

**Chaar v Arab Bank P.L.C.**

2022 NY Slip Op 32666(U)

August 3, 2022

Supreme Court New York County

Docket Number: Index No. 651780/2022

Judge: Margaret Chan

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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 MR. NAZEM CHAAR, DR. SOUHEIL ELIA, OVERSEAS  
 INVESTMENT GROUP LTD, THE FINANCIAL  
 INVESTMENT TRUST, DR. RANDA GARRANA, DR.  
 SAMIR HAFZA, SAMAR HAFZA, DR. BILAL KATTAN,  
 KATTAN FAMILY REVOCABLE TRUST, MR. JOSEPH  
 MAROUN, MR. RABIH NACHABE, DR. IMAD TABRY,  
 MR. NADIM ZAKHARIA

INDEX NO. 651780/2022

MOTION DATE 06/27/2022

MOTION SEQ. NO. 008

Plaintiffs,

**DECISION + ORDER ON  
 MOTION**

- v -

ARAB BANK P.L.C., BANK AUDI SAL, BYBLOS BANK,  
 BLOM BANK, BANK OF BEIRUT S.A.L., CREDIT  
 LIBANAIS S.A.L., FENICIA BANK S.A.L.,

Defendants.

-----X

HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 169, 170, 171, 172, 182, 183, 184, 185, 186, 187, 188, 190, 191, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 243, 244, 245, 246, 247, 248, 249

were read on this motion to/for

CONFIRM/DISAPPROVE AWARD/REPORT

In this action, the above-captioned plaintiffs seek a money judgment against defendants, which are all banks (collectively, the Banks), in connection with plaintiffs' monetary investments with defendants. Plaintiffs now move pursuant to CPLR 6211 to confirm the order of attachment granted on June 3, 2022 (NYSCEF # 102; NYSCEF #'s 114; 127-29; 161-62; 180; and 264-65 – subsequent orders respecting the attachment). Defendants oppose the motion. Plaintiffs' motion to confirm the June 3, 2022 order of attachment is denied for lack of jurisdiction.

**Background**

Plaintiffs include natural persons residing in Michigan, Nevada, California, New York, Florida, and Lebanon as well as trusts domiciled in Florida and Nevada (NYSCEF # 135 – First Amended Verified Complaint, ¶'s 40-50). Defendants are banks with principle places of business in Lebanon, except that Arab Bank P.L.C. has a principle place of business in Jordan and a branch in Lebanon (*id.*, ¶'s 51-64). Defendants are not qualified to do business in New York but each has opened and

created correspondent banking accounts with financial institutions in New York County (*id.*, ¶'s 51-64).<sup>1</sup> Defendants' correspondent banking accounts are maintained at the following institutions: JP Morgan Chase Bank, Citibank, BNY Mellon, Standard Chartered Bank, and Deutsche Bank Trust Company Americas (the Garnishee Banks) (*id.*, ¶'s 65-69).

Plaintiffs invested funds with defendants in varying amounts, collectively totaling \$28,972,889, which funds plaintiffs allege were converted since December 4, 2019 (*id.*, ¶'s 5; 98-105). On that date, due to Lebanon's financial crisis, "Lebanon decided ... to freeze all foreign currency accounts in that country" (*id.*, ¶ 107). Plaintiffs allege that their funds were held in non-investment accounts in their title or that after their investment terms expired, defendants moved, transferred, or re-classified the funds to defendants' general pool of investments, which thereby created a debtor-creditor relationship between defendants and plaintiffs (*id.*, ¶ 122). Plaintiffs add that defendants "sold, gifted, or otherwise transferred all or part of its USD denominated assets to [corporate insiders for an antecedent debt] ... without receiving reasonable equivalent value in exchange ... [and] at the time that they were insolvent" (*id.*, ¶'s 124, 126-27). Plaintiffs therefore assert that the transfers were fraudulent and are voidable (*id.*, ¶'s 132-33). Plaintiffs acknowledge that "they have no pre-existing claim in the subject property to be attached. The property rights of the owner are not in dispute" (*id.*, ¶ 11).

Altogether, plaintiffs plead claims of conversion (first cause of action), fraudulent conveyance via debtor creditor law § 273, bank transfers and debtor creditor law § 274 (second and third causes of action), and special damages respecting plaintiff Dr Souheil E. Elia (fourth cause of action), in addition to seeking the attachment that is the subject of the present motion (fifth cause of action).

Plaintiffs argue that they are entitled to confirmation on the order of attachment as they have shown a probability of success on the merits of their claims for conversion and debtor creditor law violations under New York law and established the need for the attachment. They posit that although this court does not have personal jurisdiction over the defendants, which are not qualified to do business in New York, it has personal jurisdiction over the garnishee banks and quasi-in-rem jurisdiction over the funds in defendants' correspondent accounts.

Defendants counter that the court lacks jurisdiction over them including quasi-in-rem jurisdiction because of, among other things, the lack of minimum contacts required for due process. They also argue that plaintiffs have no connection

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<sup>1</sup> "Correspondent accounts are accounts in domestic banks held in the name of ... foreign financial institutions. Typically, foreign banks are unable to maintain branch offices in the United States and therefore maintain an account at a United States bank to effect dollar transactions" (*Sigmoid Res., N.V. v Pan Ocean Oil Corp. (Nigeria)*, 234 AD2d 103, 104 [1st Dept 1996]).

to New York but seek to use its courts to avoid Lebanese law and disrupt the efforts by defendants and others to manage and ultimately resolve the financial crisis in order to gain priority over other bank customers (NYSCEF # 194 – Banks’ Opp at 2). Defendants also argue that plaintiffs have failed to demonstrate the probability of success on the merits. Moreover, they argue that the court lacks subject matter jurisdiction and that forum selection clauses in the account documents with the Banks require that this matter be litigated in Lebanon. Defendant Fenicia additionally argues that the court “should exercise its discretion to deny confirmation of the attachment” on account of the attachment “disrupting Lebanon’s strategy to address the crisis...; Fenicia’s obligation to maintain funds in the Correspondent Account free of restrictions; and Fenicia customers’ access to the funds held for their benefit” in Fenicia’s correspondent account (NYSCEF # 226 – Fenicia’s Opp at 22).

### Discussion

CPLR 6212 (a) provides:

On a motion for an order of attachment, or for an order to confirm an order of attachment, the plaintiff shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action, that it is probable that the plaintiff will succeed on the merits, that one or more grounds for attachment provided in section 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff.

CPLR 6201 provides:

An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when: 1. the defendant is a nondomiciliary residing without the state, or is a foreign corporation not qualified to do business in the state... .

The threshold issue is whether the court has quasi-in-rem jurisdiction over defendants based on the correspondent bank accounts. Quasi-in-rem jurisdiction is a viable method for subjecting a nondomiciliary to suit in this state by virtue of CPLR 301 (*Banco Ambrosiano, S.P.A. v Artoc Bank & Tr. Ltd.*, 62 NY2d 65, 71 [1984]). “Whether quasi-in-rem jurisdiction exists in a given case involves an inquiry into the presence or absence of the constitutionally mandated minimum contacts” (*id.* at 72). “The dictates of due process are not offended by requiring [a defendant] to defend [a] claim in New York [where] it has maintained a significant connection with the State and undertaken purposeful activity here” (*id.* at 73).

The minimum contacts inquiry focuses on “the nature and quality of the defendant’s contacts with the State. Those contacts must be such as to ‘make it reasonable and just, according to our traditional conception of fair play and substantial justice’ to require the defendant to litigate the claim in the particular forum” (*id.* at 70 quoting *Int’l Shoe Co. v State of Wash., Off. of Unemployment Comp. & Placement*, 326 US 310, 319 [1945]). “Thus, when the property serving as the jurisdictional basis has no relationship to the cause of action and there are no other ties among the defendant, the forum and the litigation, quasi-in-rem jurisdiction will be lacking” (*id.* at 71 citing *Shaffer v Heitner*, 433 US 186, 207-210 [1977]).

As there is no dispute that defendants are foreign corporations not qualified to do business in New York, plaintiffs have established that a ground for their application for an order of attachment exists, as provided in CPLR 6201 (1).

Nonetheless, even assuming, for the sake of argument, that plaintiffs have established the other elements of CPLR 6212 (a), plaintiffs have failed to establish quasi-in-rem jurisdiction on account of the lack of the sufficiency of minimum contacts. In arguing that the minimum contacts standard for quasi-in-rem jurisdiction has been met, plaintiffs acknowledge the inquiry turns on “the significance of the relationship between [the property] in New York and Plaintiffs [sic] claim,” citing *Emirates NBD Bank P.J.S.C. v System Construct LLC* (NYSCEF # 247 – Reply<sup>2</sup> at 28; 2022 WL 445866 at 2 [Sup Ct, NY County 2022]). Plaintiffs still fail to demonstrate that such relationship is satisfied here.

Plaintiffs allege that plaintiff OIG, Ltd.’s investment returns were routed eight times through defendants’ correspondent accounts and that transmittals of funds of each of the other plaintiffs were similarly routed on several occasions (NYSCEF # 135, ¶’s 98 A.2-A.9; 101 D.4; 102 E.2-E.3, E.6; 103 F.2; 104 G.2; 104<sup>3</sup> H.2, H.5, H.8; 105 I.2, I.5, I.8). Those allegations, even if accepted as true,<sup>4</sup> are insufficient to establish the relationship between such activity and plaintiffs’ claims.

Plaintiffs cite *Majique Fashions, Ltd. v Warwick & Co.*, (67 AD2d 321, 325, 327 [1st Dept 1979]) to posit that “the mere presence of a checking account with a US bank located in the Forum State led to the application of an attachment under IN REM” (NYSCEF # 135, ¶ 30 [emphasis in original]). However, in addition to failing to distinguish quasi-in-rem from in-rem jurisdiction, plaintiffs are incorrect. “In rem jurisdiction . . . involves an action in which a plaintiff is after a particular

<sup>2</sup> Plaintiffs also file a post-submission letter of July 15, 2022, which the court disregards as it is in clear violation of Commercial Division Rule 18.

<sup>3</sup> Paragraph 104 appears twice on page 21, for plaintiffs Rabih Nachabe and Dr. Imad Tabry (MD).

<sup>4</sup> The Banks argue the transfers are “grossly lacking” for various reasons (NYSCEF # 194 at 19-20).

thing, rather than seeking a general money judgment, that is, he wants . . . [ownership] of the particular item of property . . . . Quasi in rem, however, involves a situation where all the plaintiff wants is money” (*id.* at 326). Plaintiffs here seek only money, thus we are dealing with quasi-in-rem jurisdiction. Plaintiffs’ reliance on *Hausler v JP Morgan Chase Bank, N.A.* (740 F Supp 2d 525, 539-540 [SD NY 2010] [noting the critical importance of the distinction between in-rem and quasi-in-rem jurisdiction]), which found in-rem jurisdiction but not quasi-in-rem jurisdiction, is therefore also not relevant (NYSCEF # 247 at 22-23).

Plaintiffs are also incorrect in how they characterize the *Majique* court’s holding. In *Majique*, the court found that plaintiff established a basis for quasi-in-rem jurisdiction in seeking to attach bank accounts of a non-resident foreign defendant company. Notably, the court found that because the bank account was designated by defendant for plaintiff to remit payment for defendant, and defendant rendered inspection services for goods being imported into New York, there was a relationship between the non-resident defendant, the state, and the litigation beyond the “fortuitous presence” of the accounts in New York (67 AD2d at 327). Given this relationship, the court concluded that “defendant . . . expected or should reasonably have expected its acts pursuant to the agency agreement to have consequences within this State” (*id.*). Such relationship is lacking in the present case (*see Banco Ambrosiano* 62 NY2d at 72-73 [finding that because the Bahamian bank defendant had agreed to deposit and repay funds to New York accounts, rather than such accounts just being coincidentally located within the state, the correspondent account would be involved in the litigation]; *accord Cargill Fin. Servs. Int’l, Inc. v Bank Fin. & Credit Ltd.*, 70 AD3d 456, 456 [1st Dept 2010] [finding a basis for quasi-in-rem jurisdiction where a Ukrainian bank “utilized its New York correspondent accounts to receive funds and make interest payments pursuant to the terms of [loan agreements with plaintiff] and associated letters of credit” [emphasis added]; *see also Trans Atlantic Imaging S.A.L. v Banque MISR Liban S.A.L.*, (2021 WL 2435887 at \*3 [Sup Ct, NY County 2021] [denying the grant of the attachment against defendant Lebanese bank’s New York correspondent account because “the purposeful conduct whereby each defendant foreign bank mandated the use of each of its respective New York correspondent account in *Banco Ambrosiano* and *Cargill Financial*, respectively, is absent in the matter at bar,” notwithstanding that “each of the deposits made by plaintiffs were executed through defendant’s Bank of New York Mellon correspondent account and that defendant’s payment of one of plaintiffs’ withdrawal requests was also executed through such account. . . ”]).

Plaintiffs’ focus on the alleged New York Stock Exchange trading and substantial investments in real estate by “clients and by the executive and board members of Defendants’ banks” also fails to connect such activity with plaintiffs’ claims (NYSCEF # 247 at 29). Plaintiffs’ assertions that defendants handled wire transfers, letters of credit, investments, online banking, and opened correspondent accounts in New York are similarly unavailing (NYSCEF # 135, ¶’s 31; 52; 54; 56;

58; 60; 62; 64). And plaintiffs' reliance on *Banco Nacional Ultramarino, S.A. v Chan* (169 Misc 2d 182 [Sup Ct, NY County 1996, *affd sub nom Banco Nacional Ultramarino, S.A. v Moneycenter Tr. Co.*, 240 AD2d 253 [1st Dept 1997]) is misplaced. In *Banco Nacional*, it was undisputed that defendant's New York commercial checking account was the conduit through which the alleged fraudulent theft and laundering scheme related to plaintiff's claims. It was also clear that the account-holder defendant directed the laundered funds be wired to such account. In contrast, the alleged conduct here sound more ministerial as opposed to the purposeful activities in *Banco Nacional*.

Plaintiffs' assertion that defendants "have made continuous and systematic use of the correspondent accounts[,] even if accepted as true, is unavailing without more to establish the relationship necessary under the standard for quasi-in-rem jurisdiction, on which plaintiffs "strictly" base their attachment (NYSCEF # 247 at 5; *id.* at 8).

As there is no basis for jurisdiction over defendants, the court need not reach the additional arguments raised by the parties.


**Conclusion**

In view of the above, it is

ORDERED that plaintiffs' motion to confirm the June 3, 2022 order of attachment is denied; and it is further

ORDERED that the temporary restraining order entered on June 3, 2022 (as modified by the stipulation and order June 17, 2022), which ordered funds of defendants be secured and remain at JP Morgan Chase Bank, Citibank, BNY Mellon, Standard Chartered Bank, and Deutsche Bank Trust Company Americas (NYSCEF # 102; NYSCEF # 161), is annulled, vacated, and rescinded within five days after entry of this order.

08/03/2022  
DATE

  
MARGARET CHAN, 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 type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				REFERENCE