

**Safra v SNBNY Holdings Ltd.**

2023 NY Slip Op 31366(U)

April 24, 2023

Supreme Court, New York County

Docket Number: Index No. 650710/2023

Judge: Margaret A. Chan

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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: COMMERCIAL DIVISION PART 49M

-----X  
 ALBERTO JOSEPH SAFRA,

Plaintiff,

- v -

SNBNY HOLDINGS LIMITED, CARLOS ALBERTO  
 VIEIRA, CARLOS CESAR BERTACO BOMFIM, SIMONI  
 PASSOS MORATO, VICKY SAFRA, JACOB JOSEPH  
 SAFRA, and DAVID JOSEPH SAFRA

Defendant.  
 -----X

INDEX NO. 650710/2023

MOTION DATE 04/07/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
 MOTION**

HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58

were read on this motion to/for

STAY

This action involves an inter-family dispute over ownership and governance of defendant SNBNY Holdings Limited, which is incorporated in Gibraltar and is “the holding company for Safra National Bank, a nationally chartered United States bank” (NYSCEF # 2 – Complaint, ¶s 1, 49, 76). Now present before the court is defendants’ motion for a stay of discovery and a protective order relieving defendants of any obligation to respond to plaintiff’s pending discovery demands. Plaintiff Alberto Joseph Safra opposes the motion and cross-moves to compel.

Plaintiff asserts that “the late patriarch of the Safra family, Joseph Yacoub Safra . . . , purported to initiate certain transactions that drastically decreased [plaintiff’s] ownership share of SNBNY” (*id.*, ¶ 3). Joseph and defendant Vicky Safra are the parents of plaintiff and plaintiff’s siblings Jacob Joseph Safra, David Joseph Safra and non-party Esther Safra Dayan (*id.*, n 2). Defendants Carlos Alberto Vieira, Carlos Cesar Bertaco Bomfim, and Simoni Passos Morato are directors of SNBNY (*id.*, ¶s 32-34).

In his complaint, plaintiff alleges that on December 4, 2019, while Joseph was in poor health, Jacob, David, and Vicky improperly influenced Joseph to pass resolutions that diluted Alberto’s interests in SNBNY (*id.*, ¶ 69). Plaintiff includes the Director Defendants as participants in the events leading to his dilution (*id.*, ¶ 74). Plaintiff further states that he did not receive contemporaneous notice of the dilution events and did not receive confirmation of his dilution until June 2021, nearly six months after Joseph’s death (*id.*, ¶s 85, 88). Plaintiff subsequently sent letters “requesting information relating to SNBNY’s operations and the purported

ownership changes,” and he asserts that SNBNY has “refused to provide the majority of the information requested, limiting its disclosure to only that which it contended is strictly required under Gibraltar law” (*id.*, ¶ 88).

There are also “proceedings regarding Joseph’s estate and [plaintiff’s] dilution in Switzerland and London” but plaintiff posits that this action “focuses solely on the Defendants’ actions relating to SNBNY and Safra National Bank, and the series of transfers, events, and injuries that occurred in New York” (*id.*, ¶ 28). Plaintiff indicates that “[t]he parties agreed, after SNBNY objected to jurisdiction, that claims regarding SNBNY that were originally brought in a London-based arbitration will be withdrawn from that proceeding” (*id.* at 9, n 4).

Nonetheless, defendants contest jurisdiction here and seek a stay of discovery pending their forthcoming pre-answer motion to dismiss. The time for defendants to answer the complaint was extended, by a March 2, 2023 stipulation, to June 26 (NYSCEF # 12). The day after the stipulation, plaintiff moved by order for show cause for a preliminary injunction seeking recognition or appointment by defendants of plaintiff’s candidate director to SNBNY (NYSCEF # 17). The court declined to sign the order to show cause of March 7, 2023, commenting on the parties’ time-extension stipulation and observing that the relief sought was the same relief sought in the second cause of action of the complaint (NYSCEF # 41).

Plaintiff also sought expedited discovery in that motion, which the court denied (*id.*). On the same day that plaintiff had moved for the preliminary injunction, plaintiff had also served his first set of requests for the production of documents and his first set of interrogatories (NYSCEF #s 47-48). Defendants indicate that they wrote to plaintiff on March 11 requesting that he withdraw the requests, arguing that the court’s “express denial of plaintiff’s request for expedited discovery in this action forecloses any argument that discovery can commence now” (NYSCEF # 45 – MOL at 6, citing NYSCEF # 49 – March 11 letter at 2). Plaintiff’s March 17 letter in response declined to withdraw his requests (NYSCEF # 50). This motion followed.

Defendants “include a foreign corporation and several citizens of foreign countries who have minimal connection to New York” such that a stay is appropriate, they argue, ahead of their motion to dismiss based on personal jurisdiction (NYSCEF # 45 at 8). Defendants suggest they will move to dismiss based on *forum non conveniens* grounds on account of plaintiff’s claims “under Gibraltar law regarding the internal affairs of a Gibraltar corporation” (*id.* at 8-9). Defendants continue that plaintiff’s interrogatories are premature under the CPLR as defendants’ time to answer does not expire until June (*id.* at 9).

In opposition, plaintiff argues that he “has pled extensive facts showing that Defendants have significant contacts to New York, so as to subject them to personal jurisdiction here, and that New York, not Gibraltar, is the most appropriate forum for this dispute” as “nearly all of the key events giving rise to this action took place in New York” (NYSCEF # 57 – Opp at 7, 10). Plaintiff also states: “SNBNY is a

holding company that operates almost entirely through its principal subsidiary, Safra National Bank of New York, a New York based bank. . . . SNBNY's interactions with the Federal Reserve, which SNBNY contends form the basis for its refusal to recognize [plaintiff's] director appointee, occurred in New York" (*id.* at 10). Plaintiff continues that at the time of the events leading to plaintiff's ownership dilution, his father was receiving treatment for medical conditions in New York (*id.* at 11). And plaintiff argues that many of his document request are essential to resolving jurisdictional issues, including "much of [the] information" sought by his interrogatories (*id.* at 17-18).

In reply, defendants contend that "Plaintiff has no right to burden defendants *at all* if they are not subject to the jurisdiction of this Court" (NYSCEF # 58 – Reply at 4 [emphasis in original]). Defendants maintain that Gibraltar, not New York, is the principal place of business of SNBNY (*id.* at 5). Defendants posit that plaintiff's claims as to his board seat and the issuance of new shares in 2019 "should be litigated in Gibraltar, regardless of any business SNBNY allegedly does through subsidiaries in New York" (*id.* at 6). And defendants assert that if the court denies their motion to stay discovery, then nonetheless plaintiff's cross-motion is premature because defendants have not yet served responses and objections to plaintiff's "vague and overbroad discovery requests" (*id.* at 2).

The general rule in New York is that "[s]ervice of a notice of motion [to dismiss] stays disclosure until determination of the motion unless the court orders otherwise" (CPLR 3214 [b]). In the commercial division, however, courts "determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3214(b), pending the determination of any dispositive motion" (22 NYCRR § 202.70 [g], Rule 11 [g]; *see also Chen v 215 Chrystie Venture, LLC*, 77 Misc 3d 1222[A] [Sup Ct, NY County 2023] [noting that the decision of entering a stay of discovery rests "within the sound discretion of the court"]).

New York courts may also enter a protective order "denying, limiting, conditioning or regulating the use of any disclosure device" when necessary to "prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts" (CPLR 3103 [a]). Further, the CPLR prohibits the service of interrogatories "upon a defendant before that defendant's time for serving a responsive pleading has expired, except by leave of court" (CPLR 3132).

Defendants' motion seeking a stay of discovery and a protective order is granted. Plaintiff improperly served his first set of interrogatories before defendants' time to answer had expired and without leave of court. Accordingly, the branch of defendants' motion seeking a protective order relieving defendants of any obligation to respond to that set of interrogatories is granted as the court does not give leave for the interrogatories to issue at this time.

Plaintiff's document demands and interrogatories do appear, as defendants assert, to seek "a massive amount of sensitive information" (NYSCEF # 45 at 5). That the requests, in addition to seeking information going to the merits of

plaintiff's claims, also seek facts "relating to whether Defendants are subject to the Court's jurisdiction" does not militate in favor of, at this stage, subjecting defendants to the expense and burden of response (NYSCEF # 57 at 2). "In order to obtain jurisdictional discovery pursuant to CPLR 3211(d), plaintiffs must demonstrate the possible existence of essential jurisdictional facts that are not yet known" (*Copp v Ramirez*, 62 AD3d 23, 31 [1st Dept 2009]). The prospective motion to dismiss has yet to be filed on the stipulated extended timeline. Thus, based on these facts, a stay of discovery is the better course.

In light of the foregoing, it is

ORDERED that defendants' motion to stay discovery is granted, and plaintiff's cross-motion to compel is denied, without prejudice; and it is further

ORDERED that defendants' motion for a protective order is granted, and defendants are relieved of any obligation to respond to plaintiff's pending discovery requests at this juncture.

04/24/2023

DATE



MARGARET CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE