

Matter of El-Husseini v Invest Bank PSC

2023 NY Slip Op 32135(U)

June 27, 2023

Supreme Court, New York County

Docket Number: Index No. 160978/2022

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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INDEX NO. 160978/2022

In the Matter of the application of AHMAD MOHAMMAD EL-HUSSEINI, ALEXANDER AHMAD EL HUSSEINY, ZIAD AHMAD EL-HUSSEINY, RAMZY AHMED EL-HUSSEINY, MOHAMMAD EL HUSSEINI, and JOAN HENRY,

MOTION DATE 12/22/2022MOTION SEQ. NO. 001

Petitioners,

- v -

**DECISION + ORDER ON
MOTION**

INVEST BANK PSC,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for QUASH SUBPOENAS/CROSS-MOTION TO DISMISS.

Upon the foregoing documents, the court grants in part Petitioners Ahmad Mohammad El-Husseini's ("El-Husseini"), Alexander Ahmad El Husseiny's (El-Husseini's son), Ziad Ahmad El-Husseiny's (El-Husseini's son), Ramzy Ahmed El-Husseiny's (El-Husseini's son), Mohammad El Husseini's (El-Husseini's son) and Joan Henry's (El-Husseini's ex-wife) (collectively "Petitioners") Verified Petition to the extent that the court quashes the subpoenas duces tecum served in this matter and the court denies the remainder of the Petition. The court denies Respondent Invest Bank PSC's ("Respondent") cross-motion to dismiss the Verified Petition and to compel compliance with said subpoenas.

Respondent obtained a judgment, entered on February 9, 2021, against Plaintiff El-Husseini and non-party companies which he allegedly controlled, Al Tadamun Glass & Aluminium Company LLC ("Al Tadamun") and Commodore Contracting (Offshore) Sal. ("Commodore"), in the Abu Dhabi Commercial Court of Appeal in the United Arab Emirates

(UAE) in the amount of AED 45,849,888.27. This amount equates to over \$12,000,000 USD, plus interest since August 7, 2018, costs and attorneys' fees. At the time that the subpoenas were served, the parties were involved in pending litigation in the United Kingdom and in other jurisdictions.

On or about September 10, 2021, Respondent obtained recognition of the UAE judgment in the form of a final judgment in South Dakota against El-Husseini in the amount of \$24,195,421.28. El-Husseini did not appear in the South Dakota action. On June 1, 2022, the South Dakota court granted Respondent's request for an Order Authorizing Extraterritorial Discovery and Aid of Collection on a Judgment, which authorized third party discovery in aid of collection of the South Dakota judgment within the United States, as long as it complied with the laws of South Dakota and the state where the information was sought.

In a previous proceeding before this court, Respondent sought to have New York recognize and enforce the UAE judgment under CPLR Article 53 and Respondent served numerous subpoenas duces tecum on non-party financial institutions in New York seeking El-Husseini's financial information (*Invest Bank PSC v Al Tadamun Glass & Aluminium Company LLC*, et al. Index No. 653284/2021).¹ In a decision and order, dated November 14, 2022, the court granted El-Husseini's motion to dismiss the Verified Petition, pursuant to CPLR 3103(c), and denied Respondent's cross-motion for a default judgment against Al Tadamun and Commodore. The court determined that Respondent had not properly served El-Husseini, Al Tadamun, or Commodore and dismissed the proceeding for lack of personal jurisdiction due to improper service. The court suppressed the information that Respondent had already obtained

¹ Petitioner Ahmad Mohammad El-Husseini was sued as Ahmed Mohammed Al Hussaini.

through its subpoenas for failure to comply with the notice requirements of CPLR 3120 and directed Respondent to destroy all of the information obtained in the responses.

Respondent argued in substance that the court had in rem jurisdiction over any funds that transited through New York banks, however the court disagreed and held that there was no in rem jurisdiction under CPLR 314(2) or quasi-in rem jurisdiction under CPLR 314(3). The court found that the action was not premised on any particular, identifiable property in New York and that there was no actual attachment of New York property, but instead merely potential New York property. Additionally, the court found that even if it had in rem jurisdiction, then it still could not enforce a money judgment against El-Husseini personally. Respondent complied with the court's order and certified that it destroyed any information obtained from the subpoenas.

