

NO. 2011-47860

IN RE VU TRAN,
PETITIONER,

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

164th JUDICIAL DISTRICT

**PETITIONER VU TRAN'S VERIFIED PETITION TO TAKE DEPOSITIONS
BEFORE SUIT AND APPLICATION FOR ISSUANCE OF LETTERS
ROGATORY**

TO THE HONORABLE DISTRICT COURT:

Petitioner, Vu Tran, asks the Court for permission to take depositions before suit, and for issuance of letters rogatory, to obtain testimony in an anticipated action pursuant to Texas Rules of Civil Procedure 202 and 201.

I. INTRODUCTION

1. This Petition seeks the pre-lawsuit deposition of 3 individuals: Al Clifton Hodges ("Hodges"), Michael Phillips ("Phillips") and Morris Richards ("Richards"). Petitioner anticipates the institution of a class action lawsuit in Harris County, Texas, of which the petitioner may be a party. The deponents reside in California and Florida. Thus, this petition seeks issuance of letters rogatory to depose the witnesses within their home states.
2. Petitioner, Vu Tran, is a shareholder in CMKM Diamonds, Inc. ("CMKM"). CMKM is a Texas Corporation with its principal place of business in Tyler, Texas. The

subject matter of the anticipated action is a claim for distribution of trust funds belonging to the CMKM shareholders and/or enjoining parties currently using those funds to CMKM's detriment. Petitioner's interest in the anticipated suit is recovering any settlement proceeds or judgment monies that he would be entitled to as a CMKM shareholder.

3. Petitioner expects the following parties to have interests adverse to Petitioner's in the anticipated lawsuit: CMKM Diamonds, Inc. and the Depository Trust & Clearing Corporation. Other parties that may have an interest adverse to Petitioner's include: the banks or government entities that hold the alleged trust funds. These parties, however, are unable to be ascertained through diligent inquiry.

II. PARTIES

4. Petitioner, Vu Tran ("Petitioner"), is an individual residing in Harris County, Texas. His home address is 19435 Rosebud Ridge Way, Spring, TX 77379. Petitioner brings this petition on behalf of himself and others similarly situated.
5. Hodges is an individual residing in Los Angeles County, California. His business is located at 4 East Holly Street, Suite 202, Pasadena, California 91103. His office phone number is (626) 564-9797.
6. Phillips is an individual residing in St. Lucie County, Florida. His home address is 3324 Ironwood Ave., Port Saint Lucie, Florida 34952. His phone number is (772) 237-4668.
7. Richards is an individual residing in Hillsborough County, Florida. His work address is 18217 Digital Drive, Tampa, Florida 33647. His phone number is (813) 470-1578.

8. CMKM Diamonds, Inc. (“CMKM”) is a Texas Corporation in good standing, with a principal place of business located at 12904 Highway 155 South, Tyler, Texas 75703. CMKM’s telephone number is 903-253-0510.
9. The Depository Trust & Clearing Corporation (“DTCC”) is a New York Corporation in good standing, with a principal place of business located at 55 Walter Street, 22nd Floor, New York, New York 10041. The DTCC’s telephone number is (212) 855-1000.

III. FACTS

10. There is a widespread belief among the shareholders of CMKM that a trust fund or multiple trust funds exist for the benefit of the CMKM shareholders. Specifically, CMKM shareholders believe that a trust fund was created to remedy the damage caused by severe naked short selling of the company’s stock. The purpose of this petition is to secure the testimony of 3 individuals who claim to have first-hand knowledge of the alleged trust account. With this testimony in hand, Petitioner anticipates filing a class action lawsuit to recover trust funds belonging to the CMKM shareholders.

A. Facts Pertaining to Hodges

11. Hodges is a California attorney and, on information and belief, a shareholder of CMKM. On January 8, 2010, Hodges filed a federal *Bivens* action alleging that current and former Commissioners of the Securities and Exchange Commission (“SEC”) have withheld trust funds belonging to CMKM shareholders. Specifically, Hodges alleged that a trust was created as part of a settlement between the United

States Government and certain entities engaged in the illegal naked short selling¹ of CMKM stock. A true and correct copy of the *Bivens* complaint, filed in the Central District of California, is attached hereto as Exhibit A. Petitioner asks the court to take judicial notice of this foreign pleading.

12. According to the complaint, 2.25 Trillion “phantom” shares of CMKM stock were sold into the public market as a result of naked short selling. (Ex. A, ¶ 31). To remedy this wrongdoing, the U.S. Government and the naked short selling entities created a trust for the CMKM shareholders’ benefit. (Ex. A, ¶ 34). The complaint alleges, on information and belief, that other moneys have been collected for the benefit of the shareholders of CMKM, including from the DTCC and from the United States Government. (Ex. A, ¶ 35).

13. Prior to any written discovery, the *Bivens* action was dismissed pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). In large part the complaint failed to contain sufficient factual allegations to plausibly suggest that a CMKM trust exists. Nonetheless, Hodges maintains that a trust exists and has even filed an appeal to the U.S. Court of Appeals for the 9th Circuit. A true and correct copy of Hodges’ motion for an extension of time to file an opening brief is attached hereto as Exhibit B. Petitioner asks the court to take judicial notice of this foreign pleading.

14. The *Bivens* complaint and Hodges’ statements supporting it have generated tremendous interest within the CMKM shareholder base. CMKM has tens of

¹ A *naked short sale* occurs, when a seller of securities does not borrow or arrange to borrow the securities in time to make delivery to the buyer, within the standard three-day settlement period. This results in the sale of “phantom” shares that may not exist or be within a company’s authorized share count. For more information on this practice see: <http://www.sec.gov/spotlight/keyregshoissues.htm>

thousands of shareholders across the country and throughout the world. Many shareholders invested their life savings in the company. Some have developed an almost religious devotion to deciphering company history and whether a remedy exists for the fraud perpetrated on the shareholders. Naturally, CMKM shareholders have asked Hodges: How much money is in the trust? Where is the trust located? What rights do I have to trust funds? Etc.

15. In response to shareholder inquiries, Hodges has generally confirmed the *Bivens* allegations without providing any evidence to support them. Instead, Hodges assures that a payout of the alleged trust funds is rapidly approaching and that the whole matter will be settled “very soon”. The affidavit of Richard Keane, a direct correspondent with Hodges, is attached hereto as Exhibit C. Keane’s affidavit illustrates the widespread shareholder interest in Hodges’ litigation, as well as the paucity of evidence that Hodges has offered in its support.
16. For example, in an August 15, 2010 email to the CMKM shareholders collectively, Hodges states, “we are literally on the threshold of a payout,” without providing any evidence about the whereabouts of the trust. (Exhibit C, ¶ 4; Exhibit D, Pg. 2). Similarly, in a November 22, 2010 email to the named plaintiffs in the *Bivens* action, Hodges promises that, “we are finally in the endgame,” without divulging why the parties are nearing a settlement or what the substance of a settlement would be. (Exhibit C, ¶ 5; Exhibit E, Pg. 2). Keane has called Hodges directly for information regarding the *Bivens* action and has corresponded with Hodges via text message. He too was given the same assurance of a rapidly approaching payout and that “we are in the end game right now”. (See Exhibit C, ¶ 7; Exhibit F, Pg. 1).

17. Although CMKM shareholders are appreciative of Hodges efforts, more concrete information concerning the whereabouts of the trust is necessary. As recently as July 21, 2011, Hodges represented to the 9th Circuit in an affidavit that, “there is a substantial and serious likelihood that sustained and comprehensive official efforts to settle and conclude this matter are now underway.” See Exhibit B, Affidavit of A. Clifton Hodges, Pg. 2, ¶ 4.
18. Pursuant to Federal Rule of Civil Procedure 11(b)(3), Hodges’ factual contentions concerning the existence of a CMKM trust account *must have evidentiary support or be likely to have evidentiary support* after a reasonable opportunity for further investigation. The shareholders of CMKM would like to depose Hodges to verify what evidentiary support Hodges has for his claims.

B. Facts Pertaining to Phillips

19. Hodges is not the only party suggesting that a trust fund exists for the benefit of CMKM shareholders. On information and belief, Phillips viewed 3 CMKM trust accounts on a bank computer screen that, in the aggregate, *exceeded* 3.87 Trillion Dollars. (Exhibit C, ¶ 8). Phillips has told many CMKM shareholders, including Richard Keane and the Petitioner, that the accounts were titled “CMKM Diamonds, Inc. Settlement”; “CMKM Diamonds, Inc. RICO” and “CMKM Diamonds, Inc. Claims”. *Id.* The shareholders of CMKM want to depose Phillips to determine whether there is any evidence corroborating the existence of these trust accounts.

C. Facts Pertaining to Richards

20. Another individual who allegedly confirms that a CMKM trust fund exists is Morris Richards. Richards is an employee of the Stock Dividend Department of the DTCC.

According to several CMKM shareholders and on information and belief, Richards corroborated that former CMKM Chairman Robert Maheu met with members of the DTCC and that money was collected for their behalf. (Exhibit C, ¶ 9). This rumor is of extreme significance in light of Richards' employment at the DTCC and possible knowledge of the naked short selling that affected CMKM's stock value. *Id.*

21. The rumors of Richard's confirmation of a CMKM trust account are so prevalent that former CMKM CEO, Mark Faulk, called Richards personally to confirm or deny the rumors. Faulk posted a transcript of his phone call to Richards on CMKM's official company website, along with a report addressing the rumor. (Exhibit C, ¶ 9; Exhibit G). The shareholders of CMKM want to depose Richards, to secure an unequivocal statement on whether a trust fund exists for their benefit.

