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Re: Docket Nos. 864-867

Pretrial Conference: April 7, 2017 at 10:00 a.m.

Replies Due: March 31, 2017

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, *et al.*,	Case No. 09-50026 (MG)
Debtors.	(Jointly Administered)
MOTORS LIQUIDATION COMPANY AVOIDANCE ACTION TRUST, by and through the Wilmington Trust Company, solely in its capacity as Trust Administrator and Trustee,	Adversary Proceeding
	Case No. 09-00504 (MG)
Plaintiff,	
vs.	
JPMORGAN CHASE BANK, N.A., individually and as Administrative Agent for Various Lenders Party to the Term Loan Agreement described herein, *et al.*,	
Defendants.	

TERM LENDERS' MEMORANDUM IN OPPOSITION TO AVOIDANCE TRUST'S MOTION IN LIMINE TO EXCLUDE THE EXPERT REPORT AND TESTIMONY OF JAMES M. MARQUARDT

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JPMorgan Chase Bank, N.A. and the other members of the Defendants' Steering Committee (collectively, the "Term Lenders") respectfully oppose the motion ("Motion") of plaintiff Motors Liquidation Company Avoidance Action Trust (the "Avoidance Trust") to exclude the expert report and testimony of James M. Marquardt. His testimony will establish that a title search would find the UCC-1 fixture filing recorded with the Eaton County Register of Deeds (the "Eaton County Fixture Filing") and put a potential purchaser or lender on notice of a lien against the fixtures at General Motors ("GM") Lansing Delta Township and Lansing Regional Stamping (a manufacturing facility collectively referred to within GM as "LDT").

PRELIMINARY STATEMENT

Mr. Marquardt is undisputedly an expert in real estate title issues. He has practiced in the title field in Michigan since 1967. He began his career performing title searches and examining title documents at Title Bond & Mortgage Co., a Michigan title company. He became President of that company in 1986 and served in that role until it was sold in 1993. He currently practices real estate law at a Michigan firm, advising potential purchasers and lenders in real estate transactions, and he has been an active member of the Michigan Land Title Standards Committee for three decades, chairing that committee from 2010 to 2013.

In this case, as he has done countless times before, Mr. Marquardt conducted a title search and offered his professional opinion on the results. Here, he was asked to determine whether, as of June 1, 2009, the Eaton County Fixture Filing would have been identified by a real-property searcher looking for liens or encumbrances recorded against LDT. Mr. Marquardt searched the official land records of Eaton County using the Register of Deeds' grantor-grantee index and identified the Eaton County Fixture Filing as a potential lien recorded against the 3.4 million square foot LDT plant and its hundreds of millions of dollars of machinery and equipment. Mr. Marquardt thus opines that a potential purchaser or lender who requested a title

search would be put on notice of this potential encumbrance and would learn of the lien against the fixtures at LDT.

After receiving Mr. Marquardt's expert report, the Avoidance Trust hired Robert Mollhagen, a Michigan lawyer with virtually no title search experience, to try to undermine Mr. Marquardt's opinion. Although he lacks Mr. Marquardt's expertise in title searching, Mr. Mollhagen replicated Mr. Marquardt's search, and he too found the Eaton County Fixture Filing. Unsatisfied with this result, the Avoidance Trust now attempts, with no basis, to challenge Mr. Marquardt's opinion. That challenge is unfounded.

The Avoidance Trust's claim that Mr. Marquardt's opinion is irrelevant is baseless. The Avoidance Trust itself belatedly introduced the title search issue into this case, years after it filed its initial complaint. *See* Def. Pretrial Br. at 64-69. Moreover, the Avoidance Trust's own witness, Mr. Mollhagen, purports to opine on the same issue as Mr. Marquardt.[1] Having brought the issue into the case and offered a witness to opine on it, the Avoidance Trust's claim that Mr. Marquardt's testimony is irrelevant cannot be credited.

The Avoidance Trust's further claim that Mr. Marquardt's expert opinion is unfounded or speculative is equally baseless. Mr. Marquardt is an industry expert who took a hands-on approach to his assignment, memorializing each step of his process in his report. Far from unfounded, Mr. Marquardt provided details and screenshots of his searches and copies of the documents that he found, which were sufficient for Mr. Mollhagen to replicate his work.