On or about December 16, 2022, which was over one year after South Dakota's recognition of the UAE judgment and over one month after New York quashed the subpoenas, Respondent served eleven subpoenas on financial institutions in New York seeking the same information. This time, the subpoenas were issued in South Dakota and re-issued in New York, many of which had been withdrawn and then re-issued. Respondent served them pursuant to the Interstate Depositions and Discovery Act ("IDDA") and they sought the same financial information regarding El-Husseini, the other Petitioners and El-Husseini's son's spouses.

Petitioners now seek an order quashing, or in the alternative, for a protective order denying, limiting, conditioning, or regulating the use of the eleven subpoenas, and an order prohibiting Respondent and its attorneys from serving any subpoenas in New York seeking information in connection with the underlying foreign judgment, or efforts to enforce it, without prior court approval on notice to the parties whose information is being sought.

Petitioners argue in substance that Respondents' subpoenas in this case are essentially the same as the subpoenas which were previously rejected by the court in the previous case. They seek financial information from the same financial institutions, regarding the same individuals, and they seek judgment enforcement discovery in connection with the same underlying foreign UAE judgment. The court previously rejected these claims and refused to recognize or enforce the UAE judgment. Petitioners also argue in substance that the South Dakota court's Clerk filed the UAE judgment without serving El-Husseini with a summons or any other notice to appear and without any judicial review or notice to the judgment debtors. Additionally, the court did not authorize the specific subpoenas served in this matter because the court never reviewed them, nor considered whether they complied with New York law.

Petitioners also argue in substance that the subpoenas are "grotesquely overbroad" since Respondent's money judgment was obtained only against El-Husseini, yet they seek financial information from his ex-wife, children and their spouses and they seek records of every wire transfer, Clearing House Interbank Payment System ("CHIPS"), Society for Worldwide Interbank Financial Telecommunications ("SWIFT"), or Federal Reserve's Fedwire Fund Service ("Fedwire") payment messages concerning these individuals with no time limitations.

Respondents oppose the Verified Petition and cross-move to dismiss the Verified Petition and to compel the production of documents sought in their subpoenas. Respondents argue in substance that the subpoenas were not issued in aid of collecting the UAE judgment, but they were issued in aid of collecting the South Dakota judgment, pursuant to the South Dakota court's order authorizing such third-party discovery. They further argue that the subpoenas were properly issued pursuant to CPLR 3119 and that they are well within the scope of post judgment discovery, pursuant to CPLR Article 52. Respondent further argues that the subpoenas are

specifically tailored and not overbroad since they seek the production of spreadsheets of wire transfers which will reveal that El-Husseini transferred his assets to his family members and the entities that they control. Respondent further argues that Petitioners failed to submit any affidavits, they lack standing to challenge the majority of the information sought and they failed to meet their burden of establishing that the subpoenas are improper.

Respondent further states that it learned that one or more of the trust entities located in South Dakota had ownership or control over assets which could be used to satisfy the UAE judgment or provide evidence that would aid in its collection. Respondent further argues in substance that El-Husseini fraudulently hid assets by transferring them to family members and other entities. Additionally, it argues that there is a “reasonable probability” that El-Husseini’s assets, whether held by himself, or other individuals or entities, were routed through New York when El-Husseini attempted to conceal his assets and evade his obligation to satisfy the judgment. Respondent further argues that in January 2017, they suspect that El-Husseini raised a “reasonable suspicion” that he was transacting in USD in and out of Lebanon and Respondent believes that most Lebanese banks send their money through correspondent banks in New York that are in the business of USD clearing. Respondent argues in substance that its subpoenas were served on banks in New York that are intermediary banks keeping third-party records and they routinely keep data regarding wire transfers passing between domestic and international banks. Respondent further argues in substance that the banks “may have processed wire transfers of assets controlled or beneficially owned by the South Dakota Judgment debtors, which have been dissipated in fraud of Respondent’s rights.”

Here, the court grants Petitioners’ Verified Petition and quashes the subpoenas. The court denies Respondent’s cross-motion to dismiss the Verified Petition and compel production of the

information. The court is not persuaded by Respondent's arguments to the contrary and determines that Respondent's subpoenas seek the same information from the same financial institutions which were sought in the prior subpoenas that were previously quashed by this court. The court's previous ruling found that service was improper, it quashed the subpoenas and ordered Respondent to destroy any records that it had already received in response to those subpoenas. Furthermore, the court found that there was no in rem or quasi-in rem jurisdiction and even if it had in rem jurisdiction, then Respondent still could not enforce a money judgment against El-Husseini personally.