IV. REQUEST TO DEPOSE

22. Petitioner needs to depose Hodges, Phillips and Richards to provide accurate information to the CMKM shareholders on whether any trust fund exists for their benefit and whether the trust can be secured by lawful means. This testimony needs to be obtained *before* a lawsuit is filed, to ensure that the proper legal action is used to secure the missing funds.

A. Request to Depose Hodges

23. Petitioner asks the Court to issue an order authorizing him to examine Al Clifton Hodges by oral deposition. Hodges is a California resident. Consequently, this Petition seeks issuance of letters rogatory to depose Hodges in his home state. In conjunction with the deposition, Petitioner asks the court to order Hodges to produce

the documents requested in the Letter Rogatory to California, attached hereto as Exhibit H.

24. Petitioner expects to elicit testimony from Hodges concerning the whereabouts of the purported trust or account, the names of the parties who paid the monies into the account, and who has a right to those monies.

25. Hodges' deposition may prevent a failure or delay of justice in an anticipated lawsuit. Mr. Hodges is currently engaged in an appeal of the *Bivens* action in the U.S. Court of Appeals for the 9th Circuit. In the event that Hodges' appeal is dismissed based on a lack of factual evidence or otherwise, the CMKM shareholders may be left without a remedy to secure funds existing for their benefit. Allowing Petitioner to secure Hodges' testimony ensures that the CMKM shareholder base will have all the facts and evidence at their disposal to institute the *proper* legal proceeding to recover assets belonging to them. If Hodges' claims are untrue, the CMKM shareholders can put this matter to rest.

B. Request to Depose Phillips

26. Petitioner asks the Court to issue an order authorizing him to examine Michael Phillips by oral deposition. Phillips is a Florida resident. Consequently, this Petition seeks issuance of letters rogatory to depose Phillips in his home state. In conjunction with the deposition, Petitioner asks the court to order Phillips to produce the documents listed in the Letter Rogatory to Florida, attached hereto as Exhibit I.

27. Petitioner expects to elicit testimony from Phillips concerning whether there is any evidence to support Phillips' statement that he saw 3 CMKM trust accounts on a bank computer screen that, in the aggregate, total Trillions of dollars.

28. Phillips' testimony may prevent a failure or delay of justice in an anticipated lawsuit.

Phillips' notes or evidence of trust account information may be lost or destroyed, and the only way to secure this evidence is to depose Phillips.

C. Request to Depose Richards

29. Petitioner asks the Court to issue an order authorizing him to examine Morris Richards. Richards is a Florida resident. Consequently, this Petition seeks Issuance of Letters Rogatory to depose Richards within his home state. In conjunction with the deposition, Petitioner asks the court to order Richards to produce the documents listed in the Second Letter Rogatory to Florida, attached hereto as Exhibit J.

30. Petitioner expects to elicit testimony from Richards concerning whether Robert Maheu attended meetings with the DTCC for the purpose of collecting money for the benefit of the CMKM shareholders and whether money was in fact collected for their benefit.

31. Richards' testimony may prevent a failure or delay of justice in an anticipated lawsuit. Richards has changed his story and disavowed any knowledge of funds collected for the CMKM shareholders. (See Exhibit G). His testimony must be secured under oath so that there is an unequivocal statement from Richards on whether a trust was created for the CMKM shareholders' benefit.

IV. HEARING

32. After service of this petition and notice, Rule 202.3(a) requires that the Court hold a hearing on the petition.

V. PRAYER

33. For these reasons, Petitioner asks the Court to set this petition for hearing and, after the hearing, to order the deposition of Al Clifton Hodges, Michael Phillips and Morris Richards, and to issue letters rogatory to require their appearance at the deposition and to require them to produce the documents requested in the letters rogatory.

Respectfully Submitted,

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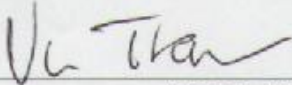
VERIFICATION

STATE OF TEXAS §


HARRIS COUNTY §

Before me, the undersigned notary, on this day personally appeared Vu Tran, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

"My name is Vu Tran. I am capable of making this verification. I have read the Petition to take Deposition Before Suit. The facts stated in it are within my personal knowledge and are true and correct."


VU TRAN

SUBSCRIBED & SWORN TO before me by Vu Tran on this
12 day of August 2011.



Notary Public In & For

The State of Texas