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[1] Mr. Mollhagen ordered a title search report from First American Title Insurance Company. As set forth in the Term Lenders' Motion in Limine, Mr. Mollhagen cannot serve as a mouthpiece for the inadmissible hearsay in a $350 title search that he did not perform, was unqualified to conduct, concededly did nothing more than read and does not fully understand, and on its face disclaims its own reliability.

The only aspect of Mr. Marquardt's opinion that the Avoidance Trust actually challenges as speculative is Mr. Marquardt's opinion that a potential purchaser or lender that learned of the Eaton County Fixture Filing — which identifies the "**GM Assembly Lansing Delta**" facility in bold-faced type — would have contacted GM to ask for an explanation of that filing and would have learned from GM the relevant details of the lien. There is nothing speculative about this opinion. Rather, as the very deposition testimony that the Avoidance Trust quotes in its Motion makes clear, Mr. Marquardt testified, based on his extensive experience, that it is "very normal" for a potential purchaser or lender to "explor[e] anything on the title commitment that they wondered about" with its counterparty on the purchase or sale. *See* Motion at 9. Indeed, under Michigan law, a person with knowledge of recorded facts that would lead an "honest man, using ordinary caution, to make further inquiries" is "chargeable with notice," even if the inquiries were not made. *See* Def. Pretrial Br. at 69-75.

ARGUMENT

I. MR. MARQUARDT'S TESTIMONY EASILY SATISFIES THE APPLICABLE LEGAL STANDARDS.

The legal standards applicable to expert testimony are well known. Rule 702 of the Federal Rules of Evidence permits opinion testimony from a "witness who is qualified as an expert by knowledge, skill, experience, training, or education." Fed. R. Evid. 702. As the Supreme Court has explained, expert testimony admissible under Rule 702 "rests on a reliable foundation and is relevant to the task at hand." *Daubert* v. *Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993); *Kumho Tire Co.* v. *Carmichael*, 526 U.S. 137, 141 (1999).

As explained in *Daubert* and its progeny, the reliability inquiry "entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the

facts in issue." *Daubert*, 509 U.S. at 592-93. Meanwhile, the relevance test considers whether the expert's testimony will "assist the trier of fact to understand the evidence or to determine a fact in issue." *Id.* at 591-92 (requiring a "connection to the pertinent inquiry").

Expert testimony must provide "more than subjective belief or unsupported speculation," but the "inquiry envisioned by Rule 702 is . . . a flexible one." *Id.* at 590, 594. For example, the advisory committee notes to Rule 702 recognize "the application of extensive experience" as appropriate expert opinion and caution that the "relevant factors for determining reliability will vary from expertise to expertise." Fed. R. Evid. 702, Adv. Cmt. Note (2000).

Mr. Marquardt and his opinions easily satisfy these standards. As noted, Mr. Marquardt is an expert in this field, with approximately forty years of experience in addressing title issues — as a title searcher, a manager of a title company, a member and past-chair of multiple bar committees focused on title issues, and as a real estate lawyer advising clients on title issues arising in connection with potential transactions, financings and other matters. *See* Szczerban Decl. Ex. A (Marquardt Report) at ¶¶ 1-4 & App'x A.[2] Over the course of his career and through his training as a real estate attorney, Mr. Marquardt has developed the necessary "knowledge, skill, experience, training, [and] education" to serve as an expert witness under Rule 702. Indeed, his expertise in real estate and title matters is unchallenged.

Applying his expertise, Mr. Marquardt offers two opinions in this case. His first opinion is that a title search at the Eaton County Register of Deeds — which he conducted — would have identified the Eaton County Fixture Filing and put a potential purchaser or lender

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[2] References to "Szczerban Decl." are to the Declaration of S. Christopher Szczerban, dated March 22, 2017, submitted herewith.

"on notice" of a "lien against the fixtures at [LDT]." *Id.* at ¶ 10. His second opinion is that the GM facilities known as "MFD Pontiac" and "Powertrain Engineering Pontiac" were related, as they were "situated upon land that was identified by a single tax parcel number" and transferred three times using "a single deed of conveyance" in each instance. *Id.*[3]

In support of each of his opinions, Mr. Marquardt put his expertise into practice, personally searching the title records of the properties in question, reviewing the documents that his searches identified and setting forth his professional opinions and the details of his work in his expert report. *See id.* at ¶¶ 37-44, 55-59 & Exs. 1-3 (search process), ¶¶ 45-54, 60-62 & Exs. 4-6 (search results). Specifically, with respect to his first opinion, Mr. Marquardt obtained the name of the property owner (here, "General Motors"), the relevant street address (here, "8175 Millett Highway" and/or "8001 Davis Highway") and the fact that the subject property was a manufacturing facility known as "GM Lansing Delta Township," or "LDT," among other common names. *Id.* at ¶¶ 38-41, 57-58.

With this information, Mr. Marquardt identified the "tax parcel" and "Section" that corresponded to the given street address using the county tax assessor's map — which showed land in Sections 28, 32, and 33 of Delta Township shaded and labeled as the "General Motors LDT Plant." *Id.* He then searched the real-property records where the LDT plant is located, inputting "General Motors" or "GM" into the grantor-grantee index kept by the Eaton County Register of Deeds, and reviewing each of the results. *Id.* at ¶¶ 42-49, 59.

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[3] Mr. Marquardt's opinion that MFD Pontiac and Powertrain Engineering Pontiac are related is not challenged by the Avoidance Trust and thus not detailed here.

His search revealed the Eaton County Fixture Filing, which (on its face and in bold letters) refers to "**GM Assembly Lansing Delta**." *Id.* at ¶¶ 48-50, 60 & Ex. 6. This, he explained, would have caused a title searcher to identify the Eaton County Fixture Filing as a potential encumbrance on any title search report or title commitment provided to a client in connection with a potential purchase of or loan against the GM Lansing Delta Township assembly and stamping plant. *Id*. at ¶¶ 53, 61. This identification would put a prospective purchaser or lender on notice. *Id.* Then, as was common in Mr. Marquardt's experience as a title searcher and real estate advisor, the purchaser or lender would contact the owner (GM) and learn the relevant details of the lien. *Id.* at ¶¶ 36, 54, 62.

Mr. Marquardt's opinions are the type of opinions on title issues that courts find relevant and reliable. *See United States* v. *Ruffin*, 575 F.2d 346, 357 (2d Cir. 1978) (explaining that testimony on a title search that an expert conducted and the identification of the records affecting an interest in property that the search identified was permissible); *Nat'l Assistance Bureau, Inc.* v. *Macon Mem'l Intermediate Care Home, Inc.*, 714 F. Supp. 2d 1192, 1202 (M.D. Ga. 2009) (finding expert testimony of title examiner as to whether a title search would have identified a tax lien "plainly admissible"). In fact, the Avoidance Trust's own witness used Mr. Marquardt's report to "see if what he did was accurate" and "test" Mr. Marquardt's description of his search, and after doing so, did not find anything to suggest that "there was any error in [Mr. Marquardt's] search," and agreed that the search was generally accurate. Szczerban Decl. Ex. B (Mollhagen Dep.) at 166-67.

Mr. Marquardt's title search and related opinion is thus neither a "convoluted search process" nor a "hypothetical, speculative chain of events" as the Avoidance Trust argues. *See* Motion at 1-2. Just the opposite: it is a standard practice in the field that Mr. Mollhagen was

able to follow and use to find the Eaton County Fixture Filing. This opinion easily satisfies the requirements of Rule 702 and should be admitted.

II. MR. MARQUARDT'S LDT OPINION IS RELEVANT AND ADMISSIBLE.

The Avoidance Trust first objects to Mr. Marquardt's LDT opinion on relevance grounds, contending that "he does not offer an opinion about whether the Eaton County Fixture Filing provides constructive notice of a lien against [LDT]." Motion at 6. This objection can be discarded simply by reading Mr. Marquardt's report or his deposition testimony. Mr. Marquardt does opine that a potential purchaser or lender would be put on notice of the fixture filing. He specifically states that as a result of the title search he conducted, a potential purchaser or lender "would have been put *on notice* that 'JPMorgan Chase Bank, N.A., as Administrative Agent' may have had a lien against the fixtures at [LDT]." Szczerban Decl. Ex. A (Marquardt Report) at ¶¶ 10, 53, 61, 79, 80 (emphasis added).

