

**Emirates NBD Bank P.J.S.C. v System Construct  
LLC**

2022 NY Slip Op 30489(U)

February 14, 2022

Supreme Court, New York County

Docket Number: 655413/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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EMIRATES NBD BANK P.J.S.C.,
Plaintiff,

- v -

SYSTEM CONSTRUCT LLC, FADI CHEHABEDDINE, NAJI
CHEHABEDDINE, RASHED ALMAKHAWI, REDINGTON
HOLDINGS LIMITED

Defendants.

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INDEX NO. 655413/2021
MOTION DATE 01/12/2022
MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 148, 149, 150

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

The following read on defendants' motion to dismiss per CPLR 3211(a)(1) – defense found upon documentary evidence, CPLR 3211(a)(7) – pleadings fail to state a cause of action, and CPLR 3211(a)(8) – the court has not jurisdiction of the person of the defendant, against Rashed Almathawi and Redington Holdings Limited. The complaint has counts for i) judgment enforcement per Article 53, ii) constructive fraudulent conveyance pursuant to New York Debtor and Creditor Law §§270, and iii) actual fraudulent conveyance pursuant to New York Debtor and Creditor Law §§270. A virtual microsoft teams appearance was held on December 16, 2021 where both sides appeared. This litigation involves the enforcement of a United Arab Emirates Judgment in relation to an alleged illegal transfer of a New York City apartment from defendant Rashed Almathawi (“Almathawi”) to defendant Redington Holdings Limited (“Redington”), for no consideration.

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (see *Leon v. Martinez*, 84 N.Y.2d 83 [1994]).

On a motion to dismiss based upon documentary evidence, defendant must present evidence which “utterly refutes” plaintiff’s allegations and establishes a defense as a matter of law (see *Goshen v. Mut. Life Ins. Co.*, 98 N.Y.2d 314 [2002]).

When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every possible favorable inference and determining “only whether the facts as alleged fit within any cognizable legal theory” (see *D.K. Prop., Inc. v. Natl. Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004]).

While a plaintiff opposing a CPLR 3211(a)(8) motion bears the burden of showing the court’s jurisdiction, it need only make a *prima facie* showing in order to withstand dismissal (see *First Manhattan Energy Corp. v. Meyer*, 150 A.D.3d 521, 522 [1st Dep’t 2017]).

Plaintiff affirms, “[a] Dubai Court of Appeals and the Dubai Court of Cassation each affirmed that judgment, ultimately ordering the four defendants to ‘jointly pay to the Appellant bank the amount of AED 211,299,040.31’” (see NYSCEF Doc. No. 149 P. 3). Plaintiff further submits a Dubai Judgment and various Orders Seizing Assets (see NYSCEF Doc. No. 94 – 98, 100 – 105).

Plaintiff’s affirmation in opposition continues,

“[o]n September 19, 2019 – just over two months after the Court of Cassation affirmed the judgment against him – Almakhawi

transferred ownership of an apartment in New York City to Redington for no consideration. The apartment was unit 26C in a residential building located at 39 East 29<sup>th</sup> Street, New York, New York 10016. Amakhawi had originally purchased the Apartment in November 2008 for \$2,209,602, and there is no record of any mortgage or lien on the Apartment following that dated. The September 2019 transfer was not recorded with the New York City Department of Finance until March 24, 2021, more than 18 months later. Redington is a Jersey entity, registered at the offices of HSBC Trustee (C.I.) Limited in St. Helier, Jersey. According to public securities filings, Redington has only two shareholders: (1) HSBC Trustee; and (2) HSBC Private Banking Nominee 3 (Jersey) Limited, a wholly owned subsidiary of HSBC Trustee. HSBC Trustee had been involved in Almakhawi's no – consideration transfers before: When Almakhawi gave his London apartment to his son in July 2019, the transfer was witnessed by an HSBC employee with experience working for HSBC Trustee” (see NYSCEF Doc. No. 149 P. 4).

Defendants seeks dismissal on personal – jurisdiction grounds. A foreign judgment is “conclusive between the parties” and “shall [be] recognized[d] under New York Law (see CPLR 5303(a). “[A] party seeking recognition in New York of a foreign money judgment ... need not establish a basis for the exercise of personal jurisdiction over the judgment debtor by the New York Courts,’ because ‘[n]o such requirement can be found in the CPLR, and none inheres in the Due Process Clause of the United States Constitution, from which jurisdictional basis requirements derive” (see *Abu Dhabi Com. Bank PJSC v. Saad Trading, Contracting & Fin. Servs. Co.*, 117 A.D.3d 609, 611 [1st Dep’t 2014]).

Further, defendant Almakhawi purposefully availed himself of the privilege[s] of New York law. “By purposefully entering into a contract to purchase New York realty, a defendant purposefully directed his activities toward New York” (see *Black River Assocs. v. Newman*, 218 A.D.2d 273, 279-80 [4th Dep’t 1996]).

Also, this Court maintains quasi in rem jurisdiction in relation to the New York apartment. Quasi in rem jurisdiction is appropriate so long as minimum contacts exist to satisfy

due process, which turns on “the significance of the relationship between [the property] in New York and Plaintiff’s claim” (see *Johnson v. United Overseas Bank*, No. 95 Civ. 9508 KTD, 1997 WL 79871, at \*2 [S.D.N.Y. Feb. 25, 1997]).

Defendant Redington was the entity that received the New York City Apartment. Plaintiff brings two fraudulent conveyance claims against Redington under New York’s Uniform Voidable Transactions Act (“UVTA”). Here, Redington is the transferee of a zero – consideration transfer of the apartment from Almkhawi, and it is thus a proper defendant for the fraudulent conveyance claims (see *Schwartz v. Boom Batta, Inc.*, 137 A.D.3d 512, 512-513 [1st Dep’t 2016]).

Hence, after a review of all the documents and a virtual appearance where both sides were present it is clear that a sufficient basis of a claim has been plead.

ORDERED that defendants’ Rashed Almkhawi and Redington Holdings Limited motion to dismiss are DENIED in their entirety.

2/14/2022  
DATE

  
LAURENCE LOVE, J.S.C.

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