

Medallion Fin. Corp. v Tsitiridis
2022 NY Slip Op 30504(U)
February 15, 2022
Supreme Court, New York County
Docket Number: Index No. 150365/2021
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C.

PART 8

MEDALLION FINANCIAL CORP. et al

INDEX NO. 150365/2021

- v -

MOT. DATE

SAVAS TSITIRIDIS et al

MOT. SEQ. NO. 4&5

The following papers were read on this motion to/for
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits
ECFS DOC No(s).
ECFS DOC No(s).
ECFS DOC No(s).

Previously, in a decision/order dated January 29, 2021, the court granted plaintiffs' motion for a preliminary injunction enjoining and restraining defendants from transferring, mortgaging, selling, converting, concealing, dissipating, disbursing, etc., any of their assets to the extent of \$32,005.729.06 during the pendency of this action as well as the real property located at 183 Daniels Lane, Sagaponack, NY 11963 (the "Sagaponack property").

Now, there are two motions to dismiss plaintiffs' amended complaint and/or vacate the preliminary injunction which are the subject of this decision/order. The first motion is by the individual defendant, Savas Tsitiridis, (sequence 4) and is brought pursuant to CPLR § 3211[a][1], [7] and [10]. The second motion is by the LLC defendants (sequence 5) and largely mirrors the individual defendants' motion. Plaintiffs oppose both and cross-move to amend the caption. The court's decision follows.

The court will first consider the defendants' motions. Defendants argue that plaintiffs Medallion Bank and Medallion Financial Corp. (collectively "Medallion") fail to state a claim under the Debtor Creditor Law, or for injunctive relief, attachment, turnover and under a theory of alter ego liability. Defendants further argue that Medallion has failed to join necessary parties, that the court lacks jurisdiction over certain LLC defendants. As for the preliminary injunction, defendants assert that even if the amended complaint is not dismissed, the court incorrectly analyzed plaintiffs' likelihood of success and therefore the injunction should be vacated.

Applicable standard

On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (Leon v. Martinez, 84 NY2d 83, 87-88 [1994]). The court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (id. citing Morone v. Morone, 50 NY2d 481 [1980]; Rovello v. Orofino Realty Co., 40 NY2d 633 [1976]).

Dated: 2/15/22

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [] CASE DISPOSED [X] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [] GRANTED [] DENIED [] GRANTED IN PART [X] OTHER
3. Check if appropriate: [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST
[] FIDUCIARY APPOINTMENT [] REFERENCE

Under CPLR § 3211(a)(1), “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law” (*Leon v. Martinez, supra* at 88). Whereas CPLR § 3211(a)(10) provides that “[a] party may move for judgment dismissing one or more causes of action asserted against him [or her] on the ground that the court should not proceed in the absence of a person who should be a party.”

The amended complaint

Medallion loaned monies north of \$41 million to taxi medallion companies owned and operated by Tsitiridis beginning in May 2013. Taxi medallions served, in part, as collateral for the loans. It is public knowledge that the value of taxi medallions plummeted in recent years due to, at least, increased competition from ride-sharing companies with phone apps such as Uber and Lyft. Eventually, the loans went into default and Medallion has since obtained judgments against the taxi medallion companies.

Medallion complains that Tsitiridis, who had a net worth of \$141 million according to financial statements in April 2013, “orchestrated a scheme by which he would divest himself of the assets held personally through the use of limited liability companies and [The Bridge Funding Trust (the “Trust”)], in order to place such assets outside Medallion’s reach.” In short, Tsitiridis allegedly transferred his membership interests in the LLC defendants to the Trust. For his part, Tsitiridis claims in a sworn affidavit that the transfers were made for estate planning purposes. Defendants otherwise assert that “[m]any of the allegations in the Amended Complaint are similarly false.”

This action was brought to enforce the judgments Medallion has obtained against Tsitiridis. Specifically, Medallion “seeks to set aside and avoid the fraudulent conveyances by [Tsitiridis] to [the Trust] of the membership interests (the “Membership Interest”) in and to the LLC [d]efendants herein (the “Transfers”) or permit Medallion to ignore and levy execution upon those interests pursuant to, *inter alia*, [DCL] § 278 on the basis that the Transfer constitutes a constructive and/or intentional fraudulent transfer in violation of [DCL] §§ 270-276-a.”

Plaintiff’s amended complaint asserts the following causes of action: [1] avoidance of constructively fraudulent conveyance in violation of DCL Section 273 and a judgment setting aside those conveyances pursuant to DCL Section 278 (1st COA); [2] a judgment setting aside the conveyances pursuant to DCL Sections 274 and 278 (2nd COA); [3] a judgment setting aside the conveyances pursuant to DCL Sections 275 and 278 (3rd COA); [4] a judgment setting aside the conveyances pursuant to DCL Sections 276 and 278 (4th COA); [5] a cause of action for injunctive relief and attachment (5th COA); [6] turnover (6th COA); and [7] a declaration that Tsitiridis has used the Trust and the LLC defendants as an alter ego and permitting Medallion to execute upon any assets or property of the Trust and LLC defendants (7th and 8th COAs).

The instant motions are the latest attempt by Tsitiridis and companies he has a controlling interest in to avoid facing the merit of the allegations Medallion has levied against him. Defendants do not argue that Medallion’s causes of action based upon Sections 275 and 276 of the DCL should be dismissed. The court will now consider the defendants’ arguments to dismiss.

DCL § 273

Medallion has asserted four claims against the individual defendant under the Former DCL which was in effect until April 4, 2020. In the court’s 1/29/21 decision/order, the court cited the current version of DCL § 273, which all sides agree does not apply to plaintiff’s first cause of action (*see i.e. Eagle Eye Collection Corp. v. Shariff*, 190 AD3d 60 [1st Dept Jan. 26, 2021]). Rather, the prior version of DCL § 273 applies to alleged fraudulent transfers that took place before April 4, 2020 and specifically applies to the transaction from which this action arises. The former DCL § 273 provides in relevant part as follows:

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

Defendants argue that Medallion has failed to state a claim under the former DCL § 273 because Medallion “cannot show that [Tsitiridis] rendered himself insolvent at the time of the transfers. In fact, nowhere in its Amended Complaint or its motion papers does Medallion even attempt to show how [Tsitiridis] was rendered insolvent by the transfers.”

The 2013s financial statements indicates that Tsitiridis’ net worth was over \$17 million at that point. The court agrees with the defendants. At best, Medallion merely alleges that the subject transfers rendered Tsitiridis insolvent “because he would be unable to pay Medallion as his obligations matured and became absolute, i.e. once his companies defaulted and the guaranties were called.” The fact that Tsitiridis could become insolvent at some point in the future does not give rise to a cause of action under former Section 273. Accordingly, plaintiff’s first cause of action is severed and dismissed.

DCL § 274

Defendants argue that Medallion cannot show that the amount of capital retained by Tsitiridis after the subject transfer was “unreasonably small” and therefore this cause of action must be dismissed. The court disagrees. DCL § 274 (now repealed) provides:

Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

Medallion points to the court’s 1/29/21 decision/order, wherein the court stated “[b]efore the loans were made, Tsitiridis’ net worth was more than four times their value and within a relatively short time period thereafter, his net worth plummeted to approximately half of the value of those loans [made by Medallion and guaranteed by Savas.]” Medallion therefore asserts that it is law of the case that Medallion properly alleged that the Fraudulent Transfers left Savas with “unreasonably small” capital. The court agrees. Defendants’ motions are at their core a motion to reargue in disguise. In any event, defendants cannot point to any documentary evidence that unequivocally rules out that after the transaction at issue, Tsitiridis had “unreasonably small” funds on hand in light of his liabilities. Therefore, defendants’ motion as to the section 274 claim is denied.

6th COA

Medallion all but concedes that the fifth cause of action is improper. Presumably, out of concern for the preliminary injunction it has already obtained, Medallion maintains that “regardless of how medallion requested such relief, Medallion’s right to seek same remains intact, particularly in light of [Tsitiridis’] bad faith conduct,... there is no basis for the Court to vacate the Preliminary Injunction.”