This opinion relates directly to the issue of constructive notice. Under Michigan law, "a person is chargeable with constructive notice where, having the means of knowledge, he does not use them." *Hill* v. *Sears, Roebuck & Co.*, 822 N.W.2d 190, 200 (Mich. 2012). Thus, when a person has knowledge of "any" recorded facts that "would lead [an] honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate, and fails to make them, he is chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed." *Kastle* v. *Clemons*, 46 N.W.2d 450, 451 (Mich. 1951); *accord In re Mich. Lithographing Co.*, 140 B.R. 161, 166, 167 (Bankr. W.D. Mich. 1992), *aff'd*, 997 F.2d 1158 (6th Cir. 1993).

Multiple Michigan cases accordingly hold that a purchaser or lender is deemed to be on constructive notice of liens identified by its title agent. *See, e.g.*, *Royce* v. *Duthler*, 531 N.W.2d 817, 821 (Mich. Ct. App. 1995) (constructive notice of easements listed on "title

insurance policy"); *Wash. Mut. Bank* v. *JPMorgan Chase Bank*, 2009 WL 3365865, at *2 (Mich. Ct. App. Oct. 20, 2009) (constructive notice of contents of "title commitment").[4] As the Michigan Court of Appeals has explained, the relevant question is whether a "diligent title searcher" would "discover[] the [recorded document]" and "recognize its applicability." *Am. Fed. Sav. & Loan Ass'n* v. *Orenstein*, 265 N.W.2d 111, 112 (Mich. Ct. App. 1978); *see also In re Mich. Lithographing Co.*, 140 B.R. at 167 ("*any* facts must be investigated if they reasonably suggest that some third party has an interest in the property at issue") (emphasis in original). This is exactly what Mr. Marquardt's opinion addresses.[5]

Notwithstanding this obvious relevance, the Avoidance Trust attempts to draw a distinction between "constructive" and "inquiry" notice, claiming — without citation — that inquiry notice is irrelevant. Motion at 2, 7. That distinction has no basis in Michigan law, and the Avoidance Trust provides none. *See Royce*, 531 N.W.2d at 821 ("Notice need only be of the possibility of the rights of another, not positive knowledge of those rights.") (internal quotation

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[4] *See also First Nat'l Bank of Chicago* v. *Dep't of Treasury*, 760 N.W.2d 775, 782 (Mich. Ct. App. 2008), *rev'd on other grounds*, 485 Mich. 980 (2009) (documents recorded by register of deeds created "constructive notice" of prior mortgage, notwithstanding that prior mortgage "described the property as lot 88 instead of lot 66").

[5] The Avoidance Trust's own expert report confirms the relevance of this inquiry. Mr. Mollhagen was engaged to opine on "Whether a Person examining the chain of title to the [LDT] Property in the Land Records as a prospective purchaser, or mortgage secured lender to the owner, of the [LDT] Property on June 1, 2009, would discover the Fixture Filing." *See* Decl. of S. Christopher Szczerban in Support of Term Lenders' Motion in Limine (Mar. 9, 2017) (Dkt. No. 875) at Ex. 4 (Mollhagen Report) at 1. This is virtually identical to Mr. Marquardt's assignment: to "determine whether, as of June 1, 2009, the [Eaton County Fixture Filing] . . . would have been identified for inclusion by a real-property searcher searching for potential liens or encumbrances recorded against [LDT]." Szczerban Decl. Ex. A (Marquardt Report) at ¶ 8. The Avoidance Trust thus cannot credibly claim that this testimony is relevant from Mr. Mollhagen but not from Mr. Marquardt.

omitted); *Hill*, 822 N.W.2d at 200 ("knowledge of facts putting a person of ordinary prudence on inquiry *is equivalent to actual knowledge* of the facts which a reasonably diligent inquiry would have disclosed.") (emphasis in original; internal quotation omitted). Indeed, as the Sixth Circuit has recognized, "References to inquiry notice under Michigan law categorize inquiry notice as both a type of actual notice and a type of constructive notice." *Robert Mickam Trust* v. *United States*, 77 F.3d 483, at *4 (6th Cir. 1996) (Table).

However described, Michigan law requires only knowledge of recorded facts that would lead an "honest man, using ordinary caution, to make further inquiries" and deems the possessor of such facts "chargeable with notice of what such inquiries and the exercise of ordinary caution would have disclosed." *Kastle*, 46 N.W.2d at 451. The expert testimony that Mr. Marquardt provides speaks directly to that standard: (a) he identifies recorded facts (the Eaton County Fixture Filing) that would be found in a title search or title commitment that would put a prospective lender or purchaser on notice of a potential lien and cause a reasonable person to make further inquiry; and (b) that upon such inquiry, the existence and relevant details of the Term Lenders' lien on the LDT fixtures would be learned. *See* Szczerban Decl. Ex. A (Marquardt Report) at ¶¶ 10, 53, 61, 79, 80. In other words, Mr. Marquardt's opinion demonstrates that "there is just ground for inferring that reasonable diligence would have led . . . to a discovery of the truth." *See In re Mich. Lithographing Co.*, 140 B.R. at 166.[6]

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[6] The Avoidance Trust claims that Mr. Marquardt has no "basis" for relying on the bold stamp on the LDT fixture filing. Motion at 8. But Mr. Marquardt's decades of experience provide the basis for a conclusion that should be obvious: a title searcher would notice and assign importance to this stamp. Szczerban Decl. Ex. A (Marquardt Report) at ¶¶ 52, 60. At deposition, Mr. Marquardt testified extensively about his understanding of the import of this stamp, and even identified a precedent he was familiar with in Michigan real estate practice supporting his point. *See* Szczerban Decl. Ex. C (Marquardt Dep.) at 41-51.

Finally, the Avoidance Trust's attempt to couch Mr. Marquardt's opinion as addressing "the entirely irrelevant question of what inquiry into parcels other than the parcels where [LDT is] located might have revealed" completely mischaracterizes Mr. Marquardt's work and demonstrates a flawed understanding of how title records are kept and how title searches are conducted. As the assessor's maps show, LDT spans portions of Sections 28, 32 and 33 of Delta Township. Additionally, and fundamentally, the Register of Deeds for Eaton County maintains a grantor-grantee index, which is — as the name suggests — searchable by the grantor and grantee names. *See* Szczerban Decl. Ex. A (Marquardt Report) at ¶ 42 (describing search interface). There is no field to search by parcel. *Id.*

Thus, there is no basis for the Avoidance Trust to suggest that the search for "General Motors" and "GM" by name is irrelevant. *See* Szczerban Decl. Ex. C (Marquardt Dep.) at 83 ("[W]hen you do a grantor-grantee search you're going to locate all the documents that are identified with the name that you search under the grantor-grantee index. That's the first step. . . . [Y]ou do not base your search at the Register of Deeds office on a legal description. You base them on the names."). Rather, it is the only available way to input that search into the Eaton County Register of Deeds' grantor-grantee index. The fact that the Eaton County Fixture Filing was identified in that search is directly relevant to the issue of constructive notice.[7]

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[7] The Avoidance Trust's citation to *In re Vandenbosch*, 405 B.R. 253, 264 (Bankr. W.D. Mich. 2009), does not require any other conclusion. In that case, it was "undisputed" that a mortgage described a vacant lot "rather than" a residence. *Id.* at 264. There was thus no expert testimony similar to what Mr. Marquardt provides here — that a title searcher performing a title search would have identified the mortgage — and no occasion for the court to consider or address the propriety of such testimony.

III. MR. MARQUARDT'S LDT OPINION IS WELL FOUNDED AND ADMISSIBLE.

The Avoidance Trust's second challenge to Mr. Marquardt's LDT opinion is that it is "unfounded and speculative." *See* Motion at 3. This challenge, however, ignores portions of Mr. Marquardt's testimony on which it purports to rely and does not even address the central part of his opinion — *i.e.*, that a diligent title search would identify the Eaton County Fixture Filing, which would put a prospective lender or purchaser on notice of a potential lien against LDT.

As with the rest of his expert work, Mr. Marquardt applies his extensive industry experience — both as a title searcher and advisor on title issues — to explain the normal series of events that would follow the identification of a potential lien in a title search. Mr. Marquardt explained in his report that "[a]s a practical matter, in [his] experience, any reasonable third party seeking to take an interest in a major commercial property would always investigate any documents identified as potential encumbrances in the results of a real-property search." Szczerban Decl. Ex. A (Marquardt Report) at ¶ 36; *see id.* at ¶ 54. He further explained that "the potential purchaser or new lender will typically ask the current owner for an explanation of each such instrument and whether it reflects any liens against the property at interest." *Id.* at ¶ 36.

