

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re: CASE No. 14-29027-BKC-EPK
TRIGEANT HOLDINGS, LTD., et al., Chapter 11
(Jointly Administered)
Debtors.

**ODFJELL TANKERS AS' REPLY IN SUPPORT OF MOTION FOR PARTIAL
RELIEF FROM AUTOMATIC STAY**

Odfjell Tankers AS' ("Odfjell" or "Movant") submits its reply ("Reply") in support of its motion for partial relief from automatic stay ("Motion") [ECF No. 203], and says:

1. The Debtor Trigeant, Ltd. ("Trigeant" or "Debtor") is but one among eight defendants in the pending Texas litigation. The other Texas Defendants are:
 - a. Harry Sargeant III;
 - b. International Oil Shipping Company, Inc. ("IOSC");
 - c. Sargeant Marine, Inc. ("Sargeant Marine");
 - c. Sargeant Trading Limited Co. ("Sargeant Trading");
 - d. BTB Refining LLC ("BTB");
 - e. Linda Collins¹; and,
 - f. Charles R. Weber Company, Inc. ("CR Weber")² (collectively, the "Texas Defendants").
2. All of the foregoing Texas Defendants have appeared in the Texas litigation and the Texas court has properly acquired jurisdiction over all eight Texas Defendants.

¹ Linda Collins, who was employed by Trigeant in Houston, handled operations and was identified as the "go to" contact for these time charters up until the time the charters were repudiated.

² With the exception of CR Weber, which was the broker that negotiated charters on behalf of the Sargeant Group companies and who contacted Odfjell USA in Houston and negotiated the charters at issue on behalf of the Sargeant Group companies, the other Texas Defendants are sometimes referred to herein as the Sargeant Group.

3. None of the Texas Defendants challenged venue or sought transfer under the doctrine of *forum non conveniens*.
4. At its core, Odfjell alleges that with Harry Sargeant III at the helm: (i) Trigeant and other Sargeant entities approached Odfjell through Odfjell's agent in Houston, Texas; (ii) induced Odfjell to charter two chemical tankers for two years to the Sargeant Group; (iii) created a sham corporation, International Oil Shipping Company, Inc. ("IOSC"); and (iv) designated IOSC as nominee to the Sargeant Group contracts for the purpose of defrauding Odfjell. (Unbeknownst to Odfjell, during this same time period, Trigeant was simultaneously and fraudulently transferring its primary asset to another new Sargeant Group company, BTB Refining, in an attempt to evade debts to other creditors.)³
5. With more than a year left on each of the charters, the pattern of fraud continued:
 - a. In response to an inquiry concerning a late charter hire payment, Odfjell was assured in March 2009 that payment for charter hire was forthcoming from "funds in the Middle East."
 - b. In response to another inquiry concerning a late charter hire payment, Odfjell was advised in April 2009 that Harry Sargeant III, had advised that payment of March charter hire would be made promptly.

³ In this context Odfjell acknowledges that Harry Sargeant III's original answer was made subject to his special appearance; however, he has since waived his special appearance. More particularly, Texas Rule of Civil Procedure 120a(2) provides that a special appearance "shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard". Texas courts refer to this as the due-order-of-hearing requirement. If a defendant obtains a hearing on a motion that seeks affirmative relief unrelated to his special appearance before obtaining a hearing and ruling on the special appearance, a general appearance has been entered and the special appearance is waived. *Trenz v. Peter Paul Petroleum Co.*, 388 SW 3d 796 (Tex. App. – Houston [1st Dist.] 2012, no pet. (holding that obtaining a hearing on motion to dismiss waived special appearance). Without first seeking a hearing on his special appearance, Harry Sargeant III filed a Motion to Compel Arbitration and had same heard in the Texas proceedings. By doing so, Harry Sargeant III waived his special appearance.

- c. On May 18, 2009, International Oil Trading Company (“IOTC”), yet another Sargeant company which had previously been represented to Odfjell as being part of the “Sargeant Group,” made a direct charter hire payment to Odfjell totaling \$1,272,860.00.
 - d. On August 13, 2009, after failing to make charter hire payments for July and August, IOSC notified Odfjell that it had “exhausted all corporate funds”, that “bankruptcy [was] imminent”, and that the amounts owed under the Charter Party Agreements would not be paid. IOSC also acknowledged that its failure to pay constituted default under the charter parties.
 - e. On August 21, 2009, Houston based attorney John Michael of Vinson & Elkins notified Odfjell that IOSC had exhausted all available corporate funds, was insolvent, and was in default under the charter parties. While admitting that IOSC had not yet filed for bankruptcy, counsel advised that due to IOSC’s “state of insolvency”, it could not agree on any damages resulting from the breach.
6. After Odfjell filed the Texas lawsuit in June 2011, IOSC as the “signatory” to the charter parties at issue invoked the arbitration provision contained in the charter parties and initiated an arbitration proceeding in London (“IOSC Arbitration”). Upon receipt of IOSC’s demand to arbitrate, Odfjell agreed to stay its claims against IOSC (and IOSC only) pending the outcome of the London arbitration. However, on motion of the other Sargeant Group Texas Defendants, including Trigeant, the Texas Court stayed ALL proceedings in Texas pending the IOSC Arbitration. (During the pendency of the IOSC Arbitration, the other Sargeant Group Texas Defendants, including Trigeant, sought to compel arbitration in London of Odfjell’s claims against them. The London Arbitrators found that they did not have subject matter jurisdiction over those claims and awarded Odfjell its costs. That award of costs underlies Odfjell’s claim no. 11 against Trigeant to be paid in full under the Plan.)

7. IOSC did not dispute that the charter parties were breached. Thus, the London Arbitration was limited to the issue of damages. Ultimately, Odfjell obtained a \$7,854,953.14 arbitration award (plus interest) against IOSC. Thus, IOSC's liability already has been established and Odfjell's compensatory damages for IOSC's breach of contract have been liquidated.
8. Before Odfjell could seek to lift the Sargeant Group's stay in the Texas litigation and reduce its arbitration award to judgment, Trigeant filed for bankruptcy in Florida.
9. Odfjell filed its proof of claim no. 10 ("Claim Number 10" or "Claim") to preserve its \$7.8 million liability claim against Trigeant as one of the eight Defendants in the Texas litigation.
10. Trigeant objected to Odfjell's Claim No. 10. [ECF No. 156]
11. Odfjell thereupon filed the stay relief Motion now before this Court in order to proceed with the Texas litigation.
12. Thereafter, Trigeant and Odfjell agreed to cap Odfjell's Claim and continue its stay relief Motion in order to facilitate Plan confirmation for the benefit of all creditors. Order Continuing Hearing on Certain Odfjell Matters and Granting Related Relief [ECF No. 386].
13. The Plan has been confirmed and Odfjell's Motion is now ripe.
14. The parties agree that stay relief is subject to the Court's discretion following a weighing and balancing of potential prejudice as between the Debtor and the Movant.

15. The parties also agree that the Court must determine that there is some merit to the Claim as a part of its analysis.
16. Regarding the merits issue, Trigeant asserts that Odfjell's 2011 First Amended Petition ("Complaint") in the Texas litigation, which forms the basis for Odfjell's Claim, fails to state a claim because its allegations "omitted...critical facts" and are "totally baseless," such that Odfjell could never achieve success on the merits. [Response, ECF No. 627 at 2-3].
17. Notwithstanding these supposed critical pleading deficiencies, Trigeant did not file a motion to dismiss for failure to state a claim, a motion for judgment on the pleadings, or a motion for summary judgment in the Texas litigation - instead, it chose simply to file an answer to the Complaint raising no affirmative defenses. See Trigeant Answer attached hereto.
18. As recognized in *Izzarelli v. Rexene Products Co. (In re Rexene)*, 141 B.R. 574, 578 (Bankr. Del. 1992) regarding the issue of potential success on the merits "[t]he required showing is very slight."
19. Here, the record before this Court is replete with allegations that Harry Sargeant III exercised complete dominion and control over various Sargeant Group entities, including Trigeant, and engaged in an ongoing pattern of self-dealing, fraud, misrepresentation, breach of fiduciary duty, gross mismanagement and other torts in order to line his own pockets. See generally, e.g., Amended Adversary Complaint styled *Trigeant, Ltd. v. Harry Sargeant III, et al.*, (the "AC") [ECF No. 13]. Indeed, in the AC, Trigeant accuses Harry Sargeant III of the very same type of conduct alleged by Odfjell (e.g. "instead of paying PDVSA for the seven

cargos of oil, which was a valid debt, Harry used those funds to purchase the Coastal refinery,” *id.* at 9, Harry employed numerous alter ego companies that were shams “created and in fact used for the improper purpose of misleading creditors,” *id.* at 13, Harry “took Jet Fuel Contract profits from IOTC that were owed to Trigeant and, instead of paying Trigeant...Harry formed BTB and used the Jet Fuel Contract proceeds to capitalize BTB,” *id.* at 18, “BTB was created and in fact used for the improper purpose of perpetrating a fraud upon creditors,” *id.* at 21, Harry “redomiciled [BTB] from being a Florida LLC to a Texas LLC [as] Texas law makes it more difficult to collect on a judgment against a member of [a Texas] LLC,” *id.* at 12, and “in the space of 18 months, by August 2012, two fraud-based judgments were entered against Harry involving approximately \$60 million in claims,” *id.* at 23.

20. Further, Trigeant has judicially admitted or alleged that:

- at all times material hereto, without other Sargeant family involvement or interference, Harry Sargeant III had full and unfettered managerial control over all affairs of the Trigeant entities, including their finances, the refinery’s operations and all issues pertaining to the PDVSA supply contracts. (*id.* at ¶ 22).
- Harry Sargeant III “grossly mismanaged Trigeant”. (*id.* at ¶ 22).
- Harry Sargeant III had indisputable control over Trigeant’s operations and finances at the Refinery. (*id.* at ¶ 19).
- Harry Sargeant III had ultimate managerial responsibility for Trigeant’s operations and exerted control over Trigeant. (*id.* at Exhibit A, Finding of Fact No. 113).
- Harry Sargeant III had unfettered control over all business, financial and legal matters related to Trigeant. (*id.* at ¶ 95).

- Harry Sargeant III spent more than eight years engaged in a consistent ongoing fraudulent scheme, directed against the Trigeant entities and others. (*id.* at ¶ 43).
 - Harry Sargeant III's continuing fraud started with his misrepresentations regarding the viability of the Jet Fuel Contracts and continued unimpeded through the fraudulent transfer mortgage foreclosure sale of Trigeant's Corpus Christi refinery. (*id.* at ¶ 43).
 - Harry Sargeant III changed BTB's domicile from a Florida limited liability company to a Texas limited liability company on July 25, 2011 in the midst of the Al-Saleh fraud trial to prevent a judgment creditor from exercising favorable Florida collection rights against BTB. (*id.* at ¶ 8).
 - Harry Sargeant III engaged in an ongoing and continuing pattern of fraud intended to damage Trigeant that started with his misrepresentations about the Jet Fuel Contracts and which grew and continued until the present. (*id.* at ¶ 77).
 - Harry Sargeant III's ongoing and continuing pattern of detrimental conduct against Trigeant and others are foundational to the legal claims of the Trigeant entities and Sargeant family members. (*id.* at ¶ 76).
 - Harry Sargeant III engaged in a continuing and ongoing pattern of self-dealing, breaches of fiduciary duties and other tort based causes of action. (*id.* at ¶ 76).
21. Given this record, it is not a great leap to suspect that Harry Sargeant III by and through Sargeant companies, including Trigeant, perpetrated a fraud against Odfjell, that Harry Sargeant III treated Trigeant and other Sargeant Group companies as his alter egos, that Trigeant is well aware of its exposure, and that Odfjell has a sufficient likelihood of success on the merits to warrant stay relief.
22. Indeed, not only does Trigeant's Plan acknowledge that IOSC was among the Harry Sargeant III controlled entities, it provides that "Reorganized Trigeant will indemnify Harry III, BTB and IOSC in respect of the Odfjell Claim." Plan [ECF No. 567-8] Exhibit 1.2(www) at 6.

23. Finally, Odfjell submits that Trigeant cannot reconcile its opposition to Odfjell's motion to lift the stay with either: (i) the allegations Trigeant has made against Harry Sargeant III while in control of Trigeant; or, (ii) the fact that Trigeant's Consenting Owners previously urged this Court:

For purposes of judicial efficiency in assuring that all claims between and among the various family interests on both sides are accommodated and resolved in one legal setting, the Consenting Owners ask this Court to abstain from holding evidentiary proceedings on the matters raised in [Consenting Owners' Objection to IOTC and BTB Claims Filed Against Trigeant Ltd., ECF No. 401], and defer same to the Circuit Court of Palm Beach County with respect to not just the Big Case, but the derivative lawsuits filed by Harry against the Consenting Owners and Sargeant family owned entities as well. To the extent the Court agrees that the state court is best suited to resolve these numerous and complex issues and cases, the Consenting Owners would submit the automatic stay should be lifted as against any claims pending in those lawsuits against the Trigeant debtors.⁴

24. Trigeant clearly is desperate to keep the parade of Harry III horrors from a Texas jury regardless of the prejudice to Odfjell or duplication of judicial effort.
25. The prejudice to Odfjell is manifest. Denial of stay relief most likely will result in Odfjell having to try its case twice - once before this court as to Trigeant's liability and once again in Texas as to the liability of the remaining seven Texas Defendants.

WHEREFORE Odfjell respectfully requests that its Motion be granted together with such other and further relief as this Court shall deem appropriate.

I HERBY CERTIFY that I am admitted to the bar of the United States District Court for the Southern District of Florida and that I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was served on June 7, 2015 *via* this Court's CM/ECF system on all those CM/ECF registered persons who have appeared in this Case.

By: /s/ Paul J. McMahon
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was served on June 8, 2015 *via* this Court's CM/ECF system on all those CM/ECF registered persons who have appeared in this Case.

By: /s/ Paul J. McMahon
Paul J. McMahon

CAUSE NO. 2011-33239

ODFJELL TANKERS AS	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
HARRY SARGEANT III; SARGEANT	§	
MARINE, INC.; TRIGEANT, LTD.,	§	
INDIVIDUALLY AND D/B/A	§	
TRIGEANT PETROLEUM;	§	
SARGEANT TRADING LIMITED CO.,	§	
LINDA COLLINS; BTB REFINING LLC;	§	
CHARLES R. WEBER COMPANY, INC.;	§	
and INTERNATIONAL OIL SHIPPING	§	
COMPANY, INC.		113 TH JUDICIAL DISTRICT

**ORIGINAL ANSWER AND REQUESTS FOR DISCLOSURE OF
DEFENDANTS SARGEANT MARINE, INC.,
TRIGEANT, LTD., INDIVIDUALLY and D/B/A TRIGEANT PETROLEUM,
SARGEANT TRADING LIMITED CO.,
LINDA COLLINS, and BTB REFINING LLC**

COMES NOW, Defendants Sargeant Marine, Inc., Trigeant, Ltd., individually and d/b/a Trigeant Petroleum, Sargeant Trading Limited Co., Linda Collins, and BTB Refining LLC, (hereinafter referred to as "Defendants"), and file this their Original Answer and in support thereof respectfully would show as follows:

I.

GENERAL DENIAL

Defendants deny all and singular, each and every material allegation contained in Plaintiff's Original Petition, and demand strict proof of the same by the applicable standard of evidence.

II.

REQUESTS FOR DISCLOSURE

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff is requested to disclose, within 30 days of service of this request, the information or material described in Rule 194.2.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that upon the conclusion of the trial hereof Plaintiff take nothing by this suit, and that Defendants be awarded their costs of Court and all other and further relief, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

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D/B/A TRIGEANT PETROLEUM,
SARGEANT TRADING LIMITED CO.,
LINDA COLLINS, and
BTB REFINING LLC

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing was served on all counsel of record, as set forth below, on this the 1st day of July, 2011.

VIA CMRRR # 7196900803249513

and VIA FAX 713.225.2907

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/s/ Frederick W. Sultan, IV

Frederick W. Sultan, IV



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this November 24, 2014

Certified Document Number: 49213073 Total Pages: 3

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com