

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL CORP.,

Plaintiff,

v.

PDV HOLDING, INC.

Defendant.

C.A. No. _____

Jury Trial Demanded

COMPLAINT

Plaintiff Crystallex International Corp. (“Crystallex”), by and through its attorneys, for its Complaint in the above-captioned action against Defendant PDV Holding, Inc. (“Defendant”) alleges as follows:

NATURE OF THE ACTION

1. Defendant, along with its affiliate companies, has been engaged in a years-long effort to evade its creditors and creditors of Venezuela by any means necessary.

2. Crystallex is one such creditor. On April 4, 2016, Crystallex obtained a nearly \$1.4 billion arbitration award against the Republic of Venezuela, issued by a tribunal established under the Additional Facility of the International Centre for the Settlement of Investment Disputes (“ICSID”)—an organ of the World Bank. This is the largest known outstanding award against the Republic of Venezuela.

3. In an attempt to avoid ever having to pay Crystallex and its other creditors, Venezuela, through Defendant and Defendant’s parent company, Petróleos de Venezuela, S.A. (“PDVSA”), initially attempted to sell its most vulnerable U.S.-based asset, CITGO Petroleum

Corporation (“CITGO Petroleum”), in order to move the value of that company out of the United States and beyond the reach of creditors. When that effort failed, Defendant knowingly participated in the monetization of PDVSA’s interest in CITGO Petroleum through a complex series of bond offerings and dividend payments with the intent to evade creditors. As a result of that transaction, Crystallex is currently prosecuting a fraudulent transfer claim against Defendant and its parent PDVSA, in this Court. On September 30, this Court rendered its decision denying Defendant’s motion to dismiss Crystallex’s fraudulent transfer claim.

4. Now, in its latest effort to transfer assets away from potential creditors, Defendant has agreed to give creditors of its parent company a lien on 50.1% of its shares of its most significant asset, CITGO Holding, Inc. (“CITGO Holding”). The lien will secure approximately \$3.367 billion of new debt of Defendant’s parent, PDVSA. By giving away a lien on a substantial portion of its assets for no consideration while a defendant in a lawsuit that seeks approximately \$1.4 billion in damages, Defendant has acted with intent to hinder and delay its creditors. The transaction wears several badges of fraud and is done with the intent to hinder and delay Crystallex in enforcing any judgment this Court may issue in the ongoing action.

PARTIES

5. Plaintiff Crystallex International Corp. is a Canadian corporation with its principal place of business at 8 King Street East, Suite 1201, Toronto, Ontario M5C 1B5 Canada.

6. Defendant PDV Holding, Inc. is a Delaware corporation with its principal place of business at 1293 Eldridge Parkway, Houston, Texas 77077. Defendant is a wholly-owned direct subsidiary of Petróleos de Venezuela, S.A., a foreign corporation wholly owned and controlled by Venezuela. Defendant, in turn, wholly owns CITGO Holding, a Delaware corporation with the same address.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 as Plaintiff is a resident of Canada and Defendant is a resident of Delaware and the matter in controversy exceeds \$75,000.

8. Personal jurisdiction in this District is proper over Defendant pursuant to 8 *Del. C.* § 321(a), 10 *Del. C.* § 3111, and Federal Rule of Civil Procedure 4(k).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) as Defendant resides in this District. Further, a substantial part of the events or omissions giving rise to the claim herein occurred in this District.

FACTUAL ALLEGATIONS

10. This case arises from an archetypical fraudulent transfer. During the pendency of a separate lawsuit brought by Crystallex, in exchange for no consideration, and for the benefit of an insider, Defendant has pledged to secure bonds to be issued by its parent company, PDVSA, by issuing to PDVSA's bondholders a first-priority lien on 50.1% of the capital stock of CITGO Holding, Defendant's wholly-owned subsidiary and principal asset.

A. The Underlying Debt: An Arbitral Award of Approximately \$1.4 Billion Arising From Venezuela's Expropriation of Crystallex's Assets

11. On September 17, 2002, Crystallex entered into a Mining Operation Agreement ("MOA") with Corporación Venezolana de Guayana ("CVG"), a Venezuelan state-owned and state-run company to engage in gold mining and exploration. Through the MOA, Crystallex acquired comprehensive and exclusive rights to explore, develop a mine on, exploit, and sell gold from Las Cristinas, one of the world's largest yet un-mined gold reserves. Notwithstanding its other ventures, these exclusive rights were Crystallex's principal assets.

12. Following Crystallex's substantial investment in the Las Cristinas mine, CVG unilaterally terminated the MOA on February 3, 2011. Having thus expropriated Crystallex's assets, Venezuela took possession of the Las Cristinas mine in April 2011.

13. Venezuela subsequently announced that Defendant's parent company, PDVSA, would hold Crystallex's interests in Las Cristinas through an affiliate. PDVSA then sold 40% of its interest in Las Cristinas to the Venezuelan Central bank in exchange for approximately \$6.9 billion.

14. Crystallex, meanwhile, was forced to file for reorganization. Its share price dropped to 15 cents and the company was delisted from the Toronto Stock Exchange and other foreign exchanges.

B. ICSID Arbitration

15. On February 16, 2011, Crystallex filed a request for arbitration against Venezuela under the ICSID Additional Facility Rules seeking compensation for the full value of its investments.

16. On April 4, 2016, the arbitral tribunal issued an award in the amount of approximately \$1.4 billion in Crystallex's favor, finding that Venezuela had expropriated Crystallex's assets.

C. Defendant's Initial Fraudulent Transfer: The "2015 Fraudulent Transfer"

17. In advance of the arbitral tribunal's award, Defendant and its affiliates began their efforts to shield assets from attachment and execution by Crystallex and other creditors.

18. CITGO Petroleum is Venezuela's most significant asset in the United States, with revenues of over \$42 billion and earnings of \$1.8 billion in 2013 alone. As Venezuela was well aware, this made CITGO Petroleum a natural target for judgment creditors, including ICSID

arbitration award holders. As its first effort to avoid enforcement of any arbitration award, Venezuela attempted to sell CITGO Petroleum. Unsuccessful in this effort, Venezuela devised a scheme to monetize its interests in CITGO Petroleum and transfer the value of that asset through Defendant and out of the country to PDVSA.

19. PDVSA directed Defendant, its wholly-owned subsidiary, to direct its wholly-owned subsidiary CITGO Holding to issue \$2.8 billion in debt, almost all of which CITGO Holding then proceeded to transfer, without any consideration, to its immediate parent, Defendant, as a stockholder dividend. CITGO Holding was forced to pay a 12 percent interest rate in order to borrow the \$2.8 billion and the bonds were rated as non-investment grade, or “junk,” bonds by all three major ratings agencies from the moment that they were issued. The debt offering had no legitimate business purpose. Upon receiving these funds, Defendant paid its own dividend equal to what it received from CITGO Holding to its immediate Venezuela-based and Venezuela-owned parent, PDVSA. Both dividends were transfers to insiders. The net result of these activities was that Venezuela (through PDVSA and its subsidiaries) repatriated \$2.8 billion in proceeds, while leaving its U.S.-based subsidiary, CITGO Holding, insolvent on an accounting basis, all while Venezuela was facing dozens of arbitrations and litigation seeking billions of dollars in recoveries.

D. Crystallex’s Pending Lawsuit Against Defendant

20. On November 23, 2015, Crystallex filed a lawsuit (the “2015 Lawsuit”) in Civil Action Number 15-1082-LPS in the United States District Court for the District of Delaware arising from Defendant’s participation in the 2015 Fraudulent Transfer of approximately \$2.8 billion out of the United States. Crystallex alleged, *inter alia*, that Defendant’s and its affiliates’ efforts described above evidenced the following badges of fraud:

- i. The debt proceeds were transferred from CITGO Holding to PDVH, which controls CITGO Holding and is thus an “insider.”
- ii. The debt proceeds were subsequently transferred from PDVH to PDVSA, which controls PDVH (and CITGO Holding) and is thus an “insider.”
- iii. By moving assets from its indirect U.S.-based subsidiary to its own coffers, PDVSA retained control of the transferred debt proceeds and merely moved them offshore.
- iv. Before causing the transfer through the purported “dividend” payouts, Venezuela had either already been sued or threatened with suits predicted to result in billions of dollars in arbitral awards and judgments against it. In addition, Venezuela itself expressly and publicly recognized that CITGO Petroleum’s assets would be the primary targets for the enforcement of any unpaid arbitral awards.
- v. PDVSA not only retained control but also “removed” the debt proceeds from the United States by moving offshore the monetized value of CITGO Petroleum, a domestic Delaware corporation whose assets and/or shares could readily be attached and executed upon to pay arbitral awards against Venezuela.
- vi. No consideration was exchanged for the transfer of the debt proceeds. Defendant received no consideration for the nearly \$2.8 billion dividend it paid, and PDVSA offered nothing in exchange for receiving that dividend.
- vii. Venezuela publicly expressed its intent not to pay any arbitral award resulting from its expropriation of investments, as well as its intent to monetize its

interest in CITGO Petroleum, located in the United States, to avoid their seizure in fulfillment of such awards.

- viii. The transfer of the debt proceeds to PDVSA rendered CITGO Holding—Defendant’s main asset—insolvent on an accounting basis. The debt incurred by CITGO Holding through the bond issuance and loan facility created negative shareholder equity.
- ix. The transfer of the near-\$2.8 billion occurred shortly after CITGO Holding incurred a substantial debt nearly identical to that amount.
- x. CITGO Holding incurred the \$2.8 billion in debt just months after PDVSA ended its unsuccessful attempt to sell its subsidiary, CITGO Petroleum.

21. On September 30, 2016, the District Court for the District of Delaware denied Defendant’s motion to dismiss the 2015 Lawsuit as against Defendant. The Court held that Crystallex’s complaint asserting that Defendant’s transfer of the declared \$2.8 billion dividend to PDVSA alleged a violation of DUFTA. The Court found that Defendant, “a non-debtor transferor of debtor property, is an appropriate defendant.”

E. Defendant’s Latest Fraudulent Transfer: The “2016 Fraudulent Transfer”

22. Shortly after the Court issued its decision denying Defendant’s motion to dismiss Crystallex’s fraudulent transfer claim, Defendant engaged in a second fraudulent transfer, this time encumbering slightly more than half of its primary asset in an effort to dodge Crystallex and other creditors. Through the 2016 Fraudulent Transfer, Defendant seeks to hinder the future enforcement of the action already pending before this Court.

23. Shortly after the oral argument on Defendant's motion to dismiss the 2015 Lawsuit, by an undated offering circular released in September 2016, PDVSA announced that it would offer to conduct a bond swap, utilizing Defendant's assets as collateral.

24. As initially proposed, through the bond swap PDVSA would exchange more than \$7 billion of outstanding PDVSA bonds for "New Notes," maturing in 2020, backed by Defendant's pledge of a first-priority lien in favor of PDVSA bondholders on 50.1% of Defendant's capital stock of CITGO Holding. The original early tender deadline for this swap was set for September 29, 2016.

25. Having failed to generate sufficient interest in the swap, PDVSA announced on September 27, 2016 that it would increase the consideration paid to bondholders in the proposed swap and extended the early tender deadline to October 6, 2016. As "sweetened," PDVSA offered consideration of 1.17 times or 1.22 times the face value of its existing April 2017 and November 2017 notes respectively, in exchange for the longer-maturity notes. Following a further delay, PDVSA announced its debt swap had concluded on October 24, 2016. Ultimately, creditors representing \$2.8 billion worth of bonds maturing in 2017 tendered their notes for approximately \$3.367 billion in new bonds maturing in 2020. Defendant's interest in CITGO Holding remains pledged as collateral in accordance with the original offer. The Settlement Date for the exchange was on or about October 27, 2016.

