

**Standard Chartered Bank v Ahmad Hamad Al
Gosaibi & Bros. Co.**

2013 NY Slip Op 32312(U)

September 24, 2013

Sup Ct, New York County

Docket Number: 653506/11

Judge: Ellen M. Coin

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ELLEN M. COIN

PART 63

Justice

Index Number : 653506/2011
STANDARD CHARTERED BANK
vs
AHMAD HAMAD AL GOSAIBI AND
Sequence Number : 003
QUASH SUBPOENA

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2

Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion is

**MOTION AND CROSS-MOTION(S) ARE
DECIDED IN ACCORDANCE WITH ANNEXED
DECISION AND ORDER.**

*This constitutes the decision and order
of the Court*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 9/24/13

Ellen, J.S.C.

HON. ELLEN M. COIN

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 63

-----X

STANDARD CHARTERED BANK,

Plaintiff-Judgment Creditor,

-against-

Index No. 653506/11

AHMAD HAMAD AL GOSAIBI AND BROTHERS
COMPANY, DAWUD SULEIMAN HAMAD AL GOSAIBI,
Wafa Suleiman Hamad Al Gosaibi, Wasal
Suleiman Hamad Al Gosaibi, Yousef Hamad
Al Gosaibi, Abdoulmohsin Ahmed Al
Gosaibi, Samiha Ahmed Al Gosaibi,
Ibtisam Ahmed Al Gosaibi, Intisar Ahmed
Al Gosaibi, Bahiya Abdoullah Al Gosaibi,
Saaud Abdoulaziz, Najat Abdoulaziz Al
Gosaibi, Siham Abdoulaziz Al Gosaibi,
Suaad Abdoulaziz Al Gosaibi, Sahar
Abdoulaziz Al Gosaibi, Samah Abdoulaziz
Al Gosaibi, Yasmin Mohammed Diaudin
Kunch, Walid Khalid Ahmed Hamad Al
Gosaibi, Abdourahman Khalid Ahmed Hamad
Al Gosaibi, and Dana Khalid Ahmed Hamad
Al Gosaibi,

Defendants-Judgment Debtors.

-----X
ELLEN M. COIN, A.J.S.C.:

Defendant-judgment debtors (Debtors) move, pursuant to CPLR 2304, for an order quashing plaintiff-judgment creditor's subpoenas duces tecum and information subpoenas with restraining notice. Plaintiff-judgment creditor (Standard Chartered) cross-moves for an order compelling compliance with the subpoenas duces tecum and the information subpoenas, and awarding Standard Chartered costs pursuant to CPLR 5224(a)(3).

Standard Chartered commenced this action, pursuant to CPLR Article 53, in order to register a judgment that it obtained against Debtors in the Bahrain Chamber for Dispute Resolution, a

court in the Kingdom of Bahrain. The facts underlying the action are set forth in this court's December 12, 2012 decision and order, and will be summarized here only as necessary. As the parties agree, the dispositive issue as to the main motion is whether this court has personal jurisdiction over Debtors, pursuant to CPLR 302(a)(1).

CPLR 302(a) provides, in relevant part, that

"As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary...who...

1. transacts any business within the state...."

Accordingly, in order to exercise jurisdiction over Debtors, this court must find that they transacted business in New York, and that Standard Chartered's cause of action in the underlying action arose from such transaction.

It cannot seriously be disputed that Debtors have transacted, and continue to transact, business in New York. Defendant Ahmad Hamad Al Gosaibi and Brothers Company (AHAB), a Saudi Arabian general partnership, of which the individual defendants are general partners, has purposefully used the courts of, and in, this State in multiple instances. In *Mashreqbank PSC v Ahmad Hamad Al Gosaibi & Bros. Co.* (101 AD3d 1 [1st Dept 2012]), AHAB asserted counterclaims against the plaintiff and also commenced a third-party action. In *Ahmad Hamad Al Gosaibi Bros. Co. v Standard Chartered Intl. (USA) Ltd.* (No. 10 Civ 1080 [JSR] [SD NY, petition filed Oct. 25, 2010]), AHAB seeks discovery from four New York banks, pursuant to 28 USC §1782. In *In re Intl. Banking Corp.*

B.S.C. (No. 09-17318 [SMB] [Bankr SD NY filed Dec, 14, 2009]), AHAB appeared in order to oppose the application of the external administrator of The International Banking Corporation, B.S.C. (TIBC) for permission to issue a subpoena for documents pertaining to an AHAB bank account at Bank of America (which AHAB, apparently, does not control), unless AHAB was permitted access to any discovery provided to TIBC. Such affirmative use of the courts satisfies the requirement of transacting business. See *Andrew Greenberg, Inc. v Sirtech Can., Ltd.*, 79 AD3d 1419, 1423 (3d Dept 2010).

The court now turns to the "arising from" prong. In the underlying action in Bahrain, Standard Chartered alleged that it had entered into a currency swap agreement with AHAB, pursuant to which Standard Chartered would transmit 93,738,750 Saudi riyals to AHAB, in exchange for \$25 million, and that in April 2009, it transmitted the Saudi riyals, but did not receive payment from AHAB. In its defense, AHAB contended that the signatures on AHAB documents concerning the proposed swap had been forged by Maan Abdoulwahid Al Sanea, who was in charge of AHAB's Money Exchange Company, and who, after receiving the Saudi riyals, transferred them to his personal account. The Bahrain court found that signatures on the AHAB documents had indeed been forged, but held AHAB liable on the ground that AHAB had been negligent in supervising Al Sanea. AHAB's litigation in New York is aimed at discovering the extent of Al Sanea's alleged frauds, for which AHAB may be liable, and at recovering the sums that he allegedly stole.

In *Licci v Lebanese Can. Bank*, SAL (20 NY3d 327, 341 [2012]), the Court of Appeals formulated the minimum relationship that must exist between the plaintiff's cause of action and the defendant's transaction of business to support the exercise of personal jurisdiction over the non-domiciliary defendant:

"where at least one element [of the cause of action] arises from the New York contacts, the relationship between the business transaction and the claim asserted supports specific jurisdiction under the statute."

Here, no element of Standard Chartered's complaint in the underlying action could have arisen from AHAB's litigation activities in New York, because AHAB commenced those activities only after April 2009, when Standard Chartered's claim in the underlying action arose. Moreover, even had AHAB commenced its litigation in New York prior to that date, there could be no conceivable argument that Standard Chartered's claim arose from such litigation. To be sure, there is an overlap between the transaction that gave rise to Standard Chartered's claim and the claims that AHAB has raised in its New York litigation, but that overlap consists of Al Sanea's alleged actions in New York, not any business that AHAB, or the individual defendants, transacted in New York.

Accordingly, it is hereby

ORDERED that the motion of defendants to quash the subpoenas duces tecum and the information subpoenas that have been served upon them is granted; and it is further

ORDERED that plaintiff's cross-motion to compel compliance with the subpoenas duces tecum and the information subpoenas is

denied.

Dated: September 24, 2013

ENTER:



Ellen M. Coin, A.J.S.C.