A claim for injunctive relief is a remedy for an underlying wrong, not a cause of action (*Talking Capital LLC v. Omanoff*, 169 AD3d 423, 424 [1st Dept 2019]). Courts have also held that attachment is also a remedy, not a standalone claim (see *i.e. L & L Auto Distributors and Suppliers Inc. v. Auto Collection, Inc.*, 23 Misc3d 1139[A] [Sup Ct Kings Co 2009]). Nonetheless, Medallion has very real claims in this action. Therefore, the fifth cause of action is dismissed and the court will grant Medallion leave to serve and file a second amended complaint which requests these remedies in connection with its substantive causes of action.

Turnover

The LLC defendants argue that the turnover claim should be dismissed because it “cannot apply to the LLC [d]efendants”. The court disagrees. CPLR § 5225[b] provides in pertinent part as follows:

Upon a special proceeding commenced by the judgment creditor, against a person in possession or custody of money or other personal property in which the judgment debtor has an interest, or against a person who is a transferee of money or other personal property from the judgment debtor, where it is shown that the judgment debtor is entitled to the possession of such property or that the judgment creditor's rights to the property are superior to those of the transferee, the court shall require such person to pay the money, or so much of it as is sufficient to satisfy the judgment, to the judgment creditor and, if the amount to be so paid is insufficient to satisfy the judgment, to deliver any other personal property, or so much of it as is of sufficient value to satisfy the judgment, to a designated sheriff. Costs of the proceeding shall not be awarded against a person who did not dispute the judgment debtor's interest or right to possession. Notice of the proceeding shall also be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested.

Since Medallion alleges that it seeks turnover of judgment debtor Tsitiridis' membership interests, which Tsitiridis fraudulently transferred into the Trust, Medallion has stated a *prima facie* cause of action for turnover of those interests.

Necessary party

Defendants argue that the Trust is a necessary party “as the actual transferee of the purportedly fraudulently transferred assets”. They point to the fifth cause of action, which has already been dismissed. Defendants argue that there are other necessary parties which are subject to the “drastic remedies afforded by the preliminary injunction” such as the co-owners and mortgagees of the Sagaponack property.

An action is subject to dismissal if there has been a failure to join a necessary party. CPLR § 1003. Necessary parties are those “who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action” (*Morgan v. de Blasio*, 29 NY3d 559 [2017]). However, dismissal for failing to name a necessary party is not favored (*Swezey v. Lynch*, 87 AD3d 119 [1st Dept 2011]).

Medallion asserts that the Trust is not a necessary party simply because it was the alleged transferee of Tsitiridis' fraudulent conveyances. Plaintiffs' counsel also cites federal cases from the Eastern and Southern Districts. On this point, the court disagrees with plaintiffs. New York State caselaw could not be clearer: “In an action to set aside an alleged fraudulent conveyance, the transferee of the subject property is a necessary party (*Alvaro v Faracco*, 85 AD3d 1072, 1073 [2d Dept 2011]; see also *Matter of Cabrera v. City of New York Civ. Serv. Commn.*, 181 AD3d 540 [1st Dept 2020] [“In any event, the court properly determined that DOC was a necessary party to this proceeding, as petitioner sought relief against the DOC, and the DOC might have been inequitably affected by a judgment in the proceeding.”]).

Thus, the court finds that the Trust, as well as the co-owners and the mortgagees of the Sagaponack property are necessary parties. This determination does not, however, warrant dismissal since these parties can be properly named in this action and served. Therefore, the court directs plaintiffs to amend their complaint to add these parties and serve the amended complaint upon them within 60 days from notice of entry of this decision/order.

Alter ego

In their seventh cause of action, plaintiffs allege that Tsitiridis created the Trust and/or orchestrated the transfers of the membership interests of the LLC defendants into the Trust in order to defraud Medallion and other creditors. Tsitiridis “used the Trust and its assets as his assets” and “the Trust has been so dominated by [Tsitiridis] and its separate identities has been so disregarded that the Trust primarily transacted [Tsitiridis’] personal business rather than its own, requiring the Trust to be treated as [Tsitiridis’] alter ego(s).” Plaintiffs’ eighth cause of action against the LLC defendants essentially mirrors the seventh.

Defendants argue that plaintiffs’ alter ego claim is “wrong” because “Medallion does not allege that the Trust exercised domination over anything, Medallion’s declaratory judgment claim must be dismissed.” Contrary to their contention, Medallion is not alleging “some sort of reverse-twisted veil piercing” as defense counsel asserted at oral argument. Rather, plaintiffs allege that the individual defendant has used the Trust and LLC defendants as an alter ego and therefore seeks to pierce the corporate veil of the Trust and LLC defendants and enforce the judgments against them.

“The doctrine of piercing the corporate veil is typically employed by a third party seeking to go behind the corporate existence in order to circumvent the limited liability of the owners and to hold them liable for some underlying corporate obligation” (*Matter of Morris v. New York State Dept. of Taxation & Fin.*, 82 NY2d 135 [1993]). In order to pierce the corporate veil, Medallion must show that: [1] Tsitiridis exercised complete domination over the Trust or LLC defendants in respect to the transaction attacked; and [2] that such domination was used to commit a fraud or wrong against Medallion which resulted in Medallion’s injury. (*Id.*) “Courts consider whether the parent company engaged in self-dealing, commingled funds, or lacked corporate formalities in addition to under-capitalization” (*Transasia Commodities Ltd. v. Newlead JMEG, LLC*, 45 Misc3d 1217[A] [Sup Ct, NY Co 2014] [J. Ramos, C.] [internal citations omitted]).

The court finds that at this stage of the litigation, plaintiffs’ allegations are sufficient to survive a motion to dismiss. Whether Tsitiridis transferred his interest in the LLC defendants to the Trust in order to thwart plaintiffs’ attempt to enforce the judgments it would eventually obtain is an issue which cannot be resolved at this stage of the litigation. Rather, plaintiffs merely need to allege sufficient facts to support every element of a *prima facie* cause of action, a burden they have met here.

Accordingly, defendants’ motion to dismiss the seventh cause of action is denied, naturally contingent on joinder of the Trust (*supra*).

Personal jurisdiction over certain LLC defendants

The LLC defendants argue that plaintiff’s claims against certain of them must be dismissed, specifically as to 4514 Elston LLC, 4532 N. Elston LLC, and Azurite LLC (the “Chicago LLCs”). Plaintiffs allege that the Chicago LLCs are Illinois limited liability companies with offices in Chicago and there are no allegations in the amended complaint that the Chicago LLCs own real property or conduct business in New York, nor that they have any other dealings or contacts within this state. However, since the court has already found that plaintiffs have sufficiently pleaded alter ego liability against the LLC defendants, personal jurisdiction exists at least at this stage as to the Chicago LLCs (*see i.e. Transasia Commodities Ltd. v. Newlead JMEG, LLC*, 45 Misc3d 1217[A] [Sup Ct, NY Co 2014] [J. Ramos, C.]).

The preliminary injunction

Defendants seek vacatur of the preliminary injunction previously imposed by the court. While one of plaintiffs’ substantive causes of action have been dismissed, the balance remains and the court finds that the result of defendants’ motions do not warrant vacatur of the preliminary injunction. Accordingly, that branch of the motions is denied.

Cross-motion to amend

Medallion cross-moves to amend the caption to correct scrivener's errors, admitting "defendants 4514 Elston LLC and 4532 N. Elston LLC were improperly named in the caption as 4512 N. Elston LLC and 4536 N. Elston LLC, which, upon information and belief, are not legal entities." As there is no opposition to the cross-motion, it is granted.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that defendants' motions to dismiss are granted to the extent that the first and fifth causes of action are severed and dismissed and, within 60 days, plaintiffs shall serve and file an amended complaint which adds the Trust, as well as the co-owners and the mortgagees of the Sagaponack property as necessary party defendants; and it is further

ORDERED that plaintiffs are granted leave to serve and file a second amended complaint seeking attachment and injunctive relief in connection with its substantive causes of action; and it is further


ORDERED that defendants' motions are otherwise denied; and it is further

ORDERED that the appearing defendants shall answer the complaint within 20 days from service of the second amended complaint; and it is further

ORDERED that plaintiffs' cross-motion to amend the caption is granted and plaintiffs shall settle an order on notice or submit a stipulation outlining the amended caption to correct their scrivener's errors and consistent with this decision/order naming the new party defendants so that said order can be served upon the County Clerk and the Clerk of Trial Support who shall amend their records accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 2/15/22
New York, New York

So Ordered:


Hon. Lynn R. Kotler, J.S.C.