SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HORSE-SHOE CAPITAL,

Plaintiff,

-against-

AMERICAN TOWER CORPORATION, AMERICAN TOWERS, INC., and AMERICAN TOWER MAURITIUS,

Defendants.

Index No. 650512/2010

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
June 3, 2010

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By: _____

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COMPLAINT

Plaintiff Horse-Shoe Capital ("Horse-Shoe"), for its complaint against defendants American Tower Corporation ("ATC"), American Towers, Inc. ("ATI"), and American Tower Mauritius ("AT Mauritius") (collectively "American Tower"), alleges as follows:

NATURE OF CASE

1. This is a case in which American Tower, a leading owner and operator of wireless communications towers, stonewalled for months in order to avoid paying Horse-Shoe the full price it was due under an acquisition agreement, then refused to pay even though American Tower admitted it had no basis to do so. Subsequently, in retaliation for Horse-Shoe's insistence on its rights, American Tower blocked the release of escrowed funds to which Horse-Shoe was expressly entitled under the terms of the acquisition and escrow agreements. American Tower's refusal to join Horse-Shoe in directing the release of escrowed funds serves no purpose other than to injure Horse-Shoe. It is the culmination of a pattern of bad faith behavior which not only breaches the relevant agreements but is willful, tortious and requires punitive damages.

2. AT Mauritius purchased XCEL Telecom Private Ltd. ("XCEL"), an Indian telecommunications infrastructure firm that owned and operated approximately 1,700 wireless communications towers, from Horse-Shoe, a company incorporated in Mauritius. ATI

guaranteed AT Mauritius' obligations and signed key documents. The Purchase Agreement required a number of post-closing adjustments and created escrows and obligations to release escrowed funds under certain conditions. ATI and AT Mauritius consistently and systematically evaded their post-closing obligations until Horse-Shoe insisted upon at least a semblance of compliance, much to the annoyance of American Tower. To this day, American Tower has not complied with material obligations under the Purchase Agreement, including the release of a $7.5 million escrow and an additional payment of $2.8 million, both due several months ago.

3. Furthermore, a trigger event recently occurred that required American Tower to release an additional $12 million in escrowed funds – an amount in excess of ten percent of the entire purchase price. American Tower, in retaliation for Horse-Shoe's consistent demands that it honor the Purchase Agreement, has refused to permit the release of these escrowed funds, even though the very matter that gave rise to the escrow was resolved favorably. American Tower is simply acting in bad faith for the purpose of causing Horse-Shoe damage.

PARTIES, JURISDICTION & VENUE

4. Plaintiff Horse-Shoe is incorporated under the laws of Mauritius and has its principal place of business in Mauritius.

5. Defendant ATC is a Delaware corporation with its principal place of business in Massachusetts. ATC is a world-wide owner and operator of communications sites for the wireless and broadcast industries. ATC is traded on the New York Stock Exchange and is subject to general personal jurisdiction in the State of New York. ATC holds itself out to the public (*e.g.*, in its public filings with the Securities and Exchange Commission) as "conducting our operations through our directly and indirectly owned subsidiaries," such as defendants ATI and AT Mauritius.

6. Defendant ATI is a wholly-owned subsidiary of ATC. ATI is registered to do business in the State of New York.

7. Defendant AT Mauritius is a private company limited by shares incorporated under the laws of Mauritius. AT Mauritius has its principal place of business in Mauritius. AT Mauritius is an indirect, wholly-owned subsidiary of ATC.

8. This Court has personal jurisdiction over all defendants under Gen. Oblig. Law § 5-1402 because the case arises out of contracts for which a choice of New York law has been made pursuant to Gen. Oblig. Law § 5-1401 and which (a) are contracts in consideration of or relating to obligations arising out of a transaction covering more than one million dollars, and (b) contain provisions whereby defendants agree to submit to the jurisdiction of the courts of this state. This Court also has personal jurisdiction over all defendants under C.P.L.R. § 302.

9. Venue is proper in this county under C.P.L.R. § 503(a), because none of the parties resides in the state, and this county has been designated by the plaintiff.

