

Weitz v Weitz

2012 NY Slip Op 30767(U)

March 19, 2012

Sup Ct, Nassau County

Docket Number: 016811-08

Judge: Timothy S. Driscoll

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SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----x
SYLVIA WEITZ,

TRIAL/IAS PART: 16
NASSAU COUNTY

Plaintiff,

-against-

Index No: 016811-08
Motion Seq. No. 9
Submission Date: 2/1/12

MELVIN WEITZ, ELLEN WEITZ,
THE MELEN TRUST,
MELVIN WEITZ, as Grantor and Trustee of
the Melen Trust,
THE LASALLE TRUST, ELLEN WEITZ as
Grantor and Trustee of The LaSalle Trust,
LANNIE LIPSON individually and as
Trustee of the LaSalle Trust,
SAGE AUGELLO, individually and as Trustee
of The LaSalle Trust, THE AMENDED AND
RESTATED LASALLE TRUST, SOUTH PAC
TRUST INTERNATIONAL, INC., a/k/a Southpac
Trust Limited as trustee of The Amended and
Restated LaSalle Trust and John Does 1-10,

Defendants.

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The following papers having been read on this motion:

- Notice of Motion, Certification, Affirmation in Support and Exhibits.....x
- Memorandum of Law in Support.....x
- Affirmation in Opposition and Exhibits A -Kx
- Exhibits L - Rx
- Memorandum of Law in Opposition.....x
- Reply Memorandum of Law.....x

This matter is before the Court for decision on the motion filed by Defendant Southpac Trust International, Inc. a/k/a Southpac Trust Limited as trustee of the Amended and Restated LaSalle Trust (“Southpac”) on May 31, 2011, which was submitted on February 1, 2012 following oral argument before the Court. For the reasons set forth below, the Court denies the motion.

BACKGROUND

A. Relief Sought

Southpac moves for an Order, pursuant to CPLR § 3211(a)(8), dismissing this action against Southpac for lack of personal jurisdiction.

Plaintiff opposes the motion.¹

B. The Parties’ History

This is an action to set aside certain allegedly fraudulent conveyances pursuant to Article 10 of the Debtor and Creditor Law. The parties’ history is outlined in detail in prior decisions of the Court, and the Court incorporates those decisions herein by reference as if set forth in full herein. As noted in the Court’s prior decisions, this action centers on the allegations of Sylvia Weitz (“Sylvia”) that, with the intent to circumvent his obligations to her following their divorce, Melvin Weitz (“Melvin”) improperly transferred funds to other parties, including his new wife Ellen with whom he now resides in Florida.

By decision dated March 15, 2011 (“2011 Decision”), the Court addressed, *inter alia*, Southpac’s motion for an Order vacating the Court’s Order dated February 1, 2010 to the extent that it held that Southpac is subject to personal jurisdiction in New York in this action. In the 2011 Decision, the Court granted Southpac’s motion to vacate based on the Court’s conclusion that Southpac had established that it neither expressly nor implicitly conferred authorization on certain attorneys to act on its behalf.

In support of its instant motion to dismiss, Tine Faasili Ponia (“Ponia”), General Counsel for Southpac, provides a certification based on his/her personal knowledge, and review of the books and records of Southpac. Ponia affirms that Southpac is trustee of the Amended and

¹ Plaintiff Sylvia Weitz recently passed away. Pursuant to a stipulation of counsel, the Court signed an Order Substituting Representative of Deceased Plaintiff Sylvia Weitz dated December 19, 2011 which directed that Steven Weitz, as Executor of the Estate of Sylvia Weitz, was substituted as Plaintiff in this action.

Restated LaSalle Trust (“Cook Islands Trust”) which was registered under the International Trusts Act 1984 as an international trust on November 9, 2005, which is also the date that Southpac accepted trusteeship.

Ponia affirms that Southpac’s principal place of business is in the Cook Islands, and submits that Southpac has not purposefully availed itself of the privilege of doing business in the State of New York (“New York”). In support of that assertion, Ponia affirms that Southpac 1) does not own, lease or have any other interest in any real property located in New York; 2) does not have an office in New York; 3) does not have a bank account in New York; 4) does not have any officers or employees in New York; 5) does not have a telephone number in New York; 6) has never filed a lawsuit in New York; 7) has no investments in any business located in New York; 8) is not licensed to do business in New York; 9) has never warehoused or stored inventory or supplies in New York; and 10) does not advertise in New York.

Ponia affirms, further, that Southpac’s only contact with New York in relation to the allegations in the Complaint is that it is the trustee of the Cook Islands Trust, whose assets were allegedly once located in New York. The assets in the Cook Islands Trust are not, and have not been since Southpac has been trustee, located in New York. Ponia affirms that his/her understanding of the assets is that 1) the assets in the Cook Islands Trust were transferred from the LaSalle Trust, a Florida trust, which was restated and amended on December 6, 2004 and September 21, 2005; and 2) the assets in the LaSalle Trust had been transferred to it from the Melen Trust, another Florida trust that was established on March 29, 2000. Ponia avers that, based on its lack of contacts with New York, Southpac does not anticipate, or consent to, being brought before the courts of New York.

In opposition, Plaintiff’s counsel affirms that the Appellate Division, Second Department affirmed the Court’s February 1, 2010 Order (“Appellate Decision”) (Ex. D to Williams Aff. in Opp.). In the Appellate Decision, *Weitz v. Weitz*, 85 A.D.3d 1153 (2d Dept. 2011), the Second Department affirmed the Court’s denial of Ellen’s motion to dismiss the Complaint on the grounds of lack of personal jurisdiction, holding that Plaintiff “made a prima facie showing that Ellen committed a tortious act within the state and is therefore subject to the personal jurisdiction of the court pursuant to CPLR [§] 302(a)(2). In particular the plaintiff alleges a fraudulent transfer of assets originally located in New York, which places the tortious conduct in

New York and warrants jurisdiction over Ellen as an alleged participant in that conduct [citations omitted].”

Plaintiff submits that “Southpac’s alleged participation in subsequent fraudulent transfers of these same assets originally located in New York arising out of the divorce settlement provides sufficient grounds for this Court to exercise personal jurisdiction over it” (Williams Aff. in Opp. at ¶ 7). Plaintiff suggests that the Court reached this conclusion in issuing its February 2010 Order. Plaintiff provides a detailed history of the relevant factual background, including 1) the divorce action and settlement, 2) admissions by Melvin and Ellen, and documentation, regarding the allegedly improper conversion of assets that could have been used to satisfy Sylvia’s judgment in the divorce action; 3) the history of the trusts established by Ellen, 4) Ellen’s continued control over trust assets, and 5) the Court’s prior Orders in this action.

C. The Parties’ Positions

Southpac submits that Plaintiff has not pleaded a prima facie showing of personal jurisdiction over Southpac in light of the fact that 1) there is no allegation, or basis to allege, that Southpac is in New York on a continuous or systematic basis; 2) Plaintiff does not allege that Southpac conducts business in, or avails itself of the privilege of doing business in, New York; 3) Plaintiff does not plead, and cannot set forth, the required nexus between any business by Southpac in New York and the causes of action sued upon; 4) Southpac has not engaged in a tortious act outside of New York that caused injury within New York; 5) Plaintiff has not pleaded, and cannot establish, that Southpac should have reasonably foreseen its acts to have consequences in New York; and 6) Plaintiff does not allege that Southpac derives, and Southpac does not derive, substantial revenue from goods used or services rendered in New York.

Plaintiff opposes Southpac’s motion, submitting that 1) Southpac is subject to personal jurisdiction in this action pursuant to, *inter alia*, CPLR § 302(a)(1) in light of its alleged participation in fraudulent transfers of proceeds relating to Melvin and Sylvia’s divorce settlement, and the exercise of jurisdiction over Southpac is warranted in light of evidence including Ellen and Southpac’s enlistment of the aid of Andrew Hart, Ellen’s New York broker, with respect to investment advisor services and transfers regarding the Restated LaSalle Trust; 2) Southpac has failed to offer new arguments that would justify the Court’s deciding the

jurisdiction issue differently than it has done previously; 3) the Court's exercise of personal jurisdiction over Southpac is warranted in light of the interactive nature of its website which "invites and promotes the very transfers that are the subject matter of this fraudulent conveyance litigation" (P's Memo. of Law in Opp. at pp. 14-15); and 4) jurisdiction over Southpac is appropriate, pursuant to CPLR § 302(a)(2), in light of Southpac's alleged participation in the fraudulent transfers at issue.

RULING OF THE COURT

In its February 1, 2010 Decision (Ex. C to Williams Aff. in Opp.), the Court held as follows:

As alleged fraudulent grantees of the proceeds of the Sale, which proceeds were distributed in the New York Divorce Action, the other Defendants have significant contacts with this jurisdiction that justify this court's exercise of jurisdiction over them. Ellen Weitz, and the self-settled trusts that she created, apparently received funds after the commencement of the Plenary Action, as demonstrated by Melvin's deposition testimony in 2007 that he gave \$7 million to Ellen eight years earlier, at a time that he was involved in litigation with Sylvia. Melvin's testimony that he never advised the court, or Sylvia, of this transfer of money supports the inference that he was aware that this transfer may have been improper.

In sum, the Court concludes that Ellen, the trusts, and Southpac, the current trustee, transacted business in New York by receiving the funds that were the subject of the Plenary Action in New York. There is clearly a substantial relationship between Defendants' receipt of those funds and this fraudulent conveyance action. Accordingly, the Court denies the motion of Ellen and the Trust Defendants to dismiss the Complaint for lack of personal jurisdiction.

In consideration of the legal principles set forth in the Court's prior decisions, and for the reasons set forth in the Court's February 1, 2010 Decision denying dismissal for lack of personal jurisdiction, the Court denies Southpac's motion. The Court concludes that the exercise of jurisdiction over Southpac is appropriate in light of the allegations that Southpac participated in the fraudulent conveyance of assets in an effort to avoid the satisfaction of the judgment in the New York divorce action.

All matters not decided herein are hereby denied.

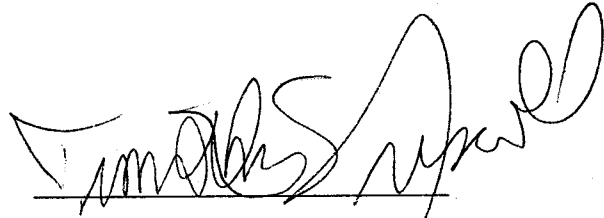
This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a conference on April 3, 2012 at 9:30 a.m.

ENTER

DATED: Mineola, NY

March 19, 2012



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED

MAR 22 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**