

**MREF REIT Lender 2 LLC v
FPG Maiden Holdings, LLC**

2023 NY Slip Op 32001(U)

June 14, 2023

Supreme Court, New York County

Docket Number: Index No. 653189/2022

Judge: Barry Ostrager

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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MREF REIT LENDER 2 LLC and MREF REIT LENDER 14 LLC,

Plaintiffs,

- v -

FPG MAIDEN HOLDINGS, LLC; FORTIS PROPERTY GROUP, LLC; FPG MAIDEN LANE, LLC; JOEL KESTENBAUM; BANK LEUMI USA; VALLEY NATIONAL BANK, as successor-by-merger to BANK LEUMI USA; BANK LEUMI LE-ISRAEL BM; and HAREL-MAIDEN LANE-GENERAL PARTNERSHIP,

Defendants.
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| INDEX NO. | 653189/2022 |
| MOTION DATE | |
| MOTION SEQ. NO. | 002 |

DECISION + ORDER ON MOTION

HON. BARRY R. OSTRAGER

Before the Court is a motion by defendant Bank Leumi Le-Israel BM (“BLITA”) for an Order, pursuant to CPLR § 3211(a)(8), dismissing with prejudice for lack of personal jurisdiction all claims asserted against BLITA, namely, the Tenth and Sixteenth Causes of Action in plaintiffs’ Complaint which seek damages for unjust enrichment and declaratory relief (NYSCEF Doc. No. 11). The other defendants have also moved to dismiss pursuant to other subdivisions of CPLR 3211, and those motions are being scheduled for oral argument (mot. seq. nos. 001 and 003). In addition to making this motion, BLITA has joined in the arguments in motion sequence 001. For the reasons that follow, based on the papers submitted and without the need for oral argument, the Court denies BLITA’s motion to dismiss the claims against it for lack of jurisdiction, without prejudice to BLITA’s arguments in motion sequence 001.

This action involves funding for a real estate development project at 161 Maiden Lane known as “One Seaport” (“the Project”). This Court has for some time been presiding over two

related cases involving the same Project. The first was filed by FPG Maiden Lane, LLC and its affiliates as “Borrower” against Bank Leumi USA and others as “Lender” (“the Borrower Action”, Index No. 653584/20). The second was filed by Bank Leumi USA and others as Lender against the Borrower for foreclosure and other relief (Index No. 657252/20).

The issue of jurisdiction over BLITA was the subject of two motions and an appeal in the Borrower Action. In response to the first motion by BLITA (seq. 002), this Court, citing *Avilon Auto. Group v Leontiev*, 168 AD3d 78 (1st Dep’t 2019), denied BLITA’s motion to dismiss for lack of jurisdiction in a Decision and Order dated March 4, 2021 (NYSCEF Doc. No. 78). There the Court held that “plaintiffs have made a sufficient showing to conduct jurisdictional discovery against [BLITA] at this time, without prejudice to [BLITA’s] right to move to dismiss the action against [it] at a later date.” The Court reasoned that the plaintiff Borrower had “alleged that the foreign defendants [BLITA] encouraged Bank Leumi USA to make the false statements that allegedly induced plaintiffs to enter into the Third Amendment” to the Loan Documents, which allegedly was a cause of plaintiffs’ default. Thus, the plaintiff Borrower had demonstrated that facts “may exist” to support a finding of personal jurisdiction over BLITA. *Id.*

The Lender defendants then appealed this Court’s March 4, 2021 Decision to the Appellate Division. By Decision and Order dated December 15, 2022, the Appellate Division dismissed the claims against BLITA on the merits without addressing the jurisdictional issue, finding the jurisdictional arguments “academic.” (NYSCEF Doc. No. 206). Also late in 2022, the Borrower filed an Amended Complaint which, as before, named BLITA as a defendant (NYSCEF Doc. No. 157), and BLITA again moved to dismiss for lack of jurisdiction based on the evidence obtained during discovery (mot. seq. no. 005). By Decision dated March 20, 2023 (NYSCEF Doc. No. 259), this Court found jurisdiction over BLITA pursuant to CPLR §

302(a)(1), which provides for personal jurisdiction over any non-domiciliary entity that “transacts any business within the state or contracts anywhere to supply goods or services in the state.”

The Court indicated the facts which formed the basis for the Decision, stating: “Among other things, BLITA’s execution of the Loan Participation Agreement with Bank Leumi USA commits BLITA to fund up to \$60M to the ‘Borrower,’ identified as ‘FPG Maiden Lane, LLC, a single purpose entity directly or indirectly owned and/or controlled by the principals of Fortis Property Group...’ FPG Maiden Lane is a limited liability company duly authorized to do business in New York and located in Brooklyn, NY. The agreement further identifies the ‘Project’ which is the subject of the funding as being ‘located at 161 Maiden Lane, NY, NY.’ BLITA does not dispute that it retained responsibility for any New York taxes associated with the funding, and the Participation Agreement [related to the Loan Documents] is expressly governed by the laws of the State of New York. These allegations are only a handful of the allegations cited by plaintiffs that support a finding of personal jurisdiction by the Court.”

