

Bandone SDN BHD v Bolkiah
2008 NY Slip Op 30710(U)
March 6, 2008
Supreme Court, New York County
Docket Number: 0604091/2006
Judge: Helen E. Freedman
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: Helen E. Freedman
Justice

PART 39M

Bardone SDN BHD

INDEX NO. 604091/06

MOTION DATE _____

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

Prince Jefri Bolkiah, Amades Hotels Limited Partnerships, PT Partners, Inc, Palace Holdings, Inc, Amades Holdings, Inc, Pengiran Muda Badar and Pengiran Muda Abdul Hakim

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the accompanying memorandum of law

FILED

MAR 11 2008

NEW YORK COUNTY CLERK'S OFFICE

Dated: 3/6/08

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

-----X
BANDONE SDN BHD,

Plaintiff,

-against-

Index No.

604091/06

PRINCE JEFRI BOLKIAH, AMEDEO HOTELS
LIMITED PARTNERSHIP, PH PARTNERS, INC.,
PALACE HOLDINGS, INC., AMEDEO HOLDINGS,
INC., PENGIRAN MUDA BAHAR and PENGIRAN MUDA
ABDUL HAKEEM,

Defendants.

-----X
PRINCE JEFRI BOLKIAH

Counterclaim-Plaintiff

-against-

BANDONE SDN,

Counterclaim-Defendant.

-----X

HELEN E. FREEDMAN, J:

Defendant/ Counterclaimant Prince Jefri Bolkiah, the younger brother of the Sultan of Brunei, seeks a temporary restraining order and preliminary injunction pursuant to CPLR 6301 against plaintiff/ counterclaim defendant Bandone SDN BHD.

(1) enjoining Bandone from taking any further action to assume ownership or exercise control over the New York Palace Hotel at 455 Madison Avenue, New York, New York 10022;

Hotel Bel-Air, 701 Stone Canyon Road, Los Angeles, California; and Sunninghill Estate, 873 Cedar Swamp Road, Old Brookville, New York until Bandone and/or the Brunei Investment Agency ("BIA") has complied, and provided adequate assurance of future compliance, with all of the BIA's obligations under the May 12, 2000 Settlement Agreement with Prince Jefri (the "Settlement Agreement"), namely: (a) the return to, and perpetual ownership, use and enjoyment by, Prince Jefri of the Brunei properties known as "Assana and Nadaa" (the "Official Residence") and "Arrifa and the Lake House" ("the Personal Residence"), including all related personal effects and household items; (b) the maintenance of the Official Residence free-of-charge; (c) additional maintenance of the Official and Personal Residences in accordance with the usual arrangements for Wazirs; (d) creation of a \$200 million trust for Prince Jeffri's benefit; (e) delivery to Prince Jefri of an independent appraisal of all assets transferred to the BIA; and (f) adequate security for Bandone's continued compliance with all Settlement Agreement obligations, including Prince Jefri's right to all inherited property and the return to him of all personal possessions presently in Bruenei; and

(2) directing the entry of liens and notices of pendency in Prince Jefri's favor on the New York Palace Hotel, Hotel Bel-Air and Sunninghill Estate.

This court granted a limited temporary restraining order ("TRO") preserving the status quo with respect to various holdings by prohibiting Bandone from disposing of the NYP Holdings Ltd ("NYP Holdings") that have been transferred to Bandone; disposing of ownership interests or share holdings in any of the underlying companies through which the ownership of the Palace Hotel is arranged, namely NYP REALTY (L) SDN Bhd ("NYP Realty"), Amedeo Holdings, Inc., Palace Holdings, Inc. PH Partners, Inc., or Amedeo Hotels Limited Partnership;

or selling, transferring, encumbering, pledging, lending or otherwise disposing directly or indirectly of any of the assets of the above companies other than in the ordinary course of business; and prohibiting any of the above from making any dividend or distribution other than to NYP, NYP Realty, Amedeo Holdings, Palace Holdings, PH Partners, or AHLP.

Plaintiff, counterclaim defendant, opposes the motion on the ground that various courts in Brunei, London, and Malaysia have already determined Prince Jefri's rights to property in the United States, London, and Brunei and this Court should grant deference to those courts.

Background

Bandone is a wholly-owned subsidiary of the Brunei Investment Agency (the "BIA"), an agency of the Brunei government. Bandone holds and manages the assets recovered from Prince Jefri on behalf of the BIA pursuant to the terms of the BIA's May 2000 Settlement Agreement with Prince Jefri, who was formerly its Chairman and the Finance Minister of Brunei. The BIA has directed Prince Jefri to transfer the New York Palace Hotel to Bandone in compliance with various court orders interpreting the Settlement Agreement.

