

Kumar's Legal Bills

CA Seeks \$15 Million Spent on Ex-Chief's Defense

BY BETH BAR

AN ATTEMPT by Sanjay Kumar, the ex-chief of CA Inc., to vacate a \$14.9 million attachment order has been rebuffed by a state appellate judge in Brooklyn, but the case continues in Nassau County.

Justice Mark C. Dillon of the Appellate Division, Second Department, last week denied Mr. Kumar's emergency application to vacate the order of attachment signed by Nassau County Supreme Court Justice Stephen A. Bucaria on Nov. 15.

Justice Dillon's denial was in the form of a brief, handwritten note. He did not elaborate on the reasons for his action.

Late yesterday afternoon, Mr. Kumar's attorneys asked Justice Bucaria not to confirm the attachment. Also, they requested that the court dismiss the underlying suit and disqualify CA's attorneys.

Justice Bucaria, in originally granting CA's attachment request, wrote that Mr. Kumar, "with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in [CA's] favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts." *CA v. Kumar*, 06-018390.

CA, formerly Computer Associates, filed suit against Mr. Kumar on Nov. 9, arguing that the \$14.9 million it advanced to pay his attorneys at Davis, Polk & Wardell must be returned.

The Islandia-based company said it had been paying Mr. Kumar's legal fees since November 2003, and has argued that, because of Mr. Kumar's criminal conviction based upon his guilty plea to securities fraud and obstruction of justice charges, the former executive is no longer entitled to indemnification.

"Kumar, as a result of his criminal conviction... admitted to knowingly and intentionally committing securities fraud, making false statements, and obstructing justice," CA said in its complaint.

Citing §45 of Delaware's General Corporation Law, CA said it was entitled to repayment of the legal fees it advanced to Mr. Kumar.

Section 145 provides that a company has the



REUTERS/KEITH BEDFORD

Sanjay Kumar

Attached Assets

- Home in Upper Brookville
- 1997 57-foot Azimut yacht
- 1999 Ferrari 550 Maranello
- 2001 Ferrari 550 Maranello
- 2004 Land Rover
- 2004 Volvo XC90
- \$9 million debt owed by former CA founder Charles B. Wang
- Bank account(s) at JPMorgan Chase

power to indemnify an executive who "acted in good faith and in a manner the person reasonably believed not to be in or not opposed to the best interest of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the person's conduct was unlawful."

CA also has argued that an order of attachment is necessary because, after he learned of the joint investigation into his actions by the U.S. Department of Justice and Securities and Exchange Commission, Mr. Kumar transferred

\$20 million and "millions of dollars in assets" to his wife. They also pointed out that Mr. Kumar has transferred \$5 million to his teenage daughters.

"Kumar has and will continue to take steps to frustrate its ability to enforce any judgment," Kenneth V. Handel, CA's general counsel, said in a Nov. 13 affidavit.

Eastern District Judge I. Leo Glasser sentenced Mr. Kumar earlier this month to 12 years in prison after the former executive pleaded guilty to financial and securities fraud and obstruction of justice charges.

Judge Glasser fined Mr. Kumar \$8 million, but said that amount might be adjusted to make funds available for restitution to those who suffered as a result of Mr. Kumar's wrongdoing.

Gary R. Brown, CA's director of litigation, said in an affidavit filed on Nov. 13 that Mr. Kumar faces restitution in excess of \$400 million due to victim losses arising out of the criminal conviction. Of that \$400 million, Mr. Brown said Mr. Kumar will likely be jointly liable for about \$175 million.

Mr. Kumar has admitted to overseeing a scheme in which the company filed fake recordings and reportings within the fiscal quarter associated with certain software license agreements, even though those agreements had not been finalized and signed during that specific quarter.

John P. McEntee, a partner at Uniondale's Farrell Fritz, and David A. Scheffel, an associate at the firm, represent CA.

Mr. Kumar argues that the firm should be disqualified because it has represented him in trust and estate matters and is familiar with his finances.

Robert P. Lynn, Jr., a partner at Mineola-based Lynn & Gartner, represents Mr. Kumar.

Both Messrs. McEntee and Lynn declined to comment.

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