Plaintiffs in this action are not formally affiliated with BLITA or the Lender in either of the two related actions. Indeed, to the contrary, plaintiffs have named BLITA and the Bank Leumi Lender parties as defendants here, referring to them as the “Seaport Senior Lenders”. However, this action, like the two earlier actions, involves the financing for the Seaport Project in lower Manhattan, and both plaintiffs here provided funding for the Project. The first named plaintiff in this action, MREF REIT Lender 2 LLC, is referred to as the “Seaport Mezzanine Lender”, and the second named plaintiff, MREF REIT Lender 154 LLC, is referred to as the “Amity Lender”. Plaintiffs Seaport Mezzanine Lender and its affiliate Amity Lender claim in this action that the Borrower and the Seaport Senior Lenders effectively persuaded plaintiffs to

lend well over \$60 million in connection with the Seaport Project knowing, but not disclosing, that the building was bowing to the extent that the glass curtain wall essential to the Project's success could not be installed as planned.

Plaintiffs here asserted jurisdiction over BLITA, arguing, as the Borrower did in the related action, that plaintiffs' claims against BLITA arise from BLITA's participation interest in the Seaport Senior Loan, the purpose of which was to finance the development of real property located in New York. In that regard, BLITA executed a Participation Agreement dated May 26, 2016, pursuant to which it acquired a \$60 million participation interest in the Seaport Senior Loan subject to, among other things, the terms of the Seaport Senior Loan Documents, including the Seaport Senior Credit Agreement. Following its acquisition of a participation interest in the Seaport Senior Loan, plaintiffs argue that BLITA became a Seaport Senior Lender under the Seaport Senior Loan Documents. [See Seaport Senior Credit Agreement § 9.1(c)]. In sum, plaintiffs here rely on the Court's finding of jurisdiction in the related action pursuant to CPLR § 302(a)(1), which provides for personal jurisdiction over any non-domiciliary entity that "transacts any business within the state or contracts anywhere to supply goods or services in the state."

In its motion to dismiss, BLITA states that it is an Israeli banking corporation with its principal place of business in Tel-Aviv. However, BLITA confirms that it is a member of the lending syndicate for the senior loan of One Seaport and, until April 1, 2022, BLITA was the parent company of Bank Leumi USA. BLITA further acknowledges that it is a majority shareholder of the Senior Lender Bank Leumi USA, even though it insists that it is a separate legal entity not authorized or registered to do business in New York, with no offices in New York. BLITA attests, as it did in the related case, that all the BLITA employees involved in the

Participation Agreement were based in Tel Aviv and did their work from that office. (See Affidavit of Idan Shapira, Sector Head of Commercial Real Estate at BLITA, NYSCEF Doc. No. 63). Additionally, BLITA argues that the Amity Loan was technically a \$40 million refinancing of a loan for a totally different project for townhouses in Brooklyn, with some of the money being used for the Seaport Project. Thus, the Amity Lender has not “participated” in the Seaport Project and its funding cannot be a basis for jurisdiction over BLITA.

The Court finds that plaintiffs have stated a sufficient basis for jurisdiction. In determining whether a plaintiff’s claims arise from a defendant’s New York contacts for the purpose of a jurisdictional analysis, a plaintiff need only demonstrate that, “in light of all the circumstances, there [is] an articulable nexus or substantial relationship between the business transaction and the claim asserted.” *Wilson v Dantas*, 128 AD3d 176, 184 (1st Dep’t 2015), quoting *Licci v Lebanese Can. Bank*, 20 NY3d 327, 339 (2015). The standard does not require the party to have been directly involved in the New York transaction, and “the inquiry under the statute is relatively permissive.” *Id.*

Here, the Participation Agreement laid the foundation for a continuing relationship between BLITA and its NY-based subsidiary Bank Leumi USA regarding the One Seaport property in New York that has lasted for the better part of a decade, and the two plaintiffs here are suing both of those parties and others in connection with plaintiffs’ additional financing for that same Project. As a result of the Participation Agreement, (i) BLITA received the benefit of the funds that Amity Lender was allegedly defrauded into lending and that are the subject of the Amity Lender’s claim for unjust enrichment (the Tenth Cause of Action) and (ii) BLITA is involved in the Lender Liability Action that is the subject of the Amity Lender’s declaratory

judgment claim that the Amity Lender has the right to receive any monies the Borrower may recover in the Borrower Action (the Sixteenth Cause of Action).

Thus, there is a substantial relationship between BLITA’s New York-related business transaction and the Senior Mezzanine Lender and the Amity Lender’s claims in this action. Such jurisdiction will not violate due process. As the Court of Appeals has held: “Jurisdiction will be upheld where the defendant purposefully reaches beyond their State into another” *State of New York v Vayu, Inc.*, 39 NY3d 330, 331 (2023). Here, BLITA’s involvement with the Senior Seaport Loan, the Participation Agreement, the Seaport Mezzanine Loan, the Amity Loan, and the One Seaport Project as a whole are sufficient to establish the minimum contacts needed to satisfy due process.

Accordingly, the motion to dismiss by defendant Bank Leumi Le-Israel BM for an Order, pursuant to CPLR § 3211(a)(8), dismissing with prejudice all claims against it for lack of personal jurisdiction is denied. Oral argument on the remaining two motions to dismiss (sequence numbers 001 and 003) shall proceed on August 22, 2023 at 2:00 p.m. as previously scheduled.

Dated: June 14, 2023


BARRY R. OSTRAGER, 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: