Fairfax Fin. Holdings Ltd. v Exis Capital Mgt., Inc.
2025 NY Slip Op 34321(U)
November 12, 2025
Supreme Court, New York County
Docket Number: Index No. 159092/2024
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** — *Justice* **PART** **33M**

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FAIRFAX FINANCIAL HOLDINGS LIMITED, CRUM & FORESTER HOLDINGS, CORP.,

Plaintiff,

- v -

EXIS CAPITAL MANAGEMENT, INC.,EXIS CAPITAL, LLC,EXIS INTEGRATED PARTNERS L.P, EXIS DIFFERENTIAL PARTNERS L.P.

Defendant.

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INDEX NO. 159092/2024

MOTION DATE 04/30/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for COMPEL.

Upon the foregoing documents, and after a final submission date of September 10, 2025, Plaintiffs' motion to compel Defendants and non-party Adam Sender ("Sender") to produce certain documents necessary to enforce a judgment is granted in part and denied in part.[1]

I. Background

On July 19, 2024, after litigating in the New Jersey Superior Court since 2006 (the "New Jersey Action"), Plaintiffs obtained a judgment of $10,666,228.00 against Defendants (the "Judgment"). The Judgment was domesticated in New York on October 2, 2024 (NYSCEF Doc. 3). The Judgement remains unsatisfied, and Defendants have represented to Plaintiffs in post-

[1] The parties and the Court attempted to resolve this motion informally at a conference, but due to the voluminous underlying record, which includes numerous lengthy decisions issued by the New Jersey Superior Court and Appellate Division, and the starkly different positions taken on issues of law, the issues raised could not be resolved through an informal conference.

judgment discovery that they have no bank accounts, assets, or employees (although during at least part of the New Jersey Action, they did).

Sender, a named Defendant in the New Jersey Action and the 100% owner of Defendants Exis Capital Management, Inc. and Exis Capital, LLC, shut down Defendants' business operations in 2014. According to Plaintiff, Sender re-opened Defendants' business under a new name, Sender Company & Partners, which purportedly engaged in the same business as Defendants. Sender as an individually named Defendant was dismissed from the New Jersey Action after a jury found he was not liable to Plaintiffs (NYSCEF Doc. 49). Plaintiffs now seek discovery from Sender and Defendants to ascertain Defendants' assets in an attempt to satisfy their judgment.

Defendants and Sender object to providing any disclosure prior to the year 2020. They argue that New Jersey law should apply, and that New Jersey's Uniform Fraudulent Transfers Act only allows challenges to transfers made without fraudulent intent for a period of four years from the date of that transfer which makes the disclosure sought here irrelevant. They further argue that the subpoenas are overbroad and unduly burdensome. In reply, Plaintiffs argue that there is no need to conduct a choice of law analysis at this stage where the only information sought is post-judgment discovery and there are not yet any claims alleging fraudulent conveyance. Plaintiffs further argue that even if a choice of law analysis was required, the New Jersey Superior Court and Appellate Division in the New Jersey Action applied New York law at Defendants' request, which highlights why New York's fraudulent conveyance statute[2] should apply to any analysis of what is relevant for purposes of post-judgment discovery (*see Fairfax Financial Holdings Limited v S.A.C. Capital Management, L.L.C.*, 450 N.J. Super. 1 [App Div 2017]).

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[2] N.Y. Debt. & Cred. Law § 273-a was replaced on April 4, 2020, when New York enacted the New York Uniform Voidable Transactions Act (the "UVTA"), but in enacting the UVTA, the Legislature expressly stated that N.Y. Debt. & Cred. Law § 273-a still applies to any transfer made or obligation incurred before April 4, 2020. Under § 273-a, Plaintiffs could challenge transactions dating back to 2006 when the New Jersey Action was filed.

II. Discussion

A. Standard

Pursuant to CPLR 5223, a judgment creditor is entitled to discover "all matter relevant to the satisfaction of the judgment" through subpoenas served on "any person" and "at any time before a judgment is satisfied or vacated" (*see also Berisha v Tosca Café, Inc.*, 202 AD3d 531, 532 [1st Dept 2022]). The standard is to be applied generously (*ICD Group, Inc. v Israel Foreign Trade Co. (USA) Inc.*, 224 AD2d 293, 294 [1st Dept 1996] citing Siegel, Practice Commentaries, McKinney's Cons. Laws of NY, Book 7B, CPLR C5223:2, at 214). Broad post-judgment discovery to aid in satisfying a judgment is the norm in New York (*B&M Kingstone, LLC v Mega Intern. Commercial Bank Co., Ltd.*, 131 AD3d 259, 266 [1st Dept 2015]). Post-judgment discovery extends to third parties "in order to determine whether the judgment debtor … transferred any assets so as to defraud the judgment creditor" (*Berisha, supra*, quoting *George v Victoria Albi, Inc.*, 148 AD3d 1119, 1119 [2d Dept 2017]). Nonetheless, the scope of post-judgment discovery is not unlimited, and the time frame and subject matter of ordered disclosure may not be overbroad (*see Pala Assets Holding Ltd. v Rolta, LLC*, 210 AD3d 560, 562 [1st Dept 2022]).

B. Choice of Law Analysis

At this stage of litigation, where there are not yet any claims for fraudulent conveyance or alter-ego liability asserted against any party, the Court finds any determination into whether New York's Debt. & Cred. Law § 273-a or New Jersey's Uniform Fraudulent Transfers Act applies to these claims to be premature. While perhaps properly raised on a motion to dismiss once those claims are asserted, at this stage the parties are merely engaged in post-judgment discovery. At this stage, there are no alleged fraudulent transfers, and Plaintiffs are simply trying to ascertain where Defendants' assets are located.

However, even if a choice of law analysis was required for purposes of determining the relevancy of the post-judgment discovery sought, the Court would still find Defendants and Mr. Sender's objection to discovery based on the application of New Jersey law to be without merit. Assuming, *arguendo*, that New Jersey's Uniform Fraudulent Transfers Act applies to any hypothetical fraudulent conveyance claim, Defendants and Mr. Sender misapprehend New Jersey's statute of limitations with respect to fraudulent transfer claims.

While Defendants and Sender argue that any liability for fraudulent conveyance under New Jersey's Uniform Fraudulent Transfers Act is limited to four years from the date of the transfer, the New Jersey Appellate Division has held, and New Jersey's statute of limitations expressly states, that a claim for fraudulent transfer may be brought "not later than four years after the transfer was made or, if later, not later than one year after the transfer or obligation was discovered by the claimant" (*see Rosario v Marco Const. and Management Inc.*, 332 NJ Super 345, 355 [App Div 2016] citing N.J.S.A. 25:2-31[a]). New Jersey courts apply the discovery rule, which holds that the claim does not accrue until the plaintiff "discovered, or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim" (*Catena v Raytheon Co.*, 447 NY Super 43, 52-53 [App Div 2016] quoting *Lopez v Swyer*, 62 NJ 267, 272 [1973]).

Because the purpose of the requested disclosure is to discover if any fraudulent transfer occurred, even if New Jersey law does apply to a potential fraudulent transfer claim, Plaintiffs have one year after the discovery of the allegedly fraudulent transfer to assert that claim. Whether under New Jersey law Defendants and Mr. Sender may succeed on a future motion to dismiss by arguing the discovery rule does not apply to toll the statute of limitations is not before the Court at

this time and cannot serve as a basis to preclude the broad and generous post-judgment discovery to which Plaintiffs are entitled.

C. Overbreadth and Unduly Burdensome Objections

The Court rejects Defendants' and Mr. Sender's objections to Plaintiffs' requests for disclosure on the basis that the request for disclosure dating back to 2006 is overly broad or unduly burdensome. The litigation which gave rise to the judgment commenced in 2006. The production period for post-judgment discovery is proper where it is commences on the action's filing date (*see Pala Assets Holding Ltd. v Rolta, LLC*, 210 AD3d 560, 562 [1st Dept 2022]). The time frame of disclosure sought is necessary because it begins when Defendants and Mr. Sender were named in the New Jersey Action, at which point they knew they may ultimately be liable for satisfying a judgment running in Plaintiffs' favor. Plaintiffs are entitled to discover where Defendants' assets went after the commencement of the New Jersey Action.

Although Defendants and Mr. Sender argue that there could be no fraudulent transfer from September 12, 2012 through April 27, 2017[3] because during that timeframe they were dismissed from the New Jersey Action, this Court disagrees. During this period of time, an appeal was pending which could, and in fact did, reinstate the dismissed claims against Defendants and Mr. Sender. Defendants and Mr. Sender are sophisticated parties represented by counsel and thus should have been aware that the dismissed claims could be reinstated on appeal. And, Mr. Sender, in explaining his decision to cease Defendants' operations, tied the decision to the New Jersey Action. He publicly stated: "We haven't been able to raise any significant capital since [Plaintiffs] sued us in 2006" and that "[o]ur plan is to move forward and work to re-establish Exis Capital as

[3] Defendants and Mr. Sender were dismissed on September 12, 2012. A notice of appeal was subsequently filed and the appeals were apparently not perfected, argued, and decided until April 27, 2017, at which time the New Jersey Appellate Division reinstated Plaintiff's claims against Defendants and Mr. Sender (*Fairfax Financial Holdings Limited v S.A.C. Capital Management, L.L.C.*, 450 NJ Super 1 [App Div 2017]).

one of the leading hedge funds in the world."[4] He also publicly acknowledged that "[m]ost of the assets in [Defendants'] fund are [from] friends and family and my own money." Thus, the temporal scope of the disclosure sought is properly tailored for it is linked to the ongoing litigation, which Mr. Sender himself acknowledged played a role in his decision to cease Defendants' business operations and to open a new business with the purpose of re-establishing Defendants' prior business.

While Defendants rely on *Ray v. Ray,* 108 A.D.3d 449 (1st Dept. 2013) for the argument that there can be no Debt. & Cred. Law § 273-a violation during the pendency of an appeal, that case is factually distinguishable. Here, the Court is dealing with sophisticated commercial entities who managed millions of dollars in assets that were allegedly transferred to a new hedge fund who was not a named defendant in a dismissed lawsuit pending appeal, as opposed to *Ray* which involved a divorced spouse who re-financed a mortgage to pay her legal fees.

Nor are the subpoenas directed at Defendants overly broad or unduly burdensome. The information and documents they seek is reasonably targeted to find out what happened to Defendants' assets during the pendency of the New Jersey Action and prior to the judgment being entered.

However, the Court agrees that portions of the subpoena issued to Mr. Sender are overbroad, unduly burdensome, and the subpoena served on Mr. Sender was served prematurely. This subpoena is improperly seeking information related to the assets and operations of non-judgment debtors (*see, e.g. Carlyle, LLC v Beekman Garage LLC*, 157 AD3d 509, 510 [1st Dept 2018]; *Stern v Carlin Communications, Inc.*, 210 AD2d 110, 111 [1st Dept 1994]). It seeks, amongst other things, information on Mr. Sender's ownership interests in entities unrelated to the

[4] *See Offshoot of SAC Capital to Close, Chief Investment Officer (Feb. 4, 2014), available at https://www.ai-cio.com/news/offshoot-of-sac-capital-to-close/* [Last accessed November 9, 2025]).

judgment, any purchase or sale of personal or real property Mr. Sender engaged in since July 26, 2006, any life insurance policies owned by Mr. Sender, and any of his purchase, sale, or transfer of artwork from July 26, 2006, to the present. Given the record before the Court, the information sought at this point appears to be premature pending what is uncovered through Defendants' response to Plaintiff's subpoenas.

Information subpoenas from the New Jersey Action show some assets from Defendants were transferred to Mr. Sender, which provides some basis to argue Mr. Sender may have served as a conduit for transferring Defendants' assets and squirreling them into other assets owned by him, or transferring them to a non-judgment-debtor entity.[5] But the amounts transferred in the current record are *de minimis*, amounting to less than $1,000, and only show two transfers from 2017. The Court therefore denies the motion to compel with respect to the subpoena served on Mr. Sender, without prejudice, with leave to renew after Defendants' respond to Plaintiff's subpoenas.

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion to compel Defendants to respond to the subpoenas served on them is granted, and within forty-five days, or some other time frame as stipulated to by the parties, Defendants shall make a good-faith document production in response to Plaintiffs' subpoenas dated October 8, 2024, and it is further

ORDERED that Plaintiffs' motion to compel Mr. Sender to respond to the subpoena served on him is denied, without prejudice, with leave to renew depending on Defendants' response to the subpoenas served on them; and it is further

[5] The Exis Capital Management Inc.'s information subpoena response shows $310.52 in cash was transferred to Mr. Sender on June 15, 2017 for "payment of Fairfax lawsuit expenses" (NYSCEF Doc. 36) while the Exis Capital, LLC information subpoena response shows $8.95 in cash was transferred to Mr. Sender on June 15, 2017 for the same reason (NYSCEF Doc. 35).

ORDERED that the parties shall provide a status update to the Court on or before February 9,2026 regarding the status of document production; and it is further

ORDERED that within ten days of entry, counsel for Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/12/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, 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		