

**JSC VTB Bank v Mavlyanov**

2017 NY Slip Op 31022(U)

May 12, 2017

Supreme Court, New York County

Docket Number: 652516/2016

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 45

-----X  
JSC VTB BANK (f/k/a OPJSC VTB BANK and  
PJSC VTB BANK),

Plaintiffs,

-against-

Index No. 652516/2016

IGOR MAVLYANOV, STELLA MAVLYANOVA,  
ILIO MAVLYANOV, HANAN MAVLYANOV, 18016  
BORIS PROPERTIES, LLC, 2710 BOWMAN, LLC,  
364 WEST 119<sup>th</sup> STREET REALTY, LLC, JASPER  
VENTURE GROUP LLC, CHEN MENACHEM EVEN,  
and MICHAL REBECCA NEWMAN EVEN,

Mot. Seq. 004

Defendants.

-----X  
SINGH, J.

Plaintiff JSC VTB Bank (Bank) moves, pursuant to CPLR 3025 (b), for an order granting leave to amend the complaint.

The underlying facts and procedural history are fully set forth in this court's prior decisions and orders, and will not be repeated here, except as is needed for clarification.

Briefly, in this action, the Bank alleges that defendant Igor Mavlyanov fraudulently conveyed assets, consisting of real property, funds, and business interests, located in New York, California, and Russia in 2013 and 2015 to family, friends, and related business entities in order to render himself judgment proof. In the original complaint, the Bank alleges that Igor Mavlyanov owes it approximately \$34 million pursuant to the terms of two personal guarantees that he executed in conjunction with the Bank's loans in 2013 to his company, nonparty Torgovo-proizvodstvennaya Kompaniya Yashma (Yashma Trade and Production Company [Yashma]). Yashma defaulted on

those loans in June 2015, and, subsequently, Igor Mavlyanov rejected the Bank's demand for payment under the guarantees.

The Bank commenced this action in May 2016. Igor Mavlyanov served an answer on September 29, 2016. Defendants Ilio Mavlyanov, Hanan Mavlyanov, 18016 Boris Properties, LLC (Boris LLC), 2710 Bowman, LLC (Bowman LLC), 364 West 119<sup>th</sup> Street Realty, LLC (119<sup>th</sup> Street LLC), and Jasper Venture Group LLC (Jasper LLC) served an answer on June 29, 2016. Defendant Stella Mavlyanova has not served an answer in this action.

The Bank now seeks leave to amend the original complaint to include additional factual allegations regarding Igor Mavlyanov's alleged scheme to defraud the Bank, and to include additional claims and parties relating to Igor Mavlyanov's alleged involvement in fraudulent purchases of three condominium apartments in the building located at 120 East 87<sup>th</sup> Street in Manhattan (East 87<sup>th</sup> Street properties), and Igor Mavlyanov's alleged fraudulent transfers of real property in California and shares of nonparty Ilio Trans, Inc. Specifically, the Bank seeks to add Jasper Partner Inc., Jasper California LLC, 120E87 1C LLC (87 1C LLC), 120E87 ATBT LLC (87 ATBT LLC), Robert Martirosyan, Pyotr Yadgarov, and Does 1-25. The Bank also seeks to omit defendants Chen Menachem Even and Michal Rebecca Newman Even (both, the Evens) from the caption and all claims asserted against them in the original complaint. Last, the Bank seeks to add allegations regarding two additional judgments that it obtained against Igor Mavlyanov in Russia, raising the amount allegedly owed to the Bank by Igor Mavlyanov to approximately \$79 million.

In opposition, Igor Mavlyanov contends that the motion must be denied on the grounds that the Bank did not file an affidavit of merits or produce any evidentiary proofs in support of the motion, and that the proposed amended complaint is based on mere speculation, lacks sufficient legal

support, and contains irrelevant and unfairly prejudicial allegations relating to the transfers of real property in New York, California, and Russia.

In opposition, Stella Mavlyanova, Ilio Mavlyanov, Hanan Mavlyanov, Boris LLC, Bowman LLC, 119<sup>th</sup> Street LLC, and Jasper LLC (collectively, the Rheem Bell defendants) raise the same procedural objections as does Igor Mavlyanov, and contend that the Bank's application to include additional parties on the claims concerning the California properties is inappropriate, and that the allegations concerning two condominium apartments in the building located at 150 West 56<sup>th</sup> Street in Manhattan (West 56<sup>th</sup> Street properties) and in Russia constitute scandalous, unduly prejudicial, and irrelevant matter, pursuant to CPLR 3024 (b).

Leave to amend is granted. "[L]eave to amend a pleading is freely given absent prejudice or surprise resulting directly from the delay. Prejudice arises when a party incurs a change in position, or is hindered in the preparation of its case, or has been prevented from taking some measure in support of its position" (*Anoun v City of New York*, 85 AD3d 694, 694 [1<sup>st</sup> Dept 2011] [internal quotation marks and citations omitted]; *see* CPLR 3025 [b]).

"The court need only determine whether the proposed amendment is 'palpably insufficient' to state a cause of action or defense, or is patently devoid of merit" (*Lucido v Mancuso*, 49 AD3d 220, 229 [2d Dept 2008]; *MBIA Ins. Corp. v Greystone & Co.*, 74 AD3d 499, 500 [1<sup>st</sup> Dept 2010]; *see* CPLR 3025 [b]). Resolution on the merits of claims sought to be added is not appropriate on a motion to amend (*see Curiale v Weicholz & Co.*, 192 AD2d 339, 339 [1<sup>st</sup> Dept 1993]).

"A party opposing leave to amend must overcome a heavy presumption of validity in favor of [permitting amendment]" (*McGhee v Odell*, 96 AD3d 449, 450 [1<sup>st</sup> Dept 2012] [internal quotation marks and citation omitted]).

Defendants' procedural objections are unavailing. The Bank's failure to submit an affidavit of merits by a person with knowledge of the underlying facts does not require denial of the motion. While an affidavit of merits may assist the court in examining the merits of the proposed pleading, the failure to submit such an affidavit is not fatal to a motion to amend (*see Delta Dallas Alpha Corp. v South St. Seaport L.P.*, 127 AD3d 419, 419 [1<sup>st</sup> Dept 2015]).

A review of the proposed amended complaint reveals that the claims asserted arise out of the same statutory and common law and many of the same general facts as do those asserted in the original complaint, and that the new allegations are largely based on public documents and on documents produced by defendants or nonparties.

The Bank submitted a legal brief, the proposed amended complaint, and a redlined version identifying the changes made to the original complaint, in support of the motion. In its reply papers, the Bank submitted an attorney's affirmation annexing numerous documents in support of the new allegations. Defendants were accorded an opportunity to respond to the new information and documents set forth in the reply papers, and filed sur-replies. Where the defendants avail themselves of an opportunity to serve and file a sur-reply, no prejudice to a substantial right can accrue (*see Fiore v Oakwood Plaza Shopping Ctr.*, 164 AD2d 737, 739 [1<sup>st</sup> Dept], *aff'd* 78 NY2d 572 [1991]).

Contrary to defendants' contention, a motion for leave to amend may be made during the pendency of a motion to dismiss (*see Nimkoff Rosenfeld & Schechter, LLP v O'Flaherty*, 71 AD3d 533, 533 [1<sup>st</sup> Dept 2010]).

Turning from the procedural to the substantive arguments, the Bank seeks to add allegations and claims arising out of the purchases of the East 87<sup>th</sup> Street properties by 87 1C LLC and 87 ATBT

LLC, and to add those companies as defendants. Specifically, the Bank alleges that, on June 30, 2014, 87<sup>th</sup> 1C LLC purchased an apartment in the building located at 120 East 87<sup>th</sup> Street in Manhattan for \$2.9 million from nonparty Bruno Lacis, Ltd. The Bank further alleges that the apartment was purchased for cash, and that no mortgage was recorded for the apartment. The Bank also alleges that, on that same date, 87 ATBT LLC purchased two penthouse apartments at that same address in exchange for \$10.6 million from nonparty Bruno Hofmann, the owner of Bruno Lacis, Ltd. The Bank alleges that those purchases were for cash, and that no mortgages were recorded for those apartments.

The proposed allegations and claims arising out of the purchases of the East 87<sup>th</sup> Street properties are not palpably without merit, and provide a sufficient basis for amendment. The Bank alleges that the underlying circumstances surrounding those purchases demonstrate that they were part of the alleged fraudulent scheme by Igor Mavlyanov to hide funds from his creditor, the Bank. Those circumstances, as alleged by the Bank, include that all, or some, of the purchase money for the three apartments was provided by Igor Mavlyanov.

The Bank also alleges that Ilio Mavlyanov is the member or manager of 87 1C LLC and 87 ATBT LLC, either directly or through Jasper LLC, and that he and Hanan Mavlyanov admittedly reside in the apartment purchased by 87 1C LLC (*see* Ilio Mavlyanov June 15, 2016 aff ¶ 3; Hanan Mavlyanov June 15, 2016 aff ¶ 3).

The Bank also alleges that 87 1C LLC and 87 ATBT LLC were formed two weeks prior to the purchases, and registered under the same Madison Avenue address used by Ilio Mavlyanov, Boris LLC, Bowman LLC, 119<sup>th</sup> Street LLC, and Jasper LLC.

Contrary to defendants' contention, the fact that the Bank alleges fraudulent purchases by

entities related to Igor Mavlyanov, rather than fraudulent conveyances from such entities, does not render those allegations irrelevant to the alleged fraudulent scheme. The Bank alleges that Igor Mavlyanov secreted property, assets, and funds from the Bank by, among other things, depleting his bank accounts by transferring funds with which he purchased real property.

The Bank seeks to add Yadgarov, Igor Mavlyanov's business associate, on allegations that he was involved in Igor Mavlyanov's fraudulent scheme to hide funds from the Bank in 2013. The Bank alleges that Igor Mavlyanov contributed more than \$1.3 million to the purchase of property located at 364 West 119<sup>th</sup> Street in Manhattan (119<sup>th</sup> Street property) by Yadgarov's company, 119<sup>th</sup> Street LLC. Those allegations are sufficient to meet the standard required for amendment.

The Bank next seeks to add Jasper Partner Inc., Jasper California LLC, Robert Martirosyan, and Does 1-25 as defendants, and to add allegations relating to alleged fraudulent conveyances in 2013 of two properties in California formerly owned by Igor Mavlyanov. The Bank contends that it seeks to add them here, because it prefers to litigate all of its claims related to Igor Mavlyanov in New York, rather than in California.

The Bank alleges that those entities and Martirosyan were involved in the alleged fraudulent scheme, as evidenced by the following alleged surrounding circumstances:

On October 23, 2013, Igor Mavlyanov sold the property located at 18000 Boris Drive, Encino, CA (Boris Drive property) to Boris LLC. Boris LLC had been formed pursuant to California law on August 28, 2013 by Igor Mavlyanov for the purpose of owning the Boris Drive property, and, in October 2013, was solely owned by Martirosyan, Igor Mavlyanov's business associate and an individual guarantor of Yashma's debt to the Bank.

On October 23, 2013, Igor Mavlyanov sold the property located at 2710 Bowmont Drive,

Beverly Hills, CA (Bowmont Drive property) to Bowman LLC, then owned by Martirosyan or his company, nonparty Kolenar, Inc. Bowman LLC had been formed under California law by Igor Mavlyanov on August 28, 2013 for the purpose of owning the Bowmont Drive property.

On June 15, 2015, Martirosyan caused Kolenar, Inc. to transfer its interest in Boris LLC to nonparty Jasper California LLC, a company owned by Ilio Mavlyanov, in exchange for a \$650,000 unsecured promissory note.

On March 17, 2015, Martirosyan caused Kolenar, Inc. to transfer full ownership of Bowman LLC to Ilio Mavlyanov's company, Jasper California, in exchange for a \$4 million unsecured promissory note which requires no payments of principal or interest until March 31, 2018, the note's maturity date. By March 17, 2015, Ilio Mavlyanov had acquired ownership of Bowman LLC.

Those allegations are sufficient to support the proposed claims against Jasper Partner Inc., Jasper California LLC, Martirosyan, and Does 1-25.

The court notes that the Bank commenced a parallel action on June 21, 2016 against those entities, Martirosyan, and Igor Mavlyanov before the Superior Court of the State of California (*JSC VTB Bank v Mavlyanov*, Superior Court, Los Angeles County, Calif., case no. BC624195 [the California action]) on allegations that they were involved in Igor Mavlyanov's scheme to fraudulently convey the Boris Drive and Bowmont Drive properties in order to remove them from the Bank's reach.

The court also notes that the Rheem Bell defendants cross-moved in the action at bar, in motion sequence no. 001, to dismiss all claims relating to the transfers of the Boris Drive and Bowmont Drive properties on a variety of grounds, including the pendency of the California action. In a separate decision, the court denied that branch of the cross motion, and granted that branch of

the Bank's motion to attach those properties. Therefore, contrary to defendants' contention, it would not be unfairly prejudicial to permit the Bank to pursue the claims related to those properties here.

Next, the Bank seeks to add allegations and claims arising out of two judgments issued by a Russian court against Igor Mavlyanov that are not based on his personal guarantees of Yashma's debt obligations.

Specifically, the Bank alleges that it commenced separate actions against Igor Mavlyanov before the Meshchansky District Court of Moscow (Moscow court). In one action, the Bank seeks to recover amounts allegedly due and owing under a personal guarantee executed by Igor Mavlyanov on December 17, 2013 in connection with a loan facility agreement, pursuant to which the Bank loaned nonparty Arial Closed Joint-Stock Company (Arial) the amount of RUB 2,057,960,500 (Arial guarantee) (*see VTB Bank Public Joint-Stock Co. v Igor Rakhimovich Mavlyanov*, Meshchansky District Court of Moscow, case no. 2-5253/2016). The Bank alleges that, subsequently, Arial defaulted on its repayment obligations, and Igor Mavlyanov defaulted on his payment obligations imposed by the Arial guarantee.

In the other action, the Bank seeks to recover amounts allegedly due and owing under a personal guarantee executed by Igor Mavlyanov on October 31, 2014 in connection with a loan facility agreement, pursuant to which the Bank loaned nonparty Aerofirst Closed Joint-Stock Company (Aerofirst) the amount of RUB 1,000,000,000 (Aerofirst guarantee) (*see VTB Bank Public Joint-Stock Co. v Igor Rakhimovich Mavlyanov*, Meshchansky District Court of Moscow, case no. 2-6822/2016). The Bank alleges that, subsequently, Aerofirst defaulted on its repayment obligations, and Igor Mavlyanov defaulted on his payment obligations imposed by the Aerofirst guarantee.

The Bank alleges that, in each action, the Moscow court issued a judgment against Igor

Mavlyanov in the amount equal to the unpaid balance due under each loan facility agreement, together with court costs in the amount of RUB 60,000.

As of the submission date of this motion to amend, Igor Mavlyanov's appeals of each judgment were still pending before the Moscow court.

Those allegations regarding the Moscow court judgments are sufficient to meet the standard required for amendment.

Contrary to defendants' contentions, none of the proposed amendments will surprise or unduly prejudice defendants. The surprise or prejudice sufficient to defeat a motion to amend is not based on the substance or merits of the proposed pleading; instead, such prejudice or surprise must result directly from the delay caused by the amendment (*see Anoun v City of New York*, 85 AD3d at 694), such that the defendants have "been hindered in the preparation of [their] case or has been prevented from taking some measure in support of [their] position" (*McGhee v Odell*, 96 AD3d at 450). "Prejudice does not occur simply because a defendant is exposed to greater liability or . . . has to expend additional time preparing its case" (*Koch v Acker, Merrall & Condit Co.*, 114 AD3d 596, 597 [1<sup>st</sup> Dept 2014] [internal quotation marks omitted]).

The proposed amendments either add detail to, and clarify, previously pleaded allegations or identify additional transfers of which defendants have knowledge, and which are consistent with the alleged pattern of fraudulent activity by Igor Mavlyanov in transferring his assets to his immediate family, friends, and related business entities. They also identify two additional judgments that the Bank obtained against Igor Mavlyanov under his personal guarantees of the debt obligations of two companies, Arial and Aerofirst.

Moreover, while some motion practice has occurred, relatively minimal discovery has been

taken in this action, and defendants will have ample opportunity to raise any defenses that they believe are appropriate, and to examine the newly pleaded allegations and claims through the various methods of discovery available under the CPLR.

Last, defendants contend that certain allegations set forth in both the original complaint and in the proposed amended complaint must be stricken.

Specifically, defendants contend that the allegations regarding the West 56 Street properties and the properties located in Russia must be stricken, pursuant to CPLR 3024 (b), on the grounds that they are unfairly prejudicial and unnecessary, and that amendment including those allegations would be futile, inasmuch as the Bank effectively abandoned and discontinued the claims relating to those properties. Defendants' contentions are without merit.

While "[a] party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading" (CPLR 3024 [b]), such a motion must be made "within twenty days after service of the challenged pleading" (CPLR 3024 [c]). Here, the defendants did not move to strike the allegations relating to the West 56<sup>th</sup> Street and Russian properties within 20 days after service of the original complaint containing those allegations.

In any event, the allegations cited by defendants are not scandalous, prejudicial or irrelevant.

In the proposed amended complaint, the Bank preserves allegations from the original complaint regarding the alleged fraudulent transfers of the West 56<sup>th</sup> Street properties by Igor Mavlyanov to the Evens. However, the Bank omits the Evens from the caption, no longer asserts claims against the Evens to annul the transfers of those properties, and has vacated the notices of pendency filed against them.

Defendants contend that, therefore, the preserved allegations serve no real purpose, are

wholly irrelevant to this action, and are asserted merely to give the mistaken impression that the transfers were fraudulent, and to cause confusion regarding the other fraudulent conveyance and alter ego claims asserted by the Bank.

The proposed amended complaint, when read as a whole, reveals that the allegations relating to the transfers of the West 56<sup>th</sup> Street properties are part of the claim for actual fraud, pursuant to Debtor & Creditor Law § 276, asserted against Igor Mavlyanov. In that claim, the Bank alleges that Igor Mavlyanov fraudulently conveyed those properties soon after executing the first personal guarantee of Yashma's debt to the Bank, and that, therefore, the conveyances constitute evidence of a pattern of purposeful conduct to defraud creditors, particularly, the Bank. While no longer seeking to attach those properties, the Bank seeks monetary damages from Igor Mavlyanov equal to the purchase price that he received for those properties.

With regard to the conveyance of certain properties in Russia, in the proposed amended complaint, the Bank omits the claims regarding those properties, while preserving the factual allegations. There is no dispute that, in 2015, Igor Mavlyanov transferred his interests in those properties to Stella Mavlyanova. The Bank and defendants dispute whether those transfers were made in good faith and in compliance with the divorce decree issued on February 3, 2015 in *Stella Mavlyanova v I. R. Mavlyanov* (Meshansky District Court, City of Moscow, case no. 2-17/2015 [Moscow divorce action]), or whether Igor Mavlyanov and Stella Mavlyanova crafted a voluntary divorce settlement agreement in order to render Igor Mavlyanov judgment proof, and submitted that agreement for approval in the Moscow divorce action.

Here, again, the proposed amended complaint, when read as a whole, reveals that the allegations of fraudulent conveyances of the properties located in Russia form a part of the pattern

of fraud by Igor Mavlyanov, his friends, family, and related entities alleged by the Bank.

The court has considered defendants' remaining contentions, and finds them to be without merit.

Accordingly, it is

ORDERED that plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 218, 60 Centre Street, on June 15, 2017, at 2:30 PM.

Dated: May 12, 2017  
New York, New York



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Anil C. Singh