JSC VTB Bank v Mavlyanov
2017 NY Slip Op 31242(U)
June 8, 2017
Supreme Court, New York County
Docket Number: 652516/2016
Judge: Anil C. Singh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 45

----------X

JSC VTB BANK (f/k/a OPJSC VTB BANK and PJSC VTB BANK),

Plaintiffs,

-against- Index No. 652516/2016

IGOR MAVLYANOV, STELLA MAVLYANOVA, ILIO MAVLYANOV, HANAN MAVLYANOV, 18016 BORIS PROPERTIES, LLC, 2710 BOWMAN, LLC, 364 WEST 119th STREET REALTY, LLC, JASPER VENTURE GROUP LLC, CHEN MENACHEM EVEN, and MICHAL REBECCA NEWMAN EVEN, Mot. Seq. 001

Defendants.

----------X

SINGH, J.

In this action, brought pursuant to New York's Debtor and Creditor Law (DCL), plaintiff JSC VTB Bank (the "Bank") seeks to set aside certain conveyances of real property in New York and California in 2013 and in Russia in 2015 by Igor Mavlyanov to defendants, allegedly made in order to render himself judgment proof. In the alternative, the Bank seeks money damages under the theory of common law fraudulent conveyance.

On January 12, 2016, the Bank commenced an action in Russia against Igor Mavlyanov to recover amounts allegedly due pursuant to the terms of the July personal guarantee, and in a second action to recover under the October personal guarantee (*see VTB Bank Public Joint-Stock Co. v Igor Rakhimovich Mavlyanov*, Meshchansky District Court of Moscow [Moscow Court], case no. 2-1459/2016; *VTB Bank Public Joint-Stock Co. v Igor Rakhimovich Mavlyanov*, Meshchansky District Court of Moscow, case no. 2-1555/2016 [both, Moscow debtor/creditor actions]).

In April 2016, the Moscow Court ruled in favor of the Bank, and subsequently issued

judgments against Igor Mavlyanov in both Moscow debtor/creditor actions. The judgment on the July guarantee is in the amount of RUB 1,207,210,564.98 (approximately $18,196,129.37), together with costs. The judgment on the October guarantee is in the amount of RUB 1,038,568,581.80 (approximately $15,654,210.47), together with costs.

Igor Mavlyanov filed an appeal of each of those judgments.

Thereafter, the Bank brought this law suit pursuant to the DCL to set aside alleged fraudulent transfers of property in New York, California and Russia between Igor Mavlyanov, his immediate family members and associates. The Bank alleges that the transfers were made with the intent to defraud creditors. Alternatively, the Bank seeks money damages.

The Bank now moves by order to show cause for the following relief:

1. For an order of attachment pursuant to Article 62 of the CPLR and Section 278 of the DCL of (a) real property listed on Exhibit A ((NYSCEF 10); (b) other assets listed on Exhibit A; and (c) any other bank accounts, real property, or personal property owned by defendants Igor Mavlyanov, Jasper LLC, 119th Street LLC, Boris LLC and Bowman LLC in which they have an interest up to the sum of 2,245,779,146.78 Russian rubles ($33,753,656.38 USD).

2. For a preliminary injunction pursuant to CPLR Article 63 enjoining defendants and/or their agents from (a) further transferring or conveying or disposing of the properties set forth in Exhibit A; and (b) taking any further steps to transfer, assign or convey any of their assets in which Igor Mavlyanov has an interest.

3. For the entry of a restraining order pursuant to CPLR 5229 enjoining and restraining defendants Igor Mavlyanov, Jasper LLC, 119th Street LLC, Boris LLC and Bowman LLC from transferring or conveying their assets pending enforcement of the Russian judgments.

Defendants Chen Menachem Even and Michal Rebeca Neuman Even s/h/a Michal Rebecca Newman Even (the "Evens") cross-move for an order, pursuant to CPLR 3211 (a) (8), dismissing this action for lack of personal jurisdiction. Defendants Stella Mavlyanova, Ilio Mavlyanov, Hanan Mavlyanov, 18016 Boris Properties, LLC (Boris LLC), 2710 Bowman, LLC (Bowman LLC), 364 West 119th Street Realty, LLC (119th Street LLC), and Jasper Venture Group LLC (Jasper LLC) (collectively, Rheem Bell defendants) cross-move for an order: pursuant to CPLR 3211 (a) (8), dismissing the complaint against Stella Mavlyanova for lack of personal jurisdiction; pursuant to CPLR 3211 (a) (1), dismissing the complaint against Stella Mavlyanova and dismissing all causes of action related to certain properties located in Russia; and, pursuant to CPLR 3211 (a) (4), dismissing the complaint against Boris LLC and Bowman LLC and dismissing all causes of action related to certain properties located in California.[1]

Alleged Facts and Procedural History:

The Bank is a Russian bank which extended loans to nonparty Torgovo-proizvodstvennaya Kompaniya Yashma (Yashma Trade and Production Company [Yashma]), a company owned by Igor Mavlyanov. The Bank made the loans pursuant to two loan facility agreements: the first executed on July 19, 2013, and supplemented in 2014 and 2016 (July loan agreement), and the second, executed on October 31, 2013, and supplemented in 2014 and 2015 (October loan agreement).

On July 19, 2013 and on October 31, 2013, in conjunction with the execution of each loan agreement, Igor Mavlyanov executed a personal guarantee of all principal and interest due under

[1]The Court's order entered on May 12, 2017 is vacated on consent without prejudice to the rights of the parties to address issues raised by counsel (see letters dated May 25, 2017) and substituted with the order dated June 8, 2017 (parties are directed to e-file these letters).

each agreement (July guarantee, October guarantee). The loans were also secured by guarantees executed by six business entities and two individuals, and by mortgages on five properties located in Russia.

Almost two years later, on June 15, 2015, Yashma defaulted on its repayment obligations under both the July and October loan agreements, and the Bank accelerated the balance due.

By letters dated November 23, 2015, the Bank sought to enforce the personal guarantees executed by Igor Mavlyanov and others, and demanded that each pay Yashma's debt. Igor Mavlyanov refused.

Meanwhile, the Bank commenced the action at bar against Igor Mavlyanov. The Bank also joined Stella Mavlyanova, Igor Mavlyanov's ex-wife, Ilio Mavlyanov, their older son, Hanan Mavlyanov, their younger son, the Evens, Boris LLC, Bowman LLC, 119th Street LLC, and Jasper LLC, on allegations that they received real property fraudulently transferred by Igor Mavlyanov in an attempt to avoid the judgments issued in the Moscow debtor/creditor actions and any judgment that may be issued in the action at bar.

The Rheem Bell defendants, with the exception of Stella Mavlyanova, served a verified answer with counterclaims on June 29, 2016. Igor Mavlyanov served a verified answer and affirmative defenses on September 29, 2016.

On June 21, 2016, the Bank filed a parallel action in the Superior Court of the State of California (*JSC VTB Bank v Mavlyanov*, Superior Court, Los Angeles County, Calif., case no. BC624195). In that action, the Bank filed notices of pendency against two properties in California formerly owned by Igor Mavlyanov that the Bank alleges were fraudulently conveyed.

By TRO issued on May 10, 2016, this court restrained, pending a hearing on this motion, all

defendants, their agents, employees, servants, attorneys, and all persons acting through, with, or on defendants' behalf, from transferring, assigning, encumbering, selling, converting, concealing, dissipating, disbursing, spending, withdrawing, gifting, or otherwise disposing of certain real properties located in New York and California, or taking further steps to dispose of those properties or company assets, except in the ordinary course of a business in which Igor Mavlyanov has an interest.

Three properties are expressly temporarily exempted from the scope of the TRO: the property located at 75-62 186th Street in Fresh Meadows, New York (Fresh Meadows property) and owned by Hanan Mavlyanov, in order to complete a refinancing; the property located at 364 West 119th Street in Manhattan (119th Street property) and owned by 119th Street LLC, consisting of a five-story, ten-unit apartment building, in order to obtain permanent financing; and the property located at 2710 Bowmont Drive in Beverly Hills, California (Bowmont Drive property) and owned by Bowman LLC, in order to obtain permanent financing. The TRO also provides that defendants may draw down on the construction loans relating to the 119th Street property and the Bowmont Drive property.

On May 10, 2016, this court issued notices of pendency against the Fresh Meadows property; two condominium apartments located at 150 West 56th Street in Manhattan (West 56th Street property) and owned by the Evens; and the 119th Street property.

By order dated May 23, 2016, this court temporarily vacated the notice of pendency filed against the 119th Street property to allow defendants to draw down on a construction loan, and permitted the Bank to re-file the notice of pendency after July 22, 2016. On October 5, 2016, the Bank filed a reinstated notice of pendency against the 119th Street property.

The Evens' Cross Motion:

The Evens' cross motion to dismiss is denied as moot on the ground that the Evens are no longer joined in this action. By stipulations dated August 3, 2016 and August 16, 2016, the Bank voluntarily discontinued without prejudice the claims asserted against the Evens, and cancelled the notice of pendency filed against the West 56th Street property.

The Bank's Motion:

The Bank now seeks an order attaching defendants' real properties and assets; restraining defendants from further transferring, dissipating, assigning, conveying, encumbering or otherwise disposing of the properties, any assets of Igor Mavlyanov, or any other assets; ordering an examination of the subject assets; and permitting expedited discovery, on allegations that, given defendants' prior dissipation of assets, they are highly likely to continue dissipating assets to evade the Moscow debtor/creditor action judgments and any judgment issued in the action at bar.

In opposition, Igor Mavlyanov contends that, among other things, he has not been legally served in Russia, in accordance with the Hague Convention, or, here, in New York; the Bank has chosen to bring a purely Russian dispute to the United States for the sole purpose of harassing Igor Mavlyanov, his sons, and his ex-wife, and slandering his name, in the hope that he will submit to its high-pressure demands; the Bank has manufactured a half-baked conspiracy theory, falsely implicating Igor Mavlyanov's family and complete strangers in a fictitious web of creditor fraud. Additionally, Igor Mavlyanov contends that the transactions that form the basis of this action are free of any impropriety, and, in some instances, resulted in his receipt of hundreds of thousands to millions of dollars; at the time that he transferred the real property, Yashma was on extremely solid financial ground, and had been making all debt service payments on a timely basis; it was not until October 2015, more than one year after he transferred the last of the subject real property, that Russia

experienced a financial crisis, and the Bank increased its interest rates, causing Yashma to default on its loan repayment obligations.

According to Igor Mavlyanov, the Bank led him to believe that he did not have any personal exposure, and that the July and October personal guarantees were pro forma only, because it never requested that he provide it with his personal financial statements; Igor Mavlyanov is contesting the Bank's claims against him before the Moscow debtor/creditor actions and has filed appeals of the judgments against him in those actions; the Bank has no right to insist on attaching every asset he owns in the United States and in Russia in order to enforce the Moscow debtor/creditor action judgments; and the Bank has intentionally failed to disclose to this court that it possesses mortgages and liens on many assets selected by the Bank in Russia that serve as security for the July and October Yashma loan agreements.

In opposition, the Rheem Bell defendants contend that, among other things, Stella Mavlyanova has not been legally served in Russia, in accordance with the Hague Convention, or, here, in New York; and Igor Mavlyanov properly transferred his ownership interests in certain properties to her in compliance with the divorce decree dated February 3, 2015 issued in *Stella Mavlyanova v I. R. Mavlyanov* (Meshansky District Court, City of Moscow, case no. 2-17/2015 [Moscow divorce action]).

Attachment, Jurisdiction over Igor Mavlyanov:

Specifically, the Bank seeks an order of attachment on the grounds that it has brought a claim for a money judgment, that it will likely succeed on the merits, and that Igor Mavlyanov intends to frustrate the enforcement of any judgment rendered in the Bank's favor. In opposition, Igor Mavlyanov contends that this court lacks long-arm jurisdiction pursuant to CPLR 302 and the Hague

Convention on the ground that the Bank has failed to properly effectuate service on him here and in Russia. The Rheem Bell defendants contend that the branch of the motion for an order of attachment, pursuant to CPLR article 62 and DCL § 278 (a), must be denied on the grounds that the mere assignment, transfer, or disposition of property does not constitute grounds for an attachment; that the Bank failed to provide an affidavit in support of its request, in violation of CPLR 6212 (a); and that the Bank failed to allege sufficient facts in support of their request (*see* CPLR 6201).

"In addition to establishing that a defendant subject to this court's personal jurisdiction meets the statutory requirements for an attachment, the party seeking attachment must demonstrate an identifiable risk that the defendant will not be able to satisfy the judgment" (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 60 [1st Dept 2013], citing *Hotel 71 Mezz Lender LLC v Falor*, 14 NY3d 303, 310-311 [2010]).

On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating satisfaction of the statutory and due process prerequisites (*Stewart v Volkswagen of Am.*, 81 NY2d 203, 207 [1993]; *LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000]; *see* CPLR 3211 [a] [8]). Where the defendant is a nondomiciliary, the plaintiff must allege facts sufficient to satisfy the relevant statutory requirements, and to warrant a finding of long-arm jurisdiction over the defendant (*see PT. Bank Mizuho Indonesia v PT. Indah Kiat Pulp & Paper Corp.*, 25 AD3d 470, 470-471 [1st Dept 2006]).

Section 302 of the CPLR permits a court to exercise long-arm jurisdiction over a nondomiciliary who transacts business within the state, in certain circumstances.

Subsection 302 (a) (1) requires that the defendant conduct purposeful activity within the state, and that there be a substantial relationship between that activity and the plaintiff's claim. "It is a

'single act statute' and proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]; *see Ehrenfeld v Bin Mahfouz*, 9 NY3d 501, 508 [2007]; CPLR 302 [a] [1]).

"'To determine whether a party has 'transacted business' in New York, courts must look at the totality of circumstances concerning the party's interactions with, and activities within, the state'" (*Scheuer v Schwartz*, 42 AD3d 314, 316 [1st Dept 2007], quoting *Bank Brussels Lambert v Fiddler Gonzalez & Rodriguez*, 171 F3d 779, 787 [2d Cir 1999]). The "overriding criterion necessary to establish a transaction of business is some act by which the defendant purposefully avails itself of the privilege of conducting activities within [New York]" (*Ehrenfeld v Bin Mahfouz*, 9 NY3d at 508 [internal quotation marks and citation omitted]).

In addition, constitutional due process considerations require that the defendant's "minimum contacts" with New York be sufficient to make the imposition of jurisdiction reasonable and just according to "'traditional notions of fair play and substantial justice'" (*Asahi Metal Indus. Co., Ltd. v Superior Ct. of Calif., Solano County*, 480 US 102, 113 [1987], quoting *International Shoe Co. v State of Washington, Office of Unemployment Confirmation & Placement*, 326 US 310, 316 [1945]; *see* United States Const., 14th Amend.). "A non-domiciliary tortfeasor has 'minimum contacts' with the forum State – and may thus reasonably foresee the prospect of defending a suit there – if it 'purposefully avails itself of the privilege of conducting activities within the forum State'" (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 216 [2000] [citation omitted]).

This court has obtained long-arm jurisdiction over Igor Mavlyanov, pursuant to CPLR 302

(a) (1). Igor Mavlyanov admits that he has visited New York to "pursue real estate investment opportunities in the United States . . . particularly in New York City" (Igor Mavlyanov Jun. 27, 2016 aff ¶ 9). There is no dispute that he effected transfers in New York of two properties located in California and three properties located in New York, and, as a tenant, executed a lease agreement for the West 56th Street property after transferring his ownership of that property to the Evens. Here, the Bank seeks to attach the New York and California properties on the ground that they were fraudulently conveyed. Clearly, then, Igor Mavlyanov's activities here were purposeful, and substantially related to the claims asserted by the Bank.

This court has also obtained long-arm jurisdiction over Igor Mavlyanov pursuant to CPLR 302 (a) (2). That subsection requires that the defendant commit a tortious action within New York. Here, the Bank alleges that Igor Mavlyanov fraudulently conveyed five properties located in New York and California. It is well settled that a fraudulent conveyance claim is a type of tort claim, and constitutes a sufficient basis upon which long-arm jurisdiction may be conferred (*see CIBC Mellon Trust Co. v HSBC Guyerzeller Bank AG*, 56 AD3d 307, 308-309 [1st Dept 2008]).

In addition, this court has obtained long-arm jurisdiction over Igor Mavlyanov pursuant to CPLR 302 (a) (4). That subsection requires that the defendant "own[], use[] or possess[] any real property situated within the state" (CPLR 302 [a] [4]). Igor Mavlyanov, admittedly, is presently renting the West 56th Street property from the Evens (*see* Igor Mavlyanov aff ¶ 47; *see also* Chen Menachem Even Jun. 8, 2016 aff ¶¶ 18, 19). Therefore, for purposes of the statute, he possesses real property within the state (*see Genesee Scrap & Tin Baling Corp. v Lake Erie Bumper Plating Corp.*, 57 AD2d 1068, 1068 [4th Dept 1977]).

Igor Mavlyanov's undisputed contacts with New York demonstrate that he has subjected

himself to jurisdiction within this state, and that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'" (*International Shoe Co. v State of Washington, Office of Unemployment Confirmation & Placement*, 326 US at 316).

The Bank properly effected service of process upon Igor Mavlyanov, before issuance of this court's order dated August 30, 2016 and entered September 14, 2016, granting the Bank's motion for approval of alternative service, and directing, pursuant to CPLR 308 (5), that alternative service may be made upon Igor Mavlyanov. Alternative service upon an individual may be made by any method designed to provide notice to the defendant of the lawsuit, upon a showing that the plaintiff made reasonable efforts to serve the defendant through traditional means (*see Baidoo v Blood-Dzraku*, 48 Misc 3d 309, 314-315 [Sup Ct, NY County 2015]).

A person subject to the long-arm jurisdiction of this state "may be served with the summons without the state, in the same manner as service is made within the state, . . . by any person authorized to make service by the laws of the . . . country in which service is made" (CPLR 313). Personal service upon a natural person may be effected by delivery of a copy of the summons within the state to a person of suitable age and discretion at the defendant's place of business or dwelling place and by mailing a copy to the defendant's last known residence (*see* CPLR 308 [2]).

In order to properly effect service under CPLR 308 (2), the plaintiff must strictly comply with that section's delivery and mailing requirements (*Glikman v Horowitz*, 66 AD2d 814, 814 [2d Dept 1978]). The plaintiff bears the burden of proving by a preponderance of the evidence that jurisdiction was obtained over the defendant by proper service of process (*Frankel v Schilling*, 149 AD2d 657, 659 [2d Dept 1989]).

An affidavit of service constitutes prima facie evidence of such service (*see Jacobs v Zurich*

Ins. Co., 53 AD2d 524, 524 [1st Dept 1976]). However, an affidavit of service may be rebutted by a defendant's sworn affidavit denying receipt of the summons personally or by mail, or by other proof (*Olmo v Olmo*, 102 AD2d 864, 865 [2d Dept 1984]; *LeFevre v Cole*, 83 AD2d 992, 992 [4th Dept 1981]).

In his affidavit of service dated May 24, 2016, Ricardo Delpratt, a process server employed by nonparty Metro Attorney Service Inc. (Metro Attorney), attests, in relevant part, that, on May 18, May 19, May 20, and May 23, 2016, he attempted to serve copies of the summons, complaint, and three notices of pendency, together with other court documents, on Igor Mavlyanov at his actual place of residence located at 150 West 56th Street, Units 4201 and 4202, in Manhattan, but the building doorman received no response to his repeated telephone calls to that residence (*see* Ricardo Delpratt May 24, 2016 aff).

Delpratt further attests that, on May 23, 2016, he served a copy of those documents on Igor Mavlyanov by personally delivering, and leaving, them with Jeremy "Doe," the building doorman and a person of suitable age and discretion at that address (*see id.*). He attests that "Doe" refused to provide his last name, and refused to permit Delpratt access to the apartment door (*see id.*). Delpratt also attests that he then mailed a copy of those documents to Igor Mavlyanov at that address (*see id.*).

In his affidavit of service dated May 17, 2016, Delpratt, attests, in relevant part, that, on May 16, 2016, he served copies of the summons, complaint, three notices of pendency, together with other court documents, on Igor Mavlyanov at his actual place of business at 275 Madison Avenue, Suite 1718, in Manhattan (*see* Ricardo Delpratt May 17, 2016 aff). Delpratt further attests that he effected service by personally delivering and leaving those documents with Rufino Marcelino, office manager, a person of suitable age and discretion at that address, and by mailing a copy of those

documents to Igor Mavlyanov at that address (*see id.*).

Igor Mavlyanov has failed to rebut the process server's affidavit.

Contrary to Igor Mavlyanov's contentions, an individual may have more than one dwelling place, and such dwelling place need not be where the individual primarily resides (*see Litton Loan Servicing, LP v Vasilatos*, 7 AD3d 580, 581 [2d Dept 2004]). "In a highly mobile society it is unrealistic to interpret CPLR § 308 (2) as mandating service at only one location where, in fact, a defendant maintains several dwelling places" (*Karlin v Avis*, 326 F Supp 1325, 1329 [ED NY 1971] [applying New York law]). Here, there is no dispute that, when Igor Mavlyanov sold the West 56th Street property to the Evens on July 24, 2014, he requested, and entered into, an occupancy agreement, a residential lease, and lease extension agreement, permitting him and Ilio Mavlyanov to remain as tenants at that property through October 31, 2016, in exchange for payments of a monthly rent increasing from $8,000 to $9,000 (*see* Chen Menachem Even Jun. 8, 2016 aff ¶¶ 18, 19; West 56th St. property lease at 1, ¶ 1).

While Igor Mavlyanov alleges that he leased that property solely as a residence for his sons, Ilio Mavlyanov attests that he does not live at that property (*see* Ilio Mavlyanov Jun. 28, 2016 aff ¶ 52), and Hanan Mavlyanov attests that he lives in the building located at 120 East 87th Street in Manhattan (*see* Hanan Mavlyanov Jun. 15, 2016 aff ¶ 3).

For the foregoing reasons, this court has obtained personal jurisdiction over Igor Mavlyanov, and the Bank has properly effected service of process upon him.

Attachment, Debtor & Creditor Law:

The Bank now seeks an order of attachment on the three real properties located in New York, two properties in California, and seven properties in Russia. In addition, the Bank seeks to attach

the membership interests and assets of Jasper LLC, 119th Street LLC, Bowman LLC, and Boris LLC, nonparty Ilio Trans, Inc. (Ilio Trans) and all bank accounts, real property, and personal property owned by them or in which they have an interest, up to RUB 2,245,779,146.78 (approximately $33,753,656).

In opposition, Igor Mavlyanov contends that the Bank has failed to show that there is any real identifiable risk that he is likely to conceal or convert his assets, pending a determination of this action, or that he will be unable to satisfy any judgment against him that the Bank might obtain in New York. He also contends that the Bank has no right to use the courts of New York to obtain relief against him because he is a Russian citizen, he resides in Russia, the Bank is located in Russia, and the underlying dispute continues to be litigated in Russia.

In opposition, the Rheem Bell defendants contend that attachment must be denied on the grounds that the mere assignment, transfer, or disposition of property does not constitute ground for an attachment; and that the Bank failed to provide an affidavit in support of its request, in violation of CPLR 6212 (a), and failed to allege sufficient facts in support of its request, because the transfers were made at arm's length and for value and were not fraudulent, given the timing of Igor Mavlyanov's divorce from Stella Mavlyanova, the unforeseen collapse of the Russian economy, and the fact that the transfers were for consideration or legitimate gifts, and/or made in compliance with the Moscow divorce action divorce decree.

> "Attachment is a provisional remedy having as its object securing a debt by preliminary levy upon property of the debtor to conserve it for eventual execution. It is strictly a creature of statute and, therefore, because of its harsh nature and, it being in derogation of the common law, the courts have strictly construed the statute creating it in favor of those against whom it may be employed"

(*Elton Leather Corp. v First Gen. Resources Co.*, 138 AD2d 132, 135 [1st Dept 1988] quoting *Siegel*

v Northern Blvd. & 80th St. Corp., 31 AD2d 182, 183 [1st Dept 1968]; *see* CPLR 6201, 6212 [a]).

CPLR 6201 provides, in relevant part, that:

> "An order of attachment may be granted in any action . . . where the plaintiff has demanded and would be entitled . . . to a money judgment against one or more defendants, when . . . (3) the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts."

CPLR 6212 (a) requires, in relevant part, that:

> "On a motion for an order of attachment . . . the plaintiff shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action, that it is probable that the plaintiff will succeed on the merits, that one or more grounds for attachment provided in section 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff."

For purposes of attachment, "[a]lthough evidentiary facts making out a prima facie case must be shown, plaintiff must be given the benefit of all legitimate inferences and deductions that can be made from the facts stated" (*Considar, Inc. v Redi Corp. Establishment*, 238 AD2d 111, 111 [1st Dept 1997]; *see Amlon Metals v Liu*, 292 AD2d 163, 164 [1st Dept 2002]; *Arzu v Arzu*, 190 AD2d 87, 92 [1st Dept 1993]).

Here, the Bank has demonstrated a likelihood of success on the merits of its claims against Igor Mavlyanov, and demonstrated, for purposes of attachment, his intent to defraud the Bank, his creditor, by transferring his interests in real property after his execution of the personal guarantees. The element of probability of success on the merits is satisfied where the moving party demonstrates that it is more likely than not that it will succeed on the merits (*In re Amaranth Natural Gas Commodities Litig.*, 711 F Supp 2d 301, 306 [SD NY 2010] [citing New York law]).

In this action, the Bank alleges claims against all defendants arising out of allegations of

violations of DCL §§ 273, 275, 276, 276-a, 278, and/or 279, and on the theories of fraudulent conveyance, alter ego, and piercing the corporate veil, and seeks money damages. The Bank bases its claims here on the judgments issued in the Moscow debtor/creditor actions against Igor Mavlyanov and on two personal guarantees admittedly executed by him, in connection with the Bank's loans to his company, Yashma. There is no dispute that Yashma defaulted on its loan payment obligations in June 2015.

Contrary to Igor Mavlyanov's contention, whether the Moscow debtor/creditor actions judgments are enforceable here under article 53 of the CPLR is not relevant. Pursuant to CPLR 5303, a court may recognize and enforce the judgment of a foreign county meeting the requirements of CPLR 5302. That section requires that, to be enforceable here, the judgment of the foreign county must be "final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal" (CPLR 5302). However, here, the Bank does not assert a claim to enforce the judgments rendered against Igor Mavlyanov in the Moscow debtor/creditor actions. Instead, it seeks to attach property and void asset transfers as fraudulent conveyances under the common law and the DCL.

The court has authority to attach the property at issue which is located within New York (*see Matter of Sojitz Corp. v Prithvi Info. Solutions Ltd.*, 82 AD3d 89, 96 [1st Dept 2011]).

The court also has authority to attach the property at issue which is located in California. "[A] court with personal jurisdiction over a nondomiciliary present in New York has jurisdiction over that individual's tangible or intangible property, even if the situs of the property is outside of New York" (*Hotel 71 Mezz Lender LLC v Falor*, 14 NY3d at 312). Conversely, "where personal jurisdiction is lacking, a New York court cannot attach property not within its jurisdiction" (*Koehler*

v Bank of Bermuda Ltd., 12 NY3d 533, 538 [2009]).

However, the Bank has failed to demonstrate that this court has authority to attach the properties located in Russia, as the Bank acknowledged during oral argument on this motion (*see* oral argument Aug. 4, 2016 tr at 59, lines 10-14)[2].

The record, at this preliminary stage, demonstrates that Igor Mavlyanov acted with the actual intent to hinder, delay and defraud the Bank, or may be deemed to have acted with such intent, when he transferred the New York and California properties.

Section 276 of the DCL provides that "[e]very conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed by law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors."

Thus, if such actual intent is shown, then the transfer is fraudulent and avoidable, regardless of whether fair consideration was paid or the debtor remained solvent after the transfer (*see Pashaian v Eccelstan Props. Ltd.*, 88 F3d 77, 86 [2d Cir 1996] [applying New York law]; DCL § 276).

Section 278 (1) of the DCL similarly provides:

> "1. Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser,
>
> a. Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or
>
> b. Disregard the conveyance and attach or levy execution upon the property conveyed"

---

[2]Pursuant to preliminary conference order dated September 15, 2016, this court stayed discovery on the Russian properties, until rulings are made on the pending motions to dismiss, including the cross motion decided here.

(DCL § 278 [1]).

Inasmuch as an actual intent to hinder, delay, or defraud creditors is difficult to prove, "the pleader is allowed to rely on 'badges of fraud' to support his case, i.e., circumstances so commonly associated with fraudulent transfers that their presence gives rise to an inference of intent" (*Wall St. Assocs. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999] [internal quotation marks and citations omitted]).

Badges of fraud identified by the courts include:

> "(1) the close relationship among the parties to the transaction, (2) the inadequacy of the consideration, (3) the transferor's knowledge of the creditor's claims, or claims so likely to arise as to be certain, and the transferor's inability to pay them, and (4) the retention of control of property by the transferor after the conveyance"

(*Dempster v Overview Equities, Inc.*, 4 AD3d 495, 498 [2d Dept 2004]; *see In re Kaiser, Debtor*, 722 F2d 1574, 1582-1583 [2d Cir 1983]; *Mineola Ford Sales v Rapp*, 242 AD2d 371, 371-372 [2d Dept 1997]; 30 NY Jur 2d § 338).

At this preliminary juncture, the record indicates that the transfers of the California and New York properties by Igor Mavlyanov and among defendants demonstrate the badges of fraud, and give rise to a clear inference of Igor Mavlyanov's intent to defraud the Bank.

The real property located at 18000 Boris Drive in Encino, California (Boris Drive property) was purchased by Igor Mavlyanov and Stella Mavlyanova on September 21, 2006. The Bowmont Drive property was purchased by Igor Mavlyanov and Stella Mavlyanova on September 6, 2005 for $1.7 million.

On October 10, 2013 and on October 23, 2013, after Igor Mavlyanov executed the July guarantee and just prior to executing the October guarantee, Stella Mavlyanova entered into an

InterSpousal Transfer Grant Deeds conveying her interests in the Boris Drive and Bowmont Drive properties to Igor Mavlyanov.

Contrary to Igor Mavlyanov's contention, the property transfer need not have occurred after the Yashma's default for it to be fraudulent. The Bank became a creditor upon Igor Mavlyanov's execution of the guarantees (*see* DCL §§ 270, 276).

On October 23, 2013, Igor Mavlyanov sold the Boris Drive property for approximately $932,000 to Boris LLC. Boris LLC had been formed pursuant to California law on August 28, 2013 by Igor Mavlyanov for the purpose of owning the Boris Drive property, and was solely owned by nonparty Robert Martirosyan, Igor Mavlyanov's business associate, in October 2013 (*see* Ilio Mavlyanov aff ¶ 15).

On October 23, 2013, Igor Mavlyanov sold the Bowmont Drive property for approximately $2,440,000 to Bowman LLC, then owned by Martirosyan or his company, nonparty Kolenar, Inc. Bowman LLC had been formed under California law by Igor Mavlyanov on August 28, 2013 for the purpose of owning the Bowmont Drive property.

Ilio Mavlyanov acted in New York as his parents' agent on the transfers.

On June 15, 2015, Martirosyan caused Kolenar to transfer its interest in Boris LLC to nonparty Jasper California LLC (Jasper California), a company owned by Ilio Mavlyanov, in exchange for a $650,000 unsecured promissory note which requires no payments of principal or interest until its December 31, 2017 maturity date (*see id.*, ¶¶ 17, 23; Jasper California amended unsecured promissory note payable to Kolenar).

On March 17, 2015, Martirosyan caused Kolenar to transfer full ownership of Bowman LLC to Ilio Mavlyanov's company, Jasper California (*see* Ilio Mavlyanov aff at ¶¶ 27-30), in exchange

for a $4 million unsecured promissory note which requires no payments of principal or interest until March 31, 2018, the note's maturity date (*see id.*, ¶ 27; Jasper California promissory note payable to Kolenar). By March 17, 2015, Ilio Mavlyanov acquired ownership of Bowman LLC (*see* Ilio Mavlyanov aff ¶ 27).

Igor Mavlyanov admits that, at the time of the transfers of the Boris Drive and Bowmont Drive properties, he was attempting to "quickly and easily sell the Boris and Bowmont Properties . . . for cash" (Igor Mavlyanov aff ¶ 37).

The record includes evidence that these companies and individuals were connected, from their creation. Boris LLC's original registered mailing address, 85-93 66th Avenue, Queens, NY 11374, is the same address used by Igor Mavlyanov's company, Igor Trading, 11th Street LLC, and Ilio Mavlyanov's company, Jasper LLC. Bowman LLC also used that address as its original registered mailing address.

In addition, nonparty Eric Bukhman, the Jasper Venture financial controller, had been affiliated in 2013 with nonparty Citi Development Enterprises, LLC (Citi Development), a real estate development company formed by another of Igor Mavlyanov's business associates, nonparty Pyotr Yadgarov. On August 8, 2013, Bukhman, in his dual capacities as manager of both Boris LLC and of Bowman LLC, executed each company's operating agreement. Martirosyan, as the sole member of Boris LLC and Bowman LLC also signed the operating agreements.

On October 23, 2013, Bukhman, on behalf of Boris LLC, signed the preliminary change of ownership report for the transfer of the Boris Drive property to Jasper California. On that date as well, Bukhman, on behalf of Bowmont LLC, signed a preliminary change of ownership report for the Bowmont Drive property. In both documents, Bukhman referenced his Citi Development email

address.

The 119th Street property was purchased for $4.7 million by 119th Street LLC on January 13, 2014. 119th Street LLC had been formed under New York law on June 24, 2013 by Yadgarov, just prior to Igor Mavlyanov's execution of the July guarantee. Yadgarov is Igor Mavlyanov's business associate, 119th Street LLC's sole member in 2013, and a Citi Development principal.

Significantly, while Igor Mavlyanov attests that he has never held any ownership interest in 119th Street LLC, the 119th Street property, or Jasper LLC (*see* Igor Mavlyanov aff ¶¶ 50, 51), the record demonstrates that he contributed more than $1.3 million of his own funds to 119th Street LLC's purchase of that property (*see* 119th St. LLC wire transfer, Jan. 13, 2014; 119th St. property closing statement, Jan. 13, 2014; Pyotr Yadgarov Jan. 16, 2017 aff ¶¶ 6, 7). The record also demonstrates that the $1.3 million loan was part of a $3 million loan made by Igor Mavlyanov to 119th Street LLC on July 31, 2013 (*see* Yadgarov aff ¶ 6, 7; JPMorgan Chase wire transfer, Jul. 31, 2013).

A creditor may attach property or funds fraudulently conveyed to a business entity or a friend or relative of the debtor in order to shield that asset from the creditor. A fraudulent conveyance may consist of the payment of money or the placing of assets in another's name (*see Matter of CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 302 [1st Dept 2006]; *see* DCL § 270). The corporate veil maybe pierced, and a limited liability company or other corporate entity is liable for the debts of the entity's owners, if the entity's owners dominated and controlled the entity, and used that control to shield assets from creditors (*see Colonial Sur. Co. v Lakeview Advisors, LLC*, 93 AD3d 1253, 1255 [4th Dept 2012]).

On April 1, 2015, 119th Street LLC and Yadgarov transferred 100% of their ownership

interests in 119th Street property to Ilio Mavlyanov, in exchange for Ilio Mavlyanov's assumption of the mortgage debt on that property and agreement to fund the gut renovation of the entire apartment building at that property (*see* 119th Street LLC Membership Interest Purchase Agreement §§ 1, 3, 4, 13).

The address originally listed for 119th Street LLC is the same as the address registered to Citi Development and nonparty I.G.O.R. Trading Corp. (IGOR Trading), a company owned by Igor Mavlyanov. On November 28, 2014, 119th Street LLC changed its registered address to the same address as that listed by the other companies affiliated with Igor Mavlyanov and Ilio Mavlyanov. On April 7, 2015, one week after the transfer of Yadgarov's interest to Ilio Mavlyanov, Igor Mavlyanov dissolved IGOR Trading.

Here again, Bukhman, the Jasper LLC employee who was affiliated with Citi Development in 2013, was involved in the purchase of the 119th Street property, in addition to Igor Mavlyanov's transfers of the Boris Drive and Bowmont Drive properties.

In addition, the evidentiary record demonstrates the existence of other associations among Igor Mavlyanov, Yadgarov, Citi Development, and another company once owned by Yadgarov, nonparty Auberge Grand Central LLC (Auberge). Igor Mavlyanov loaned funds to Citi Development in 2012 and 2013 and to Auberge in 2012 (*see* chart of loans; Citi Development December 2010 bank statement; Auberge July 2012 bank statement). On December 30, 2015, Yadgarov, nonparty Mark Yadgarov, Igor Mavlyanov, and Ilio Mavlyanov, as members of Auberge, executed a Compromise and Settlement Agreement. On that date as well, Mark Yadgarov and Ilio Mavlyanov executed an Assignment of Profit Units of Auberge. The Auberge Compromise and Settlement Agreement reflects the 275 Madison Avenue address used by Igor Mavlyanov, Ilio Mavlyanov, and

the defendant limited liability companies.

The Fresh Meadows property was purchased by Igor Mavlyanov and Stella Mavlyanova on August 2, 1996. On November 25, 2013, after Igor Mavlyanov executed the July and October guarantees, he and Stella Mavlyanova granted a power of attorney with respect to that property to Ilio Mavlyanov. On December 5, 2013, they conveyed the Fresh Meadows property to their son, Hanan Mavlyanov, for no consideration. (*See* Hanan Mavlyanov Jun. 28, 2016 aff ¶¶ 10, 11, 14; Stella Mavlyanova Jun. 27, 2016 aff ¶¶ 13, 14.) On November 23, 2013, that property was appraised at $900,000 (*see* POPP Appraisals Inc. appraisal report, Nov. 23, 2013).

Defendants disagree as to certain aspects of the Fresh Meadows property and its transfer. Igor Mavlyanov refers to the Fresh Meadows property as a place to stay in during the first two years after their purchase (*see* Igor Mavlyanov aff ¶ 10), while Stella Mavlyanova refers to it as their "marital home" (*see* Stella Mavlyanova aff ¶ 14). Hanan Mavlyanov admits that his parents gave him the property as a gift because he had been raised there, but also attests that he lives in Manhattan (*see* Hanan Mavlyanov Jun. 28, 2016 aff ¶ 10; Hanan Mavlyanov Jun. 15, 2016 aff ¶ 3).

In addition, while Igor Mavlyanov, Stella Mavlyanova, and Hanan Mavlyanov repeatedly refer to the transfer as a valid gift, there is no objective documentation in the record demonstrating that the transfer was a gift for tax purposes.

Igor Mavlyanov also transferred to Hanan Mavlyanov, for no consideration, his ownership interest in Ilio Trans, a company that he founded in June 1996. Ilio Trans derives income from its ownership of two taxi medallions that it leases to drivers (*see* Igor Mavlyanov aff ¶ 49). Hanan Mavlyanov attests that Igor Mavlyanov transferred Ilio Trans to him as a gift on April 17, 2015, after the New York City Taxi & Limousine Commission approved that transfer (*see* Hanan Mavlyanov

Jun. 28, 2016 aff ¶¶ 24-25). He also attests that, after acquiring the company, he obtained financing by collateralizing his shares, and is using the income derived from the medallions to repay the loan (*see id.* at ¶ 25).

However, information on file with the New York State Department of State, Division of Corporations, demonstrates that Igor Mavlyanov remained Ilio Trans' sole director, shareholder, and principal executive officer through April 7, 2016.

The Bank seeks to attach the bank accounts maintained by Igor Mavlyanov, Jasper LLC, 119th Street LLC, Boris LLC, and Bowman LLC in the United States.

Igor Mavlyanov does not oppose this branch of the motion.

In opposition, the Rheem Bell defendants contend that the Bank has failed to identify a single bank account or bank transfer that could have been involved in the alleged fraud, and has failed to allege any basis for this branch of the motion. Contrary to the Rheem Bell defendants' contention, no asset, including a bank account, must be specifically identified, in order for an order of attachment to issue (*see In re Hypnotic Taxi LLC [Bombshell Taxi LLC]*, 543 BR 365, 384 [Bankr ED NY 2016] [applying New York law]).

As discussed in detail above, and contrary to defendants' repeated and strenuous contentions, sufficient badges of fraud exist with regard to those transfers from which Igor Mavlyanov's intent to defraud the Bank is inferred. In summary, the documentary record demonstrates that, shortly after execution of one or both of the personal guarantees, or shortly before Yashma's default, Igor Mavlyanov divested himself of each of his United States real property interests and interests in the defendant LLCs and Ilio Trans by transferring them to family, friends, or businesses in which he, or members of his family, retained or soon purchased interests.

Therefore, the branches of the motion to attach those properties and interests are granted.

The branch of the motion to attach certain real property located in Russia is denied as moot as the amended complaint no longer seeks to attach the real property located in Russia. See Letter from Susan F. DiCicco, dated May 25, 2017 ("Plaintiff amended the complaint to drop claims concerning the Russian Properties.")[3]

Turning to the Bank's claims of statutory violations, the Bank seeks to hold Igor Mavlyanov's real property transfers as fraudulent, pursuant to DCL §§ 272, 273, and 275.

In opposition, Igor Mavlyanov contends that the Bank cannot succeed on its claims asserted under DCL §§ 273 and 275 because it failed to demonstrate that he was insolvent at the time that any of the transfers were made, that he was rendered insolvent as a result of the transfers, or that the transfers were made in bad faith.

Igor Mavlyanov's transfers of his property and ownership interests to family members and related entities made as gifts without consideration are fraudulent conveyances, as defined by DCL §§ 272, 273, and 275. In addition, Igor Mavlyanov's transfers of his interests for consideration are fraudulent conveyances, where the circumstances surrounding the transfers demonstrate a lack of good faith.

Section 273 of the DCL provides that "[e]very conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without

---

[3]In any event, the claim would still be dismissed. The Bank contends that Igor Mavlyanov improperly ensured that his Russian assets were beyond the reach of the Bank by transferring his interests in seven real properties located in Russia to Stella Mavlyanova in April and May 2015, just prior to Yashma's June 15, 2015 default. As discussed above, the Bank has failed to demonstrate that this court has authority to attach the properties located in Russia, as the Bank acknowledged during oral argument on this motion held on August 4, 2016 (*see* oral argument tr at 59, lines 10-14).

regard to his actual intent if the conveyance is made or the obligation is incurred without fair consideration."

Section 275 of the DCL provides that "[e]very conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors."

Fair consideration requires both an exchange of fair value and good faith on the part of the transferor and the transferee, pursuant to DCL § 272. That section provides, in relevant part, that:

> "a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or
>
> b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property, or obligation obtained"

(DCL § 272).

> "In New York, 'fair consideration' is defined in the Debtor and Creditor Law as an exchange of equivalent value coupled with 'good faith' on the part of both the purchaser and the seller . . . Under New York law, a transaction is void for lack of 'good faith' when one or more of the following factors is lacking: (1) an honest belief in the propriety of the activities in question; (2) no intent to take unconscionable advantage of others; and (3) no intent to, or knowledge of the fact that the activities in question will hinder, delay, or defraud others. The term 'good faith' does not merely mean the opposite of the phrase 'actual intent to defraud'"

(*Computerland Corp. v Batac, Inc.*, 750 F Supp 97, 98 [SD NY 1990] [internal citations omitted] [applying New York law] [finding "suspiciously close relationship" between defendant corporation and transferee evidences lack of good faith]; *Matter of CIT Group/Commercial Servs., Inc. v 160-09*

Jamaica Ave. Ltd. Partnership, 25 AD3d at 303).

The transfers between Igor Mavlyanov and his business entities, and his immediate family members, Stella Mavlyanova, Hanan Mavlyanov, and Ilio Mavlyanov, and/or their business entities, made for no consideration, give rise to an inference that they were not made in good faith (*see Laco X-Ray Sys., Inc. v Fingerhut*, 88 AD2d 425, 432-433 [2d Dept 1982] [finding that transfers between two nominal business entities controlled by defendant raise inference of lack of consideration]; *Matter of Mega Personal Lines, Inc. v Halton*, 9 AD3d 553, 555 [3d Dept 2004] [finding that "transfer of corporate assets either directly to the insider or to an entity controlled by the insider" establishes lack of good faith and, thus, lack of fair consideration]; *United States v Alfano*, 34 F Supp 2d 827, 845 [ED NY 1999] [applying new York law] [finding that "(c)ourts view intrafamily transfers made without any signs of tangible consideration as presumptively fraudulent"]).

In the context of demonstrating the existence of fraudulent conveyances for purposes of the DCL, the Bank contends that Boris LLC, Bowman LLC, 119th Street LLC, and Jasper LLC are the instrumentalities and alter egos of Igor Mavlyanov and Ilio Mavlyanov, and were used by Igor Mavlyanov to shelter his assets from the reach of his creditors, including the Bank.

In opposition, Igor Mavlyanov contends that the Bank's allegations in support of the alter ego claim are baseless, conclusory, insufficient as a matter of law, or squarely rebutted by his attestations that he had no ownership interest in, or control over, any of the entities to which the subject properties were sold, or any other entity that the Bank has attempted to implicate in its fictitious fraudulent scheme.

In opposition, the Rheem Bell defendants contend that the transfers by Igor Mavlyanov to them were not fraudulent, and that the defendant LLCs are not the alter egos of either Igor

Mavlyanov or Ilio Mavlyanov.

Pursuant to New York law, courts will disregard the corporate form in order to achieve equity, to prevent fraud, or to prevent the improper avoidance of a corporate obligation (*Wm. Passalacqua Bldrs., Inc. v Resnick Devs. S., Inc.*, 933 F2d 131, 138-139 [2d Cir 1991] [applying New York law]; *Walkovszky v Carlton*, 18 NY2d 414, 417-418 [1966]). Additionally, "[w]hen a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego" (*Austin Powder Co. v McCullough*, 216 AD2d 825, 827 [3d Dept 1995]).

Generally, a plaintiff seeking to pierce the corporate veil must show that: "(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*Matter of Morris v New York State of Dept. of Taxation & Fin.*, 82 NY2d 135, 141 [1993]). Further, "[a] plaintiff is not required to plead or prove actual fraud in order to pierce the corporate defendant's corporate veil; but [must prove] only that the individual defendant's control of the corporate defendant was used to perpetrate a wrongful or unjust act toward plaintiff" (*Rotella v Derner*, 283 AD2d 1026, 1026 [4th Dept 2001] [internal citation and quotation marks omitted]). Ultimately, a determination of whether an owner is a corporation's alter ego turns on the specific facts and equities of the case (*Matter of Morris v New York State of Dept. of Taxation & Fin.*, 82 NY2d at 141; *Gateway I Group, Inc. v Park Ave. Physicians, P.C.*, 62 AD3d 141, 146 [2d Dept 2009]).

> "Indicia of a situation warranting veil-piercing include: '(1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, *i.e.*, issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate

> capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms['] length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own'"

(*Shisgal v Brown*, 21 AD3d 845, 848-849 [1st Dept 2005], quoting *Wm. Passalacqua Bldrs., Inc. v Resnick Devs. S., Inc.*, 933 F2d at 139). Conclusory allegations and statements made upon information and belief are insufficient to support an alter ego claim (*Pine St. Homeowners Assn. v 20 Pine St. LLC*, 109 AD3d 733, 735 [1st Dept 2013]).

A limited liability company or other corporate entity is liable for the debts of the entity's owners, if the owners (1) dominated and controlled the entity, and (2) used that control to hide assets from creditors (*see Colonial Sur. Co. v Lakeview Advisors, LLC*, 93 AD3d at 1255-1256).

As detailed above, at this preliminary juncture, the record includes evidence that Igor Mavlyanov and Ilio Mavlyanov created, and used, the defendant LLCs as instrumentalities with which to transfer assets away from Igor Mavlyanov, and in so doing, shelter them from the reach of his creditors.

Preliminary Injunction:

The Bank contends that it is entitled to a preliminary injunction restraining Igor Mavlyanov and the Rheem Bell defendants from transferring or otherwise encumbering the properties and assets at issue here, in order to maintain the status quo.

In opposition, Igor Mavlyanov contends that injunctive relief is not appropriate because

essential facts are in sharp dispute, and because the Bank seeks to enforce money judgments issued by a court in a foreign country.

In opposition, the Rheem Bell defendants contend that the Bank cannot show a likelihood of success on the merits: because the Boris Drive, Bowmont Drive, and West 56th Street properties were each purchased for fair consideration; the transfers of the Fresh Meadows property and Ilio Trans were legitimate gifts; the West 119th Street property transfer was an arm's-length transaction; and the Russian properties were transferred pursuant to court order issued in the Moscow divorce action.

To demonstrate entitlement to a preliminary injunction directing a party to perform a particular act or requiring a party to refrain from certain behavior, the plaintiff must demonstrate by clear and convincing evidence that it is likely to succeed on the merits of the claim, that absent an injunction, it will suffer irreparable injury that cannot be compensated by money damages, and that the equities weigh decidedly in favor of the plaintiff (*W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981]; *Chernoff Diamond & Co. v Fitzmaurice, Inc.*, 234 AD2d 200, 201 [1st Dept 1996]; *see* CPLR 6301). The decision to grant or deny a demand for a preliminary injunction lies within the sound discretion of the court (*Zoller v HSBC Mtge. Corp. (USA)*, 135 AD3d 932, 933 [2d Dept 2016]).

For the reasons discussed above, the Bank has demonstrated a likelihood of success on the merits in this action, and the necessity of preventing the dissipation of assets. A plaintiff need only submit evidence sufficient to demonstrate a prima facie showing of a right to relief (*Terrell v Terrell*, 279 AD2d 301, 303 [1st Dept 2001]). Further, "[w]here . . . the denial of injunctive relief would render the final judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be reduced" (*State v City of New York*, 275 AD2d 740,

741 [2d Dept 2000]). Where the "plaintiff . . . merely seeks to maintain the status quo with the injunctive relief, since denial thereof would render any final judgment ineffectual . . . a likelihood of success can be found even where certain facts are in dispute" (*Board of Mgrs. of the 235 E. 22nd St. Condo. v Lavy Corp.*, 233 AD2d 158, 161 [1st Dept 1996]).

Thus, injunctive relief is appropriate in a fraudulent conveyance action to maintain the status quo by ensuring that the debtor does not further dissipate or dispose of the assets (*see Trafalgar Power, Inc. v Aetna Life Ins. Co.*, 131 F Supp 2d 341, 350 [ND NY 2001] [applying New York law]). As discussed above, the Bank does not seek to enforce a money judgment issued by a foreign country, but, instead, seeks to attach certain property and restrain defendants from transferring certain property on the grounds of fraudulent conveyance and violations of the DCL.

The Bank has demonstrated that it will suffer immediate and irreparable harm, absent the injunctive relief sought.

Irreparable harm exists where, "but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied" (*Brenntag Intl. Chems., Inc. v Bank of India*, 175 F3d 245, 249 [2d Cir 1999] [internal citations omitted] [applying New York law]). As discussed above, the Bank has demonstrated that it will be irreparably harmed by defendants' uncontrolled transfer of the subject assets, rendering any judgment that it may receive here unenforceable.

The Bank has demonstrated that a balance of equities weighs in its favor. There is no dispute that Igor Mavlyanov executed two personal guaranties of Yashma's loan payment obligations to the Bank, Yashma defaulted on both loans, judgments were issued against Igor Mavlyanov in the Moscow debtor/creditor actions, and he transferred real property and other assets in New York and

California to the Rheem Bell defendants under circumstances making it appear that he did so to shield them from the Bank's reach and to render uncollectible any judgment issued here.

Therefore, the branch of the Bank's motion for injunctive relief against the defendants is granted.

Expedited Discovery:

Last, that branch of the Bank's motion, pursuant to CPLR 3103, 3106 (a), and 3107, for expedited discovery in advance of oral argument on the order to show cause is denied as moot. The court has broad discretion to control discovery and disclosure (*see J.G. v Zachman*, 34 AD3d 1277, 1278 [4th Dept 2006]). That hearing has been held, and the Bank has commenced discovery with service of document demands and subpoenas on defendants and nonparties.

CROSS MOTION

The Rheem Bell defendants cross-move, pursuant to CPLR 3211 (a) (1), (a) (4), and (a) (8), for an order dismissing the complaint asserted against Stella Mavlyanova for lack of personal jurisdiction, dismissing all causes of action relating to the subject properties located in Russia, dismissing the complaint asserted against Boris LLC, Bowman LLC, and Jasper LLC, and dismissing all causes of action relating to the subject properties located in California.

Personal Jurisdiction:

That branch of the cross motion to the complaint asserted against Stella Mavlyanova for lack of personal jurisdiction is denied as moot.

By order dated August 30, 2016, and entered September 14, 2016, this court granted the Bank's motion for approval of alternative service, and directed, pursuant to CPLR 308 (5), that alternative service may be made upon Stella Mavlyanova. As discussed above, alternative service

upon an individual may be made by any method designed to provide notice to the defendant of the lawsuit, upon a showing that the plaintiff made reasonable efforts to serve the defendant through traditional means (*see Baidoo v Blood-Dzraku*, 48 Misc 3d at 314-315).

Russian Properties:

That branch of the cross motion to dismiss the claims of fraudulent conveyance of the Russian properties asserted against Stella Mavlyanova is denied as moot and dismissed with prejudice (*see* Letter from Susan F. DiCicco, dated May 25, 2017 ("The CPLR 3211(a)(1) portion of the cross-motion was rendered moot when Plaintiff amended the complaint to drop claims concerning the Russian Properties"); June 6, 2017, Tr., at p. 3 (plaintiff concedes that the claims against the Russian Properties are withdrawn with prejudice as to any action within the United States)).

Another Action Pending:

That branch of the cross motion, pursuant to CPLR 3211 (a) (4), to dismiss all claims asserted against Boris LLC and Bowman LLC is denied.

In order to avoid duplicative litigation and the possibility of inconsistent judgments, the court may, in its discretion, dismiss an action or claim where there is pending another action between substantially the same parties, which arises out of the same transaction, and involves the same causes of action (*see Whitney v Whitney*, 57 NY2d 731, 732 [1982]; *Jadron v 10 Leonard St., LLC*, 124 AD3d 842, 843 [2d Dept 2015]; CPLR 3211 [a] [4]). Alternatively, the court may stay the action, pending resolution of the other matter (*see Goodridge v Fernandez*, 121 AD2d 942, 945 [1st Dept 1986]; *see* CPLR 2201).

On June 21, 2016, the Bank commenced the California action against defendants here and

nonparties Jasper Partner Inc. and Jasper California LLC in which it alleges violations of California Civil Code § 3439, the California Uniform Fraudulent Transfer Act (*see JSC VTB Bank v Mavlyanov*, Superior Court, Los Angeles County, Calif., Case No. BC624195).

The Bank commenced the action at bar approximately six weeks earlier, on May 9, 2016.

Dismissal pursuant to CPLR 3211 (a) (4) generally requires that the other action between the parties be commenced prior to the action at bar (*see National Union Fire Ins. Co. of Pittsburgh, PA. v Jordache Enters.*, 205 AD2d 341, 343-344 [1st Dept 1994]). However, the mere fact that the action at bar was commenced prior to commencement of the California action is not fatal, because both actions were commenced reasonably close in time (*see id.*; *AIG Fin. Prods. Corp. v Penncara Energy, LLC*, 83 AD3d 495, 496 [1st Dept 2011]).

More significant is the lack of identity between the causes of action asserted in the actions. In the California action, the Bank seeks relief under the California Civil Code, while, here, it seeks relief under the New York DCL. In the California action, the Bank filed notices of pendency against the California properties, while, here, it filed notices of pendency against the New York properties.

For that reason, that branch of the cross motion to dismiss pursuant to CPLR 3211 (a) (4) is denied.

Undertaking

A hearing was conducted on June 6th, 2017 to determine the amount of the undertaking (*see Spivak v. Bertrand*, 147 AD3d 650 [1st Dept. 2017]). The parties did not call any witnesses (June 6, 2017, Tr. at p. 4). Instead, argument was held on their letter submissions to the Court dated June 5, 2017.

CPLR 6212(b) provides that "plaintiff shall pay to the defendant all costs and damages,

including reasonable attorney's fees, which may be sustained by reason of the attachment, if the defendant recovers judgment or it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property ..."

Before granting a preliminary injunction, the movant must give an undertaking in an amount fixed by the court (CPLR 6311). "The fixing of the amount of an undertaking is a matter within the sound discretion of the court, and will not be disturbed absent an improvident exercise of discretion" *(Lelekakis v. Kamamis*, 303 A.D.2d 380 [2d Dept., 2003]). It is well settled that the amount must be rationally related to defendants' potential damages if the preliminary injunction later proves to have been unwarranted *(Madison/Fifth Associates LLC v. 1841-1843 Ocean Parkway, LLC*, 50 A.D.3d 533, 534 [1st Dept., 2008]).

"It is improper to require, as a condition of a preliminary injunction, an undertaking in an amount which would result in a denial of the relief to which the plaintiffs show themselves to be entitled" (67 N.Y.Jur.2d Injunctions 172, citing *Zonghetti v. Jeromack*, 150 A.D.2d 561 (holding that plaintiffs were required to post only $100,000 undertaking as prerequisite to granting injunctive relief, not $740,000 undertaking originally required by trial court); *see also Modugno v. Merritt-Chapman Scott Corp.*, 17 Misc.2d 679 [Sup. Ct., Special Term, Queens Cty., 1959], and *Barouh Eaton Allen Corp. v. International Business Machines Corp.*, 1980 WL 4693 [Sup. Ct., Special Term, Kings Cty., 1980]). On the other hand, the amount of the bond must not be insufficient *(Weitzen v. 130 E. 65th St. Sponsor Corp.*, 86 A.D.2d 511 [1st Dept., 1982]).

Two properties that are subject to the attachment order and preliminary injunction are of primary concern. First, with respect to the 119th Street property defendants have not been able to obtain permanent financing. The tittle company will not issue a mortgage policy due to the lis

pendens and this litigation. The loan term has expired and defendants are in default. Second, Pacific Premier Bank will not extend the loan on the 2710 Bowmont property because of the lis pendens and litigation.

Defendants state that without permanent financing the properties will end up in foreclosure. Plaintiff responds that the damages, if any, do not flow from the order of attachment as the default on the 119th Street property occurred prior to the issuance of the order. The 2710 Bowmont property has issues with title and it is speculative to assume that the property will be lost.

This argument ignores the fact that the Court's temporary restraining order restrained both the 119th Street and 2710 Bowmont properties with carve outs permitting defendants to obtain permanent financing for the properties. These carve outs were made because defendants needed to obtain permanent financing. Defendants have been unsuccessful in their attempts to procure financing. Similarly, there is a reasonable possibility that the order of attachment will have a chilling effect on defendants' ability to secure permanent financing for the 119th Street and 2710 Bowmont properties. This may result in foreclosure.

The court finds that a $25 million undertaking, inclusive of appreciation and attorneys' fees is the sum that is rationally related to defendants' potential damages.[4]

Accordingly,

WHEREAS, it appearing that Plaintiff is entitled to an Order of Attachment against certain property now held by certain Defendants identified below for the sum of $33,850,339, which

---

[4]This figure is based on plaintiff's 2013 appraisal that valued the properties at $23.5 million (June 6, 2017, Tr. at p. 39). In a subsequent email dated June 7, 2017, plaintiff requests that an undertaking be given in the amount of $10,071,428. However, this does not account for the actual value of the 2710 Bowmont Drive property.

represents the total amounts of the Russian judgments issued against Igor Mavlyanov plus interest, costs of this action, and Sheriff's fees and expenses for a total sum to be secured by this Order of Attachment;

NOW, on the application of Plaintiff, it is

ORDERED that the motion by plaintiff JSC VTB Bank (f/k/a OPJSC VTB Bank and PJSC VTB Bank) is granted to the extent that an order of attachment and a preliminary injunction are granted, and it is further

ORDERED, that Plaintiff's undertaking be and the same hereby is fixed in the sum of $25,000,000, upon which sum it is conditioned that Plaintiff will pay to Defendants all costs and damages which may be sustained by reason of the attachment and/or preliminary injunction if Defendants recover judgment or it is finally determined that Plaintiff was not entitled to an attachment and/or preliminary injunction of Defendants' property, and the balance thereof is conditioned that Plaintiff will pay to the Sheriff all of his or her allowable fees, and it is further

ORDERED, that the Temporary Restraining Order issued by this Court on May 10, 2016 shall be dissolved upon Plaintiff paying the undertaking to the Court, and it is further

ORDERED that as to defendant IGOR MAVLYANOV, the Sheriff of the City of New York or of any county in the State of New York attach any real or personal property of IGOR MAVLYANOV, within his or her jurisdiction, at any time before final judgment, by preliminary levy upon any of the property interests of defendant IGOR MAVLYANOV, to preserve them for eventual execution, as will satisfy the aforementioned sum of $33,850,339, to answer any judgment that may be obtained against Defendants in this action, and that he or she proceed herein, otherwise, in a manner required by law, and it is further

ORDERED that as to defendant ILIO MAVLYANOV, the Sheriff of the City of New York or of any county in the State of New York attach (a) the real property of ILIO MAVLYANOV, limited to 364 West 119th Street, New York, New York; 75-62 186th Street, Fresh Meadows, NY; 1800 Boris Drive, Encino, CA; and 2710 Bowmont Drive, Beverly Hills, CA, and (b) defendant ILIO MAVLYANOV'S stock or membership interests, if any, limited to, 18016 Boris Properties, LLC, 2710 Bowman, LLC, 364 West 119th Street Realty LLC, within his or her jurisdiction, at any time before final judgment, by preliminary levy upon any of the aforementioned property interests of defendant Ilio Mavlyanov, to preserve them for eventual execution, as will satisfy the aforementioned sum of $33,850,339, to answer any judgment that may be obtained against Defendants in this action, and that he or she proceed herein, otherwise, in a manner required by law, and it is further

ORDERED that as to defendant HANAN MAVLYANOV, the Sheriff of the City of New York or of any county in the State of New York attach (a) the real property of HANAN MAVLYANOV, limited to 75-62 186th Street, Fresh Meadows, NY, and (b) defendant HANAN MAVLYANOV'S stock or membership interests limited to Ilio Trans, Inc., within his or her jurisdiction, at any time before final judgment, by preliminary levy upon any of the aforementioned property interests of defendant HANAN MAVLYANOV, as will satisfy the aforementioned sum of $33,850,339, to answer any judgment that may be obtained against Defendants in this action, and that he or she proceed herein, otherwise, in a manner required by law, and it is further

ORDERED that as to the defendants 18016 Boris Properties, LLC; 2710 Bowman, LLC; 364 West 119th Street Realty LLC (each referred to here as a "LLC DEFENDANT"), the Sheriff of the City of New York or of any county in the State of New York attach any real property of each LLC

DEFENDANT, limited to 364 West 119th Street, New York, New York; 75-62 186th Street, Fresh Meadows, NY; 1800 Boris Drive, Encino, CA; and 2710 Bowmont Drive, Beverly Hills, CA, within his or her jurisdiction, at any time before final judgment, by preliminary levy of the aforementioned property interests of each LLC DEFENDANT, as will satisfy the aforementioned sum of $33,850,339, to answer any judgment that may be obtained against Defendants in this action, and that he or she proceed herein, otherwise, in a manner required by law, and it is further

ORDERED, that notwithstanding the aforementioned, the Defendants and following properties shall be exempt from the attachment and preliminary injunction to the following extent:

(i) Ilio Mavlyanov and 364 W. 119th Street Realty LLC for the purposes of obtaining permanent and/or replacement financing on 364 W. 119th Street, New York, NY property; and

(ii) Ilio Mavlyanov and 2710 Bowman LLC for the purposes of (a) continuing to draw down on the construction loan on 2710 Bowmont Drive, Beverly Hills, CA; (b) extending or obtaining new construction loan to replace the existing loan before it expires; and (c) obtaining permanent and/or replacement financing on 2710 Bowmont Drive, Beverly Hills, CA.

(iii) The personal property of 18016 Boris Properties, LLC, 2710 Bowman LLC, 364 West 119th Street Realty, LLC, Jasper Venture Group LLC, Jasper Partner Inc., and Jasper California LLC, so that they can be utilized to pay for the carrying charges required to continue to operate these entities in the ordinary course of business, and to the extent applicable, service and maintain the real properties each controls, and it is further

ORDERED that nothing herein prevents Plaintiff from moving before the California Court for attachment of the real properties located at 1800 Boris Drive, Encino, CA; and 2710 Bowmont Drive, Beverly Hills, CA and/or the membership interests of 18016 Boris Properties, LLC, 2710 Bowman, LLC, Jasper Partner Inc., and Jasper California LLC, and it is further

ORDERED that this order does not serve to separately attach the assets of STELLA MAVLYANOVA, PYOTR YADGAROV, OR ROBERT MARTIROSYAN, and it is further

ORDERED that the cross-motion by defendants Chen Menachem Even and Michal Rebecca Newman Even is denied as moot on the ground that plaintiff has voluntarily discontinued without prejudice all claims asserted against them.

Dated: June 8, 2017
New York, New York

Anil C. Singh