FACTS

The Agreements

10. On or about March 9, 2009, AT Mauritius and Horse-Shoe executed the "Purchase and Sale Agreement Entered Into Among American Tower Mauritius, and Horse-Shoe Capital Dated as of March 9, 2009" (the "Purchase Agreement"), under which AT Mauritius purchased all of the outstanding shares of XCEL Telecom Private Ltd. from Horse-Shoe (the "Transaction"). As set forth above, XCEL owned and operated approximately 1,700 wireless communications towers in India. American Tower announced at the time that it was "very excited to be entering into this transaction with XCEL" because it would "strengthen our base in

India," "one of the fastest growing telecom markets, with the tower market seeing record growth."

11. Also on or about March 9, 2009, ATI executed an agreement (the "Guaranty") under which it "guarantee[d] unconditionally to Seller, as a primary obligor and not merely a surety, the full and timely performance and observance of all of the terms, provisions, covenants and obligations of Buyer ... under the Purchase Agreement."

12. Under the Purchase Agreement, a number of complex post-closing adjustments to the purchase price were contemplated. To provide in part (but only in part) for these potential adjustments, the Purchase and Sale Agreement required AT Mauritius to deposit 7.7% of the purchase price (as adjusted between the agreement date and the closing date) into a "Holdback Escrow." The Holdback Escrow was subject to a Holdback Escrow Agreement executed by ATI, AT Mauritius, Horse-Shoe and an escrow agent (the "Agent"). Under the Holdback Escrow Agreement, the mechanism for release of escrowed funds was a joint written direction to the Agent from Horse-Shoe and American Tower.

13. The Purchase Agreement also addressed certain potential tax liabilities that were of concern to American Tower. Most relevant here, American Tower was uncertain as to whether the tax authorities in India would assert that Horse-Shoe owed tax on capital gains on the Transaction under Indian law, and that AT Mauritius would therefore be required to withhold taxes, despite the fact that Horse-Shoe was a resident not of India but of Mauritius. The issue was whether the Double Taxation Avoidance Agreement between the Republic of India and Government of Mauritius (the "Double Taxation Treaty") would be applied on the facts of the Transaction such that the proceeds would not be taxable to Horse-Shoe in India.

14. The Double Taxation Treaty issue, in American Tower's words, was "a material issue that needed a solution" – an issue that "might mean we would not be able to conclude a transaction." Central to American Tower's concern were "cases" that had not been "decided fully," specifically "the E*Trade matter." The E*Trade case arose out of a transaction having substantially the same relevant facts as the Transaction: the sale of shares in an Indian company to a Mauritius company by E*Trade Mauritius Limited, a Mauritius subsidiary of E*Trade Financial Corporation, USA ("E*Trade") (through an intermediate U.S. subsidiary of E*Trade). American Tower's understanding as of November 20, 2008 was that "[t]his E*Trade matter involved a tax assessment ruling involved [sic] Mauritius entities and seemed to run directly against the [Double Taxation] treaty."

15. To address the risk related to (again, in American Tower's words) the "E*Trade kind of considerations," as well as an unrelated tax issue, the Purchase Agreement was written to require AT Mauritius to deposit 16% of the purchase price, as adjusted between the agreement date and closing, into escrow (the "Tax Escrow"). The amount was subject to further adjustment depending upon the outcome of the post-closing adjustments to the purchase price. The Tax Escrow was subject to a Tax Escrow Agreement executed by ATI, AT Mauritius, Horse-Shoe and the Agent. The escrowed funds relevant to the "E*Trade kind of considerations" were to be released, in the words of both the Purchase Agreement and the Tax Escrow Agreement, upon the favorable conclusion of any "Indian Tax litigation" concerning "transactions substantially similar" to the Transaction:

> The Tax Escrow Funds ... shall be released to Seller as follows:
>
> * * *
>
> in case of any Indian Tax litigation relating to application of capital gains taxes to the transactions contemplated by this Agreement or transactions substantially similar thereto,

> a final non-appealable resolution of such litigation to the effect that the transactions contemplated by this Agreement or a transaction substantially similar thereto is not subject to taxation under the Indian Income Tax Act, 1961 (or a successor statute) ....

(Purchase Agreement, ¶ 2.6(e).) This provision was drafted specifically with the E*Trade case in mind, although it was written more broadly to encompass other cases the parties knew were pending.

