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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<hr/>	§	
IN RE:	§	
	§	Chapter 11
ARCAPITA BANK B.S.C.(c), et al.,	§	
	§	Case No. 12-11076-shl
Debtors.	§	Jointly Administered
<hr/>	§	
IN RE:	§	
	§	Chapter 11
FALCON GAS STORAGE CO., INC.	§	
	§	Case No. 12-11790-shl
Debtor.	§	Joint Administration Requested
<hr/>	§	

**TIDE’S OBJECTION TO DEBTORS’ MOTIONS FOR AN ORDER PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE DIRECTING THAT CERTAIN
ORDERS IN THE CHAPTER 11 CASES OF ARCAPITA B.S.C.(c), et al.
BE MADE APPLICABLE TO SUBSEQUENT DEBTOR
(relates to Dkt. No. 132, Case No. 12-11076 &
Dkt. No. 5, Case No. 12-11790)**

Tide Natural Gas Storage I, LP and Tide Natural Gas Storage II, LP (together, “Tide”),
by their undersigned counsel, respectfully object to the Motions of Arcapita Bank B.S.C.(c)
 (“Arcapita”) and Falcon Gas Storage Co., Inc. (“Falcon” and, together with Arcapita, “Debtors”)

for an Order Pursuant to Section 105(a) of the Bankruptcy Code Directing that Certain Orders in the Chapter 11 Cases of Arcapita Bank B.S.C.(c), *et al.* be Made Applicable to Subsequent Debtor (together, the “Motions”) (Dkt. No. 132, Case No. 12-11076 & Dkt. No. 5, Case No. 12-11790). In support thereof, Tide respectfully submits as follows:

I. PRELIMINARY STATEMENT

1. Falcon is a non-operating entity with no employees and no cash flow. Other than a possible claim against its parent, Arcapita, Falcon’s only asset appears to be a disputed, alleged interest in \$70 million that currently is in escrow at HSBC Bank USA, N.A. Those escrow funds are the subject of a lawsuit that has been proceeding in the United States District Court for the Southern District of New York for almost two years.¹

2. By their Motions, the Debtors seek to incorporate over thirty-one substantive orders from the Arcapita bankruptcy cases (the “Arcapita Orders”) and make them applicable to Falcon’s bankruptcy.

3. As described more fully below, there is no legitimate reason that would support the application of the Arcapita Orders in the Falcon bankruptcy case. Unlike Arcapita, Falcon is a non-operating company that exists only on paper for the sole purpose of defending against the fraud litigation pending before Judge Kimba Wood. As a non-operating shell company with few if any assets, Falcon does not need the complex array of relief set forth in the Arcapita Orders. By adopting orders designed for a debtor of Arcapita’s size, scope and complexity, the Court

¹ As described in this Objection, the litigation arises from fraudulent misrepresentations Falcon made to Tide when selling the natural gas storage business that was Falcon’s only material asset. Falcon repeatedly has asked Judge Kimba Wood to release the escrow funds to it, but Judge Wood repeatedly has denied Falcon’s requests. It appears Falcon made this bankruptcy filing in an attempt to forum shop for a more favorable ruling. Tide reserves all rights, claims and defenses related to the appropriateness of Falcon’s bankruptcy filing, including, but not limited to, the right to seek dismissal, abatement, relief from the automatic stay, conversion or appointment of a trustee.

would increase rather than lessen the burdens to Falcon and its creditors.² In fact, it appears that Falcon's estate instantly would become administratively insolvent if the relief requested in the Motions is granted. Also as described below, there are numerous conflicts of interest that make the Motions procedurally improper. Consequently, the Motions should be denied in their entirety.

II. RELEVANT BACKGROUND

4. Tide is the plaintiff in civil action number 10-CIV-5821 (KMW), which is currently pending in the United States District Court for the Southern District of New York (the "District Court Action"). Falcon, Arcapita, and Arcapita, Inc. are defendants in the District Court Action. The escrow agent, HSBC Bank USA, N.A, is a nominal defendant.

5. The District Court Action arises out of Falcon and its controlling affiliates' misrepresentations to Tide in connection with a half-billion dollar transaction for the sale of a natural gas storage business called "NorTex Gas Storage Company, LLC" ("NorTex").

6. NorTex, formerly a subsidiary of Falcon, is in the business of storing and processing natural gas in and from two underground gas storage facilities (the "Storage Facilities") located in northern Texas.

7. In March 2010, Tide and Falcon entered into a Purchase Agreement (the "Purchase Agreement") whereby Tide agreed to purchase all of Falcon's interest in NorTex. Tide thereby acquired the entire gas storage business of NorTex. The transaction closed on April 1, 2010. The purchase price at that time was \$515 million. However, \$70 million of that

² As part of the Motions, the Debtors seek to apply to Falcon "Any and all generally applicable orders hereafter entered in the [Arcapita case] ... in respect of requests for relief pending before the Court on the date [of the order approving the Motions]." Therefore, the exact number of orders and substance of those orders to be applied to Falcon is actually unknown. Tide objects to the application of any unspecified orders in the Falcon case.

purchase price was placed in escrow with HSBC Bank USA, N.A., where the funds remain today.

8. Tide purchased the natural gas storage business on the strength of various material representations and warranties from Falcon and its affiliates, including representations about NorTex's business and the value of certain of NorTex's assets, in particular the amount of "pad gas" in the Storage Facilities, the operating costs associated with fuel consumption of the Storage Facilities, and the source of hydrocarbons extracted during the operation of NorTex's two natural gas liquid extraction plants. After taking possession of NorTex, Tide discovered not only that those misrepresentations were materially false, but that both Falcon and its controlling affiliates had actual knowledge of the falsity at the time Tide agreed to purchase NorTex.

9. In short, Tide was deceived by Falcon and its affiliates into spending over a half-billion dollars for NorTex, and Tide was materially defrauded and harmed as a direct result of Falcon's and Arcapita's misrepresentations and material omissions of facts regarding NorTex's assets and operations. Accordingly, on August 2, 2010, Tide brought the District Court Action, alleging, among other things, fraud, fraudulent inducement, breach of express warranty, breach of contract, and various securities violations, and seeking, alternatively, money damages for the economic harm Tide has suffered, disgorgement of Falcon's unjust gains from the transaction, or rescission of the purchase and sale of NorTex.

10. At the outset of the litigation, Falcon filed a motion for summary judgment asking the court to enter an order releasing the escrow funds to Falcon. Judge Wood denied the summary judgment motion, ruling that Tide had made a prima facie showing of fraud and, as a result, the \$70 million in escrow funds may not be released until Tide's fraud claims are resolved at trial. (See Opinion & Order at Dkt. No. 101 in District Court Action, denying Falcon motion

for summary judgment, attached as **Exhibit A-1**. See also Opinion & Order at Dkt. No. 130 in District Court Action, denying motion for reconsideration, attached as **Exhibit A-2**.³

11. On April 30, 2012, Falcon filed its petition for relief under chapter 11 of the Bankruptcy Code. As admitted in the Motions, following the sale of NorTex, Falcon was left with no operations, employees or cash flow, and Falcon's only asset is its alleged and disputed interest in the \$70 million escrow funds. (See Motions ¶¶ 6-7).

12. By filing the Motions, the Debtors now seek to burden Falcon's non-operating, single asset estate unnecessarily by having its case jointly administered with the bankruptcy cases of Arcapita and numerous affiliates and by incorporating over thirty substantive orders that have little or no applicability to Falcon and its bankruptcy.

III. OBJECTION AND BASIS THEREOF

13. For the reasons set forth below, Tide objects to the relief sought in the Debtors' Motions for an Order Pursuant to Section 105(a) of the Bankruptcy Code Directing that Certain Orders in the Chapter 11 Cases of Arcapita Bank B.S.C.(c), *et al.* Be Made Applicable to Subsequent Debtor, and requests that the Motions be denied in full.

A. The Arcapita Orders Have No Applicability to Falcon's Estate and Would Be Unduly Burdensome

14. As the purported basis for application of the Arcapita Orders to the Falcon estate, the Motions provide that such relief "will save the Debtors and parties in interest considerable time and expense by eliminating the need for duplicative notices, motions, applications, and orders...", that Falcon's creditors "will not be adversely affected," and that, absent such relief, "[Falcon] would seek substantially the same substantive relief granted in the [Arcapita] Orders."

³ Indeed, because traceable property obtained by a party through fraud may not be retained by such party under New York law, *see Gowan v. Patriot Group, LLC (In re Dreier LLP)*, 452 B.R. 391, 417-18 (Bankr. S.D.N.Y. 2011), the escrow funds are not property of the estate.

(Motions ¶¶ 14-15). In actuality, applying the Arcapita Orders to Falcon would *increase* time and expense to, and adversely affect, Falcon's estate and its creditors. Further, because the Arcapita Orders in most instances have no applicability to Falcon's estate, Falcon is not likely to "seek substantially the same substantive relief" as suggested in the Motions.

15. Arcapita is a massive and complicated investment vehicle, subject to Islamic banking rules and principles, with offices in Atlanta, London, Hong Kong, Singapore and Bahrain. Arcapita, through its Debtor and non-Debtor subsidiaries, has approximately \$7 billion in assets under management, \$3.06 billion in assets owned, and liabilities of \$2.55 billion. As a debtor in possession in chapter 11, Arcapita continues to operate its international enterprise by managing "assets located throughout the world, including the United States, the Middle East, Europe and Asia." (Declaration of Henry A. Thompson ¶ 27, Dkt. No. 6, Case No. 12-11076). "The underlying investments made by the Arcapita Group are generally medium to long term projects that have limited value in the short term and often require significant on-going capital funding to complete in order to realize the value of the investment." (Id. at ¶ 7). By all accounts, Arcapita intends to restructure and emerge from chapter 11 as a going-concern.

16. In contrast, Falcon is a non-operating shell company, incorporated under the laws of Delaware, with an office in Atlanta. Upon information and belief, Falcon has few, if any, creditors other than Tide, as Falcon's liabilities were settled as part of the NorTex closing. Falcon has no significant real or tangible property. Falcon's only significant property (other than an apparent claim against Arcapita) is a disputed, alleged interest in \$70 million of escrowed funds, and the validity of that interest is currently challenged in the District Court Action. Falcon has no ongoing business or assets around which to restructure. Consequently, the propriety of Falcon's chapter 11 filing is highly suspect. However, if the bankruptcy case

remains, there is no justification for joint administration with the Arcapita bankruptcy case and unnecessarily burdening the Falcon estate with the Arcapita Orders.

17. While the Debtors may suggest that the Motions are purely procedural and that they are not seeking to substantively consolidate the estates, by blindly incorporating all orders from Arcapita's case into Falcon's case (whether or not they have any applicability to Falcon's bankruptcy) the Debtors are essentially treating the estates as substantively consolidated and seek to burden the Falcon estate with costs and expenses for which the Falcon estate will receive no benefit and otherwise would not be liable.

18. Attached hereto as **Exhibit B** is a chart prepared by Tide that details each of the thirty-one orders from the Arcapita case that Falcon seeks to apply in its case. Exhibit B also provides the reasons presented by Arcapita for seeking the relief in the motions, and an explanation of why such reasons are not germane to the Falcon case.

19. As reflected on Exhibit B, Arcapita's bankruptcy estate has requested and obtained relief from this Court befitting an ongoing enterprise of its size and complexity. For example, as it relates to professionals, Arcapita has retained or sought to retain GCG, Inc. as a claims and noticing agent; Gibson, Dunn & Crutcher LLP as debtor's counsel; Trowers & Hamlins LLP as Bahraini counsel; Alvarez & Marsal as financial advisors, Rothschild Inc. and N.M. Rothschild & Sons Ltd. as additional financial advisors and investment bankers; Linklaters LLP as special counsel; KPMG LLP (US) as tax consultants; and KPMG LLP as valuation advisor. In contrast, Falcon has no need for a claims agent, Bahraini counsel, financial advisors, investment bankers, numerous special counsels or a valuation advisor. Nonetheless, via the Motions, Arcapita and Falcon seek to make all of these orders applicable to Falcon's estate. If these orders were to apply to Falcon, then presumably the Falcon estate would also be liable for

some or all of these professional fees that Falcon has no ability to pay, thereby rendering Falcon administratively insolvent.

20. As it relates to Arcapita's size and complexity, Arcapita has also sought: an extension of time to file schedules and statements of financial affairs; an extension of time to file information required by Federal Rule of Bankruptcy Procedure 2015.3(a); and a waiver of the requirement that each debtor file a list of creditors and equity security holders. In contrast, Falcon's size and complexity do not warrant any of the relief granted in these orders.

21. As it relates to Arcapita's ongoing business operations, Arcapita has sought: an order confirming protections of 362 and 365 of the Bankruptcy Code and restraining any action in contravention thereof; an order authorizing payment of critical and foreign vendors and requiring financial institutions to honor and process related checks; an order authorizing payment of prepetition wages, salaries, expenses, medical benefits, and employee compensation plans; an order to continue insurance programs; an order authorizing cash management systems, bank accounts, intercompany transactions and extending time to comply with section 345(b) of the Bankruptcy Code; and an order for names of customers to be filed under seal. Again, none of these orders applies to Falcon and they should not be incorporated wholesale in to Falcon's bankruptcy.

22. Finally, joint administration of the Falcon estate with the Arcapita estate would be highly burdensome for, and would adversely affect, Falcon's creditors. Specifically, if the cases were jointly administered, Tide and Falcon's other creditors, if any, would be required to review every motion filed in the Arcapita bankruptcy and object where the relief requested is not applicable to or appropriate for Falcon's case (as Tide has had to do here). When seeking affirmative relief, Tide would also have the additional burden of noticing creditors of the other

debtors even though those creditors otherwise would have no standing in Falcon's bankruptcy. On the other hand, the Debtors will suffer no harm or prejudice if the Motions are denied because the relief requested in Arcapita's jointly administered cases is not likely to be similar or applicable to the relief to be requested in Falcon's case (and vice versa).

B. Conflicts of Interest Also Make the Relief Requested Procedurally Improper

23. Federal Rule of Bankruptcy Procedure 1015 provides that prior to entering an order for joint administration, "a court shall give consideration to protecting creditors of different estates against potential conflicts of interest." FED. R. BANKR. P. 1015. There are numerous potential conflicts of interest between the estates of Falcon and Arcapita that warrant denial of joint administration and the other relief sought in the Motions.

24. By way of example, according to Arcapita's List of Creditors Holding 50 Largest Unsecured Claims (Dkt. No. 6-2, Case No. 12-11076 copy of which is attached here to as **Exhibit C**), Arcapita is indebted to Falcon in the amount of \$15,160,474.99 on account of a bank loan. However, in the Motions, the Debtors completely fail to mention this substantial claim of Falcon against Arcapita. Instead, the Motions state the opposite—that it is Arcapita that is a creditor of Falcon. (See Motions ¶¶ 6-7). The fact that Falcon is an admitted top 50 creditor of Arcapita yet the Motions state that Falcon owes Arcapita money highlights a conflict between the entities that weighs against joint administration.

25. Likewise, as Falcon is a top 50 creditor of Arcapita, Arcapita's counsel and Arcapita's other professionals represent an interest adverse to Falcon's estate. This adverse interest has not been disclosed in any of these professionals' employment applications, and the Arcapita Orders approving the employment of these professionals should not be summarily incorporated into Falcon's bankruptcy in violation of §§ 327(a) and (e) of the Bankruptcy Code.

26. The same conflict exists with regard to Arcapita's Official Committee of Unsecured Creditors. The Arcapita committee does not and cannot represent the creditors of Falcon for the simple reason that Falcon's gain is Arcapita's loss insofar as Falcon recovers on its \$15 million claim against Arcapita. In fact, the Arcapita committee already has stated that "allegations have been made that, prior to the petition date, cash flowed and intercompany claims were created in ways that do not accord with the Debtors' account of their cash management system." (Arcapita committee's Omnibus Objection, Dkt. No. 114 ¶ 12, Case No. 12-11076). Yet, if the relief in the Motion is granted, the Arcapita committee would presumably be the committee in Falcon's case and the Falcon estate may be obligated to pay for some or all of the fees and expenses of that committee and its professionals.⁴

IV. CONCLUSION

27. While motions for joint administration are often routinely granted to help ease the administrative and procedural burdens for the Court, the debtors, the debtors' estates and creditors, that would not be the case here. To the contrary, it would be unduly burdensome to jointly administer the Arcapita and Falcon bankruptcy cases and to apply the superfluous Arcapita Orders in the Falcon bankruptcy case. Additionally, conflicts of interest weigh against joint administration and application of the Arcapita Orders in Falcon's case.

⁴ Tide also objects to the Arcapita committee becoming the committee for the Falcon case because, upon information and belief, none of the committee members are creditors of Falcon.

WHEREFORE, Tide requests that the Court deny in full the relief sought in the Motions and grant Tide such other and further relief as the Court deems just.

Respectfully submitted,

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**COUNSEL FOR TIDE NATURAL GAS
STORAGE I, LP AND TIDE NATURAL GAS
STORAGE II, LP**

EXHIBIT A-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIDE NATURAL GAS STORAGE I, L.P. and
TIDE NATURAL GAS STORAGE II, L.P.,

Plaintiffs/Counterclaim
Defendants,

-against-

Opinion & Order
10 Civ. 5821

FALCON GAS STORAGE COMPANY, INC.;

Defendant/Counterclaim
and Crossclaim Plaintiff,

ARCAPITA BANK B.S.C.; and ARCAPITA,
INC.;

Defendants,

and HSBC BANK USA, NATIONAL
ASSOCIATION,

Defendant/Crossclaim
Defendant.

KIMBA M. WOOD, U.S.D.J.:

Plaintiffs/Counterclaim Defendants Tide Natural Gas Storage I, L.P. and Tide Natural Gas Storage II, L.P. (collectively, “Tide”) bring this action against Defendant/Counterclaim/Crossclaim Plaintiff Falcon Gas Storage Company, Inc. (“Falcon”) and Defendants Arcapita Bank, B.S.C.(c) and Arcapita, Inc. (together, “Arcapita”). Tide’s claims—which sound in common law fraud, securities fraud, breach of warranty, and breach of contract—arise out of Tide’s purchase of Falcon’s interest in the NorTex Gas Storage Company, LLC (“NorTex”).

Four motions are now before the Court. First, Falcon and Arcapita (collectively “Defendants”) move for judgment on the pleadings dismissing Tide’s Complaint, pursuant to Federal Rule of Civil Procedure Rule 12(c).

The remaining three motions relate to funds that are currently being held in escrow pursuant to the purchase agreements for NorTex. Tide, in the Fifth Cause of Action of its Complaint, seeks a permanent injunction restraining the disbursement of the escrowed funds. Falcon and Arcapita move for partial summary judgment dismissing Tide’s claim for a permanent injunction. Falcon has also filed a Counterclaim and Crossclaim, the First Cause of Action of which seeks a judgment declaring that Defendant HSBC Bank USA, National Association (“HSBC”) must disburse the escrowed funds to Falcon. Falcon moves for partial summary judgment on this request for declaratory relief. Finally, Tide cross-moves for an order of attachment against the debts and property of Falcon and Arcapita, in the event that the escrowed funds are released.

For the reasons stated below, the Court (a) DENIES Falcon’s and Arcapita’s motion for judgment on the pleadings; (b) DENIES Falcon’s and Arcapita’s motion for partial summary judgment dismissing the Fifth Cause of Action of Tide’s Complaint; (c) DENIES Falcon’s motion for partial summary judgment on the First Cause of Action of its Counterclaim and Crossclaim; and (d) DENIES Tide’s cross-motion for an order of attachment.

BACKGROUND

I. The Underlying Dispute¹

A. Tide's Purchase of NorTex

On March 15, 2010, Tide and Falcon entered into a Purchase Agreement in which Tide agreed to purchase Falcon's 100 percent interest in NorTex, an operator of two natural gas storage reservoirs in Texas for \$515 million. (Compl. ¶¶ 12-13.) On March 29, 2010—two days before the NorTex acquisition was scheduled to close—a group of Falcon's minority shareholders filed lawsuits in Texas courts (collectively, the "Hopper Litigation") in an effort to stop the deal from closing. (Plaintiff's Response to Defendants' Statement of Undisputed and Material Facts Pursuant to Rule 56.1 ("Pl.'s 56.1 Resp.") ¶ 15.) The Hopper Litigation plaintiffs also filed notices of *lis pendens* in Jack and Eastland Counties, in which the NorTex facilities (the "Facilities") are located. (Id. ¶ 18.)

In order to ensure that the NorTex deal would close despite the Hopper Litigation, the parties to the instant action entered into an amended Purchase Agreement ("Amended Agreement") and an Escrow Agreement (collectively, the "Agreements"). The parties designed the Escrow Agreement to protect Tide from any expenses or liability that might be incurred in connection with the Hopper Litigation. (Id. ¶¶ 24, 36.) The Escrow Agreement provided that \$70 million of the purchase price (the "Escrowed Amount") would be placed into escrow with HSBC. (Id.)

¹ Unless otherwise noted, the following facts are undisputed and are taken from the parties' Local Rule 56.1 statements, affidavits, and other submissions. The Court construes all evidence in a light most favorable to the non-moving party, and draws all inferences in the non-moving party's favor. See, e.g., Sledge v. Kooi, 564 F.3d 105, 108 (2d Cir. 2009).

Disbursement of the Escrowed Amount is governed by Section 3.7(a) of the Amended Agreement. That provision states that Tide and Falcon “shall deliver to [HSBC] joint instructions to disburse the balance of the Escrowed Amount” upon the occurrence of either one of the following “Escrow Breakage Triggers”:

- (i) a final non-appealable order of each court of competent jurisdiction with respect to the Hopper Claim or
- (ii) (A) an agreed dismissal with prejudice of the Hopper Claim . . . ,
(B) a complete release by all of the Participants under the Hopper Claim . . . , and
(C) the final non-appealable release or expungement of the *Lis Pendens*

(Anderson Decl., Ex. B § 3.7(a).) With the foregoing agreements in place, and with the Escrowed Amount deposited at HSBC, the NorTex transaction closed on April 1, 2010. (Pl.’s 56.1 Resp. ¶ 35.)

On July 27, 2010, Falcon and the Hopper Litigation plaintiffs entered into a written settlement agreement. (Id. ¶ 39.) The actions were dismissed with prejudice when the Hopper Litigation plaintiffs filed nonsuits in each of the courts in which their actions were pending, and the court in Eastland County entered orders expunging the notices of *lis pendens*. (Id. ¶¶ 40, 42.)

On August 2, 2010, Tide filed this lawsuit against Falcon and Arcapita. (Dkt. No. 1.)

II. Procedural History

Tide’s Complaint contains five claims for relief based on misstatements allegedly made by Falcon and Arcapita in connection with the sale of NorTex. (Compl. ¶¶ 10-11.) Tide states that Falcon made specific representations regarding the quantities and value of

“pad gas”² contained in the storage facilities, the operating costs associated with the consumption of fuel in the facilities’ operation, and the source of hydrocarbons extracted during the operation of NorTex’s natural gas liquid extraction plants. (Id. at ¶ 14.) Tide states that, after closing on the purchase of NorTex, it conducted engineering analyses that revealed a shortfall of billions of cubic feet of NorTex’s pad gas. (Id. at ¶ 25.) Tide says that it also discovered that Falcon had neither recorded nor accounted for the fuel used to compress the gas for storage and that the consumption of fuel in that compression process had further depleted the quantities of gas within the facilities. (Id. at ¶ 27.) Finally, Tide states that it also learned that Falcon did not calculate or account for “shrinkage” in gas quantities resulting from the extraction of natural gas liquids from the storage facilities. (Id. at ¶ 30.) Tide estimates the combined economic impact of the gas shortfalls and omitted operating expenses at more than \$70 million. (Id. at ¶¶ 37-39.)

Tide brings five claims for relief based on these misstatements. First, Tide alleges that Falcon and Arcapita fraudulently misrepresented material facts about the value of NorTex on which Tide relied in its decision to purchase the facility. Second, Tide alleges that Falcon breached express warranties that Falcon made in the Amended Agreement for NorTex. Third, Tide brings a breach of contract claim, on the ground that Falcon failed to deliver all of the assets represented in the Amended Agreement. Fourth, Tide claims that Falcon’s misrepresentations violated section 10 and Rule 10b-5 of the Securities Exchange Act of 1934. Finally, Tide seeks a permanent injunction restraining HSBC from disbursing any funds from the Escrow Account, except pursuant to Section 3.7 of the Purchase Agreement.

² Pad gas is the base amount of gas necessary to maintain storage field pressure and deliverability of the gas customers have stored in the facility.

Defendants Falcon and Arcapita answered Tide's Complaint, and Defendant Falcon filed a Counterclaim and Crossclaim (1) seeking a declaratory judgment ordering the disbursement of the funds in the Escrow Account and (2) alleging breach of contract by Tide. (See Defs.' Ans. & Countercl., Dkt. No. 6.) Tide asserted various affirmative defenses to Falcon's counterclaims, including that: (1) "Falcon's claims fail because [Falcon] is not entitled to enforce the provisions of agreements procured by fraud"; (2) "Falcon's claims fail because the fraud in the underlying transaction supersedes the obligations set forth in the Escrow and Purchase Agreements"; and (3) "Falcon's claims are barred because Tide is entitled to rescission of the Purchase Agreement." (See Pl.'s Ans. to Defs.' Countercl., Dkt. No. 29, ¶¶ 46, 48, 52.)

DISCUSSION

I. Defendants' Motion for Judgment on the Pleadings

A. Overview

Defendants move, pursuant to Rule 12(c), for judgment on the pleadings dismissing Claims I through IV of Tide's Complaint. Defendants offer four main grounds on which they argue that the claims should be dismissed. First, Defendants note that, in the Amended Agreement, Tide expressly disclaims reliance on any representations or warranties outside of Section IV of the Amended Agreement. Defendants argue that Claims I through IV of the Complaint are not actionable because they are based on alleged misrepresentations that were not included in Article IV. Second, Defendants note that because the Amended Agreement limits Tide's remedies to actions for breach of the indemnity provisions, Tide's common law fraud claim should be dismissed. Third, Defendants contend that Tide failed to plead its federal securities fraud

claims with the particularity required under applicable law. Finally, Defendants argue that Tide failed to support its common law fraud and securities fraud claims with adequate allegations of scienter.

B. Rule 12(c) Standard

In deciding a Rule 12(c) motion, courts “apply the same standard as that applicable to a motion under Rule 12(b)(6).” Hayden v. Paterson, 594 F.3d 150, 160 (2d Cir. 2010). In order to survive a motion for judgment on the pleadings, a plaintiff must have pleaded sufficient factual allegations “to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007); Desiano v. Warner-Lambert & Co., 467 F.3d 85, 89 (2d Cir. 2006). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, -- U.S. --, 129 S.Ct. 1937, 1949 (2009). The Court must accept as true all well-pleaded factual allegations in the complaint, and “draw[] all inferences in the plaintiff’s favor.” Allaire Corp. v. Okumus, 433 F.3d 248, 249-50 (2d Cir. 2006) (quotations omitted).

In considering a motion to dismiss, a court may consider “any written instrument attached to [the complaint] as an exhibit or any statements or documents incorporated in it by reference.” Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir. 1991). In addition, a court may consider a particular document, which is integral to the claims at issue, of which the plaintiff has notice. Yak v. Bank Brussels Lambert, 252 F.3d 127, 130-31 (2d Cir. 2001).

C. Discussion

1. Sections 4.26 and 5.5 Do Not Bar The Claims Asserted Here

Defendants first argue that Claims I through IV of Tide’s Complaint must be dismissed because, in Sections 4.26 and 5.5 of the Amended Agreement, Tide disclaims reliance on any representations except those set forth in Article IV of the Amended Agreement. (Defs.’ Mem. of Law in Support of Their Mot. for Judgment on the Pleadings (“Defs.’ Mem.”) at 10-14.) Section 4.26 of the Amended Agreement (“Section 4.26”), entitled “Disclaimer of Additional Representations and Warranties,” provides, in pertinent part, that Falcon

shall not be deemed to have made to [Tide] any representation or warranty other than as expressly made in this Article IV or the schedules accompanying Article IV. Except as expressly set forth in this Article IV, [Falcon] disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated or furnished . . . to [Tide]

(Declaration of Richard T. Marooney dated October 27, 2010 (“Marooney Decl.”) Ex. 2 § 4.26 (emphasis added) (capitalization omitted).)³ Section 5.5 of the Amended Agreement (“Section 5.5”), entitled “Reliance,” provides that Tide “has not relied on, nor is it relying on any statement, representation or warranty, either express or implied, concerning [NorTex], . . . other than those expressly made in Article IV or the Schedules accompanying Article IV.” (Id. § 5.5 (emphasis added).)

Tide, however, specifically alleges in its Complaint that it relied on two representations made by Defendants in Article IV. Tide states that it relied on representations in Section 4.9 of the Amended Agreement (“Section 4.9”) regarding the

³ The Court considers the Amended Agreement and the Financial Statements referenced in Article IV of the Amended Agreement because they are integral to the Complaint and incorporated in it by reference, and they were documents that Tide had in its possession and upon which it relied in bringing suit. Cortec Indus., 949 F.2d at 47.

accuracy of the Financial Statements Falcon provided in order to ascertain the value of the pad gas in the storage reservoirs and the cost of fuel used to operate the facilities. (Compl. ¶¶ 15, 20-21, 51-52.) Tide also states that it relied on representations in Section 4.11 of the Amended Agreement (“Section 4.11”) that there had not been any disposition of material NorTex assets between March 31, 2009 and the closing. In its complaint, Tide alleges that both of those Article IV representations were false. (Compl. ¶¶ 15, 20-21, 51-52.)

a. Alleged Misrepresentation in Section 4.9

In pertinent part, Section 4.9 states:

[e]ach balance sheet included in the Financial Statements (including the related notes and schedules) has been prepared in accordance with GAAP and fairly presents in all material respects the consolidated financial position of [NorTex] and its Subsidiaries as of the date of each such balance sheet. . . .

(Marooney Decl. Ex. 2 § 4.9 (emphasis added).)⁴

Tide alleges that Section 4.9 contains misrepresentations because, contrary to its terms, the Financial Statements (and related notes and schedules) do not “fairly present[] in all material respects the consolidated financial position of [NorTex] and its Subsidiaries” (*Id.* § 4.9.) Tide contends that at least two specific components of the Financial Statements render that representation false.

⁴ “Financial Statements” is defined to include: (1) “the audited consolidated balance sheet of [NorTex] and its Subsidiaries as of March 31, 2009, the audited consolidated statements of income, members’ equity and cash flows of [NorTex] and its Subsidiaries for the twelve (12)-month period then ended”; and (2) “the unaudited consolidated balance sheet of [NorTex] and its Subsidiaries as of December 31, 2009, the unaudited consolidated statements of income, members’ equity and cash flows of [NorTex] and its Subsidiaries for the nine (9)-month period then ended.” (*Id.* § 1.1.)

Falcon and Arcapita argue that Tide’s common law fraud claim (First Cause of Action) and its federal securities fraud claim (Fourth Cause of Action) fall short of the pleading standards required by Rule 9(b) and the Private Securities Litigation Reform Act of 1995 (“PSLRA”) 15 U.S.C. § 78u-4(b). (Defs.’ Mem. at 16.)

a. Elements of the Claims

To state a claim for a violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, “a plaintiff must plead that the defendant, in connection with the purchase or sale of securities, made a materially false statement or omitted a material fact, with scienter, and that the plaintiff’s reliance on the defendant’s action caused injury to the plaintiff.” Ganino v. Citizens Utils. Co., 228 F.3d 154, 161 (2d Cir. 2000).

The elements of common law fraud in New York are “essentially the same” as those that must be alleged to state a claim under Section 10(b) and Rule 10b-5. In re Merrill Lynch Auction Rate Sec. Litig., No. 09 MD 2030, 2011 WL 1330847, at *11 (S.D.N.Y. Mar. 30, 2011) (quotations omitted) (noting that a plaintiff asserting a common law fraud claim must show: (1) a material representation or omission of fact; (2) made with knowledge of its falsity; (3) with scienter or an intent to defraud; (4) upon which the plaintiff reasonably relied; and (5) that such reliance caused damage to the plaintiff).

b. Heightened Pleading Standards

Rule 9(b) of the Federal Rules of Civil Procedure sets forth heightened pleading requirements for fraud claims: “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b); see also In re Pfizer Inc. Sec. Litig., 584 F. Supp. 2d 621, 632-33 (S.D.N.Y. 2008). This

The Court must resolve two threshold issues before considering whether Falcon is entitled to partial summary judgment on this claim.

First, the Court considers whether any provisions in the Agreements bar Tide's fraud-based affirmative defense. Second, the Court examines Falcon's contention that Tide's "further" performance under the Agreements cannot be excused, because Tide has already fully performed by paying the contractual purchase price for NorTex and the money in the Escrow Account. (See Defs.' Reply at 5-7.)

a. Waiver of Claims and Disclaimer of Representations

The Court first considers whether Tide may assert its fraud-based affirmative defense to performance of its obligations under the Amended Agreements. As in its motion for a judgment on the pleadings, Falcon again contends that Tide is precluded from raising any fraud-related arguments because (1) Tide waived its right to assert tort "claims and causes of action" in Section 10.7; and (2) the alleged misrepresentations are not actionable under Section 4.26, which bars a party from relying on representations extrinsic to Article IV of the Purchase Agreement ("Article IV"). The Court briefly reexamines each of Falcon's contentions.

Section 10.7 states that the contractual indemnification provisions of the Agreement provide the exclusive remedy as to all claims relating to the Agreement. (Declaration of Jeremiah J. Anderson dated August 31, 2010 ("Anderson Decl.") Ex. A § 10.7.) At issue now, however, is whether Falcon is entitled to summary judgment on its First Cause of Action, notwithstanding Tide's assertion of an affirmative defense. Section 10.7 does not, by its terms, waive any affirmative defenses, and Falcon does not argue otherwise. Section 10.7 includes "claims and causes of action," but an affirmative

defense is not a claim but “a lineal descendent of the common law plea by way of ‘confession and avoidance.’” 5 C. Wright & A. Miller, Federal Practice & Procedure § 1270 (3d ed.). The Court therefore finds that Section 10.7 does not bar Tide’s affirmative defense.

