

**AT&T Mobility Holdings B.V. v Grupo Salinas
Telecom, S.A. de C.V.**

2024 NY Slip Op 33991(U)

November 7, 2024

Supreme Court, New York County

Docket Number: Index No. 650330/2020

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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|--|---------------------------------------|--------------------|
| AT&T MOBILITY HOLDINGS B.V., | INDEX NO. | <u>650330/2020</u> |
| Plaintiff, | MOTION DATE | <u>--</u> |
| - v - | MOTION SEQ. NO. | <u>016 017</u> |
| GRUPO SALINAS TELECOM, S.A. DE C.V. and GRUPO SALINAS TELECOM II, S.A. DE C.V., | DECISION + ORDER ON MOTION | |
| Defendants. | | |

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 016) 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 796, 797, 801, 808, 809, 810, 817, 819, 820, 825, 826, 827, 828, 829, 830, 831, 832, 833

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 017) 811, 812, 813, 814, 815, 816, 818, 821, 822, 823, 824, 836, 838

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In motion seq. no. 016 AT&T Mobility Holdings B.V. (AT&T) moves to (1) hold Grupo Salinas Telecom, S.A. de C.V. and Grupo Salinas Telecom II, S.A. de C.V (together, Grupo) in contempt, pursuant to Judiciary Law § 753, imposing a fine of \$15,000 per day until they demonstrate compliance with this Court's post-judgment discovery order (NYSCEF 774) and turnover order (NYSCEF 756) and awarding AT&T \$823,629.50¹ in attorneys' fees incurred from February 2024 through July 2024 in attempting to enforce the court's Judgment (NYSCEF 577); (2) impose sanctions on Grupo pursuant to CPLR 3126 and common law, in the form of adverse inferences that

¹ In reply to Grupo's opposition, AT&T reduced the amount of attorneys' fees sought to \$296,801.95. (NYSCEF 833, AT&T Reply Memo at 11; see *also* NYSCEF 827, Updated Quinn Emanuel time logs; NYSCEF 829, Updated DNZ time logs.)

Banco Azteca, S.A., Institucion de Banca Multiple (Banco Azteca), Grupo Elektra S.A.B. de C.V. (Grupo Elektra), Ricardo Salinas Pliego, and Servicios Tplay S.A. de C.V. (STP) are Grupo's alter egos; and (3) hold that transmission of pleadings, orders and other filings in this action to Grupo's former counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP (Paul Weiss), and to Grupo's in house counsel, Francisco Borrego, constitutes sufficient and proper service on Grupo and its alter egos.

In motion seq. no. 017, Grupo moves to vacate the court's turnover order (NYSCEF 756), order appointing a receiver (NYSCEF 755), and order relieving Paul Weiss to the extent that the court ordered that Paul Weiss "shall continue to receive service of documents in this case and forward" them to Grupo and directing AT&T to "also serve all documents" on Grupo's "General Counsel Francisco Borrego by email." (NYSCEF 764.)

For the reasons stated on the record on October 31, 2024, AT&T's motion is granted. Since Grupo failed to comply with this court's order to produce documents regarding alter egos, AT&T is entitled to an adverse inference that Banco Azteca, Grupo Elektra, Ricardo Salinas Pliego, and STP are Grupo's alter egos. AT&T is also awarded a penalty of \$15,000 per business day from July 12, 2024, the date of the first violation of the court's post-judgment discovery order to October 31, 2024 as compensation for the cost of noncompliance. This daily penalty shall be paid to AT&T.

Additionally, as Grupo's contempt continues, beginning November 7, 2024, Grupo shall continue to pay to AT&T \$15,000 per business day until Grupo provides the information. This penalty shall double daily, starting on November 8, 2024 and shall continue to double each business day that Grupo is in contempt. (*See Ardent Harmony*

Fund Inc. v Barrick, 2019 NY Slip Op. 34007[U], 3 [Sup Ct, Nassau County 2019] [imposing a fine on defendant in the amount of \$25,000 per day until compliance].) Of course, if Grupo satisfies the Judgment, the penalty will cease. Such penalty is capped at the amount of the Judgment.

As to attorneys' fees, AT&T is entitled to the reduced fee it seeks of \$296,801.95. To determine the reasonableness of the requested attorneys' fee, the court is guided by the following factors: (1) "the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented"; (2) "the lawyer's experience, ability, and reputation"; (3) "the amount involved and benefit resulting to the client from the services"; (4) "the customary fee charged by the Bar for similar services"; (5) "the contingency or certainty of compensation"; (6) "the results obtained"; and (7) "the responsibility involved." (*Matter of Freeman*, 34 NY2d 1, 9 [1974].) These factors apply in commercial cases. (Commercial Litigation in New York § 61:7, Criteria for Determining Reasonableness [5th ed, Oct. 2023 update].) The court also relies on its own knowledge of hourly rates charged by private firms who practice in the Commercial Division, New York County. (See *Miele v New York State Teamster Conference Pension & Retirement Fund*, 831 F2d 407, 409 [2d Cir 1987].)

The court finds that the hours expended by AT&T's attorneys - 238.6 hours of work performed by Quinn Emanuel Urquhart & Sullivan, LLP (six attorneys, one paralegal, and two support staff) and approx. 33 hours of work performed by Dorf Nelson & Zauderer LLP (two attorneys) reasonable for the work conducted from July 12, 2024 through September 30, 2024 in the attempt to enforce the judgment. The court

rejects Grupo's objection; the court does not find the number of people working on this matter per se unreasonable.

Finally, for the reasons stated on the record, Grupo's motion is denied. The court does not lack jurisdiction over Grupo in a post-judgment enforcement proceeding.

Section 9.3 of the Stock Purchase Agreement (SPA) states, in relevant part,

"Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement, exclusively in the United States District Court for the Southern District of New York or any New York State court sitting in the Borough of Manhattan, of The City of New York (the 'Chosen Courts'), and solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement (a) irrevocably submits to the exclusive (except with respect to actions to enforce any judgment issued by the Chosen Courts in accordance with this Section 9.3) jurisdiction of the Chosen Courts, thereby expressly and unconditionally waiving any other jurisdiction to which it may be entitled, either by reason of domicile (present or future) or otherwise." (NYSCEF 813, SPA at 94.)

Grupo asserts that the phrase "except with respect to actions to enforce any judgment issued by the Chosen Courts in accordance with this Section 9.3" divested the court of jurisdiction once this matter became one of post-judgment enforcement. The court disagrees. This exception immediately follows the word "exclusive," meaning that enforcement proceedings are not limited to this court and may be brought in other courts and the judgment enforced by other courts. It does not exclude this court from having jurisdiction over post-judgment enforcement proceedings. This makes sense since plaintiff will seek justice from a court where defendants' assets can be found.

Further, the court declines to vacate its order directing the notice of court filings in this action to Paul Weiss and Borrego. As stated, the court has

jurisdiction over Grupo and these transmissions constitute notice in this action, not service of process for jurisdictional purposes.

Accordingly, it is

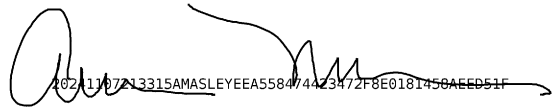
ORDERED that AT&T's motion is granted; and it is further

ORDERED that AT&T is entitled to an adverse inference that Banco Azteca, Grupo Elektra, Ricardo Salinas Pliego, and STP are Grupo's alter egos; and it is further

ORDERED that Grupo is sanctioned in the amount of \$15,000 per business day from July 12, 2024 to October 31, 2024 and attorneys' fees of \$296,801.95; AT&T shall submit a proposed judgment accordingly within 7 days of the date of this order; and it is further

ORDERED that Grupo is sanctioned in the amount of \$15,000 per business day until Grupo provides the information with the penalty doubling daily, starting on November 8, 2024 each business day that Grupo is in contempt; and it is further

ORDERED that defendant Grupo's motion is denied.



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11/7/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE