

**Rybolovleva v Rybolovleva**

2014 NY Slip Op 33634(U)

September 18, 2014

Supreme Court, New York County

Docket Number: 102168/12

Judge: Milton A. Tingling

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This opinion is uncorrected and not selected for official publication.

EA  
9/26/14  
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING  
J.S.C.

Justice

PART 44

Ryb olavleva

-v-

Ryb olavlev

INDEX NO. 1002 168/12

MOTION DATE 3/21/13

MOTION SEQ. NO. 3

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is decided in accordance with  
annexed decision.

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

**FILED**  
SEP 29 2014  
NEW YORK  
COUNTY CLERK'S OFFICE

RECEIVED  
SEP 26 2014  
GENERAL CLERK'S OFFICE  
NYS SUPREME COURT - CIVIL

Dated: 9/18/14

mat, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING

PART 44

ELENA RYBOLOVLEVA,

PLAINTIFF,

-v-

DMITRI RYBOLOVLEV AND PROPERTY NY 100-11 LLC,  
JOHN DOE TRUSTEE, JOHN DOE TRUST, JOHN DOES 1-5  
AND EKATERINA RYBOLOVLEVA,

DEFENDANTS.

INDEX NO. 102168/12

MOTION DATE: 03/21/13

**FILED**

SEP 29 2014

**NEW YORK  
COUNTY CLERK'S OFFICE**

Upon the foregoing papers, motions under sequence numbers two and three are decided by this decision and order. The Defendants' motions are DENIED and Plaintiff's cross-motion is granted.

Defendant, Dmitri Rybolovlev, moves the Court to dismiss the Amended Complaint for lack of personal jurisdiction; on the grounds that in the interest of substantial justice the actions should be heard in another forum; on the grounds that it fails to make allegations with sufficient particularity; and to strike scandalous and prejudicial matter from the Amended Complaint. Plaintiff cross-moves the Court for an Order directing discovery on the issue of personal jurisdiction over defendant Dmitri Rybolovlev.

This action arises from a divorce proceeding commenced in Switzerland against Defendant. Plaintiff is a resident of Geneva, Switzerland and Defendant is a resident of Monaco. Defendant alleges that the Court has no personal jurisdiction over him because he does not own real property in New York and has only had minimal contact with New York as a visitor. The Defendant also alleges that the asserting personal jurisdiction in this case would violate constitutional due process. Defendant also claims that New York is not a proper forum because this action turns on a Swiss order that should be properly decided by the Swiss Court and that

Switzerland is the more convenient forum for the parties. Defendant alleges that this Court is not authorized by Article 53 to enforce the Swiss order.

Plaintiff began divorce proceedings in 2008 against Defendant. During those proceedings the Geneva Court of Justice issued an order freezing the assets of Defendant Dmitri Rybolovlev, held directly or indirectly through trusts or otherwise to prevent any further dissipation. Plaintiff alleges that Defendant used those assets to purchase the New York Property in question. Plaintiff claims that Defendant created two trusts known as Virgo and Aries, to which he transferred interests from multiple companies, in an effort to exclude this assets from Plaintiff. Plaintiff alleges that Defendant acquired the New York Property for \$88 million dollars, during their marriage and in secret, using an unnamed trust in an effort to ensure that it is not available to be disposed of in accordance with the Swiss Court Action. Plaintiff acknowledges that she cannot provide greater detail regarding Defendants ownership interests in the New York Property, and moves this court, to order that the Defendant be Deposed.

Before a motion for dismissal on the grounds of personal jurisdiction can be granted, additional discovery may be ordered to aid in the resolution of the jurisdictional issue. A party “need not meet the standard of establishing a prima facie case; rather, the party need only convince the court that facts ‘may exist’ to defeat the dismissal motion.” *Banham v. Morgan Stanley & Co.*, 178 A.D.2d 236, 236 (1st Dep’t 1991). The plaintiff need only show, “some tangible evidence which would constitute a ‘sufficient start’ in showing that jurisdiction could exist.” *SNS Bank, N.V., v. Citibank, N.A.*, 7 A.D. 352, 354 (1st Dep’t 2004). Pursuant to CPLR § 302(a), jurisdiction is proper over a non-domiciliary where he “in person or through an agent: (1) transacts any business within the state; (2) commits a tortious act within the state; or (3) owns, uses or possess any real property situated within the state. In the instant case, Plaintiff alleges that Defendant, through the use of a shell company, purchased the New York Property. Plaintiff claims that Defendant made this purchase, in violation of the Swiss order freezing all assets, by using an agent

Mr. David Lifson. Plaintiff presents facts that show that Mr. Rybolovlev, along with Mrs. Rybolovleva, used Mr. Lifson in their previous attempt to acquire the property now in question. The Plaintiff claims that jurisdiction exists because Defendant has conducted business in New York; owns, uses or possess property (the New York Property) directly or indirectly; and uses agents located in New York to represent his interests, including Mr. Lifson and Mr. Marc Salis, Esq.

To determine if an agency relationship can confer jurisdiction the court examines the relationship to see if the person or entity acts “for the benefit of and with knowledge and consent of the non-resident.” *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988). The Court of Appeals has held that under CPLR § 302(a)(1) jurisdiction is proper “even though defendant never enters New York, so long as the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted.” *Fischbarg v. Doucet*, 849 N.Y.3d 375, 380 (2007). In *Doucet*, the Court found that creating a relationship with a New York business professional such as an attorney, or in this case Mr. Lifson a NY tax accountant and Mr. Salis a NY attorney, can be considered “a transaction of business in New York” that is sufficient enough to subject themselves to the State’s jurisdiction. In the instant case, the Plaintiff presents enough “tangible evidence” to show that jurisdiction could exist. Defendant fails to provide any information addressing his relationship to Mr. Lifson, who is the Manager of the Defendant Property NY 100-11 LLC, or Mr. Salis, who represented the Defendant Property during the purchase of the New York Property. The Plaintiff provides sufficient facts to convince the court that facts may exist that would provide jurisdiction. Plaintiff also makes a showing that these facts would be in the hands of the defendant and therefore further discovery is needed before jurisdiction can be affirmed or denied.

Defendant’s failure to sufficiently address the jurisdictional issue of agency and Plaintiff’s claim that an agency relationship exists convinces this court that the motion to dismiss the Amended Complaint should be denied. Plaintiff’s cross-motion

that further discovery, including the deposition of Defendant Rybolovlev, should proceed is granted.

Parties are to appear for a conference on November 17, 2014 at 9:30 am.

DATED: September 18, 2014



Hon. Milton A. Tingling, JSC

**HON. MILTON A. TINGLING  
J.S.C.**

**FILED**  
SEP 29 2014  
NEW YORK  
COUNTY CLERK'S OFFICE