16. Upon closing on the Transaction (May 27, 2009), AT Mauritius paid Horse-Shoe $69,562,225, paid certain Horse-Shoe expenses in the amount of $5,208,224, deposited $7,545,642 into the Holdback Escrow and deposited $15,679,256 into the Tax Escrow.

American Tower Fails to Engage in Required Post-Closing Process

17. After closing, the timing of information and payments concerning purchase price adjustments was related to the "Adjustment Date," which the Purchase Agreement established as August 10, 2009. Under the Purchase Agreement, American Tower was required to do the following, *inter alia*:

a. No later than five business days after the Adjustment Date – August 17, 2009 – provide Horse-Shoe with an "Adjustment Decrements Statement," together with detailed supporting documentation specified in the Purchase Agreement. The purpose of the Adjustment Decrements Statement was to provide for certain defined types of incremental costs in connection with any defects in certain wireless towers or bringing certain wireless towers to completion.

b. No later than fifteen business days after the Adjustment Date – August 25, 2009 – provide Horse-Shoe with an "Adjustment Purchase Price Statement." This was to show American Tower's calculation of a number of items, including: (i) the net liabilities and current assets of XCEL as of the closing date; (ii) the number of completed towers; (iii) a cost figure (as

further defined in the Purchase Agreement) for towers that were "ready for inspection" as of the closing date; (iv) similar information for two other defined types of towers in the Purchase Agreement; and (v) certain Horse-Shoe transaction expenses. Each of these items was a factor in determining adjustments to be made to the purchase price, adjustments to the Tax Escrow and Horse-Shoe's entitlement to funds in the Holdback Escrow (and potentially additional funds). In general, these were items that required careful, meticulous calculation on the part of American Tower. Supporting documentation was also to be provided, in the form of detailed supporting schedules specified in the Purchase Agreement, specifically negotiated at great length to ensure a smooth post-closing adjustment process.

18. Despite multiple reminders and requests from Horse-Shoe, by August 26, 2009 American Tower had failed to provide any of the information specified in the preceding paragraph and given no indication as to when the information would be provided. Furthermore, Horse-Shoe had requested numerous other necessary items, including audited financials as of the closing date, unaudited March 31, 2009 financials given to the auditors to begin their audit, and other audited financial statements – some of which were requested multiple times – without a clear response.

19. On information and belief, the reason American Tower did not comply with the post-closing process set out in the Purchase Agreement was that it knew that the adjustments to be made to the purchase price would be in Horse-Shoe's favor. Rather than take any affirmative steps to cooperate in good faith in a process that served to benefit Horse-Shoe only, American Tower embarked on a course of non-cooperation and delay.

American Tower Blocks Release of Holdback Escrow and Withholds Required Payments

20. By September 17, 2009, the lack of responsiveness and cooperation on the part of American Tower had reached a point where Horse-Shoe was forced to escalate matters. Accordingly, on that date, Horse-Shoe's outside counsel wrote to American Tower that it had forfeited its rights to deliver an Adjustment Decrements Statement or an Adjustment Purchase Price Statement. The letter set forth Horse-Shoe's own calculations of further amounts owed by American Tower: the adjusted purchase price, the letter said, was $101,374,800; American Tower was required to release the entire Holdback Escrow (over $7,545,642) to Horse-Shoe, plus an additional payment of approximately $2,838,740 (the "Additional Payment"); and American Tower was required to deposit an additional $540,712, approximately, into the Tax Escrow (the "Additional Tax Escrow Contribution"). The letter also put American Tower on notice that it was in breach of contract and asserted that Horse-Shoe might thereby be excused from complying with certain covenants in the Purchase Agreement, such as non-compete and no-hire covenants.

21. On or about September 25, 2009, American Tower responded to the September 17th Letter. American Tower's letter (the "September 25th Letter") called Horse-Shoe's assertion of a breach "completely unjustified" and used delay in completion of the audit of XCEL as an excuse for American Tower's own failures – although nothing in the Purchase Agreement absolved American Tower of its timeliness obligations if the audit were delayed, and in fact the audit was complete prior to the operative due dates. The September 25th Letter purported to send the statements and information required in August under the Purchase Agreement. The conclusion American Tower purported to come to was that it owed Horse-Shoe just $5.3 million from the Holdback Escrow and nothing else.

22. The material American Tower provided to purportedly comply with its obligation to support its position, however, was incoherent and slipshod. As Horse-Shoe set out in another letter from its counsel (the "October 15th Letter") and demonstrated in accompanying documents:

> a great number of the positions taken in the Buyer Statements are inconsistent with one another, or with other information provided by Buyer; appear to depart from the requirements of the Purchase Agreement; represent significant changes since the prior audit which seem unlikely to be accurate; are described insufficiently or lack any supporting documentation that would permit Seller to make a reasonable judgment as to appropriateness; or otherwise appear to be errors.

23. On November 10, 2009, American Tower wrote to Horse-Shoe, conceding that in reviewing the points raised in the October 15th Letter American Tower found "a number of areas where there was double counting" and "factors that were overlooked" in American Tower's September 25th Letter. Nevertheless, American Tower claimed that it owed Horse-Shoe only $1.5 million more than it had concluded in the September 25th Letter, which meant that it owed $6.8 million from the $7.5 million Holdback Escrow (and no additional payment). American Tower admitted that it had not performed the analysis to substantiate its number: it had not made "any attempt or effort to have people engage in an exercise of looking back into the data and determine the extent of errors, omissions or offsets running the Buyer's way there might be." American Tower frankly asserted that it would rather not make this effort.

24. Thus, American Tower, without providing any basis for disputing Horse-Shoe's conclusions (and having forfeited its right to do so in any event, by not providing timely or complete information), has refused to join Horse-Shoe in directing the Agent to release the Holdback Escrow, has refused to make the Additional Payment and has refused to make the Additional Tax Escrow Contribution, despite Horse-Shoe's demands.

American Tower Blocks Release of Tax Escrowed Funds

25. On March 22, 2010, the E*Trade case was resolved. The ruling that terminated the case came from India's Authority for Advance Rulings, which held that although the Mauritius subsidiary of E*Trade may very well have been created solely for tax purposes, it nevertheless was created according to law and therefore was a resident of Mauritius within the protection of the Double Tax Avoidance Treaty. Consequently, the sale of its shares in an Indian company to a buyer organized under the laws of Mauritius was not subject to Indian income tax or to withholding by the buyer in the transaction.

26. The resolution of the E*Trade case triggered the release of funds from the Tax Escrow. Indeed, as set forth above, the E*Trade case was the example of an "Indian Tax litigation" involving a "substantially similar" transaction that gave rise to the Tax Escrow in the first place (and to the provision quoted above concerning release of funds).

27. Like the Holdback Escrow Agreement, the Tax Escrow Agreement provided the mechanism for the release of the funds: Horse-Shoe and American Tower were to provide the Agent with a joint written instruction to disburse the funds to Horse-Shoe.

28. Horse-Shoe has demanded that American Tower join it in providing a joint written instruction to the Agent, but American Tower has refused to comply and continues to block the release of any Tax Escrow funds to Horse-Shoe.

29. The amount that is required to be released from the Tax Escrow to Horse-Shoe is 75% of the Tax Escrow funds, or approximately $12 million.

30. When the Purchase Agreement was drafted, it specifically reflected American Tower's position that resolution of the E*Trade case in favor of the taxpayer would suffice to allay American Tower's concerns. That resolution occurred, but now American Tower claims

(despite the terms of the agreements) that it is not sufficient after all. On information and belief, the reason for American Tower's professed change of heart is that it seeks to retaliate against Horse-Shoe for prodding it to meet its obligations in the post-closing adjustment process, exposing American Tower's shoddy and cavalier approach to its contractual obligations, and insisting on Horse-Shoe's rights to the Holdback Escrow funds, the Additional Payment and the Additional Tax Escrow Contribution.

COUNT I:
BREACH OF CONTRACT

31. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

32. American Tower breached the Purchase Agreement and the Guaranty by refusing to comply with its post-closing obligations under the Purchase Agreement.

33. American Tower breached the Purchase Agreement, the Holdback Escrow Agreement and the Guaranty, and continues to breach these agreements, by refusing to join Horse-Shoe in directing the Agent to release the Holdback Escrow funds to Horse-Shoe.

34. American Tower breached the Purchase Agreement and the Guaranty, and continues to breach these agreements, by refusing to make the Additional Payment to Horse-Shoe.