Falcon similarly argues that Tide cannot, consistent with Section 4.26 of the Purchase Agreement, “allege a fraud claim” based on misrepresentations extrinsic to Article IV. (Defs.’ SJ Reply at 8; see also Defs.’ SJ Mem. at 10.) As previously discussed, Section 4.26 provides that Falcon “shall not be deemed to have made to [Tide] any representation or warranty other than as expressly made in this Article IV or the schedules accompanying Article IV.” (Anderson Decl. Ex. A § 4.26 (capitalization omitted).) Tide has submitted evidence in conjunction with this motion for summary judgment to further bolster its claims that statements in Sections 4.9 and 4.11 are false.

In its Rule 56.1 statements and accompanying declarations, Tide has submitted evidence to the effect that Defendants inflated the value of pad gas included in the Financial Statements by approximately \$30 million. (Compl. ¶ 73; Pl.’s Counterstatement. ¶¶ 90-94, 102-04; Dolan Decl. ¶¶ 13-14, 22-24; id. Ex. A-F, G.) Tide has also submitted evidence to the effect that the Financial Statements failed to include the value of fuel burned as part of the “facility operating expenses,” and that Defendants thus misstated such expenses by approximately \$40 million. (Compl. ¶ 73; Pl.’s Counterstatement ¶¶ 95-101; Dolan Decl. ¶ 16; id. Ex. A; Declaration of Mike Gallup dated September 9, 2010 (“Gallup Decl.”) ¶ 22.) The foregoing evidence gives rise to an issue of fact as to whether the representation contained in Section 4.9 that the Financial

Statements fairly presented in all material respects the consolidated financial position of NorTex was fraudulent.

Tide also alleges that statements in Section 4.11 are false because NorTex did experience a material adverse effect between March 31, 2009 and the closing date. Tide offers evidence demonstrating that, in 2009 and early 2010, Falcon management became aware that NorTex was encountering deliverability issues due specifically to shortfalls and depletion of pad gas. (Gallup Decl. ¶ 39, Exs. U-V.) Tide alleges that Defendants did not disclose such issues to Tide. (Gallup Decl. ¶ 23.) Following its purchase of NorTex, Tide states that it learned that NorTex at that point had a shortfall in pad gas of over 6 billion cubic feet. (Id. ¶¶ 14-15.) NorTex cannot operate its business absent sufficient pad gas. (Id. ¶ 7.) The foregoing evidence raises an issue of fact as to whether, contrary to the representation expressly made in Section 4.11, NorTex experienced a “Material Adverse Effect” or a “disposition of any material assets” during the relevant time period.

In light of the foregoing, the Court finds that Sections 10.7 and 4.26 do not preclude Tide from offering evidence with respect to its fraud-based affirmative defense.

b. Remaining Performance

Falcon contends that Tide’s further performance under the Agreements cannot be excused because Tide has already fully performed and the money in the Escrow Account belonged to Falcon as soon as the escrow conditions were met. (See Defs.’ Reply at 5.)

Section 3 of the Escrow Agreement, entitled “Distributions from the Escrow Account,” states that the Escrowed Amount “shall be . . . transferred only in accordance with Section 3.7 of the [Amended Agreement].” (Anderson Decl. Ex. C § 3.) Section 3.7

of the Amended Agreement provides that, upon the occurrence of either of the defined Escrow Breakage Triggers, the parties “shall deliver to [HSBC] joint instructions to disburse the balance of the Escrowed Amount” (Id. Ex. B § 3.7(a).) Tide acknowledges that the Escrow Breakage Triggers have been satisfied, (see Marooney Decl. Ex. 9; Conf. Tr. 4:12), but contends that Defendants’ fraud excuses Tide from fully performing Section 3.7—i.e., from issuing joint instructions to HSBC to release the Escrowed Amount to Falcon.

Falcon disputes the contention that any non-ministerial obligation under the Agreements remains to be performed. (See Defs.’ Reply at 7 n.6 (“The [Amended Agreement] does not give plaintiffs discretion in instructing the Escrow Agent.”).) According to Falcon, “[w]hat entitles [it] to the release of the funds is not the joint instructions, but the satisfaction of the escrow conditions.” (Defs.’ Reply at 7.)

Under New York law, property in escrow should be released only after the conditions precedent are satisfied. See In re Pan Trading Corp., S.A., 125 B.R. 869, 878 (Bankr. S.D.N.Y. 1991) (“Only after the requisite conditions are satisfied, can an escrow be fully transferred to the grantee.”). Courts are generally reluctant to override the clear terms of an escrow agreement. Netherby Ltd. v. G.V. Licensing, Inc., No. 92-4239, 1995 WL 491489, at *3 (S.D.N.Y. Aug. 17, 1995) (“Because there are no reasons to override the clear terms of the amended escrow agreement, and because none of the conditions for release of the escrowed funds contained in that agreement have been met, plaintiff’s motion [to compel release of escrowed funds] is denied.”). In the case before the Court, however, the conditions for the release of the escrowed funds contained in the agreement have been met, creating a valid reason to override its terms. Nevertheless, Tide argues

issue for trial as to the following elements: (1) that Defendants made a representation, (2) as to a material fact, (3) which was false, (4) and known to be false by Defendants, (5) that was made for the purpose of inducing Tide to rely upon it, (6) that Tide “rightfully did so rely,” (7) in ignorance of its falsity, (8) to Tide’s injury. See Cohen v. Koenig, 25 F.3d 1168, 1172 (2d Cir. 1994); Internet Law Library, Inc., 2005 WL 3370542, at *5; Cont’l Airlines, Inc. v. Lelakis, 943 F. Supp. 300, 305 (S.D.N.Y. 1996).

b. Application of Law to Facts

In opposing the instant motion for partial summary judgment, Tide has adduced particularized evidence that would allow a reasonable jury to find, by clear and convincing evidence, that each of the elements of fraud has been satisfied. See Schuster, 877 F. Supp. at 826. As previously discussed, Tide has demonstrated that Falcon made two principal representations in Article IV of the Purchase Agreement that were allegedly false: (1) that “[c]omplete and accurate copies of the Financial Statements have been made available to [Tide],” and that “[e]ach balance sheet included in the Financial Statements (including the related notes and schedules) . . . fairly presents in all material respects the consolidated financial position of [NorTex],” (Anderson Decl. Ex. A § 4.9); and (2) that since March 31, 2009, NorTex has not experienced a “disposition of any material assets” or a “Material Adverse Effect,” which is defined as “any state of facts” that is “materially adverse to the condition (financial or otherwise), business, results of operations, properties, assets or liabilities of [NorTex]” (Anderson Decl. Ex. A § 4.9, § 1.1.) These alleged misrepresentations, which related to the value of NorTex’s current assets, were “plainly” material. See, e.g., Cohen, 25 F.3d at 1172 (stating that

IV. Conclusion

The Court has considered Defendants' remaining contentions and finds them to be without merit. For the reasons stated above, the Court (a) DENIES Defendants' motion for judgment on the pleadings (Dkt. No. 94); (b) DENIES Defendants' motion for partial summary judgment (Dkt. Entry No. 32.); and (c) DENIES Tide's cross-motion for an order of attachment (Dkt. No. 82).

By no later than October 28, 2011, the parties shall submit via ECF and facsimile a Joint Status Letter detailing how they intend to proceed, and whether they wish to be referred to a magistrate judge for settlement discussions. The parties shall attach to their Joint Status Letter a Scheduling Order that provides for this case to be tried no later than January 17, 2012.

SO ORDERED.

DATED: New York, New York
September 28, 2011

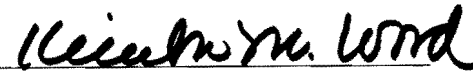

KIMBA M. WOOD
United States District Judge

EXHIBIT A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIDE NATURAL GAS STORAGE I, L.P. and
TIDE NATURAL GAS STORAGE II, L.P.,

Plaintiffs/Counterclaim
Defendants,

-against-

Opinion & Order
10 CV 5821

FALCON GAS STORAGE COMPANY, INC.;

Defendant/Counterclaim
and Crossclaim Plaintiff,

ARCAPITA BANK B.S.C.; and ARCAPITA,
INC.;

Defendants,

and HSBC BANK USA, NATIONAL
ASSOCIATION,

Defendant/Crossclaim
Defendant.

KIMBA M. WOOD, U.S.D.J.:

Pursuant to Rule 60 of the Federal Rules of Civil Procedure and Local Rule 6.3, Defendants Falcon Gas Storage Company, Inc. (“Falcon”), Arcapita Bank, B.S.C.(c) and Arcapita, Inc. (“Arcapita”) (collectively, “Defendants”) move for reconsideration of the portion of this Court’s September 28, 2011 Order that: (1) denied Defendants’ partial summary judgment motion for a declaratory judgment ordering the escrowed funds to be disbursed to Falcon; and (2) denied Defendants’ partial summary judgment dismissing Plaintiffs Tide Natural Gas Storage I, L.P. and Tide Natural Gas Storage II, L.P.’s (collectively, “Tide”) request for a permanent injunction restraining the disbursement of

escrowed funds. *Tide Natural Gas Storage I, L.P. v. Falcon Gas Storage Co., Inc.* (the “September 28, 2011 Order”), 10 CV 5821, 2011 WL 4526517 (S.D.N.Y. Sept. 28, 2011).

For the reasons stated below, the motion for reconsideration is denied.

BACKGROUND

I. The Underlying Dispute

On March 15, 2010, Tide and Falcon entered into a Purchase Agreement, whereby Falcon agreed to sell its entire interest in Nortex Gas Storage Company, LLC (“Nortex”) to Tide for \$515 million. (Compl. ¶¶ 12-13.) Two days before the closing of the deal, a group of minority shareholders filed lawsuits in Texas courts (collectively, the “Hopper Litigation”), in an attempt to stop the transaction from closing. (Plaintiff’s Response to Defendants’ Statement of Undisputed and Material Facts Pursuant to Rule 56.1 (“Pl.’s 56.1 Resp.”) ¶ 15.) The Hopper Litigation plaintiffs also filed notices of *lis pendens*, in connection with their lawsuits. (Id. ¶ 18.)

Consequently, the parties agreed to place \$70 million of the purchase price into an escrow account (the “Escrow Account”) with HSBC Bank USA, National Association (“HSBC”) as protection against any expenses or liability Tide might incur as a result of the Hopper Litigation. (Id. ¶¶ 24, 36.) On April 1, 2010, the parties executed an Amended Purchase Agreement in tandem with an Escrow Agreement: Section 3.7(a) of the Amended Purchase Agreement governs the disbursement of the monies escrowed with HSBC. Section 3.7(a) provides that Tide and Falcon “shall deliver to [HSBC] joint instructions to disburse the balance of the Escrowed Amount” upon the occurrence of either one of the following two conditions:

- (i) a final non-appealable order of each court of competent jurisdiction with respect to the Hopper Claim or
- (ii) (A) an agreed dismissal with prejudice of the Hopper Claim . . . ,
(B) a complete release by all of the Participants under the Hopper Claim . . . , and
(C) the final non-appealable release or expungement of the Lis Pendens

(Declaration of Jeremiah J. Anderson, dated Aug. 31, 2010, Ex. B, Amended Purchase Agreement § 3.7(a).) On April 1, 2010, with the abovementioned agreements in place, the Nortex transaction closed. (Pl.'s 56.1 Resp. ¶ 35.)

On July 27, 2010, Falcon and the Hopper Litigation plaintiffs reached a settlement, pursuant to which the Hopper Litigation plaintiffs filed nonsuits in each of the courts in which their actions were pending. (Id. ¶ 39.) Subsequently, the Court in Eastland County entered an order expunging the notices of *lis pendens*. (Id. ¶¶ 40, 42.)

Tide filed the instant action against Falcon and Arcapita on August 2, 2010. (Dkt. No. 1.)

II. Procedural History

Tide's complaint contains four causes of action arising out of alleged misstatements made by Defendants in connection with the Nortex sale. Tide alleges: (1) fraudulent misrepresentation; (2) breach of warranty; (3) breach of contract; and (4) violation of Section 10 and Rule 10b-5 of the Securities Exchange Act of 1934. (Compl. ¶¶ 10-11.) In addition, Tide seeks a permanent injunction preventing Falcon and HSBC from disbursing any funds from the Escrow Account, except pursuant to Section 3.7 of the Amended Purchase Agreement.

Defendants answered Tide's complaint, and Falcon filed a Counterclaim and Crossclaim, seeking, *inter alia*, a declaratory judgment ordering the disbursement of the funds in the Escrow Account.

Defendants Falcon and Arcapita, pursuant to Federal Rule of Procedure 12(c), filed a motion for judgment on the pleadings to dismiss Claims I through IV of Tide's complaint. Defendants also moved for partial summary judgment on two claims: (1) Falcon's first cause of action of its Counterclaim and Crossclaim, requesting a judgment declaring that HSBC must disburse the escrowed funds to Falcon; and (2) Tide's request for a permanent injunction restraining the disbursement of the escrow funds. In its September 28, 2011 Order, the Court denied each of Defendants' motions. *Tide*, 2011 WL 4526517, at *15.

DISCUSSION

I. Defendants' Motion for Reconsideration

A. Legal Standard

Local Rule 6.3 provides that a party may submit a motion for reconsideration "setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked." Local R. 6.3. The "major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *United States v. Plugh*, 648 F.3d 118, 123-24 (2d Cir. 2011) (quotation marks and citation omitted). Reconsideration may be granted where the moving party can point to matters "that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

A Court should not grant a motion for reconsideration in order to allow a party to “advance new facts, issues or arguments not previously presented to the Court.” *Williams v. Smith*, 02 CV 4558, 2009 WL 5103230 at *1 (S.D.N.Y. Dec. 23, 2009) (Cote, J.) (quotation marks and citation omitted). Similarly, a “motion to reconsider should not be granted where the moving party is solely attempting to relitigate an issue that already has been decided.” *Shrader*, 70 F.3d at 257.

B. Discussion

The Defendants ask the Court to reconsider only the portion of its September 28, 2011 Order denying Defendants’ motion for partial summary judgment on: (1) Falcon and Arcapita’s request for a declaratory judgment ordering the disbursement of the escrowed funds; and (2) Tide’s request for a permanent injunction restraining the escrowed funds. The Court considers each in turn.

Defendants argue that the Court has overlooked “the fact that the escrow was created for a purpose entirely separate and unrelated to plaintiff’s fraud claims.” (Memorandum of Law in Support of Defendants’ Motion for Reconsideration (“Defs.’ Mem.”) at 2.) However, the relatedness of the agreements was considered by this Court in its September 28, 2011 Order. *Tide*, 2011 WL 4526517, at *13 (“Section 3 of the Escrow Agreement, entitled ‘Distributions from the Escrow Account,’ states that the Escrowed Amount ‘shall be . . . transferred only in accordance with Section 3.7 of the [Amended Agreement].’”). Defendants seek to reargue the merits of this Court’s previous decision, and present no controlling decisions or facts which the Court did not already consider. Accordingly, the Court dismisses Defendants’ motion for reconsideration of their request for a declaratory judgment.

Even if Defendants had met the strict standard required for reconsideration, their claim fails. The Amended Purchase Agreement and the Escrow Agreement are interconnected. Each agreement was entered into in conjunction with the other, each agreement references the other, and neither agreement can stand alone. It is true, as Defendants point out, that the funds were placed in escrow as a response to the Hopper Litigation. (Defs.' Mem at 5.) Nevertheless, the conditions of the escrow release are incorporated into the Purchase Agreement through the First Amendment to that Agreement, entered into on April 1, 2010. The Escrow Agreement itself does not provide instructions for the withdrawal and transfer of the escrowed funds, but refers to Section 3.7 of the Amended Purchase Agreement. Thus, the release of the escrowed funds is part and parcel of the Amended Purchase Agreement. The agreements are interdependent—neither would have been entered into without the other—and thus the distribution of the funds in the Escrow Account is intertwined with Tide's underlying fraud claims related to the Amended Purchase Agreement.

Defendants' contention that the parties had not contemplated an Escrow Agreement at the time they entered into the original Purchase Agreement is not persuasive, because the transaction itself was governed by the Amended Purchase Agreement, not the original Purchase Agreement. Defendants clearly contemplated the Escrow Agreement at the time they entered into the Amended Purchase Agreement because the Amended Purchase Agreement governs the distribution of the escrowed funds.

Defendants also argue that because Tide's fraud claims arise out of breaches of Sections 4.9 and 4.11 of the Amended Purchase Agreement, rather than Section 3.7,

“Tide’s allegations of fraud have nothing to do with . . . the escrow.” (Defs.’ Mem. at 4.)

Tide, however, alleges fraud in the inducement of the entire Amended Purchase Agreement. Because the terms of the Amended Purchase Agreement govern the distribution of the escrowed funds, Tide’s remaining performance under Section 3.7 of the Amended Purchase Agreement may be excused pending resolution of Tide’s claims that the Amended Purchase Agreement was fraudulently induced.

Defendants also argue that “the escrow conditions have been met” and that therefore “the escrow must be released.” (Defs. Mem. at 6.) In its September 28, 2011 Order, the Court also addressed this issue, finding that Tide had sufficiently alleged fraud in the inducement of the Amended Purchase Agreement and recognizing the settled law that a party may not compel performance of an agreement that was induced by fraud. *Tide*, 2011 WL 4526517, at *14 (“Because Tide has come forward with evidence that would allow a reasonable jury to find, by clear and convincing evidence, that each of the elements of fraud has been satisfied, Falcon is not, at least at this juncture, entitled to the declaratory relief it seeks.”).

Thus, even considering the request for a declaratory judgment on the merits, the Court comes to the same conclusion, that it must be denied pending adjudication of Tide’s claims that the whole Amended Purchase Agreement was fraudulently induced.

Defendants also ask this Court to reconsider its decision denying their motion for summary judgment on Tide’s request for a permanent injunction restraining the escrowed funds. The issue raised in Defendants’ motion was fully considered and decided by this Court in its September 28, 2011 Order. *Tide*, 2011 WL 4526517, at *11 (“Unless and until Tide moves for an injunction, Falcon’s and Arcapita’s motion for summary

judgment is premature.”). Tide’s complaint has established viable claims under its first four causes of action. If those claims are ultimately successful and Tide can establish Defendants’ liability, at that point Tide could request a permanent injunction. *Chiste v. Hotels.com L.P.*, 756 F. Supp. 2d 382, 407-08 (S.D.N.Y. 2010) (McMahon, J.). Foreclosing that potential remedy at this preliminary stage would be premature. Defendants have failed to identify any controlling decisions or data which would merit reconsideration of this conclusion.

CONCLUSION

For the reasons stated above, Defendants’ motion for reconsideration is DENIED.

SO ORDERED.

DATED: New York, New York
May 4, 2012

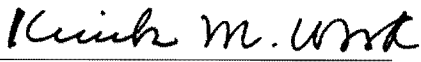

KIMBA M. WOOD
United States District Judge

EXHIBIT B

FIRST FILED DEBTORS' ENTERED ORDERS

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
3/22/2012	16	Order Directing Joint Administration of Related Chapter 11 Cases (granting Dkt. No. 2)	<ul style="list-style-type: none"> - “[T]he Chapter 11 cases potentially involve a large number of creditors,” that joint administration will “render the completion of various tasks less costly,” (p. 7, ¶12) - “respective creditors of the Debtors will not be adversely affected” by joint administration (p. 8, ¶15). 	<ul style="list-style-type: none"> - Falcon has few, if any, creditors other than Tide - Joint Administration would increase rather than decrease burden and expenses to Falcon’s creditors and thus, creditors would be adversely affected by joint administration

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
3/22/2012	18	Order Extending the Time to File Schedules and Statements of Financial Affairs, granting Debtors' Motion for Order Extending the Time to File Schedules and Statements of Financial Affairs (granting Dkt. No. 3)	<ul style="list-style-type: none"> - "The size and complexity of the Debtors' business operations, the number of creditors likely to be involved in the Chapter 11 Cases (many of whom are foreign creditors), and the international scope of the Debtors' operations will make it difficult to complete the Schedules and Statements within the required time period. . . . for many creditors, the Debtors will not have received invoices within the 14-day period to determine the amounts due as of the Petition Date." (p. 4-5, ¶9) - "Further, given the numerous critical operational matters . . . and the volume of information that must be compiled and reviewed, the Debtors believe that they will be unable to complete their Schedules and Statements within the time provided under Bankruptcy Rule 1007." (p. 4-5, ¶9) 	<ul style="list-style-type: none"> - Falcon has no business operations and few, if any, creditors other than Tide - No foreign creditors - No operations, international or otherwise - No invoices - No operational matters to attend to - Very small amount of information to compile since Falcon has no operations and only one disputed alleged asset other than its claim against Arcapita

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
3/22/2012	19	Order Confirming the Protections of Sections 362 and 365 of the Bankruptcy Code and Restraining Any Action In Contravention Thereof (granting Dkt. No. 4)	<ul style="list-style-type: none"> - “Debtors have foreign operations with potentially large numbers of foreign creditors and counterparties to contracts who may be unaware of the global-reaching prohibitions and restrictions of the Bankruptcy Code (p. 4, ¶7) - “certain Foreign Creditors may attempt to seize assets located outside the Unites States to the Detriment of the Debtors” (p. 4, ¶8) 	<ul style="list-style-type: none"> - Falcon has no foreign operations - Falcon has no foreign creditors
3/22/2012	20	Order Granting the Debtors Additional Time to File Reports of Financial Information Pursuant to Federal Rule of Bankruptcy Procedure 2015.3(a) (granting Dkt. No. 9)	<ul style="list-style-type: none"> - Significant amount of non-debtor affiliates located in various countries - “Many of these Non-Debtor Affiliates have substantial assets and operations, and assembling and compiling the financial reports of the value, operations, and profitability of these various Non-Debtor Affiliates throughout the world will require significant time and effort by the Debtors’ personnel.” (p. 5, ¶9) 	<ul style="list-style-type: none"> - Falcon has no reporting requirements under Rule 2015.3(a)

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
3/22/2012	21	Order (a) Waiving the Requirement that Each Debtor File a List of Creditors and Equity Security Holders and Authorizing Maintenance of Consolidated List of Creditors In Lieu of a Matrix; (b) Authorizing Filing of a Consolidated List of Top 50 Unsecured Creditors; and (c) Approving Case Management Procedures (granting Dkt. No. 7)	<ul style="list-style-type: none"> - Providing the list of creditors in matrix form would be unduly burdensome and “increase risk of error with respect to the transfer of this information from the present systems maintained by the Debtors of their agents” (p. 7, ¶12) 	<ul style="list-style-type: none"> - Falcon has few, if any, creditors other than Tide and there is no reason Falcon cannot timely prepare lists and schedules required by the Bankruptcy Rules

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
3/30/12	39	Interim Order Authorizing (a) Debtors to Pay Certain Prepetition Claims of Critical and Foreign Vendors; and (b) Financial Institutions to Honor and Process Related Checks and Transfers (granting Dkt. No. 23)	<ul style="list-style-type: none"> - “Debtors service a diverse set of clients and customers located throughout the world, and in particular, the Middle East” (p. 3, ¶5) - “Any interruption in the provision of services could be disastrous to the Debtors’ business. Maintaining the operational capability to provide these goods and services, in turn, depends on the Debtors’ ability to obtain essential goods and services from select and often irreplaceable vendors.” (p. 3, ¶5) - Vendors in foreign countries “may not be willing to do business with a ‘Chapter 11 Debtor’ absent payment of their prepetition claims.” (p. 3, ¶6) - Negative impact on Debtors’ ability to operate and attract new business (p. 4, ¶6) - “Foreign vendors may also attach or foreclose on the Debtors’ assets outside the United States, or sue or otherwise initiate legal actions against one of more of the Debtors in a foreign court to recover prepetition amounts owed to them.” (p. 7, ¶14) - Need to pay fees, such as those imposed by Bahraini government (p. 8, ¶15) 	<ul style="list-style-type: none"> - Falcon does not service any customers or clients - Falcon does not have an operational business that could be disrupted - Falcon does not do business with any foreign creditors - Falcon does not operate and, as such, does not need to attract new business - Falcon has no critical or foreign vendors to pay - Falcon does not have money to pay these entities

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
3/30/12	40	Interim Order (a) Authorizing the Debtors to (a) Pay Certain Prepetition Wages, Salaries, and Reimbursable Employee Expenses, (b) Pay and Honor Employee Medical and Similar Benefits, and (c) Continue Employee Compensation and Employee Benefit Programs (granting Dkt. No. 24)	<ul style="list-style-type: none"> - “If the Employee Obligations are not paid, the Debtors will risk tangible and intangible loss of the value of their businesses, including, among other things, losses relating to the cost of replacing Employees who seek alternative employment and losses related to the disruption of, and lower productivity in, the Debtors’ business operations resulting from low employee morale and high turnover.” (p. 17, ¶34) 	<ul style="list-style-type: none"> - Falcon has no employee expenses to pay - Falcon does not have the money to pay these expenses

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
3/30/12	43	Interim Order (a) Authorizing the Debtors to Continue Insurance Coverage Entered Into Prepetition and To Pay Obligations Relating Thereto; and (b) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (granting Debtors' Motion for Interim and Final Orders (A) Authorizing the Debtors to Continue Insurance Coverage Entered into Prepetition and to Pay Obligations Relating Thereto; and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers (granting Dkt. No. 25)	<ul style="list-style-type: none"> - "The Policies are essential to the preservation of the value of the Debtors' businesses, properties, and assets . . . the contracts that govern the Debtors' commercial activities require insurance coverage such as that provided by the policies." (p. 4, ¶6) - "Failure to pay the Insurance Obligations may harm the Debtors' estates in several ways, such as the potential for an insurance company to terminate coverage, the subsequent need to obtain replacement insurance at a likely higher price, and the adverse effect any interruption of payment would have on the Debtors' ability to finance premiums on future Policies." (p. 6, ¶10) 	<ul style="list-style-type: none"> - Falcon engages in no commercial activity - Falcon owns no assets requiring insurance - Falcon does not have any insurance policies that can be terminated, and which it would then have to replace
4/19/12	83	Final Order Authorizing and Approving the Employment and Retention of GCG, Inc. as Administrative Agent for the Debtors and Debtors In Possession Nunc Pro Tunc to the Petition Date (granting Dkt. No. 27)	<ul style="list-style-type: none"> - "In light of the size and complexity of the Chapter 11 Cases, the Debtors respectfully represent that GCG's retention and employment pursuant to the terms of the Engagement Agreement is necessary and in the best interest of the Debtors' estate and all parties in interest to the Chapter 11 Cases." (p. 7-8, ¶22) 	<ul style="list-style-type: none"> - Falcon's case is not large and complex - Few claims and votes will be submitted

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
4/19/12	84	Final Order Authorizing Retention and Appointment of GCG, Inc. as Claims and Noticing Agent under 28 U.S.C. § 156(c), 11 U.S.C. § 105(a), S.D.N.Y. LBR 5075-1 and General Order M-409 and Granting Related Relief (granting Dkt. No. 26)	<ul style="list-style-type: none"> - GCG to prepare and serve notices and pleadings; maintain service list and matrix; process all proofs of claim 	<ul style="list-style-type: none"> - Falcon has few, if any, creditors other than Tide, and will not require mass mailings or processing of mass claims
4/20/12	86	Third Interim Order (a) Authorizing Debtors to (i) Continue Use of Existing Cash Management System, Bank Accounts and Business Forms and (ii) Continue Ordinary Course Intercompany Transactions; and (b) Granting an Extension of the Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code (granting Dkt. No. 12)	<ul style="list-style-type: none"> - Approval of existing cash management system will avoid “distractions that not only could divert the Debtors’ attention from more pressing matters during the initial days of the Chapter 11 Cases, but also interfere with the operation of the Debtors’ businesses” (p. 5, ¶9) - Exhibit C lists Debtors’ bank accounts; none in Falcon’s name listed - Request approval of intercompany transfers “through which expenses of Non-Debtor affiliates are paid by Arcapita . . . and intercompany transactions are utilized to maintain Arcapita’s ability to make such payments.” (p. 8, ¶16) - Seek to “avoid a substantial disruption to the normal operation of their businesses and to preserve a ‘business as usual’ atmosphere” (p. 14, ¶28) 	<ul style="list-style-type: none"> - Falcon has no operations with which to interfere - Falcon does not appear to have any bank accounts or existing cash management system to maintain - Falcon does not require funding as it is non-operational - No business atmosphere to preserve

Date	Docket #	Order	Bases for Relief Given in Motion	Reasons Not Applicable to Falcon Estate
4/24/12	94	Order Approving Specified Information Blocking Procedures and Permitting Trading in Claims against the Debtors Upon Establishment of a Screening Wall (granting Dkt. No. 69)	<ul style="list-style-type: none"> - Motion seeks a “safe harbor” so that Barclays is not deemed to have violated fiduciary duties to other members of the Committee by trading claims and/or securities 	<ul style="list-style-type: none"> - Falcon does not have any securities that can be traded, and upon information and belief, Barclays is not a creditor of Falcon
4/30/12	105	<i>Ex Parte</i> Bridge Order Extending the Time to File Reports of Financial Information Pursuant To Federal Rule of Bankruptcy Procedure 2015.3(a) and Schedules and Statements of Financial Affairs (granting Dkt. Nos. 90 and 91)	<ul style="list-style-type: none"> - Time to file Rule 2015.3 Reports should be extended for another 45 days because “[i]n addition to the size, complexity and volume of information that must be reviewed, the Debtors’ professionals anticipate that they will need additional time to continue consideration of the nuanced legal issues that are presented by the Debtors’ financial statements, operational procedures, and organizational structure.” (Dkt. No. 90, p.7, ¶12) - Time to file schedules and statements should be extended by 45 days for cause shown because as “a global manager of Shari’ah compliant alternative investments and an investment bank, the Debtors maintain assets and contracts throughout the world.” (Dkt. No. 91, p.7, ¶10) - Again, “nuanced legal issues” (Dkt. No. 91, p.7, ¶11) 	<ul style="list-style-type: none"> - Falcon case not large or complex - Very few documents to review and compile since no operations or contracts and limited assets - Falcon does not manage Shari’ah investments or any other investments and does not have contracts anywhere - No nuanced legal issues that would interfere with filing schedules, statements, and financial reports - Falcon has no disclosure requirements under Rule 2015.3

FIRST FILED DEBTORS' PENDING MOTIONS

Date	Docket #	Motion	Reason Given in Motion	Reason Not Applicable In Re Falcon
4/2/12	46	Debtors' Application Pursuant to Sections 327(e) and 328 of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ Trowers & Hamlins LLP as Bahraini Counsel <i>Nunc Pro Tunc</i> to the Petition Date	<ul style="list-style-type: none"> - T&H has represented the Debtors since 2002 (p.5, ¶9) - “Any of a number of issues arising in connection with the chapter 11 process will implicate the Debtors’ compliance with Bahrain laws, ranging from basic legal transactions to employee relations.” (p.5, ¶9) 	<ul style="list-style-type: none"> - Falcon does not engage in transactions or have any employees in Bahrain - Falcon has no need for professionals in Bahrain - Falcon has no funds with which to compensate professionals - These professionals represent interests adverse to Falcon, which interests have not been properly disclosed pursuant to Rule 2014
4/2/12	47	Debtors' Application for Interim and Final Orders Approving the Employment and retention of Alvarez & Marsal North America, LLC as Financial Advisors to Debtors and Debtors In Possession Pursuant to Sections 327(a) and 328 of the Bankruptcy Code	<ul style="list-style-type: none"> - “A&M specializes in interim management, crisis management, turnaround consulting, operational due diligence, creditor advisory services, and financial and operational restructuring.” (p.4, ¶10) 	<ul style="list-style-type: none"> - Falcon has no operations, has no employees or management, and has no need for a financial advisor or consultant - Falcon has no funds with which to compensate professionals - These professionals represent interests adverse to Falcon, which interests have not been properly disclosed pursuant to Rule 2014

Date	Docket #	Motion	Reason Given in Motion	Reason Not Applicable In Re Falcon
4/2/12	48	Debtors' Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Committee Members	<ul style="list-style-type: none"> - "Given the number of professionals likely to be retained in the Chapter 11 Cases, the Debtors believe that the implementation of orderly procedures for interim monthly payment of professional fees and expenses would ease the administration of these bankruptcy estates." (p.3, ¶6) 	<ul style="list-style-type: none"> - Falcon is a non-operating holding company with one disputed, alleged asset (other than its claim against Arcapita). It has no need for professionals other than legal counsel and does not need complicated payment procedures to pay professionals - Falcon has no funds with which to compensate professionals
4/2/12	49	Debtors' Motion for an Order Pursuant to Sections 105(a), 327, 328 and 330 of the Bankruptcy Code Authorizing Debtors to Employ and Retain Certain Professionals Utilized in the Ordinary Course of the Debtors' Business	<ul style="list-style-type: none"> - All foreign law firms, tax advisories, consultants, and accountants - Seeks order "approving the payment of 100% of the monthly fees and expenses of the Ordinary Course Professionals, without requiring the filing of fee applications or further court orders" (p.3, ¶5) 	<ul style="list-style-type: none"> - Falcon has no need for and cannot benefit from services of foreign law firms, advisors, accountants, etc., and should not be forced to bear the cost of compensating these professionals, for which it does not have funds to pay

Date	Docket #	Motion	Reason Given in Motion	Reason Not Applicable In Re Falcon
4/3/12	51	Debtors' Application for an Order Approving the Employment and Retention of Gibson, Dunn & Crutcher LLP as Counsel for the Debtors In Possession <i>Nunc Pro Tunc</i> to the Petition Date	<ul style="list-style-type: none"> - Extensive expertise and experience in large and complex bankruptcy cases - No adverse interest - Intimately familiar with "virtually all aspects of the Debtors' business and legal affairs." (p. 5 ¶8) - Will charge ordinary and customary rates 	<ul style="list-style-type: none"> - Falcon does not require counsel with extensive experience in large and complex bankruptcy cases - These professionals represent interests adverse to Falcon, which interests have not been properly disclosed pursuant to Rule 2014 - Falcon does not require counsel with familiarity of all aspects of Arcapita's business and legal affairs and this is a conflict of interest - Falcon cannot afford professional's ordinary and customary rates and rates not appropriate for size and complexity of Falcon's case
4/3/12	52	Debtors' Motion for Order Authorizing Parties to File Under Seal Names of the Debtors' Customers	<ul style="list-style-type: none"> - Seeks to file names of Debtors' investors under seal because "[p]ublic disclosure of the Investor's names would damage the Debtors' business by enabling the Debtors' competitors to 'poach' the Investors" (p.5, ¶10) 	<ul style="list-style-type: none"> - Falcon has no investors or competitors to protect

Date	Docket #	Motion	Reason Given in Motion	Reason Not Applicable In Re Falcon
4/3/12	53	Debtors Application for an Order Approving the Employment and Retention of Rothschild Inc. and N M Rothschild & Sons Limited as Financial Advisors and Investment Bankers for the Debtors <i>Nunc Pro Tunc</i> to the Petition Date	<ul style="list-style-type: none"> - “Rothschild has expertise in domestic, international and cross-border restructurings, mergers and acquisitions and other debt and financial advisory services.” (p.4, ¶7) - “[A]s a result of the prepetition work performed on behalf of the Debtors, Rothschild acquired significant knowledge of the Debtors and their businesses and is now intimately familiar with the Debtors’ financial affairs, debt structure, operations and related matters.” (p.7, ¶11) 	<ul style="list-style-type: none"> - Falcon does not need a financial advisor because it does not have any business or operations. It especially does not need <i>three</i> advisors (A&M, Rothschild Inc. and N.M. Rothschild) - These professionals represent interests adverse to Falcon, which interests have not been properly disclosed pursuant to Rule 2014 - Falcon has no funds with which to compensate professionals
4/23/12	92	Debtors’ Application Pursuant to Sections 327(e), 328(a), and 330(a) of the Bankruptcy Code for an Order Authorizing the Debtors to Retain and Employ Linklaters LLP as Special Counsel to the Debtors <i>Nunc Pro Tunc</i> to the Petition Date	<ul style="list-style-type: none"> - Seek retention to continue assisting the Debtors “in the acquisition and disposition of various assets.” (p.10, ¶22) - Also advising “in connection with the Debtors’ prepetition credit, security, and intercreditor agreements” (p.6, ¶11(a)) 	<ul style="list-style-type: none"> - These professionals represent interests adverse to Falcon, which interests have not been properly disclosed pursuant to Rule 2014 - Falcon has no assets to dispose of and no funds to acquire assets - Falcon does not have complex debt structure requiring Linklaters’ expertise - Falcon has no funds with which to compensate professionals

Date	Docket #	Motion	Reason Given in Motion	Reason Not Applicable In Re Falcon
5/2/12	113	Debtors' Application for an Order Approving the Employment and Retention of KPMG LLP (US) as Tax Consultants to Debtors and Debtors In Possession Pursuant to Section 327(a) of the Bankruptcy Code	<ul style="list-style-type: none"> - "The Debtors have selected KPMG-US as their tax consultants because of the firm's diverse experience and extensive knowledge in the fields of accounting, taxation, and operational controls for large sophisticated companies both in chapter 11, as well as outside of chapter 11." (p.3, ¶10) - "KPMG-US is familiar with the books, records, financial information and other data maintained by the Debtors and is qualified to continue to provide tax consulting services to the Debtors." (p.4, ¶11) 	<ul style="list-style-type: none"> - Falcon is not a large sophisticated company - These professionals represent interests adverse to Falcon, which interests have not been properly disclosed pursuant to Rule 2014 - Falcon has no need for these services - Falcon has no funds with which to compensate professionals
5/4/12	123	Debtors' Application Pursuant to Sections 327(a) and 330 of the Bankruptcy code for an Order Authorizing the Debtors to Retain and Employ KPMG LLP as Valuation Advisor to the Debtors <i>Nunc Pro Tunc</i> to the Petition Date	<ul style="list-style-type: none"> - "KPMG UK, as an experienced valuation advisor, fulfills a critical need that complements the services offered by the Debtors' other restructuring professionals . . . KPMG UK's services will be limited to providing valuation services for the specific portfolio assets in which the Debtors hold interests . . ." (p.6, ¶14) 	<ul style="list-style-type: none"> - Falcon has no assets requiring expert valuation - These professionals represent interests adverse to Falcon, which interests have not been properly disclosed pursuant to Rule 2014 - Falcon has no funds with which to compensate professionals

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 IN RE: : Chapter 11
 ARCAPITA BANK B.S.C.(C), *et al.*, : Case No. _____
 Debtors. : Joint Administration Requested
 -----X

**CONSOLIDATED LIST OF CREDITORS HOLDING
THE 50 LARGEST UNSECURED CLAIMS**

The above-captioned debtors (collectively, the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. The following is the consolidated list of the Debtors' creditors holding the 50 largest unsecured claims (the "**Consolidated List**") based on the Debtors' books and records as of approximately March 14, 2012. The Consolidated List is prepared in accordance with Rule 1007(d) of the Federal Rules of Bankruptcy Procedure and Rule 1007-2(4) of the Local Rules of Bankruptcy Procedure for filing in these chapter 11 cases. The Consolidated List does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101(31) or (2) secured creditors, unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 50 largest unsecured claims on a consolidated basis. None of these creditors are minor children. The information contained herein shall neither constitute an admission of liability by, nor is it binding on, the Debtors. The information herein, including the failure of the Debtors to list any claim as contingent, unliquidated or disputed, does not constitute a waiver of the Debtors' right to contest the validity, priority or amount of any claim.

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim
1.	Central Bank of Bahrain	Mr. Ashley Freeman P.O. Box 27 Diplomatic Area Manama Kingdom of Bahrain Tel: +973 17547531 ashley@cbb.gov.bh	Bank Loan	\$255,120,417.00
2.	Commerzbank	Commerzbank Aktiengesellschaft Corporates & Markets, Leveraged Finance, Maizner Landstr. 153, DLZ-Geb. 2, Handlerhaus, 60327 Frankfurt am Main, Germany. Telephone: +49 69 136 429 01 , Christoph Reinhard, Christoph Neff, Christian Rodde.	Bank Loan	\$164,687,500.00
3.	National Bank of Bahrain	National Bank of Bahrain PO Box 106 Manama Kingdom of Bahrain 17205501 544 508	Bank Loan	\$132,251,777.15
4.	Bahrain Bay Development B.S.C.(c)	PO Box 5092 Manama, Kingdom of Bahrain	Bank Loan	\$116,481,112.28
5.	District Cooling Capital Limited	c/o Paget-Brown Trust Company Ltd. Boundary Hall Cricket Square P.O. Box 1111, Grand Cayman KY1-1102 Cayman Islands Tel: +13459495122	Bank Loan	\$110,673,520.60
6.	Arcsukuk (2011 - 1) Limited	c/o MaplesFS Limited P.O. Box 1093 GT Queensgate House South Church Street George Town Grand Cayman Cayman Islands Facsimile No: +1345 9457100 Attention: Directors	Bank Loan	\$100,000,000.00

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim	
7.	Euroville Sarl (formally Satinland Finance Sarl)	Fortelus Attn: Antoine Cadart Attn: Andy Low 125 London Wall London EC2Y 5AJ Tel: 020 77772000 Antoine.Cadart@fortelus.com Andy.Low@fortelus.com	Bank Loan		\$88,750,000.00
8.	Riyad Bank	Timothy Pope Financial Institutions Department P.O. Box 22622, Riyadh 11416, Saudi Arabia Tel: +966-1-4052477 timothy.pope@riyadbank.com	Bank Loan		\$75,000,000.00
9.	VR Global Partners LP.	400 Madison Avenue 15th Floor New York, NY 10017 United States of America Tel: +1 646 571 1870 backoffice@vr-capital.com	Bank Loan		\$74,900,000.00
10.	Midtown Acquisitions LP	Davidson Kempner c65 East 55th Street, 19th Floor New York, New York 10022 Tel: +1 212-446-4000 bdasari@dkpartners.com ckrishanthan@dkpartners.com jdonovan@dkpartners.com bdasari@dkpartners.com	Bank Loan		\$50,050,000.00
11.	Thornbeam Limited	#10F1, Ministry of Finance Building, Commonwealth Drive Jalan Kebangsan BB3910 Negara Brunei Darussalam Att: Mr. Junaidi Masri	Bank Loan		\$50,118,502.00
12.	Perbadanan Tabung Amanah Islam Brunei	Perbadanan Tabung Amanah Islam Brunei Jalan Sultan, Bandar Seri Begawan BS8811, Brunei Darussalam Attention: Tuan Yusof bin Haji Abd Rahman (Managing Director) and Hjh Fatimah Masri (CIO) Tel.: 673 223 2222 Fax: +673 224 0316	Bank Loan		\$47,258,216.20

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim	
13.	Fortis Bank NA/NV	Warandeborg 3 1000 Brussels Belgium Tel: +32 2 565 11 11 liane.a.santenero@bnpparibasfortis.com regine.ouyang@bnpparibasfortis.com jules.van.rie@bnpparibasfortis.com	Bank Loan		\$40,094,801.60
14.	Overseas Fund Co. S.P.C.	PO.Box 836 Sheraton Commercial Complex Manama, Kingdom of Bahrain, Attn: Mr. Mobin Chowdhury	Bank Loan		\$40,000,000.00
15.	Devonshire Limited	Abu Dhabi Investment Council Sheikh Hamdan Building - Silver Tower Abu Dhabi, United Arab Emirates P.O.Box 61999 Tel: +971 2 611 5915 / +971 50 617 5917 dbeau@adcouncil.ae cgriffin@adcouncil.ae pweber@adcouncil.ae mpfeffer@adcouncil.ae kbadawi@adcouncil.ae	Bank Loan		\$35,000,000.00
16.	Standard Bank plc	20 Gresham Street London EC2V 7JE England United Kingdom Tel: +44 (0)20 3145 5000 peter.kennedy@standardbank.com Simon.Reeves@standardbank.com justyna.hubert@standardbank.com	Bank Loan		\$31,000,000.00
17.	BBB Holding Company II Limited	c/o Paget-Brown Trust Company Ltd. Boundary Hall Cricket Square P.O. Box 1111, Grand Cayman KY1-1102 Cayman Islands Tel: +13459495122	Bank Loan		\$30,025,128.44

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim
18. Goldman Sachs Lending Partners	Goldman Sachs International Daniel House 133 Fleet Street London EC4A 2BB Tel: 44 207 051 8091 julien.farre@gs.com loandocumentation@ln.email.gs.com	Bank Loan		\$30,000,000.00
19. Barclays Bank plc	5 The North Colonnade Canary Wharf London E14 4BB United Kingdom allan.power@barcap.com liam.wiltshire@barcap.com Simon.Lindow@barclayscapital.com	Bank Loan		\$30,000,000.00
20. Bank of America N.A.	Bank of America Merrill Lynch Financial Centre 2 King Edward St. London EC1A 1HQ United Kingdom Tel.: +44 0 20 7628 1000 nick.j.reidy@baml.com randheer.sahota@baml.com bruce.mccormick@baml.com	Bank Loan		\$30,000,000.00
21. CIMB Bank Berhad	10th Floor Bangunan CIMB Jalan Semantan Damansara Heights 50490 Kuala Lumpur Malaysia john.ng@cimb.com graham.tench@cimb.com Ground Floor 27 Knightsbridge London SW1X 7YB United Kingdom P: 00 44(0) 20 7201 3150 Tel: +603-2084-6458	Bank Loan		\$30,000,000.00

