

Malik v Malik
2022 NY Slip Op 30958(U)
March 22, 2022
Supreme Court, New York County
Docket Number: Index No. 161065/2021
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

GHAUS MALIK,

Plaintiff,

- v -

FARHAN MALIK, JOHN MALIK, ILIASSER ARIAS, WELLS
FARGO CLEARING SERVICES, LLC D/B/A WELLS
FARGO ADVISORS

Defendant.

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INDEX NO. 161065/2021

MOTION DATE 01/04/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, 44, 45, 46

were read on this motion to/for PROVISIONAL REMEDY.

Upon the foregoing documents and after oral argument, the motion seeking (1) the attachment of the Wells Fargo bank accounts of defendants Farhan Malik and John Malik, (2) a Preliminary Injunction pursuant to CPLR 6301 enjoining and restraining all defendants from withdrawing any monies from the Wells Fargo bank accounts of Farhan Malik and John Malik is denied in its entirety.

Plaintiff, Ghaus Malik is the father of defendants Farhan and John Malik. Plaintiff claims that his sons, with the aid of defendants Arias and Wells Fargo Advisors, fraudulently transferred \$8,000,000.00 from the bank account belonging to G.& P. Malik LLC to themselves through a series of sham business transactions.

.In order to obtain an order of attachment, plaintiff must show a viable cause of action, the probability that it will succeed on the merits, that one or more grounds exist for attachment as set forth in CPLR 6201, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff (CPLR 6212; see, *Considar, Inc. v Redi Corp.*

Establishment, 238 AD2d 111, 655 N.Y.S.2d 40 [1st Dept 1997]). Attachment is a "harsh" remedy and is construed narrowly in favor of the party against whom the remedy is invoked (*Penoyar v Kelsey*, 150 NY 77, 80, 44 NE 788, 3 NY Ann Cas 206 [1896]; *DLJ Mtge. Capital, Inc. v Kontogiannis*, 594 F Supp 2d 308, 319 [EDNY 2009]). Whether to grant a motion for an order of attachment rests within the discretion of the Court (see *Morgenthau v Avion Resources Ltd.*, 11 NY3d 383, 387, 898 NE2d 929, 869 N.Y.S.2d 886 [2008] [no abuse of discretion when court declined to confirm the attachment orders]).

The party seeking attachment must demonstrate an identifiable risk that the defendant will not be able to satisfy the judgment (*Hotel 71 Mezz Lender LLC v Falor*, 14 NY3d 303, 310-311, 926 NE2d 1202, 900 N.Y.S.2d 698 [2010]; *Koehler v Bank of Bermuda Ltd.*, 12 NY3d 533, 538, 911 NE2d 825, 883 N.Y.S.2d 763 [2009]).

It is well settled that on a motion for a temporary restraining order or a preliminary injunction, the moving party must demonstrate, by clear and convincing evidence, the following three elements: 1) Likelihood of ultimate success on the merits; 2) Irreparable injury if the injunction were not granted; 3) Balancing of equities in favor of granting the injunction. *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 833 N.E.2d 191, 800 N.Y.S.2d 48 (2005); *Aetna Ins. Co. v. Capasso*, 75 NY2d 860, 552 N.E.2d 166, 552 N.Y.S.2d 918 (1990).

Preliminary injunctions should not be granted absent extraordinary or unique circumstances or where the final judgment may otherwise fail to afford complete relief. *SHS Baisley, LLC v. Res Land, Inc.*, 18 AD3d 727, 795 N.Y.S.2d 690 (2nd Dep't. 2005). Plaintiff must "establish a clear right to that relief under the law and the undisputed facts." *Omakaze Sushi Rest, Inc. v. Ngan Kam Lee*, 57 A.D. 34 497 (2nd Dept., 2008). The Court must deny the motion

if any one of these three requirements are not satisfied. *Faberge Intern., Inc. v. Di Pino*, 109 AD2d 235, 491 N.Y.S.2d 345 (1st Dep't. 1985).

Initially, it must be noted that plaintiff has brought this matter in the State of New York. The LLC Operating Agreement, of which Plaintiff alleges a breach, provides for exclusive venue in Delaware. New York courts regularly dismiss actions in the face of forum selections clauses designating other forums as the exclusive venue for the subject dispute (see e.g. *New Greenwich Litig. Trustee, LLC v Citco Fund Servs. (Europe) B. V.*, 145 AD3d 16, 28, 41 N.Y.S.3d 1 [1st Dept 2016]). Plaintiff has not shown why this matter should be heard in this jurisdiction and not in the venue clearly chosen by the parties and outlined in the agreement.

In the case at bar, plaintiff has failed to satisfy any of the elements necessary to obtain either an attachment or temporary restraining order. It must be initially noted that plaintiff has not shown a viable cause of action against these defendants. Plaintiff conceded during oral argument that his sons had the authority under the contract to perform the actions he now claims are fraudulent. This concession demonstrates that plaintiff could not succeed on the merits of this case as this statement shows that there is no basis for this motion.

Based upon the aforementioned, plaintiff has not established a right, under the law, to the relief requested herein. Therefore, plaintiff may not obtain an order of attachment and may not obtain a preliminary injunction enjoining and restraining all defendants from withdrawing any monies from the Wells Fargo bank accounts of Farhan Malik and John Malik.

The motion is denied.

3/22/2022

DATE



WILLIAM PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: