

Deutsche Bank AG v Vik
2017 NY Slip Op 31233(U)
June 9, 2017
Supreme Court, New York County
Docket Number: 161257/2013
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

DEUTSCHE BANK AG,

Plaintiff,

-against-

DECISION &
ORDER
Index No.
161257/2013
Mot. Seq. 007

ALEXANDER VIK, CARRIE VIK, AS AN INDIVIDUAL
and AS TRUSTEE of THE CSCSNE TRUST, IVAN
GONELL SANTANA AS TRUSTEE OF THE CSCSNE
TRUST, THE CSCSNE TRUST, C.M. BEATRICE, INC.,
and SEBASTIAN. HOLDINGS, INC.,

Defendants.

HON. ANIL C. SINGH, J.:

In this action for, *inter alia*, fraudulent conveyance, Ivan Gonell Santana (Santana), the trustee of the Cscsne Trust, and the Cscsne Trust (the Trust) move to dismiss the complaint or alternatively to stay the action as against them (motion sequence 007).

In January 2009, DB sued SHI in the United Kingdom (UK) seeking the amount owed by SHI in connection with its FX accounts. On November 8, 2013, the UK court handed down a judgment against SHI and in favor of DB for approximately \$243 million in unpaid margin calls, and denied SHI's claims (Deutsche Bank AG v Sebastian Holdings, Inc., Case No: 2009 Folio 83, [2013] EWHC 3463 (Comm),

2013 WL 5905024 [High Court of Justice Queen's Bench Division Commercial Court 2013]).

DB proceeded to attempt to collect the judgment against SHI, and to render Vik and the other defendants liable for the judgment on the basis of alter ego and fraudulent conveyance.

In 2013, DB commenced an action for summary judgment in lieu of complaint against SHI in this court. Deutsche Bank AG v Sebastian Holdings, Inc., Index No. 161079/13 (Sup Ct, NY County 2013). DB's motion was granted and, in May 2016, a judgment based on the UK judgment was entered with the Clerk of the Court.

DB commenced a separate 2013 action against SHI, Alexander Vik, Santana and the Trust, seeking to set aside allegedly fraudulent transfers by Vik, and alleging that SHI and other entities were Vik's alter ego. Deutsche Bank AG v Vik, Index No. 161257/2013 (Sup Ct, NY County 2013) (the 2013 action).

DB alleges that SHI, due to the losses in the FX accounts maintained at DB, faced imminent margin calls from DB in October 2008. In that month, to avoid paying DB, Vik stripped SHI of its assets, causing approximately \$1 billion to be transferred from SHI to himself or to other entities controlled by him or members of his family. DB alleges that one billion Norwegian kroner (NOK) certificates of deposit were transferred from SHI to VBI. All the shares in Conformat were transferred from SHI, Conformat's sole owner, to Vik. At the time, the shares were

worth \$92 million. Also in October 2008, \$730 million was transferred from SHI to Beatrice, Inc. (Beatrice), and then Beatrice was transferred to the Trust. Before that, Vik was the sole shareholder of Beatrice, a TCI corporation and a defendant in the 2013 action. In October 2008, Vik created the Trust.

DB alleges that Vik caused these transfers. In this action, DB seeks to set aside the conveyances made in October 2008, and to pierce the corporate veil between Vik, Beatrice, and SHI in order to make the first two liable for the judgment against SHI.

Discussion

In the 2013 action, Santana, the trustee of the Trust, correctly argues that the court has no jurisdiction over him and that, unless he is party to the action, the Trust cannot be a party to the action.

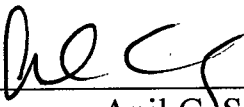
Without a trustee, a trust cannot maintain or defend a lawsuit (Gleason v Town of Clifton Park Planning Bd., 90 AD3d 1205, 1206 [3d Dept 2011]; Salanitro Family Trust v Gorina, 49 Misc 3d 153[A], 2015 NY Slip Op 51785[U] [App Term, 2d Dept 2015]; Ronald Henry Land Trust v Sasmor, 44 Misc 3d 51, 52 [App Term, 2d Dept 2014]). As DB does not allege any connections between Santana and New York, the court cannot find that it has jurisdiction over him. DB argues that jurisdiction over the trust confers jurisdiction over the trustee, citing In re Deyette (16 Misc 3d 1124[A], *2, 2007 NY Slip Op 51559[U] [Sup Ct, Nassau County 2007]). That case

is of no aid to DB, because jurisdiction over the trustee was based on the Surrogate's Court Procedure Act § 210 (2) (b).

An additional basis for jurisdiction was that the trust was a New York trust, and the acts by which it was administered were connected to New York. That the same applies to the Trust is not alleged.

ORDERED that the motion by Ivan Gonell Santana and the Cscsne Trust to dismiss the complaint as against themselves (motion sequence number 007) is granted and the complaint is dismissed as against said defendants, and the alternative motion to stay the action is denied as moot.

Date: June 9, 2017
New York, New York



Anil C. Singh