Now, Respondent seeks to obtain the same financial information by attempting to avoid compliance with the spirit of the New York order, which is New York's refusal to recognize or enforce the foreign UAE judgment or to compel enforcement of the subpoenas seeking to obtain financial information in aid of enforcing the foreign judgment. The South Dakota judgment is based on recognition of the UAE judgment and New York finds that similar concerns exist with the South Dakota judgment. This court has already identified deficiencies with the UAE judgment and refused to recognize it. The South Dakota judgment and subsequent issuance of the subpoenas are merely attempts to forum shop to avoid the consequences of the New York court's previous decision and order. New York has not recognized either judgment. To be sure, although Respondent claims that the subpoenas were authorized by the court in South Dakota, no South Dakota judge reviewed the New York decision or approved the validity of the subpoenas. Here, the court will not permit Respondent to avoid New York's decision by simply going through South Dakota. Petitioners never appeared in South Dakota, nor were they served with documents directing them to do so prior to service of the subpoenas.

Furthermore, the court is not persuaded by Respondent's arguments that it has no other means available to seek the financial information. There is an action to enforce the UAE judgment pending in the United Kingdom and the assets of El-Husseini, his family and corporate entities were frozen on July 8, 2021. Respondents are simultaneously attempting to collect on their judgment in multiple jurisdictions, which is their right to do so. Each jurisdiction has its own post-judgment discovery requirements and potential opportunities to obtain the judgment debtors' financial information.

Additionally, the court determines that Petitioners demonstrated that the subpoenas are overbroad as they seek information from individuals and entities that are not the judgment debtors and there is nothing to demonstrate that any of the judgment debtors have specific assets, nor sufficient connections to New York. Respondent's allegations are premised on mere conjecture that since major New York banks often act as correspondent banks for USD clearing and since El-Husseini has connections to certain foreign transactions which may involve U.S. Dollars, he and other people and entities affiliated with him must have been involved with transactions where funds flowed through New York banks at some unknown time.

Although, the court declines to grant Petitioner's request to prohibit Respondent from issuing any additional subpoenas in New York in an effort to collect on Respondent's UAE judgment, the court cautions Respondent from attempting to issue additional subpoenas in New York which would be contrary to the language and spirit of the previous New York court's decision.

Additionally, Respondent failed to demonstrate its entitlement to an order dismissing the Verified Petition, or an order compelling compliance with the subpoenas. As Petitioners argue, Respondent's cross-motion fails to specifically state the specific grounds upon which the

Verified Petition should be dismissed. However, Respondent argues in substance that Petitioners lack standing to challenge the majority of the information sought. Here, the court agrees with Petitioners and finds that Petitioners have standing to challenge these subpoenas and that dismissal is not warranted.

Simply put, to compel compliance with the subpoenas would contradict the spirit of the court’s previous decision and would violate New York’s fundamental principles of fairness, justice and due process.

The court has considered all additional arguments raised by the parties, but finds no need to specifically address them herein. The court denies all additional requests for relief not specifically granted below.

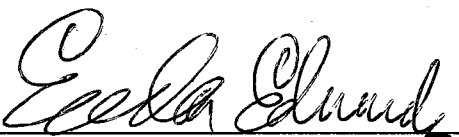
As such, it is hereby

ORDERED and ADJUDGED that the court grants in part Petitioners Ahmad Mohammad El-Husseini’s, Alexander Ahmad El Husseiny’s, Ziad Ahmad El-Husseiny’s, Ramzy Ahmed El-Husseiny’s, Mohammad El Husseini’s and Joan Henry’s Verified Petition to the extent that the court quashes Respondent Invest Bank PSC’s subpoenas served in this matter and the court denies the remainder of the relief requested in the Verified Petition; and it is further

ORDERED that the court denies Respondent Invest Bank PSC’s cross-motion to dismiss the Verified Petition and to compel compliance with said subpoenas.

This constitutes the decision and order of the court.

6/27/2023
DATE


ERIKA M. EDWARDS, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	