The Avoidance Trust does not contest Mr. Marquardt's expertise and made no effort at deposition to show that Mr. Marquardt was wrong about how the potential purchaser or lender would interact with a property owner. Nor could they, as it is hard to imagine how any purchaser of or lender against LDT would not contact their GM counterparty to fully understand any potential encumbrance a title search revealed — particularly one that identified LDT by name in bold type. *See In re Mich. Lithographing Co.*, 140 B.R. at 166-67, 171.

Instead, the Avoidance Trust's attack is purely semantic, quoting a snippet of Mr. Marquardt's deposition testimony in which he refused to speculate as to the precise questions that would be asked and answers that would be received. Motion at 9. Yet the

Avoidance Trust ignores much of the very testimony it quotes. *See* Szczerban Decl. Ex. C (Marquardt Dep.) at 85-88.

Specifically, when asked "what would the potential purchaser or lender ask the contact at General Motors," Mr. Marquardt testified, "Well, that's speculation. I don't know what they would ask, *other than they would be exploring anything on the title commitment that they wondered about. That's very normal.*" *Id.* at 87 (emphasis added). Thus, it is absolutely clear that all Mr. Marquardt was saying at his deposition was that, while he could not recite a hypothetical transcript of the discussion that would necessarily take place, in his experience, it is "very normal" for prospective purchasers and lenders to "explore" issues identified in the title search with the property owner and thereby learn additional information.

Plainly, an "honest man, using ordinary caution" would "make further inquiries concerning the possible rights of another in real estate" after learning of the Eaton County Fixture Filing. *Kastle*, 46 N.W.2d at 451. In Mr. Marquardt's experience, the exercise of such ordinary caution would have revealed relevant details about the lien, including that it covered fixtures at LDT. *See* Szczerban Decl. Ex. A (Marquardt Report) at ¶¶ 10, 54, 62, 79, 80. There is no basis to assume that GM would not disclose that interest if asked by a potential purchaser or lender. Indeed, to paraphrase the bankruptcy court in *In re Michigan Lithographing*, one "cannot imagine that" a "prospective purchaser would not have" picked up the phone and called the seller "which would have disclosed the true facts of the situation." 140 B.R. at 171.

In any event, there is no basis to exclude Mr. Marquardt's opinion based on his supposed failure to identify granular details of the conversation that his experience says would occur. *See, e.g.*, *Edwards* v. *Ethicon, Inc.*, 2014 WL 3361923, at *6 (S.D. W. Va. July 8, 2014) (allowing expert opinion based on general knowledge and experience over challenges to a lack of knowledge of "all details of the issues raised" and to a lack of a "detailed explanation" as to the

basis for the expert's conclusions). At most, the Avoidance Trust's objection to the level of support for this aspect of Mr. Marquardt's opinion, goes to the weight, not admissibility, of this testimony. *See MBIA Ins. Corp.* v. *Patriarch Partners VIII, LLC*, 2012 WL 2568972 at *15, *17 (S.D.N.Y. July 3, 2012) ("arguments challenging an expert's support for his opinions go to weight, rather than admissibility, of testimony") (citing *Olin Corp.* v. *Certain Underwriters at Lloyd's London*, 468 F.3d 120, 133-34 (2d Cir. 2006)).

The two cases cited by the Avoidance Trust are inapposite. The entire discussion of speculative opinions in *Highland Capital Management, L.P.* v. *Schneider*, 379 F. Supp. 2d 461 (S.D.N.Y. 2005), is dicta in a single footnote, and the court was careful to note that the expert in that case, unlike Mr. Marquardt here, did not perform any search or analysis, but could have been admitted if a sufficiently reliable foundation were laid. *Id.* at 473 & n.2. And in *Dora Homes, Inc.* v. *Epperson*, 344 F. Supp. 2d 875 (S.D.N.Y. 2004), the court found that the proposed opinion was "patently devoid of reliability" because the expert was purporting to opine on an oil tank leak without personally inspecting or evaluating the tanks, offering an opinion "contrary to the documented facts," and relying on a third-party report instead of his own work. *Id.* at 888-89. While that may describe Mr. Mollhagen's opinion, it does not undermine Mr. Marquardt's expert testimony.

CONCLUSION

For the foregoing reasons, the Avoidance Trust's Motion should be denied.

Dated: New York, New York
March 22, 2017

Respectfully submitted,

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