

16-132-cv

United States Court of Appeals
for the
Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellees,

v.

PREVEZON HOLDINGS LTD., ET AL.,

Defendants-Appellees,

v.

HERMITAGE CAPITAL MANAGEMENT LTD.,

Movant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EMERGENCY MOTION OF DEFENDANT-APPELLEES TO MODIFY STAY

MICHAEL B. MUKASEY
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Tel: (212) 909-6000

Attorneys for Defendants-Appellees

Defendants-Appellees Prevezon Holdings Ltd., et al. (collectively, “Prevezon”) hereby move the Court for an order modifying its January 25, 2016 order staying the proceedings in Case No. 13 Civ. 6326 in the U.S. District Court for the Southern District of New York pending the adjudication of this appeal for the limited purpose of deposing Andrei Alexeevich Pavlov, an individual now within the District Court’s jurisdiction who is both central to the Government’s case against Prevezon and available only for a brief period. *See* Doc. No. 78 (the “Stay Order”). Third-party Hermitage Capital Management Ltd. (“HCML”)’s appeal was argued on June 9, 2016, and remains sub judice. Counsel for the Government and counsel for HCML have both been notified of this motion but have not yet indicated whether they oppose the relief sought herein.

As the Court is aware, on September 10, 2013, the United States filed a civil action against Prevezon in the District Court, seeking the forfeiture of allegedly laundered funds resulting from “an elaborate tax refund fraud scheme” perpetrated by corrupt Russian officials and international criminals who “defrauded Russian taxpayers of approximately . . . \$230 million in United States dollars” using falsified lawsuits and fraudulently-obtained tax refunds and obtained an ex parte freezing order over the defendants’ worldwide assets. A-303–04, A-316–20.¹ Mr.

¹ Unless otherwise indicated, all citations to appendices are as they appear in HCML’s opening brief on the merits.

Pavlov is a central figure in the scheme alleged by the Government, appearing in five separate paragraphs of its Second Amended Complaint (“SAC”). *See* A-311–12 ¶¶ 22–23, A-316 ¶ 34, A-317 ¶ 36, A-321 ¶ 50. In brief, the SAC alleges that Mr. Pavlov traveled with the members of a shadowy criminal syndicate – identified only as the “Organization” – to plan an alleged fraud against the Russian Treasury, that Mr. Pavlov purported to represent Hermitage companies in Russian litigations even though the companies had no knowledge of or relationship with Mr. Pavlov, and that it was Mr. Pavlov who appeared on behalf of entities suing those Hermitage companies in the sham litigations that form the basis of the fraud alleged by the Government. *Id.*

Mr. Pavlov, who resides in Russia, was served with a grand jury subpoena when he entered the United States to attend an international conference in Washington, D.C. Mr. Pavlov approached counsel for Prevezon in Washington D.C., Baker & Hostetler LLP, and disclosed his presence. He is scheduled to appear before the grand jury in the Southern District of New York on Wednesday, September 21 at noon.² His stay within the jurisdiction of the District Court,

² The subpoena also demands that Mr. Pavlov produce his correspondence with, among others, Mr. Dmitry Klyuev, another individual mentioned repeatedly in the SAC, and Ms. Natalia Veselnitskaya, Prevezon’s Russian counsel. *See* Exhibit A (Grand Jury subpoena); A-311–12 ¶¶ 22–23, A-318 ¶ 39, A-321–22 ¶ 54, A-326 ¶ 71. Although not the subject of this motion, Prevezon has moved in District Court challenging the propriety of the Government’s prior

however, is likely to be brief. Upon information and belief, Mr. Pavlov will return to Russia immediately after he gives testimony before the grand jury, leaving the jurisdiction of the District Court and frustrating Prevezon's ability to obtain his testimony. Although Mr. Pavlov has not expressed any opposition to returning to making himself available to be deposed at a later date, the likelihood and/or success of any such attempts in the future is speculative at best.

In granting HCML's request for a stay, this Court considered the test set forth in *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167 (2d Cir. 2007), which includes (1) "whether the stay applicant has made a strong showing that he is likely to succeed on the merits"; (2) "whether the applicant will be irreparably injured absent a stay"; (3) "whether issuance of the stay will substantially injure the other parties interested in the proceeding"; and (4) "the public interest." *Id.* at 170 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). *See* Stay Order at 1. This Court has applied those same factors in considering whether to vacate a stay. *See In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d at 170; *Mohammed v. Reno*, 309 F.3d 95, 100 (2d Cir. 2002). Here, the Court's imposition of the stay pending resolution of this appeal will substantially injure Prevezon by depriving it of an unusual opportunity to depose a figure central to the Government's

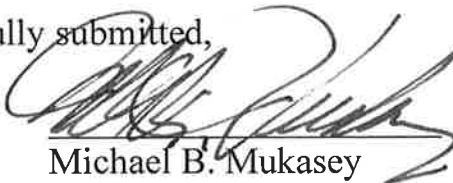
use of grand jury subpoenas in connection with this case. *See* S.D.N.Y. Case No. 13 Civ. 6326, Doc. Nos. 464, 531.

allegations that would otherwise be unavailable. The public interest in fair adjudication and equal access to factual information necessary for litigation also weighs heavily in favor of modifying the stay, as any deprivation will not be born equally by both parties in the District Court; the Government is empowered to seek disclosure of the grand jury proceedings if it desires. *See* Fed. R. Crim. P. 6(e)(3)(E). Finally, Prevezon may be irreparably injured absent a limited modification of the stay, as there is no guarantee that it will have another opportunity to depose Mr. Pavlov once he leaves the Southern District of New York.

For the foregoing reasons, Prevezon seeks a modification of the stay previously entered by this Court on January 25, 2016 for the limited purpose of deposing Mr. Pavlov.

Dated: September 20, 2016
New York, New York

Respectfully submitted,



Michael B. Mukasey

Michael B. Mukasey
Jennifer F. Mintz
Jarrod L. Schaeffer

DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022

(212) 909-6000
mbmukasey@debevoise.com

*Attorneys for Defendants-
Appellees*

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 16-132

Caption [use short title]

Motion for: limited modification of the stay of the action United States of America v. Prevezon Holdings, Ltd.
before the District Court.

Set forth below precise, complete statement of relief sought:

Defendant Prevezon Holdings, Ltd. seeks a limited modification of
the stay of the action below pending the resolution of
the interlocutory appeal currently before this Court for the
limited purpose of deposing Mr. Andrei Alexeevich Pavlov
who is in this country for a limited period of time.

MOVING PARTY: Prevezon Holdings, Ltd. et al.

☐ Plaintiff

☒ Defendant

☐ Appellant/Petitioner

☒ Appellee/Respondent

OPPOSING PARTY: Hermitage Capital Management

MOVING ATTORNEY: Michael B. Mukasey

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: Jacob W. Buchdahl

Debevoise & Plimpton LLP

Susman Godfrey LLP

919 3rd Ave., New York, NY 10022

1301 Ave. of the Americas, 32nd Fl., New York, NY 10019

212-909-6000; mbmukasey@debevoise.com

212-336-8342; jbuchdahl@susmangodfrey.com

Court-Judge/Agency appealed from: Southern District of New York, Hon. Thomas P. Griesa (case has since been reassigned to Hon. William H. Pauley III)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes

☐ No (explain):

Opposing counsel's position on motion:

☐ Unopposed

☐ Opposed

☒ Don't Know

Does opposing counsel intend to file a response:

☐ Yes

☐ No

☒ Don't Know

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:**

Has request for relief been made below?

☐ Yes

☒ No

Has this relief been previously sought in this Court?

☐ Yes

☒ No

Requested return date and explanation of emergency: 9/21/2016

Upon information and belief, Mr. Pavlov, who is present for the purpose of appearing

before the Grand Jury, will depart the United States on September 21, 2016.

Prevezon seeks emergency leave to depose Mr. Pavlov prior to his departure.

Is oral argument on motion requested?

☐ Yes

☒ No

(requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☒ Yes

☐ No

If yes, enter date: 06/09/2016

Signature of Moving Attorney:

Date: 9/20/16

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

EXHIBIT A

Grand Jury Subpoena

United States District Court
SOUTHERN DISTRICT OF NEW YORK

TO: Andrei Alexeevich Pavlov
DOB August 7, 1977

GREETINGS:

WE COMMAND YOU that all and singular business and excuses being laid aside, you appear and attend before the GRAND JURY of the people of the United States for the Southern District of New York, at the United States Courthouse, 40 Foley Square, Room 220, in the Borough of Manhattan, City of New York, New York, in the Southern District of New York, at the following date, time and place:

Appearance Date: September 21, 2016 Appearance Time: 12:00 p.m.

to testify and give evidence in regard to an alleged violation of :
18 U.S.C. §§ 1343, 1344, 1349, 1956, 1957.

and not to depart the Grand Jury without leave thereof, or of the United States Attorney, and that you bring with you and produce at the above time and place the following:

Personal appearance is required.

In addition, please bring the documents requested in the attached rider.

Failure to attend and produce any items hereby demanded will constitute contempt of court and will subject you to civil sanctions and criminal penalties, in addition to other penalties of the Law.

DATED: New York, New York
September 15, 2016


PREET BHARARA

United States Attorney for the
Southern District of New York


Paul M. Monteleoni

Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Telephone: 212-637-2219



RIDER

(Grand Jury Subpoena to Andrei Alexeevich Pavlov)

Please bring with you to the grand jury true and correct copies of the following documents. Please provide documents in native electronic format if possible.

1. All non-privileged documents in your possession relating to the following cases (the "Specified Cases"):
 - a. St. Petersburg Arbitration Court Case No. A56-22479/2007
 - b. Kazan Arbitration Court Case No. A65-26689/2007
 - c. Criminal Case No. 678540
 - d. Criminal Case No. 152979
 - e. Moscow Arbitration Court Case No. A40-12329/06-45-117
 - f. Moscow Arbitration Court Case No. A40-16205/06-137-172
 - g. Moscow Arbitration Court Case No. A40-16204/06-137-172
 - h. Moscow Arbitration Court Case No. A40-12328/06
 - i. Kazan Arbitration Court Case No. A65-6851/2006-CG1-17
2. All non-privileged correspondence in your possession with any of the following persons regarding the Specified Cases or regarding the subject matter of any of the Specified Cases:
 - a. Oleg Urzhumtsev
 - b. Yuri Nikolaev
 - c. Oleg Kirilenko
 - d. Sergei Orlov
 - e. Dimitri Klyuev
 - f. Natalia Veselnitskaya

Advice of Rights

1. The grand jury is conducting an investigation of possible violations of Federal criminal laws involving wire fraud in violation of 18 U.S.C. § 1343, bank fraud in violation of 18 U.S.C. § 1344, wire and bank fraud conspiracy in violation of 18 U.S.C. § 1349, and/or money laundering in violation of 18 U.S.C. §§ 1956, 1957.
2. You may refuse to answer any question if a truthful answer to the question would tend to incriminate you.
3. Anything that you do say may be used against you by the grand jury or in a subsequent legal proceeding.
4. If you have a lawyer, the grand jury will permit you a reasonable opportunity to step outside the grand jury room to consult with your lawyer if you so desire.
5. If you would like a lawyer but do not have funds to retain one, you may make an application to the United States Magistrate Judge who will decide whether to appoint a lawyer to represent you.

Повестка в суд от Большого Жюри

**Окружной Суд Соединённых Штатов Америки
Южный Округ города Нью-Йорк**

Кому: Андрею Алексеевичу Павлову

Дата рождения: 7 Августа 1977

ПРИВЕТСТВИЯ:

МЫ ПОВЕЛЕВАЕМ ВАМ отложить в сторону все ваши дела и оправдания и предстать перед членами Большого Жюри присяжных Соединенных Штатов Америки Южного Округа Нью-Йорка в здании Окружного Суда Соединенных Штатов, находящегося по адресу 40 Фолей Сквер, Комната 220, район Манхэттен, город Нью-Йорк, штат Нью-Йорк, в Южном Округе Нью-Йорка в следующую дату и время:

Дата явки: 21 Сентября 2016 Время явки: 12:00

чтобы засвидетельствовать и дать показания в деле о предполагаемом нарушении 18 пункта кодекса США, параграфов 1343, 1344, 1349, 1956, 1957.

и не покидать Большое Жюри без разрешения, в том числе от федерального прокурора, и чтобы Вы принесли с собой и предоставили в указанное время и в указанном месте следующее:

Личная явка обязательна.

Неявка и непредоставление запрашиваемых доказательств будет рассматриваться как неуважение к суду и повлечет за собой гражданские санкции и уголовные наказания в дополнение к иным мерам наказания предусматриваемых законом.

Датировано: Нью-Йорк, Нью-Йорк

15 Сентября 2016

подпись

Preet Bharara

федеральный прокурор

Южного Округа Нью-Йорка

Paul M. Monteleoni

помощник федерального прокурора

Один Ст. Эндрюз Плаза

Нью-Йорк, Нью-Йорк

Печать Окружного
Суда Соединённых
Штатов Америки
и подпись

Поправка

(Повестка в суд от Большого Жюри для Андрея Алексеевича Павлова)

Пожалуйста принесите с собой для Большого Жюри подлинные и истинные копии следующих документов. Пожалуйста, по возможности, предоставьте документы в их оригинальном электронном формате.

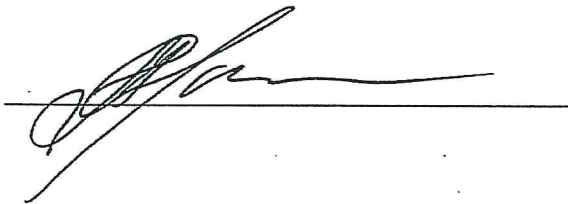
1. Все непривилегированные документы находящиеся в Вашем владении и относящиеся к следующим судебным делам ("Указанные Дела"):
 - a. Дело Санкт-Петербургского Арбитражного суда No. A56-22479/2007
 - b. Дело Арбитражного суда Казани No. A65-26689/2007
 - c. Уголовное дело No. 678540
 - d. Уголовное дело No. 152979
 - e. Дело Московского Арбитражного суда No. A40-12329/06-45-117
 - f. Дело Московского Арбитражного суда No. A40-16205/06-137-172
 - g. Дело Московского Арбитражного суда No. A40-16204/06-137-172
 - h. Дело Московского Арбитражного суда No. A40-12328/06
 - i. Дело Арбитражного суда Казани No. A65-6851/2006-CG1-17
2. Всю непривилегированную переписку, находящуюся в Вашем владении, с любым из нижеперечисленных лиц по поводу "Указанных Дел" либо об обсуждении любого из "Указанных Дел":
 - a. Олег Уржумцев
 - b. Юрий Николаев
 - c. Олег Кириленко
 - d. Сергей Орлов
 - e. Дмитрий Ключев
 - f. Наталия Весельнитская

Уведомление О Наличии Прав

1. Большое Жюри присяжных проводит расследование о возможных нарушениях криминальных законов, вовлекающих мошенничество с использованием современных средств связи, нарушающее 18 пункт кодекса США параграф 1343, сговор в банковском мошенничестве, нарушающим 18 пункт кодекса США параграф 1344, мошенничество с использованием современных средств связи и сговор в банковском мошенничестве нарушающее 18 пункт кодекса США параграф 1349, и/или отмывание денег, нарушающее 18 пункт кодекса США параграфы 1956, 1957.
2. У Вас есть право отказаться отвечать на любые вопросы, если правдивый ответ может изобличить Вас.
3. Все, что Вы скажете может быть использовано против Вас Большим Жюри или в последующем процессуальном действии.
4. Если у Вас есть адвокат, Большое Жюри предоставит Вам разумную возможность выйти из комнаты и проконсультироваться с Вашим адвокатом, если Вы изъявите желание.
5. Если Вы хотите нанять адвоката, но у Вас нет денежных средств, Вы можете подать ходатайство мировому судье который решит назначить Вам адвоката для Вашего представления или нет.

CERTIFICATE OF ACCURACY

I, Aliona Salauyova, hereby attest that I am a Per Diem Certified Russian/English Interpreter with the Court of the State of New York and that I have translated the attached English document (Grand Jury Subpoena, 3 pages) into Russian. I also attest that to the best of my knowledge, ability, and belief this translation is true, accurate, and complete translation of the attached English document that was provided to me.



STATE OF NEW YORK)

) ss

COUNTY OF NEW YORK)

Subscribed and sworn to before me this 16th day of September, 2016.


Notary Public

KATHY CHIODI
Commissioner of Deeds, City of New York
No. 3-6881
Certificate Filed in New York County
Commission Expires December 7 2016

My Commission Expires:

12/7/16