

Invest Bank PSC v Al Mansouri 3B LLC
2022 NY Slip Op 31331(U)
April 20, 2022
Supreme Court, New York County
Docket Number: Index No. 656751/2021
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART **57TR**

Justice

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INVEST BANK PSC,

Plaintiff,

- v -

AL MANSOURI 3B LLC, AMER ALOMAR SALEM
MOHAMED ALOMAR AL MANSOURI, TARIQ MOHAMED
SULTAN AL MASKRI

Defendant:

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INDEX NO. 656751/2021
MOTION DATE 04/04/2022
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for

ALTERNATE SERVICE

BACKGROUND

Plaintiff commenced this action seeking recognition and enforcement of a foreign judgment obtained on November 2, 2021 in the United Arab Emirates against defendants in the amount of \$185,271,418.72.

The summons and complaint were filed on November 30, 2021. However, despite several attempts and the use of different methods to serve defendants Al Mansouri 3B (AM3B) and Tariq Mohamed Sultan Al Maskri (Al Maskri) with the summons and complaint in this case, plaintiff represents they have been unable to serve AM3B and Al Maskri in accordance with New York law.

PENDING MOTION

On April 4, 2022, plaintiff moved for an order recognizing *nunc pro tunc* that service was proper upon all defendants pursuant to CPLR §§ 308(5) and 311-a(b), or in the alternative,

directing alternative method of service and extending plaintiff's time to serve the Summons and Complaint pursuant to CPLR § 306-b.

Defendants have not appeared or submitted opposition.

DISCUSSION

CPLR § 306-b (f) provides, in pertinent part, service of the summons and compliant shall be made within 120 days of commencement of the action, and if it is not, “upon good cause shown or in the interest of justice” the court may extend the time for service.

“To establish the requisite good cause, reasonable diligence in attempting service must be shown, but the interest of justice is a broader standard, which does not require a showing of good cause, and permits the court to consider many factors (*Spath v Zack*, 36 A.D.3d 410 [1st Dept 2007] citing *Mead v. Singleman*, 24 A.D.3d 1142,[2005])”.

In this action there are three defendants Al Mansouri 3B LLC (AM3B), Amer Alomar Salem Mohamed Alomar Al Mansouri (Al Mansouri), and Tariq Mohamed Sultan Al Maskri (Al Maskri).

Plaintiff was able to successfully serve Al Mansouri, by conspicuous place service on March 16, 2022, with a mailing made on March 18, 2022, at his usual place of abode, 1 Al Lujjah Street, Plot 79, E19, Abu Dhabi, UAE.

Plaintiff has been unable to serve Al Maskri and AM3B in accordance with the CPLR.

Plaintiff submits the affidavit of Khaled Ahmed Almulla, an associate with Clyde & Co LLP, an international law firm involved with this action, which details the efforts made to serve Al Maskri and AM3B.

Almulla asserts that an attempt at personal service on AM3B as provided by CPLR § 311-a(a) was made by visiting AM3B's last known address at Plot C9, Office no.301, East 10, Al

Ain Tower, Hemdan Street, Abu Dhabi on January 18, 2022. Mr. Almulla was informed on that day that AM3B no longer maintained an office at this address.

On March 1, 2022, Mr. Almulla attempted service on AM3B through its counsel of record in the UAE proceedings, by sending an email to AM3B's counsel of record. Mr. Almulla did not receive an answer to his email.

On the same day, Mr. Almulla also attempted service of AM3B through AM3B's beneficial owner, Al Mansouri. Mr. Almulla emailed a copy of the summons and complaint he had previously attempted to serve in person, to Al Mansouri's counsel of record in the UAE proceedings. Mr. Almulla did not receive an answer to his email.

On the same day, Mr. Almulla also attempted service of AM3B through AM3B's vice-chair, Al Maskri, by emailing a copy of summons and complaint he had previously attempted to serve in person to Al Maskri's counsel of record in the UAE proceedings. Mr. Almulla did not receive an answer to his email.

On March 9, 2022, plaintiff's counsel mailed a copy of the summons and complaint by registered mail through Emirates Post to the UAE mailing address of AM3B, a PO Box. The mail containing process was delivered the next day.

Almulla was also unable to effectuate serve on Al Maskri, affirming he was unable to personally serve Al Maskri at his place of business, or by emailing his counsel of record. Almulla resorted to also mailing a copy of the summons and complaint to the same PO Box on March 9, 2022.

Plaintiff does not indicate any attempt at locating Al Maskri at his usual place of abode.

Although plaintiff may have established the requisite good cause and reasonable diligence in attempting service, it does not appear that the underlying motion was served on any

of the defendants. The only proof of service submitted are the registered mail receipts, of the summons and complaint, dated March 9, 2022, to the PO Box. There is no indication that the instant motion was mailed or otherwise served upon the defendants. Therefore, the court cannot consider the motion without notice to defendants.

In addition, plaintiff fails to expand on what if any jurisdiction this court has over the defendants. The complaint merely asserts “upon information and belief, each has connections to this jurisdiction, including assets and communications that have been stored and passed through this jurisdiction”. The motion fails to expand on any of the “assets and communications”. If the defendants do have assets or communications within the State of New York, it should be possible to identify other possible addresses for defendants, possible inside the state.

For these reasons, plaintiff’s motion is denied.

CONCLUSION


Wherefore, it is hereby

ORDERED plaintiff’s motion is denied, and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on defendants, and on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that this constitutes the decision and order of the court.

<u>4/20/2022</u> DATE		 SABRINA KRAUS, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE