

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MIG, LLC and ITC Cellular, LLC,¹
Debtors.

Chapter 11

Case No. 14-11605 (KG)
(Jointly Administered)

MIG, LLC and ITC Cellular, LLC,
Plaintiffs,

v.

SHENTON PARK COMPANY, INC.,
Defendant,

Adv. No. 15-_____ (KG)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), as Debtors-Plaintiffs in this adversary proceeding bring this action for declaratory and injunctive relief pursuant to sections 105 and 362 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 65 of the Federal Rules of Civil Procedure (the “**Federal Rules**”) seeking (a) a declaration that the automatic stay operates to prevent Shenton Park Company, Inc. (“**Shenton Park**”) from taking actions to have a liquidator appointed over the Debtors’ sole equity holder, Caucuscom Ventures L.P. (“**Caucuscom**”) or extension of the automatic stay under section 362(a) of the Bankruptcy Code to such action; and/or (b) a

¹ The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor’s federal tax identification number, are: MIG, LLC. (5301); and ITC Cellular, LLC (4611).
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temporary restraining order and preliminary injunction pursuant to section 105(a) of the Bankruptcy Code, Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 65 of the Federal Rules of Civil Procedure (the “**Federal Rules**”), enjoining Shenton Park during the pendency of these Chapter 11 Cases from proceeding with prosecution of and requiring them to take all actions necessary to stay, adjourn, or otherwise withdraw the Application for Winding Up and Appointment of Liquidator (the “**BVI Application**”) filed by Shenton Park in the British Virgin Islands, Case Number BVIHCM 2015/0075 (the “**BVI Liquidator Action**”), which apparently seeks the winding up and appointment of a liquidator over Caucuscom.

Summary of the Action

1. This is an adversary proceeding brought pursuant to sections 105 and 362 of title 11 of the United States Code (the “**Bankruptcy Code**”) Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) seeking (i) a declaration that the automatic stay operates to prevent Shenton Park from proceeding with the BVI Liquidator Action or an extension of the automatic stay under section 362(a) of the Bankruptcy Code and/or (ii) injunctive relief under section 105(a) of the Bankruptcy Code and Bankruptcy Rule 7065, to enjoin and restrain Shenton Park from taking actions to have a liquidator appointed over Caucuscom.

2. The Debtors believe that Shenton Park’s efforts to seek liquidation of Caucuscom, would be devastating to the Debtors’ ability, as debtors-in-possession, to operate their business, administer their Chapter 11 Cases, and negotiate a plan of reorganization that maximizes the value of the Debtors’ estates. Thus, the Debtors have commenced this adversary proceeding to protect the Debtors’ estates.

Jurisdiction, Venue and Statutory Predicates

3. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

4. This adversary proceeding is initiated under Bankruptcy Rule 7001(7), and the relief requested herein may be ordered pursuant to Bankruptcy Rule 7065 and sections 105(a) and 362(a) of the Bankruptcy Code.

Background

A. The Chapter 11 Cases

5. On June 30, 2014 (the “**Petition Date**”), the Debtors commenced these cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors have continued in possession of their properties and are operating and managing their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. On July 21, 2014, the United States Trustee appointed the Official Committee of Unsecured Creditors (the “**Committee**”). No request has been made for the appointment of a trustee or examiner.

B. The Debtors-Plaintiffs

8. Debtor MIG is a limited liability company organized under the laws of the State of Delaware.

9. MIG owns 100% of the membership interests in Debtor ITC Cellular, a Delaware limited liability company.

10. ITC Cellular in turn owns 46% of the membership interests of non-debtor International Telcell Cellular, LLC (“**International Telcell**”).

11. International Telcell, directly and indirectly through its wholly owned non-debtor subsidiary, Telcell Wireless, LLC, owns all the issued and outstanding equity interests of non-debtor Magticom Ltd. (“**Magticom**”), the leading mobile telephone company in the Republic of Georgia.

12. The remaining ownership stake of International Telcell is held 51% by Dr. George Jokhtaberidze (“**Dr. Jokhtaberidze**”), a Georgian national who founded Magticom, and 3% by Gemstone Management Ltd., an entity formed by certain former management of Magticom.

13. The Debtors’ value is derived almost solely from their interests in International Telcell and, indirectly, Magticom.

C. The Defendant and Caucuscom.

14. Caucuscom owns 100% of the membership interests in MIG. The Debtors do not believe that Caucuscom has any assets other than its membership interests in MIG.

15. Shenton Park is a BVI company controlled by Swiss Partners Advisors Ltd., as Trustee.

16. Shenton Park, along with Yola Investments S.a.r.l. (“**Yola**”) and Gtel L.P. (“**Gtel**”) are limited partners of Caucuscom (collectively, the “**Caucuscom Limited Partners**”).

17. Caucus Carry Management LP (“**CCM**”) is the general partner of Caucuscom.

18. Caucus Telecom Management Ltd. (“**CTM**”) is the general partner of CCM and formed pursuant to a joint venture agreement between Yola and Gtel.

19. Pursuant to its formation documents, the Caucuscom partnership was set to expire on August 15, 2013. Under the terms of the Caucuscom partnership agreement, the consent of each of the Caucuscom Limited Partners – Yola, Gtel, and Shenton Park – was required to extend the partnership.

20. Through a series of amendments, the Caucuscom Limited Partners in Caucuscom unanimously elected to extend the termination of Caucuscom until April 15, 2014.

21. On April 24, 2014, Shenton Park informed MIG that it had not agreed to extend the Caucuscom partnership past its April 15, 2014 expiration.

22. Although the term of the Caucuscom partnership has terminated, Caucuscom continues to exist until liquidated by its general partner or order of a BVI court

D. Governance of International Telcell

23. The Debtors' rights with respect to its indirect interest in Magticom are governed by the Purchase and Sale Agreement between ITC Cellular and Dr. Jokhtaberidze, dated January 15, 2009 (the “PSA”) and the Second Amended and Restated Limited Liability Company Agreement of International Telcell Cellular, LLC, dated January 15, 2009 (the “**International Telcell LLC Agreement**”).

24. The International Telcell LLC Agreement provides that Dr. Jokhtaberidze and the Debtors exercise joint management control over International Telcell regarding all key decisions related to the management of Magticom on a 50/50 basis, provided that certain change of control provisions have not been triggered.

25. As part of the International Telcell LLC Agreement, both the Debtors and Dr. Jokhtaberidze are bound by non-alienation and change of control provisions regarding their

interests in Magticom, as specifically enumerated in the PSA and International Telcell LLC Agreement.

26. These provisions, as they relate to the Debtors, are triggered by the occurrence of certain events with respect to certain entities in MIG's and ITC Cellular's ownership chain (each an "**ITC Cellular Change of Control**").

27. Specifically, an ITC Cellular Change of Control occurs upon the occurrence of the following events:

- (a) Caucuscom ceasing to beneficially own in the aggregate, directly or indirectly at least 46% of the Equity Securities of the Company;
- (b) Caucus Carry ceasing to be the general partner of Caucuscom;
- (c) Yola and Gtel ceasing to hold 100% of limited partner interests in Caucus Carry;
- (d) Caucus Telecom ceasing to be the general partner of Caucus Carry;
- (e) Yola and Gtel ceasing to hold 100% of the Equity Securities of Caucus Telecom;
- (f) Yola and Gtel ceasing to hold at least 35% of the limited partnership interests in Caucuscom Ventures;
- (g) Yola and Gtel (acting jointly through their direct and indirect Subsidiaries) ceasing to direct or cause direction (i) of management and policies of ITC Cellular or (ii) of the exercise and performance of ITC Cellular's rights and obligations under the International Telcell LLC Agreement; and
- (h) any Change of Control of Yola, Gtel, Caucus Telecom, Caucus Carry or Caucuscom.

International Telcell LLC Agreement at ¶ 8.1; PSA at Article 1.

F. The BVI Application for Winding Up of Caucuscom and Appointment of Liquidator

28. On June 19, 2015, Shenton Park initiated the BVI Liquidator Action.

29. A hearing to consider Shenton Park's Application is scheduled for September 16, 2015.

30. No notice of the BVI Application or BVI Liquidator Action was provided to the Debtors.

31. The relief sought in the BVI Liquidator Action may cause an ITC Cellular Change of Control.

Count I

Declaratory Relief Under Section 362

32. The Debtors repeat and reallege the allegations contained in paragraphs 1 through 27 as if fully set forth herein.

33. Section 362(a)(1) of the Bankruptcy Code operates as a stay, "applicable to all entities," of "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1).

34. Section 362(a)(3) of the Bankruptcy Code operates as a stay, "applicable to all entities," of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3).

35. Section 362 has been applied to extend the automatic stay protections to non-debtors.

36. The circumstances justify extending the protections of the automatic stay to Caucuscom during the pendency of these Chapter 11 Cases. In the absence of the requested relief, the prosecution of the BVI Liquidator Action and appointment of a liquidator for

Caucuscom may cause an ITC Cellular Change of Control and irreparably harm the Debtors. The appointment of a liquidator and the winding up of Caucuscom would have a highly disruptive effect on the Debtors' ability, as debtors-in-possession, to administer their Chapter 11 Cases in this Court and to maintain the operations of their business, thereby causing harm to the Debtors' estates and creditors.