The Settlement Agreement came about as follows. Allegedly, in 1997, Brunei experienced financial difficulties which triggered a political crisis and the Sultan and others blamed Prince Jefri for diverting BIA and other funds. Legal proceedings instituted against him culminated in the May 2000 Settlement Agreement that requires Prince Jefri to transfer substantially all of his assets to the BIA including the two hotels in the United States--The Palace Hotel in New York City and the Hotel Bel-Air in Los Angeles, as well as his residential estate in the Town of Oyster Bay known as the Sunninghill Estate--valued at over \$1 billion. According to Prince Jefri, the Settlement Agreement also provides that he is entitled to retain his official

residence in Brunei to be maintained free of charge, his personal residence at his expense, his personal effects and some ordinary household items, all inherited properties, and is entitled to have a Trust established of up to \$200 million established by the BIA, and to have an independent appraisal ("Accounting") of all assets transferred to the BIA. He alleges that, despite his transfer of over a \$ 1 billion including property and personal assets, he was forcibly evicted from his properties in May of 2005 when the government of Brunei expropriated his personal and official residences, and that Bandone has neither established a Trust or provided the Accounting that were provided for in the Settlement Agreement.

The Brunei High Court ruled against him in two separate orders in 2005 and 2006 and the Brunei Court of Appeal upheld the lower court orders on May 20, 2006. However, the High Court made a finding that Prince Jefri owned the official and personal residences seized by Bandone. That Court also held that the BIA had failed to comply with its obligations under the Settlement Agreement to set up the \$200,000 Trust or provide the Accounting.

Prince Jefri obtained leave to appeal to the Judicial Committee of the Privy Council. On November 8, 2007, the Privy Council in London, found in favor of the BIA to the extent that it declared that a Settlement of the litigation against Prince Jefri, his eldest son, and his companies that the Government of Brunei and the BIA brought required Prince Jefri to transfer six assets including the New York Palace Hotel to the BIA. The Privy Council members also indicated that, contrary to allegations of duress, there was nothing in the record to indicate that the Sultan procured the assent to the Settlement by dominating Prince Jefri's will. The Privy Council did, however, raise serious concerns about whether the transfer to the BIA of Prince Jefri's private and official residences were mistakes and whether the notices to vacate should be revoked

pursuant to the Settlement Agreement. If they were not transferred, then they should be made available. However, the Privy Council concluded that this issue cannot be relied upon by Prince Jefri to refuse to comply with his contractual obligations under the Settlement Agreement.

Various documents and resolutions of the NYP companies dated January 26, 2008 indicate that directors functioning under the Prince Jefri regime have been removed and new directors have been appointed. There is also currently pending in the Court of Appeal of Malaysia an appeal from a determination of the High Court of Labuan commenced by the BIA against, among others, Prince Jefri, and concerning the ownership of the New York Palace Hotel, the principal asset of NYP Holdings Ltd. Apparently, a Labuan Malaysian company is at the top of the ownership chain of the hotel. Bandone has furnished an undertaking and confirms that it will not dispose of or deal with the shares in NYP Holdings that were ordered to be transferred to Bandone or dispose or deal with shareholdings or ownership interests in any of the underlying companies through which ownership of the New York Palace Hotel is arranged. It makes other commitments as well. However, Bandone states as part of the undertaking that it is important to “resume management and control of the Hotel.”

Although my Order of February 20, 2008 stated that the TRO had been issued to “preserve the status quo”, it appears that ownership transfers of the hotel had already occurred. Counsel for Prince Jefri avers that the Sultan is now attempting to take over and sell the hotel and fire Judge Milonas who had been hired by the hotel to preserve its assets. Counsel contends that the removal of directors and termination of employees and discharge of Judge Milonas that has ensued violates my order. While this Court during oral argument approved Judge Milonas’ role in preserving assets, that must not be construed as an order that he must be retained under all

circumstances. The Court did however state that it did “not want [the new directors] firing the employees” and counsel for Bandone assured me that [we] “don’t want to fire the employees”. None of those statements were actually orders, they were merely approval of counsel’s assurances that employees would not be fired similar to approval of Judge Milonas’ role in preserving assets.

Prince Jefri’s main motive in seeking a temporary restraining order and preliminary injunction concerning transfers of ownership of the New York Palace Hotel is to assure that properties in Brunei known as “Assana,” “Nadaa,” “Arrifa,” and “Lake House,” are restored to him pursuant to the February 21, 2000 Settlement Agreement and that a Trust is funded under the Settlement Agreement.

Legal Issues

In order to obtain a preliminary injunction, a party must show that without such relief it will suffer irreparable harm, it is likely to succeed on the merits, and that the balance of equities is in its favor. *W.T. Grant v. Srogi*, 52 N.Y.2d 496 (1981); *Michael, Inc. v. Southbridge Towers, Inc.*, 121 A.D.2d 962, 505 N.Y.S.2d 612 (1st Dept. 1986); *Albini v. Solork Associates*, 37 A.D.2d 835, 326 N.Y.S.2d 150 (1st Dept. 1971).

