

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

CORE BTS, INC.,

Petitioner,

-against-

HARPDATA LLC,

Respondent.

Index No. _____/2109

VERIFIED PETITION

TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK:

Petitioner Core BTS, Inc. (“Core”), by its attorneys, Schwartz Sladkus Reich Greenberg Atlas LLP, as and for its verified petition, alleges as follows:

Nature of the Proceeding

1. This proceeding seeks to restrain respondent HarpData LLC (“Harp”) from transferring to unauthorized third-parties, or in any way compromising, certain equipment, identified in the annexed **Exhibit 1** (the “Equipment”), in its possession, custody, or control, pending an arbitration to be commenced between the parties.

2. The Equipment at the heart of this matter was purchased by Core from non-party Cisco Systems, Inc. (“Cisco”) for resale to Harp, which, in turn, would resell the Equipment to a *specific* end user.

3. To maintain the integrity of its product and brand, Cisco demanded that Core ensure the Equipment is transferred only to a specific end user—and no other party.

4. Core purchased the Equipment from Cisco and delivered it to Harp, but Harp has failed to pay to Core the nearly \$4.4 million purchase price, nor has Harp duly transferred the Equipment to the authorized end user.

5. Upon information and belief, Harp intends to sell the Equipment to un-authorized third-parties and/or to black-market traders, which would have a *catastrophic* effect on Core: not only would it render ineffectual any arbitration award in Core's favor compelling Harp to transfer the Equipment to the authorized end users, but, more gravely, it would destroy Core's vital business relationship with Cisco and ruin Core's reputation in the marketplace as a trusted equipment reseller that can be relied upon to ensure delivery to specific end users.

6. To prevent such mischief pending arbitration, Core seeks—*and needs*—immediate relief restraining Harp from disposing of, or in any way compromising, the Equipment.

The Parties

7. Petitioner Core is a technology consulting company that, among other business activities, purchases and then resells Cisco products and services. As such, Core's business, including its reputation and goodwill in the market, depends upon its critical relationship with Cisco.

8. Respondent Harp is engaged in a business similar to that of Core.

Jurisdiction and Venue

9. This Court has jurisdiction over this proceeding under CPLR Article 75 because Core imminently will be commencing an arbitration against Harp under the terms of the parties' June 6, 2018 Master Products and Services Agreement (the "Agreement"), a copy of which is annexed as **Exhibit 2**.¹

10. Venue in this county is proper because Core transacts business in New York County (CPLR 7502[a] and [c]).

¹ Under the terms of the Agreement, any dispute between Core and Harp arising from or relating to the Agreement must be resolved by arbitration (Exhibit 2 at Section 20).

Factual Background

11. In June 2018, Core and Harp entered into the Agreement, under which Core would purchase products (including the Equipment) from Cisco and resell it to Harp, which, in turn, would deliver them to two specific end users: Erie County Medical Center (“ECMC”) and Kaleida Health (“Kaleida”).

12. All parties involved—Core, Harp, ECMC, Kaleida, and Cisco—collaborated on the development and execution of the multi-layered transaction.

13. The Agreement further provided that Harp was to order products (including the Equipment) from Core by submitting a “Purchase Order” specifying the precise products and services desired, the requested quantities, and applicable pricing.

14. Upon receipt of Harp’s Purchase Order, Core would process the order after confirming with Cisco that the order was approved.

15. As part of that confirmation process, Core and Cisco entered into two partner-to-partner sales exception agreements, dated June 27, 2018 (the “P2PSEs”), copies of which are annexed as **Exhibit 3**.

16. Under the two P2PSEs, Core agreed that *the specific products being purchased from Cisco for resale to Harp—including the Equipment—could be resold and transferred only to ECMC or Kaleida*, respectively.

17. Cisco insisted on entering into the P2PSEs as a condition of Core reselling the Equipment to Harp (rather than reselling directly to end users), since Cisco has a *very* strong interest in ensuring that its products and services reach reputable end users that do not dilute or otherwise adversely impact Cisco’s position in the marketplace.

18. Because its relationship with Cisco is vital to its business, Core likewise has a very strong interest here in ensuring that the specific Equipment at issue reaches only Kaleida; if the specific Equipment purchased by Core from Cisco fails to reach the authorized end user (Kaleida), Core will be in breach of the P2PSEs, and its reputation, goodwill, and critical relationship with Cisco will be damaged.

19. Because all parties involved—Core, Harp, ECMC, Kaleida, and Cisco—collaborated in developing and executing the deal, Harp was well-aware of the P2PSEs and their critical role in securing the Equipment from Cisco.

20. In June 2018, Harp submitted to Core “Purchase Order No. 1013” for purchase of Cisco products (including the Equipment), which Harp would then resell to ECMC and Kaleida (in accordance with their respective P2PSEs).

21. Core, in turn, submitted “Purchase Order No. 1013” to Cisco and purchased the products (including the Equipment) for approximately \$4,400,000.

22. Upon receipt from Cisco, Core dutifully transferred the Cisco products (including the Equipment) to Harp for resale and transfer to the only two end users permitted under the P2PSEs: ECMC and Kaleida.

23. In accordance with the Agreement, Core then invoiced Harp \$4,378,345.75 for “Purchase Order No. 1013” (Exhibit 2 at Section 5.2).

24. Harp transferred to ECMC the products earmarked for resale to ECMC, and ECMC actually paid Harp approximately \$1,470,000 for those products.

25. To date, Harp has not paid any portion of the \$4,378,345.75 it owes Core—not even the \$1,470,000 ECMC has paid it.

26. Incredibly, Harp also not transferred the Equipment to Kaleida; instead, Harp continues to hold the Equipment in its possession, custody, or control.

27. Upon information and belief, Harp intends to sell the Equipment to unauthorized third-parties and/or to black market traders, causing Core to breach the P2PSEs and jeopardizing Core's business relationship with Cisco and its marketplace goodwill.

The Court Should Issue An Injunction in Aid of Arbitration

28. Core intends to commence arbitration proceedings imminently to: (i) recover the \$4,378,345.75 owed by Harp; and, more critically (ii) compel Harp to deliver the Equipment only to Kaleida (or to return the Equipment to Core for return to Cisco, if Cisco will even agree to accept it).

29. But unless Harp is enjoined from disposing of or tampering with the Equipment, any award Core obtains through arbitration will be rendered ineffectual (CPLR 7502).

***Without The Requested Injunction,
Any Arbitration Award Will Be Rendered Ineffectual***

30. As alleged hereinabove, it is *essential*—both contractually and as a matter of Core's business reputation and goodwill—that the *specific* Equipment at issue here be delivered to Kaleida only.

31. Under the P2PSEs, Core is bound contractually to ensure that this specific Equipment is transferred only to Kaleida; if it is not, Core will be in default of its obligations under the P2PSEs and exposed to Cisco's claims for breach thereof.

32. Even more critically, if the specific Equipment at issue here is transferred to any party other than Kaleida, Core's critical relationship with Cisco—the very lifeline of its business—will be damaged permanently, and its reputation and goodwill in the marketplace as a reseller will be ruined.

33. That is the reason Core will be seeking an arbitration award compelling Harp to transfer the Equipment to Kaleida only (or to return the Equipment to Core for return to Cisco). And that is the reason that, pending such arbitration, Harp **must** be enjoined from transferring the Equipment to any party other than Kaleida.²

Although Not Required To Do So, Core Also Meets The Standard For Preliminary Injunctive Relief

34. While to obtain an injunction in aid of arbitration, Core need only show that an eventual arbitration award in its favor “**may** be rendered ineffectual” (CPLR 7502[c] [emphasis added]), Core also is entitled to injunctive relief under the familiar standards for a preliminary injunction (CPLR 6301).

35. Core will succeed on the merits of its claims against Harp. Under the Agreement, Harp agreed to order the Equipment from Core, deliver the Equipment to authorized end users, and pay Core for the Equipment upon receipt of Core’s invoice (Exhibit 2 at Section 5.2) Harp indeed ordered and accepted the Equipment from Core, but it has failed and refused to deliver the Equipment to Kaleida and it has failed and refused to pay Core the nearly \$4,400,000 it owes for the Equipment, which it continues to retain. Core will succeed at arbitration.

36. Core will suffer irreparable harm absent an injunction. If Harp is permitted to sell the Equipment to third-parties other than Kaleida (or in any way compromise the Equipment), not only will Core be exposed to Cisco’s claims for breach of the P2PSEs, its critical relationship with Cisco—the very lifeblood of Core’s business—will be harmed irreparably, and its reputation and goodwill in the marketplace as a stellar products and services reseller will be ruined. That must not be allowed to happen.

² Harp also must be enjoined from tampering with the Equipment in any manner that could result in Cisco’s refusal to accept a return of the Equipment.

37. The equities weigh definitively in favor of the requested injunction. If Harp intends to honor its contractual obligation to transfer the Equipment to Kaleida, Harp will suffer no prejudice at all from the requested injunction.³ In contrast, if Harp is not enjoined from disposing of the Equipment and is permitted to sell the Equipment to an unauthorized third-party or black market purchaser (as Harp, upon information and belief, intends to do), Core will be in *de facto* breach of the P2PSEs, its relationship with Cisco will be forever spoiled, and its reputation and goodwill in the marketplace as an equipment reseller that can be relied upon to deliver equipment to specific end users will be **ruined**. The equities are lopsided in favor of an injunction.

WHEREFORE, Core demands judgment granting its motion for an injunction in aid of arbitration, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 12, 2019

SCHWARTZ SLADKUS REICH
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³ Core does not object to Harp transferring the Equipment to Kaleida, provided that Harp *first* pays to Core the outstanding and overdue amount of \$4,378,345.75.

Verification

STATE OF INDIANA)
 ss.:
COUNTY OF MARION)

JASON EICKMANN, being duly sworn, deposes and says:

I am a Senior Vice President and the General Counsel of Petitioner Core BTS, Inc. I have read the foregoing Petition and know the contents thereof, which are true to my knowledge, except as to those matters alleged upon information and belief, and as to those matters I believe them to be true.



Jason Eickmann

Sworn to before me this
12 day of April 2019



Notary Public