37. Although Caucuscom is not a debtor in these Chapter 11 Cases, should the BVI Liquidator Action continue against Caucuscom, the Debtors' restructuring efforts will be entirely frustrated, as the value of the Debtors' estates would be severely diminished if the BVI Liquidator Action in fact causes an ITC Cellular Change of Control.

38. If an ITC Cellular Change of Control occurs, the chances of a successful reorganization will be substantially impaired, if not foreclosed entirely. The Debtors' right to receive the critical income stream will be eliminated, and their right to pursue legal action to protect that income stream will be eradicated. In addition, the value of the equity interests comprising the Debtors' key assets – their direct and indirect ownership of International Telcell and Magticom – will be substantially diminished.

39. There exists a substantial controversy between the Debtors and Shenton Park regarding the BVI Liquidator Action of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant. In light of the continued prosecution of the BVI Liquidator Action against Caucuscom, and a scheduled hearing on September 16, 2015 to consider Shenton Park's Application, a prompt judicial determination of the respective rights and duties of the parties is necessary and appropriate.

40. Accordingly, the Debtors are entitled to a declaratory judgment extending the automatic stay under section 362 of the Bankruptcy Code to enjoin Shenton Park from seeking a liquidation and/or winding up of Caucuscom.

Count II

**Injunctive Relief Under Section 105(a),
Fed. R. Bankr. P. 7065 and Fed. R. Civ. P. 65**

41. Debtors repeat and reallege paragraphs 1-36 above as if fully set forth herein.

42. Alternatively, in the event the Court declines to extend the automatic stay pursuant to § 362, the Debtors seek an injunction pursuant to 11 U.S.C. § 105 barring the continued prosecution of BVI Liquidator Action during the pendency of these Chapter 11 Cases.

43. Section 105(a) of the Bankruptcy Code authorizes the court to issue “any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Relief under § 105 is particularly appropriate where it would assist the debtor confirm a plan of reorganization and/or preserve property of the debtor's estate.

44. Fed. R. Civ. P. 65, made applicable to this adversary proceeding by Fed. R. Bankr. P. 7065, also permits this Court to enter a temporary restraining order and/or preliminary injunction where: (i) there is a likelihood of successful reorganization; (ii) irreparable harm to the Debtors’ estates would result in the absence of an injunction; (iii) the harm to the Debtors outweighs any alleged harm to Shenton Park; and (iv) the public interest weighs in favor of the Debtors.

45. The Debtors can establish a likelihood of a successful reorganization. The Debtors are working cooperatively with their creditors and parties in interest to build the consensus necessary to successfully reorganize in a way that maximizes the value of the Debtors’ estates and towards a resolution to these bankruptcy proceedings.

46. The BVI Liquidator Action, if allowed to continue, threatens to harm creditors and to cause irreparable injury to the Debtors' estates. A liquidation of Caucuscom would have a highly disruptive effect on the Debtors' ability, as debtors-in-possession, to administer their Chapter 11 Cases in this Court and to maintain the operations of their business, thereby causing harm to the Debtors' estates and creditors.

47. The harm to the Debtors and their estates if a preliminary injunction is not issued significantly outweighs any harm that could be suffered by Shenton Park.

48. An injunction preventing prosecution of the BVI Liquidator Action will also serve the public interest by ensuring that the Debtors' estates are maximized for the benefit of all creditors in accordance with a confirmed chapter 11 plan.

49. The Debtors therefore seek entry of a temporary restraining order and preliminary injunction enjoining Shenton Park from proceeding with prosecution of and requiring Shenton Park to take all actions necessary to stay, adjourn, or otherwise withdraw the BVI Liquidator Action during the pendency of these Chapter 11 Cases.

Statement Pursuant to Del. Bankr. L.R. 7016-2

50. The Debtors consent to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Conclusion

WHEREFORE, for all the foregoing reasons, the Debtors respectfully request: (i) a declaration that the automatic stay operates to prevent Shenton Park from proceeding with the BVI Liquidator Action or an extension of the automatic stay under Bankruptcy Code Section 362(a) and/or (ii) injunctive relief under section 105(a) of the Bankruptcy Code and Bankruptcy

Rule 7065, to enjoin and restrain Shenton Park from taking actions to have a liquidator appointed over Caucuscom and (iii) such other relief as the Court may find just and proper.

Dated: August 19, 2015

GREENBERG TRAURIG, LLP

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