Prince Jefri contends that maintaining the status quo of his United States properties and preventing their transfer to Bandone or the BIA is the only means by which he can assure compliance with the provisions of the Settlement Agreement as affirmed by the Privy Council decision. In particular, the Assana and Nadaa properties, which he contends are his official residence under the Agreement are now under the control of the Brunei government. Additionally, the \$200 million Trust Fund has not been established despite Prince Jefri’s

contention that he has transferred a billion dollars worth of assets to Bandone and the BIA in compliance with the Settlement Agreement, which he now contends was obtained through duress.

Discussion and Conclusion

Prince Jefri has not shown that he will suffer irreparable harm in the absence of a preliminary injunction. Letters from Freshfields Bruckhaus Deringer, BIA's and Bandone's counsel in London acknowledge that Prince Jefri is entitled to private and official residences in Brunei and state that the property has been "maintained intact andthe BIA is in a position to return them if necessary." The Freshfield's letters to Prince Jefri offer to make Arrifa and the Lake House available, to appraise various property, to maintain the official residence, and to pay property transfer taxes relating to the Palace Hotel. Concededly, there is some dispute as to whether just Arrifa and the Lake House alone are Prince Jefri's—or whether the Assana and Nadaa properties too belong to Prince Jefri as his official residence under the Settlement Agreement. These properties were repossessed because of the potential for development of a marina that would afford a venue for sporting events that would promote Brunei tourism. The letters indicated that the ownership of the Assana and Nadaa properties were subject to determination by Brunei courts. Freshfields also notes that the " BIA remains willing to establish the Trust.." but that "all liabilities that might otherwise have qualified to be paid from the Trust were discharged at the BIA's expense." The BIA has directed that the Trust be established.

Prince Jefri has not shown likelihood of success on the merits. The various judgments of the Courts in Brunei, the Privy Council in London and the High Court of Labuan (now on appeal to the Malaysian high Court) all indicate that the transfer of ownership of the New York property

to Bandone or the BIA is appropriate and has occurred. Plaintiff has offered an undertaking not to dispose of the shares or to sell the Palace Hotel while the appeal to the Labuan Court of Appeal.

Despite the above disagreements, collateral estoppel bars a preliminary injunction from issuing. Plaintiff submits an affidavit of Richard Michael Sheldon QC of 3-4 South Square, Gray's Inn, London WC1R 5HP, England, a barrister at the English Bar and Queen's Counsel since 1996. Mr. Sheldon attests that under English law, the doctrine of estoppel *per rem judicatem* would govern the parties here. He finds that where the three prerequisites to estoppel *per rem judicatem* exist, namely, that there must be a final conclusive decision on the merits by a court of competent jurisdiction, the decision determined the same question, and the parties to the later litigation were either parties to the earlier litigation or their privies, the doctrine applies. It appears that the prerequisites have been met here. Where parties are either the same or in privity with each other, *res judicata* recognition must be given to a foreign judgment. See *Watts v. Swiss Bank Corp.*, 27 N.Y.2d 270 (1970). The Privy Council's November 2007 decision that the BIA's alleged failures to provide an accounting, create a trust, and return Brunei properties does not excuse Prince Jefri from his obligation to transfer his assets under the Settlement Agreement is binding on this court. There is insufficient reason under all of the circumstances of this case to enjoin the enforcement of the judicial proceedings in London. Similarly, there is no basis set forth for enjoining the proceedings concerning other properties in the United States inasmuch as no proceeding has yet occurred.

Finally, the balance of equities do not weigh in Prince Jefri's favor. Any claim to the properties in Brunei dates back to May 2005 when the government of Brunei repossessed them.

The Privy Council and High Court of Brunei seemingly recognized that fact and addressed the issue, concluding that Prince Jefri must obtain relief from courts in Brunei. As to the other claims, London counsel indicates that the government of Brunei stands ready to comply with the provisions of the Settlement Agreement. The government has also indicated willingness to forebear on final disposition until the Malaysian High Court determines whether the company that holds the Palace Hotel has proper authority. Additionally, since some of the intermediate companies holding title to the Hotel are in Delaware, proceedings may have to be brought in that jurisdiction as well.

Based on the foregoing, the Temporary Restraining Order is vacated and the application for a preliminary injunction as well as other preliminary relief is denied.

Dated: March 6, 2008

Enter:

FILED

MAR 11 2008

NEW YORK
COUNTY OF NEW YORK

Helen E. Freedman

Helen E. Freedman, J.S.C.