

San-Dar Assoc. v Amar

2025 NY Slip Op 32599(U)

July 11, 2025

Supreme Court, New York County

Docket Number: Index No. 655193/2023

Judge: Lori S. Sattler

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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: PART 02M

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SAN-DAR ASSOCIATES,

Plaintiff,

- v -

YAACOV AMAR, RAQUEL BEHAR, STONE QUARRY
 COMMONS LLC, 51 APPLGATE PARTNERS LLC, FIRST
 CHOICE INVESTMENT LLC, Y&Y CAPITAL
 LLC, HOUSING SOLUTIONS LLC, Y&Y CAPITAL GROUP
 LLC, YACOV SMOUHA, THE OFARIM GROUP
 INC., AMAR SHREVEPORT LLC

Defendant.

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INDEX NO. 655193/2023

MOTION DATE 03/04/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON
 MOTION**

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 23, 26, 31, 74, 75, 78, 100, 113, 114, 115, 116, 117, 118, 119, 120, 124

were read on this motion to/for DISMISS.

In this commercial action asserting fraudulent conveyance, Defendant Yacov Smouha (“Smouha”) seeks dismissal of San-Dar Associates’ (“Plaintiff”) Second Amended Complaint (NYSCEF Doc. No. 115) as against him pursuant to CPLR 3211(a)(7). Plaintiff opposes this motion.

Plaintiff is a judgment creditor of Corporate Habitat NY LLC (“CHNY”), as it obtained a money judgment against CHNY for \$3,319,756.34 (Second Amended Complaint ¶¶ 22-23; *San-Dar Associates v Corporate Habitat NY, LLC*, Sup Ct, NY County, June 13, 2023, Index No. 156683/2021). CHNY is owned by Smouha, Defendant Yaacov Amar and non-party Raphael Waknine. In addition to ownership in CHNY, Smouha has ownership in other entities including a New Jersey corporation, Ofarim Group Inc. (“Ofarim”) (Second Amended Complaint ¶ 11).

Plaintiff commenced this action pursuant to Article 10 of the Debtor and Creditor Law (“DCL”), after learning of CHNY’s insolvency. In the Second Amended Complaint filed on December 5, 2024, Plaintiff seeks *inter alia* to void transfers made by CHNY to transferees listed in

¶ 29 of the Second Amended Complaint and Exhibit 1 thereto (Second Amended Complaint ¶¶ 29-30, 36-46). The list of challenged transfers includes three transfers from CHNY to Ofarim: a transfer of \$25,000 made on June 17, 2020, a transfer of \$201,250 made on July 6, 2021, and a transfer of \$201,250 made on July 7, 2021 (“Ofarim Transfers”) (Second Amended Complaint ¶ 29).

Smouha is not named individually as a transferee in the Second Amended Complaint. Nevertheless, Plaintiff asserts that Smouha received a benefit from the transfers. The Second Amended Complaint does not identify which of the listed transfers purportedly benefited Smouha, nor does it identify any facts supporting its claim other than pointing to Smouha’s ownership in some of the listed transferees.

Smouha now moves to dismiss, alleging that Plaintiff fails to state a cause of action as against him since the Second Amended Complaint does not plead facts supporting the allegation that the challenged transfers were to Smouha’s benefit. Plaintiff opposes, specifying that Smouha benefited from the Ofarim Transfers (NYSCEF Doc. No. 119, Plaintiff’s Memorandum at 6-7).

When considering a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), “the court is required to accept as true the facts as alleged in the complaint, accord the plaintiff the benefit of every favorable inference and strive to determine only whether the facts alleged fit within any cognizable legal theory” (*Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 144-145 [1st Dept 2009], citing *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). However, “factual allegations which fail to state a viable cause of action” or “that consist of bare legal conclusions . . . are not entitled to such consideration” (*Leder v Spiegel*, 31 AD3d 266, 267 [1st Dept 2006]). A court may consider extrinsic documents to determine whether the cause of action has been sufficiently stated (*see Moises-Ortiz v FDB Acquisition LLC*, 221 AD3d 540, 542 [1st Dept 2023], *Rovello v Orofino Realty Co.*, 40 NY2d 633, 638 [1976]).

Pursuant to Article 10 of the DCL, a transfer from a debtor to a third-party transferee is voidable as to the creditor when the transfer was inequivalent, it was made after the creditor's claim arose, and the debtor was or became insolvent as a result of that transfer (DCL § 274[a]). When a transfer is deemed voidable a judgment may be entered against "a person for whose benefit the transfer was made" (DCL § 277[b][i]). The creditor bears the burden of proving the defendant was a transferee or beneficiary of the transfer (DCL § 277[g][2]).

Although the Second Amended Complaint does not plead with specificity facts supporting its allegations against Smouha, the documents relied upon by Plaintiff make plausible the claim that the Ofarim Transfers have been made as a distribution of profit to Smouha as a member of CHNY. Smouha, not Ofarim, was a member of CHNY (NYSCEF Doc. No. 31, CHNY Operating Agreement at 1; Plaintiff's Memorandum at 6), yet Ofarim, not Smouha, was listed in CHNY's K-1 forms used for reporting partners' share of income, deduction and credit (NYSCEF Doc. 26, 74, 75). While the amounts of the Ofarim Transfers are not the same as the amounts listed as membership distribution to Ofarim in the K-1 forms for 2020 or 2021, it is possible that the Ofarim Transfers were at least partially included in the withdrawals and distributions listed in these K-1 forms for 2020 and 2021 (NYSCEF Doc. No. 26). The fact that these K-1 forms have been later amended to, among others, exclude any distributions to Ofarim (NYSCEF Doc. No. 74, 75) does not impact this inference, as the Court at this stage cannot decide the veracity of conflicting documents and any inference is drawn in favor of Plaintiff. Additionally, the Ofarim Transfer of June 17, 2020 appears to be listed in the general ledger as a transfer "Due to / from Yuki" (NYSCEF Doc. No. 23 at 47), a name allegedly used by Smouha (Second Amended Complaint ¶ 6). This also supports the allegation that Smouha benefited from the June 17, 2020 Ofarim Transfer. At this stage, this inference is not contradicted by the later revisions in the general ledger, changing the recipient of this transfer to Ofarim (NYSCEF Doc. No. 78).

Accordingly, for the reasons set forth herein, it is hereby:

ORDERED that defendant Yacov Smouha's motion to dismiss is denied; and it is further

ORDERED that the stay of discovery ordered on June 17, 2025 is lifted.

All other relief sought is denied. This constitutes the Decision and Order of the Court.

7/11/2025

DATE



LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

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