'd like to put up a couple of documents. The first is Exhibit I to the Farmer declaration, if my colleague can put that up on the screen. Your Honor, this is the application that Mr. Woods submitted under the Paycheck Protection Program to Newtek, the PPP lender, under penalty of perjury, certifying that all the information in here was accurate, not only that he had the authority to present this application, but also that the proceeds obtained from this loan would be used for certain enumerated purposes, including paying payroll.

Your Honor, the legal entity name on this form, as some would imagine, is clearly Urban Commons Queensway, LLC, the debtor. There is no dispute in this case that, at the time of this application, Taylor Woods had no authority whatsoever to act on behalf of that entity. Yet, in filling out this form, which he signed, he put as his title he was, quote/unquote, "manager." Not only did he have no authority to act on behalf of Urban Commons Queensway, but that was a

made-up position.

He also, under owner name, listed UCQ Holding, LLC. that entity is not at all, in any way, the owner of Urban Commons Queensway. Yet, he said that they held a hundred percent ownership interest. And the reason for that, as we've shown in Exhibit M -- which I would like my colleague to pull quickly, if possible. What happened here, Your Honor, is that, when Newtek, in June, started asking -- actually, sorry. It was before exhibit -- it might be Exhibit N. I apologize. No, it's -- I'm sorry. Yeah, Exhibit M. I apologize, Your Honor. I'm doing this on the fly.

What you see here, Your Honor, is that Newtek began asking questions about the application, and they said they wanted information -- as you see in the email from a Glenn McGuire, on Tuesday, June 2nd, they wanted information for all affiliates for the entities who submitted the applications, including a list of all companies under common ownership. What did Urban Commons -- or what did the employee of Woods and Wu do? They responded in an email chain, taking off Newtek, saying that the problem for Urban Commons Queensway is the ultimate owner is EHT US1, the debtor, owned by the REIT, instead of the defendant EHT Asset Management, owned by Mr. Wood and Mr. Wu.

So how did they address that problem? They

responded by providing this PDF in Exhibit M to Newtek. The top of this document says these are the entities with common management of Howard Wu and Taylor Woods. They listed all of these entities, beginning with EHT, that are in their corporate universe, and added to it Urban Commons Queensway, even though that was 100 percent categorically false, as they had just acknowledged in the earlier email. So the idea that they can stand before the Court today and argue that what happened here is a mistake is just -- I don't even have words for it, Your Honor, because I don't know how they possibly think they can credibly do that.

Now, of course, because they have no response on the facts, they turn to, you know, a litany of arguments as to why they don't think (indiscernible) a preliminary injunction should issue. They start with laches. Your Honor, the problem with that argument is that -- well, there are several problems with it. First, we didn't have the evidence. These documents that I've just shown the Court were not in our possession. That is exactly why we diligently pursued a Rule 2004 investigation at the outset of this case, got the documents, reviewed the documents, and decided what to do with the documents.

Also, there's a continuing course of fraudulent conduct here. Not only do we not know what happened in July of 2020, when Mr. Tantleff first exchanged emails with Mr.

Woods and Wu, since then, they've continued to lie about what happened. They refused requests by Mr. Tantleff to return the funds. They refused requests to tell us where the funds went. They continued to repeat their false assertions that what happened here was an innocent mistake.

So there can be no laches under a circumstance when the fraud has been continuing and where the debtors acted prudently at every stage, including once these cases were filed, to pursue an investigation, to review the fruits of that investigation as soon as possible, and to seek relief from the Court thereafter as soon as possible. So I think laches, Your Honor, does not bar the relief that we're seeking.

I'm not going to spend too much time on the indispensable party issue. We have alleged that Mr. Woods and Mr. Wu committed fraud. The entity -- they are named defendants. The entity that is the transferee, critically, the transferee of these funds, EHT Asset Management, is a defendant in the lawsuit. I did not hear any argument, much less a compelling one, as to why specific other parties are indispensable to this litigation and that this litigation cannot move forward against the current defendants without those parties.

Turning to some of the arguments made with respect to irreparable harm and some of the threshold legal issues,

respectfully, I think Mr. Sensing was just incorrect in how he addressed Groupo Mexicano. First of all, he didn't address at all indicating that Groupo Mexicano -- and there's tons of this case law -- flat out does not apply in Bankruptcy Court. So it's really not -- you don't even need to get to the legal versus equitable claim issue.

If you do get to that issue, there's clear case law, including a case Mr. Sensing didn't address, the Judge Gerber decision and the decision from the Ninth Circuit that I referenced, where courts have held that Groupo Mexicano does not apply when a plaintiff has asserted equitable claims, which may include and, in fact, do include, and numerous courts have held, fraudulent transfer claims.

Also, although Mr. Sensing said (indiscernible) that somehow we're not relying on the other claims in our complaint, we are absolutely relying on all of the claims in our complaint for the relief that we're seeking. And those include claims that are undeniably equitable, including constructive trust and unjust enrichment.

Now the last point I'll address, I think, Your Honor, is just, you know, whether we've met the showing necessary to demonstrate irreparable harm. Mr. Sensing really did not address any relevant bankruptcy cases in his remarks. And the one case that I hade meant to address but didn't is the decision of your colleague Judge Gross in the

American Tissue case, and that's at 2006 W.L. 3498065, from 2006. And there, Judge Gross granted a preliminary injunction to a trustee, who had sued a party who had been accused of wrongfully being in possession of estate property, and the trustee had sought damages from that party as a result of a sale. And in granting a preliminary injunction, the Court said the duty of the Court -- and this is a quote:

> "The duty of the Court is to preserve the rights and positions of the parties pending a trial on the merits. In the bankruptcy setting, the Court should be especially sensitive to situations which could result in the disposition" -- "the dissipation" -- rather -- "of estate assets, and the Court's responsibility to prevent a wrongful taking of the bankruptcy assets provides it with a broader equitable power."

And you know, when it comes to situations in which courts have, in fact, granted the type of injunction that we are asking the Court to grant, Mr. Sensing also didn't address the Oxford Homes case that I mentioned. There is case law, Your Honor, where courts have granted this relief in circumstances with far less evidence that what we presented to the Court, particularly where there are assets that are liquid and are capable of ready dissipation. In that case, the Court granted the injunction even though there

was no evidence of a course of conduct and no evidence that assets were imminently being transferred away from the plaintiff.

So, Your Honor, I'm happy to address any questions that the Court might have. I don't think I have any other remarks for the moment. But again, I greatly appreciate your time.

THE COURT: Thank you.

All right. Thank you very much for the presentation. And I know you all worked very hard over the weekend, both before and over the weekend, to present it to the Court.

And let me be perfectly clear. These defendants' behavior is beyond the pale. It was reprehensible. It was a violation of public trust. It's an abuse of Congress' attempt to help businesses survive the pandemic, not to line the pockets of rich people.

There is an overwhelming likelihood of success on the merits, as far as I can see. Indeed, I'm considering reference -- I'm considering referring the matter to the U.S. Attorney for investigation for possible criminal conduct. And I do not say that lightly. I've done that twice in 15 years on the bench.

Also, the balance of equities -- or really, the balance of hardships -- excuse me -- favors the debtor. But

then you have to look at, you know, what's the possible harm to the debtor in not granting the objection -- or granting the injunction, and what's the possible harm to the defendant if you improperly grant an injunction against it.

Here, if I don't grant the injunction, the debtors run a real risk -- or I wouldn't say a real risk -- a possible risk of not being able to collect on this multi-million-dollar (indiscernible) that obviously harms the debtor, harms the debtors' estate and harms the (indiscernible)

If I do grant the objection -- or excuse me -- injunction, if I do grant the injunction wrongfully against the defendants here, I do cause some harm to them because it may interfere with their ability to participate in the sale process. I think that it's close in this particular instance on the balance of hardships, but I think that it favors the debtor.

And the public interest, my goodness, the public interest overwhelmingly supports an injunction here because this goes really to the heart of the integrity of this program. We all read the papers, we know people abused this program, and we know there were very little guardrails on due diligence (indiscernible) the Small Business Administration (indiscernible) there simply wasn't time. That does forgive what I think, at least at first glance -- and I think it will

survive first glance -- was clearly fraudulent behavior.

If this was a mistake, then I'm 98 pounds and still have all my hair. This was not a mistake. This was purposeful and fraudulent. But I don't find that there is irreparable harm here.

I'm going to assume Groupo Mexicano doesn't apply because I think that was -- I think if we get to the merits of all it, you know, we don't need to give that defense or defense point to the defendants. Also, laches, I don't think apply here remotely. This is not a situation where the debtors sat on their hands. It took them months to get this information. They were lied to for months. They had to fight every inch to get the 2004 discovery.

When they got it, it was a lot, they went through it, they found the issue, they found the proof, and they immediately acted on it. If this is laches, I mean, you can't bring an injunction (indiscernible) I mean, it's ridiculous. And I'm not going to reward people not telling the truth, not cooperating with discovery, and somehow give them a laches defense to an injunction, so laches is clearly not the case.

But I don't have sufficient evidence here on a preliminary injunction basis -- the case survives, but I'm talking on a preliminary injunction basis -- that there i8s a significant risk of dissipation of assets. And that's really

the only thing that would support irreparable harm in a case like this, where you are seeking damages.

Now whether or not, you know, again, Groupo Mexicano applies in Bankruptcy Court, whether fraudulent conveyances are equitable claims -- which is really an interesting question to me -- and I'm not at all sure what the answer to that is. I don't know if (indiscernible) Groupo Mexicano doesn't apply or (indiscernible) that fraudulent conveyance claims are equitable. And I'm nonetheless going to find on this record that there's no risk of irreparable harm sufficient to grant the injunction.

Now, if we were in State Court, we might be able -- I might be able to fashion a remedy where you can go back and forth. If you've got an overwhelming case on likelihood of success, you can have a lighter case on irreparable harm and still get your injunction. Unfortunately -- well, not unfortunately. But the law the Supreme Court has put in place is that each element has to be satisfied by at least a preponderance of the evidence. And I just don't find a preponderance of evidence on this record that would support a finding of irreparable harm.

But let me -- I mean, again, to be clear, this empiric victory for these defendants in this case. From what I've seen today, again, there's an overwhelming chance of the likelihood of success of the merits here. And if this thing

ever gets to trial, I don't think it looks good for the defendant.

Now, Your Honor, if there is some concrete reason to find that there's truly, you know, a risk of insolvency, basically, by the defendants, we can revisit the issue. But it would have to be a different record than the record I have today.

So, for all those reasons, the Court is going to deny the motion for a preliminary injunction. And the Court will enter an order probably tomorrow because it's late.

MR. DESPINS: Thank you, Your Honor. Luc Despins for the debtors. Would Your Honor entertain a motion to expedite this proceeding? You've already said that the evidence is overwhelming and --

THE COURT: Well, you know, I would prefer -- I certainly don't see why you would have to have a two-year, you know, discovery record for, you know, a 2.6-million- -- or whatever it is -- dollar claim. You would eat that up in attorneys' fees before we would ever, you know, get any real money in the (indiscernible) of the plan. I'm certainly open to that.

But what I would ask you to do is try to negotiate something with the other side. And if you can't negotiate a scheduling order that makes sense, you can either submit dueling scheduling orders or we can have a -- we can have a

Zoom call and we can talk about it.

MR. DESPINS: Thank you, Your Honor .

THE COURT: I think I know where those negotiations are going, which is nowhere, but I'm going to make you -- I'm going to make you try anyway, Mr. Despins.

MR. DESPINS: Thank you, Your Honor. Very good, Judge.

THE COURT: You're welcome. I know you're not happy.

Anything else for today?

MR. DESPINS: No.

THE COURT: All right. See you Friday at 10.

COUNSEL: Thank you, Your Honor. Thank you, Your Honor.

UNIDENTIFIED: (Indiscernible) Your Honor.,

THE COURT: Oh, we need (indiscernible) 8, because we're taking the Singapore witnesses first. Yes, I do know that. Thank you for reminding me.

All right. We're adjourned.

UNIDENTIFIED: Thank you very much.

(proceedings concluded at 4:13 p.m.)

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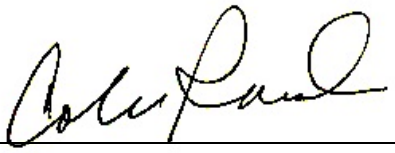
CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



May 27, 2021

Coleen Rand, AAERT Cert. No. 341

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