	(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim
22.	Credit Suisse, London	One Cabot Square London E14 4QJ United Kingdom Tel: +44 207 888 0729 loan.tradingdocs@credit-suisse.com siobhan.mcgrady@credit-suisse.com george.miloszewski@credit-suisse.com sarah.j.ward@credit-suisse.com karim.blasetti@credit-suisse.com markus.niemeier@credit-suisse.com joseph.cresce@credit-suisse.com shamalee.vanderpoorten@credit-suisse.com ayaz.asaf@credi-suisse.com chingiz.mammadov@credit-suisse.com	Bank Loan		\$30,000,000.00
23.	Deutsche Bank Luxembourg S.A.	2, Boulevard Konrad Adenauer L-1115 Luxemburg Luxemburg Tel: +971 (4) 428-3218 Banu.ozkutan@db.com anke.budzisch@db.com nabeel.abdulaal@db.com peter.tracy@db.com	Bank Loan		\$30,000,000.00
24.	European Islamic Investment Bank Plc	60 Chiswell Street London, EC1Y 4SA England Tel: +44 20 7847 9916 / +44 7854 354 515 doug.bitcon@eiib.co.uk danie.marx@eiib.co.uk chris.engel@eiib.co.uk chandimal.Ekanayake@EIIB.co.uk	Bank Loan		\$30,000,000.00

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim	
25.	Malayan Banking Berhad, London Branch	<p>Bahrain branch Mr.Nor Rashidi Maybank Bahrain Branch 8th Floor, Al-Jasrah Tower P.O. Box 10470, Diplomatic Area Manama Kingdom of Bahrain</p> <p>Maybank London 74 Coleman Street, London EC2R 5BN United Kingdom Tel: Bahrain: +973 17 535 733 Tel: London:+44 20 76380561 raelah@maybank.uk.com shahrul@maybank.uk.com saleem@maybank.uk.com credit@maybank.com.bh mhbobu@maybank.com.bh</p>	Bank Loan		\$30,000,000.00
26.	Mashreqbank psc	<p>P.O. Box 1250, Dubai Near Al Ghurair City, Deira Tel: +9714 424 4444 NaumanF@Mashreqbank.com FaisalL@mashreqbank.com Sarwatt@mashreqbank.com DalalM@mashreqbank.com AsmaH@mashreqbank.com godrej@mashreqbank.com</p>	Bank Loan		\$30,000,000.00
27.	Royal Bank of Scotland N.V.	<p>RBS NV 280 Bishopsgate London EC2M 4RB United Kingdom Tel: +44 (0)131 556 8555 /+44 (0)20 7833 2121 steve.field@rbs.com amar.gill@rbs.com ruth.traugott@rbs.com david.pierce@rbs.com graham.cowe@rbs.com</p>	Bank Loan		\$30,000,000.00

	(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim
28.	The Royal Bank of Scotland plc	RBS NV 280 Bishopsgate London EC2M 4RB United Kingdom Tel: +44 (0)131 556 8555 /+44 (0)20 7833 2121 steve.field@rbs.com amar.gill@rbs.com ruth.traugott@rbs.com david.pierce@rbs.com graham.cowe@rbs.com	Bank Loan		\$30,000,000.00
29.	The Arab Investment Company S.A.A.	Sharq - Ahmed Al-Jaber Street - Emad Commercial Center - 4th & 5th Floor P.O.Box: 26630 Safat 13127 Kuwait Tel: +965 - 2224 9999 Fax: 17-588983	Bank Loan		\$30,000,000.00
30.	ING Bank N.V.	ING Commercial Banking Amsterdamse Poort Building Bijlmerplein 888 1102 MG, Amsterdam, The Netherlands Attn: Richard Kirby Reinoud Le Coultre chris.van.den.berge@ingbank.com reinoud.le.coultre@ingbank.com richard.kirby@ingbank.com Fax: '+31 20 563 9111	Bank Loan		\$29,000,000.00

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim	
31.	HSH Nordbank AG, Luxembourg Branch	2 Rue Jean Monnet 2180 Luxembourg Luxembourg Tel: +352 424141-1 Mr. Bo Kolbe Nielsen Madsen Mrs. Kerstin Tensfeldt-Biell holger.claessen@hsh-nordbank.com oliver.schreiber@hsh-nordbank.com bettina.schilz@hsh-nordbank.lu bernd.nolte@hsh-nordbank.com Kerstin.Tensfeldt-Biell@hsh-nordbank.com sabine.glover@hsh-nordbank.lu michael.wulf@hsh-nordbank.de jutta.gerber@hshn-securities.com bo.kolbe.nielsen.madsen@hshra.dk Kerstin.Tensfeldt-Biell@hsh-nordbank.com	Bank Loan		\$29,000,000.00
32.	Yayasan Sultan Haji Hassanal Bolkiah	Peti Surat 1166, Bandar Seri Begawan BS8672 Negara Brunei Darussalam Attn: Dk Norazimah Pg Hj Muhammad Tel.: 6732234080 Fax:6732234082	Bank Loan	\$23,631,610.22	
33.	Bandtree SDN BHD	c/o Brunei Investment Agency Level 12, Ministry of Finance Building Commonwealth Drive Jalan Kebangsaan, BSB BB3910, Brunei Darussalam Tel.: 673 2383535 Fax: 673 2383518	Bank Loan	\$23,631,592.24	
34.	Saudi Industrial Capital I Limited	c/o Paget-Brown Trust Company Ltd. Boundary Hall Cricket Square P.O. Box 1111, Grand Cayman KY1-1102 Cayman Islands Tel: +13459495122	Bank Loan	\$21,314,388.94	
35.	Fuad Al Ghanim & Sons General Trading and Contracting	PO Box 2118 Safat 13022, Kuwait Fax: +96524827555	Bank Loan	\$21,147,000.00	

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim
36. BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft	BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse, Aktiengesellschaft, Seitzergasse 2-4, A-1010 Vienna Tel: +43 5 99 05 22518 / +43 664 80998 22518 Attn: Martin Leppin Attn: Darren Capon martin.leppin@bawagpsk.com darren.capon@bawagpsk.com	Bank Loan		\$20,000,000.00
37. BBK B.S.C.	43 Government Avenue Manama , Kingdom of Bahrain PO Box 597 Tel: +973 17 207 420 ankur.lalaji@bbkonline.com amardeep.singh@bbkonline.com prasenjit.mandal@bbkonline.com	Bank Loan		\$20,000,000.00
38. Boubyan Bank K.S.C.	Mubarak tower Kuwait City, Abdullah Al Salem St., Block 5 Building 15 Central Commercial Area, Kuwait Tel: +965 232 5000 maljaser@bankboubyan.com akhursheed@bankboubyan.com	Bank Loan		\$20,000,000.00
39. Doha Bank	P.O. Box 3818 Grand Hamad St. Doha, Qatar Tel: (974) 4015 4843 Mobile: (974) 6685 9755 Attn: Mr Narayanan Kattusery Pisharath knarayanan@dohabank.com.qa	Bank Loan		\$20,000,000.00
40. Natixis	30, avenue Pierre Mendès-France 75013 Paris Tel: +33 (0) 1 58 32 30 00 francois.lemeur@natixis.com lucinda.collins@uk.natixis.com stephane.robinet@natixis.com alexandre.baguat@natixis.com	Bank Loan		\$20,000,000.00

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim	
41.	Perbadanan Tabung Amanah Islam Brunei	Perbadanan Tabung Amanah Islam Brunei Jalan Sultan, Bandar Seri Begawan BS8811, Brunei Darussalam Tel.: +673 223 2222 Fax: 673 224 0316 Attention: Tuan Yusof bin Haji Abd Rahman (Managing Director) and Hjh Fatimah Masri (CIO)	Bank Loan		\$19,696,797.80
42.	Tadhamon Capital B.S.C.	Tadhamon Capital B.S.C.(c) P.O. Box 75511 GBCorp Tower 12th Flr. Bahrain Financial Harbour Manama, Kingdom of Bahrain Tel.: +973 17 103444 Fax: +973 17 104840	Bank Loan		\$18,421,924.14
43.	Kuwait Finance House KSC	Aras 18, Tower Two Etiqa Twins, 11 Jalan Pinang, 50450 Kuala Lumpur, Malaysia Tel: +603 2054 7414 Attn: (Malaysia) Berhad Nurulhelmy Bin Norman Fayaz Ahmed Mohammed Javid Mr. Yeow Tiang Hui KSC Attn: Mathew Thomas Attn: Sabah Ismael Thakoor raja.arni@kfh.com.my nurulhelmy.norman@kfh.com.my iqbal@kfh.com Abdullah.alhadad@kfh.com	Bank Loan		\$18,000,000.00

(1) Name of creditor and complete mailing address, including zip code	(2) Name, telephone number, fax numbers and complete mailing address, including zip code of employee, agents, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contracts, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to set off	(5) Amount of claim
44.	NavIndia Holding Company Limited	c/o Paget-Brown Trust Company Ltd. Boundary Hall Cricket Square P.O. Box 1111, Grand Cayman KY1-1102 Cayman Islands Tel: +13459495122	Bank Loan	\$17,605,878.21
45.	Commerzbank (beneficiary PVC (Lux) Lux Holding Company S.a. r.l.)	Commerzbank Aktiengesellschaft, Corporates & Markets Leveraged Finance Maizner Landstr. 153 DLZ-Geb. 2, Handlerhaus, 60327 Frankfurt am Main, Germany. Telephone: +49 69 136 429 01 , Attn: Christoph Reinhard, Christoph Neff, Christian Rodde	Bank Loan	\$17,127,500.00
46.	Falcon Gas Storage Company, Inc.	5847 San Felipe, Suite 3050, Houston, TX 77057 USA. Fax: 713-961-2676	Bank Loan	\$15,160,474.99
47.	The Governor and Company of the Bank of Ireland	Bank of Ireland Corporate Banking Lower Baggot Street, Dublin 2 Tel: +353 1 604 4713 adrian.behan@boi.com jennifer.lyons@boimail.com frank.schmitt@boimail.com russell.williamson@boi.com elaine.crowley@boi.com carla.ryon@boi.com	Bank Loan	\$15,000,000.00
48.	Bank of Taiwan, Singapore Branch	80 Raffles Place #28-20 UOB Plaza 2 Singapore 048624 jasonlee@botsg.com carol@botsg.com.sg	Bank Loan	\$15,000,000.00
49.	G.P. Zachariades Overseas Ltd.	PO Box 5632 Manama, Kingdom of Bahrain	Bank Loan	\$13,250,000.00
50.	Tabung Amanah Pekerja	Island Block Level 1 Commonwealth Drive Jln Kebangsaan Bandar Seri Begawan BB3910 Negara Brunei Darussalam Ms. Clarice Lim Boon Chi Fax: 673-2381218	Bank Loan	\$12,219,295.18

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. § 1746, I, Henry A. Thompson, the duly authorized signatory of Arcapita Bank B.S.C.(c), declare under penalty of perjury that I have read the forgoing Consolidated List of Creditors Holding the 50 Largest Unsecured Claims and that it is true and correct to the best of my information and belief.

Dated: New York, New York
March 19, 2012

/s/ Henry A. Thompson
By: Henry A. Thompson
Title: General Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served by ECF notice on those parties set up for ECF on this 23rd day of May, 2012.

By: /s/ William A. (Trey) Wood III

William A. (Trey) Wood III