26. The offering circular does not mention any consideration flowing to Defendant in exchange for its extraordinary pledge of 50.1% of CITGO Holding. Instead, it warns that "PDVSA cannot guarantee that a creditor of the Bolivarian Republic of Venezuela will not be able to interfere with the Exchange Offers, the Collateral or payments made under the New Notes, through an attachment of assets, injunction, temporary restraining order or otherwise."

27. The form of pledge agreement by which Defendant is offering up its shares is silent as to any consideration for the pledge of a substantial portion of Defendant's assets.

28. Defendant's transfer of its interest in CITGO Holding could prove disastrous for Defendant. According to the Financial Times:

Even if enough bondholders sign up, and the legality of the collateral pledge goes unchallenged, Citgo may prove scant security. If PDVSA defaults on the new bonds then investors can seize 50.1 per cent of the US petrol company, but this would trigger a "change-of-control" clause in Citgo's own \$5bn of debt, making it immediately payable.

29. In other words, if the lien on Defendant's shares of CITGO Holding is ever called, it will destroy the value of Defendant's largest asset.

30. Yet, this did not stop Defendant from agreeing to offer its assets solely for the benefit of PDVSA, an insider, *see* 6 *Del. C.* § 1301(7)(b).

FIRST CAUSE OF ACTION
Fraudulent Transfer in Violation of
The Delaware Uniform Fraudulent Transfer Act (DUFTA)

31. Crystallex repeats and incorporates the allegations set forth in Paragraphs 1 through 31 as though fully set forth herein.

32. The Delaware Uniform Fraudulent Transfer Act (DUFTA), 6 *Del. C.* § 1301 *et seq.*, provides that a "Transfer" "means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes . . . creation of a lien or other encumbrance." 6 *Del. C.* § 1301(12).

33. Further, a transfer is "fraudulent" as that term is used in the act, if the debtor made the transfer with actual intent to hinder, delay, or defraud any creditor of the debtor, *id.* § 1304(a). And in determining such actual intent, courts look to the non-exclusive badges of fraud delineated in the statute, *see id.* § 1304(b), and other considerations.

34. Despite the pendency of Crystallex's action against Defendant arising from the 2015 Fraudulent Transfer, Defendant has engaged in a further fraudulent transfer, the 2016 Fraudulent Transfer, by creating a lien on its assets with the intent to hinder and delay Crystallex's ability to execute any judgment against Defendant obtained in the pending 2015 Lawsuit. The 2016 Fraudulent Transaction bears several badges of fraud:

- i. The transfer was made during the pendency of the 2015 Lawsuit;
- ii. No consideration was exchanged for the transfer. PDVSA's offering circulars make no mention of any consideration paid to Defendant in exchange for Defendant agreeing to a lien against 50.1% of its most significant asset, CITGO Holding.
- iii. The transfer was made for the benefit of PDVSA, which controls Defendant, and is thus an "insider."
- iv. Defendant will complete the transfer just weeks after the District Court for the District of Delaware's denial of Defendant's motion to dismiss Crystallex's lawsuit against Defendant for the 2015 Fraudulent Transfer.

35. Crystallex is therefore entitled to the relief specified in DUFTA, *see* 6 *Del. C.* §§ 1307, 1308, against Defendant's fraudulent transfer, particularly, a declaration that Defendant's pledge of a lien on 50.1% of its shares in CITGO Holding constitutes a fraudulent transfer, an order directing the cancellation of the transfer, and a money judgment equal to the value of the transfer should the lien not be cancelled. Crystallex also seeks an injunction barring any further transfers from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Crystallex respectfully requests judgment against Defendant be entered as follows:

- i. Declaring that Defendant's pledge to issue a lien against 50.1% of its shares of CITGO Holding constitutes a fraudulent transfer;
- ii. Avoiding the transfer should Defendant complete the transfer;
- iii. Awarding money damages, including pre-and-post judgment interest, against Defendant should the lien be unavoidable, such amount to be proven at trial;
- iv. Enjoining Defendant from further attempts to transfer assets without consideration; and
- v. Granting such other and further relief as the Court may deem just or proper.

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