35. American Tower breached the Purchase Agreement and the Guaranty, and continues to breach these agreements, by refusing to make the Additional Tax Escrow Contribution.

36. American Tower breached the Purchase Agreement, the Tax Escrow Agreement and the Guaranty, and continues to breach these agreements, by refusing to join Horse-Shoe in directing the Agent to release approximately $12 million from the Tax Escrow to Horse-Shoe.

37. Plaintiff is entitled to approximately $22.5 million in compensatory damages from American Tower. Alternatively, plaintiff is entitled to specific performance of American Tower's obligation to join plaintiff in directing the Agent to release the Holdback Escrow and 75% of the Tax Escrow funds to plaintiff, plus compensatory damages in the amount of approximately $3.3 million, the precise amount to be determined at trial.

38. American Tower's retaliatory blocking of the release of Tax Escrow funds was done, and continues to be done, in bad faith to a degree that evinces a disingenuous and dishonest failure to carry out the Agreements.

39. Plaintiff is entitled to punitive damages in an amount not less than $45 million.

COUNT II:
PRIMA FACIE TORT

40. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

41. American Tower's retaliatory blocking of the release of Tax Escrow funds constituted and continues to constitute intentional infliction of harm, resulting in special damages of approximately $12 million, without excuse or justification, by an act or series of acts that would otherwise be lawful.

42. American Tower's retaliatory blocking of the release of Tax Escrow funds was done, and continues to be done, solely out of disinterested malevolence. American Tower has nothing to gain from blocking the release of the Tax Escrow funds, except the satisfaction it takes in injuring Horse-Shoe.

43. Plaintiff is entitled to approximately $12 million in compensatory damages from American Tower, the precise amount to be determined at trial, plus $24 million in punitive damages.

COUNT III:
DECLARATORY JUDGMENT

44. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein.

45. A real and justiciable controversy now exists between plaintiff and American Tower concerning whether or not any further obligations of plaintiff under the Purchase Agreement are excused by the various breaches by American Tower.

46. The Purchase Agreement contains a broad noncompetition provision (the "Non-Compete"). The Non-Compete extends for two years and purports to preclude Horse-Shoe or any of its affiliates not only from (a) engaging in "the business of building passive infrastructure towers in India in competition with Buyer or XCEL" but from (b) owning equity in or being a major lender to parties engaged in that business or (c) providing any management, consulting, financial, administrative or other services to any such parties. It is material to the business strategy of Horse-Shoe and its affiliates now to know whether or not the Non-Compete remains binding. Similarly, the Purchase Agreement contains a two-year no-hire provision (the "No-Hire") that in general purports to prevent Horse-Shoe from hiring anyone employed by XCEL.

47. The material breaches of contract by American Tower specified above excuse Horse-Shoe and its affiliates from any further compliance with the Non-Compete or the No-Hire.

48. Plaintiff is entitled to a declaratory judgment that the Non-Compete and the No-Hire are no longer in force or effect and are not binding upon Horse-Shoe or its affiliates.

WHEREFORE, plaintiff Horse-Shoe Capital respectfully requests that the Court:

a. On Count I above, award compensatory damages against defendants jointly and severally in an amount to be determined at trial, but no less than $22.5 million;

b. Alternatively, on Count I above, grant specific performance by ordering American Tower to join plaintiff in providing a written instruction to the Agent to release the Holdback Escrow and 75% of the Tax Escrow funds to plaintiff, and award compensatory damages against defendants jointly and severally in an amount to be determined at trial, but no less than $3 million;

c. On Count I above, award punitive damages against defendants jointly and severally in an amount to be determined at trial, but no less than $45 million;

d. On Count II above, award compensatory damages against defendants jointly and severally in an amount to be determined at trial, but no less than $12 million;

e. On Count II above, award punitive damages against defendants jointly and severally in an amount to be determined at trial, but no less than $24 million;

f. Declare that plaintiff is excused from compliance with the Non-Compete and No-Hire provisions of the Purchase Agreement and that they are no longer in force or effect; and

g. Award prejudgment interest at the statutory rate of 9% from August 25, 2009 as to all amounts other than the amount held in the Tax Escrow, and from March 22, 2010 as to the amount held in the Tax Escrow, plus costs, attorney's fees, and such other relief as the Court deems just and proper.

Dated: June 3, 2010

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