

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 08-50688 CA 32

CDR CRÉANCES, S.A.S.,

Plaintiff,

v.

LEON COHEN et al.,

Defendants.

**ORDER GRANTING MOTION TO STRIKE DEFENDANTS' PLEADINGS
AND ENTERING DEFAULT BASED ON FRAUD ON THE COURT**

THIS CAUSE came before the Court on October 1, 5 and 6, 2010, on plaintiff CDR Creances, S.A.S.' ("CDR") Motion to Strike Pleadings and Enter Default Judgment Based on Fraud on the Court ("Motion to Strike"). The Court, having reviewed the Motion, the Oppositions thereto, the documents submitted by the parties and the testimony of the witnesses, having heard argument from counsel and being otherwise duly advised in the premises, makes the following findings of fact and conclusions of law:

Defendants Maurice Cohen, Sonia Cohen, Leon Cohen and Lea Cohen (collectively, the "Cohens"), along with the defendant companies they control (the "Corporate Defendants"),¹

¹ The "Corporate Defendants" are: Empire World Towers, LLC; Maclee Holdings, LLC; Maclee Express USA, LLC; Macless Express (Miami), LLC; Maclee Express International, LLC; Maclee Express Retail Network, LLC; Maclee Express Sales Center Southeast (Florida), LLC; Maclee Express Sales Center 001-20, LLC; Maclee Express Store 001-01, LLC; Maclee Express Manufacturing, LLC; Maclee Quarters USA, LLC; Maclee Quarters (Miami), LLC; Maclee Productions, LLC; Maclee Production Center 001-00, LLC; Maclee Music (USA), LLC; Maclee Developments, LLC; Maclee Central, LLC; Maclee Virtual Systems, LLC; American Leisure Resorts, Inc.; American Leisure Resorts of Florida, LLC; ALR Work Force & Management, LLC; American Creek Realty, LLC; American Dynamics, Inc.; Empire Ocean Residence Realty, LLC, f/k/a First Ocean Residences Realty, LLC;

have engaged in a wide-ranging and orchestrated scheme to defraud this Court as well as the court presiding over the related case brought by CDR against the Cohens in the Supreme Court of New York, New York County (the “New York Action”).² The fraud was engineered by the defendants, united in interest, with the specific intent to interfere with the judicial system’s ability impartially to adjudicate this matter by improperly influencing the Court and unfairly hampering the presentation of CDR’s claim. The Corporate Defendants include American Leisure Resorts, Inc. (“ALR”), whose subsidiaries own six Florida real estate properties (the “Florida Properties”) that are the subject of CDR’s equitable claims in this case.³ CDR filed lis pendens on each of the Florida Properties when it commenced this action.

Although this Court makes its own findings of fact based on the evidence before it, the Court is mindful that Maurice and Leon Cohen were recently found guilty of a federal felony under 18 U.S.C. § 371 of conspiracy to defraud the Internal Revenue Service and additional felony counts under 26 U.S.C. § 7206(1) of filing false tax returns, after a multi-week trial by a federal jury in the Southern District of Florida. *See United States v. Cohen et al.*, Case No. 10-60159-CR-ZLOCH (S.D. Fla. 2010). As discussed in greater detail below, the criminal complaint is based on the same allegations CDR advances in this case, to wit: the Cohens’ use of a world-wide web of alter-ego entities to hide \$33 million in cash received from the sale proceeds of the New York Flatotel and the fruits of their use of that unreported income to further

Flatotel Sea Spa Palace, Inc.; The Hot Rod Factory (Miami), LLC; Knowledgeware, LLC; LC Harbor Realty, LLC; North Realty, LLC; Showtime Theatres of Florida, LLC; Villa del Mare Realty, LLC; White Hall Holdings USA Corp.; ABC World Investment, LLC; Marina Club, LLC.

² *CDR Creances, S.A.S. v. Maurice Cohen, et al.*, Index No. 109565/03, Index No. 600448/06; *CDR Creances, S.A.S. v. Leon Cohen, et al.*, Index No. 600448/06; *see also CDR Creances, S.A.S. v. First Hotels & Resorts Investments, Inc., et al.*, Index No. 650084/09.

³ The ALR subsidiaries which hold title to the six Florida Properties are: Empire World Towers, LLC; LC Harbor Realty, LLC; Villa del Mare Realty, LLC; North Realty, LLC; Empire Ocean Residence Realty, LLC; and Showtime Theatres of Florida, LLC. The real property is described with particularity in the Complaint.

their wealth and income.

During the hearing on this Motion, the Court heard testimony from several witnesses who had previously testified in the criminal case against Maurice and Leon Cohen, and received extensive documentary evidence. The clear and convincing evidence proves that the defendants engaged in a scheme to defraud the Court as well as CDR. To conceal their ownership in the Corporate Defendants and other companies involved in the underlying fraud allegations, the defendants: (i) falsified and forged documents, and then had ALR's corporate representative rely on those documents as the basis for sworn testimony in this case; (ii) held secret meetings in Paris, France with material witnesses, gave them typed scripts with false answers to anticipated deposition questions, coerced them, and promised financial reward in return for false testimony; (iii) lied under oath regarding their ownership and control over ALR and other corporate entities; and (iv) failed to produce documents in discovery (notwithstanding three court orders requiring them do so) in which Maurice and Leon Cohen admitted ownership of ALR.

In entering this Order, the Court makes the following Findings of Fact and Conclusions of Law, and for the reasons discussed below, the Motion is **GRANTED**.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The Pleadings

On September 2, 2008, CDR, which is an instrumentality of the Republic of France, filed a four count complaint, asserting claims for: (1) temporary injunction based on a prior court order in the New York Action, (2) permanent injunction based on fraudulent transfers, (3) a constructive trust on the Florida Properties, and (4) an equitable lien on the Florida Properties. The Complaint incorporates the New York Action, and the allegations of the underlying fraud are the same. *See* Compl. ¶¶1-3, 30-34, 49, 51-59, and 63. The principal difference between the

New York Action and the instant case is that the current action seeks equitable remedies specifically directed towards the Florida Properties,⁴ as well as other assets owned by other Florida entities owned and controlled by the Cohens.

In both cases,⁵ CDR alleges a fraud arising from a loan made by CDR's predecessor, Societe de Banque Occidentale ("SDBO") to a company controlled by the Cohens known as Euro-American Lodging Corporation ("EALC"), ostensibly for the purpose of purchasing and renovating a New York City hotel – the Flatotel. CDR alleges that the Cohens did not use all of the funds from the loan for its intended purpose. Instead, once the loan proceeds were in hand, the Cohens systematically began to divert hotel revenue into their own pockets through alter-ego entities they owned and controlled.

The theft of funds continued unabated through at least February 14, 2000, when the Cohens received \$33 million from the sale of the New York Flatotel "by wire to a Swiss bank account of Blue Ocean Finance, Ltd. ("Blue Ocean"), a Panamanian shell company controlled by the Cohen Defendants." See Compl. ¶26(d). These proceeds were subsequently used to purchase, maintain, and/or satisfy mortgages on the Florida Properties, which properties are owned through the Cohens' "alter egos, the corporate defendants they control, rather than in their individual names." See Compl. ¶35.

On July 2, 2009, after this Court denied the defendants' motions to dismiss the Complaint, Maurice, Sonia and Leon Cohen, filed their answer and affirmative defenses to the

⁴ The properties are situated in Miami-Dade County and have the following addresses: (1) 330 Biscayne Blvd.; (2) 429 Lennox Ave.; (3) 1475 Collins Ave.; (4) 5930 North Bay Road; (5) 7213 Fisher Island Drive; and (6) 268 Park Drive.

⁵ The Court hereby incorporates Justice Tolub's description of the New York Action in *CDR Creances, S.A.S. v. Maurice Cohen, et al.*, 2009 N.Y. Misc. LEXIS 6514 (N.Y. Sup. Ct., Nov. 24, 2009), *aff'd in part and modified in part*, 2010 N.Y. App. Div. LEXIS 7487 (N.Y. App. Div. 1st Dep't, Oct. 19, 2010).

Complaint.⁶ The Corporate Defendants, with the exception of ABC World Investment, LLC and Marina Club, LLC, also filed their answer and affirmative defenses that day. ABC World and Marina Club, along with defendant Lea Cohen (the daughter of Maurice Cohen and sister of Leon Cohen), had filed their answer and affirmative defenses a few days earlier on June 29, 2009.

In their answer and affirmative defenses, the Cohens denied, among other things, that: (i) ALR and the other entities are alter egos of the Cohens; (ii) the Cohens and others engaged in a conspiracy to avoid repayment of the SDBO loan by looting the assets, diluting the shares of EALC, and selling the Flatotel without payment to CDR; (iii) the conspiracy to defraud included a labyrinthine web of affiliated shell entities located in Florida, New York, Delaware, Liechtenstein, the British Virgin Islands, Panama, Quebec, and France; (iv) the Cohens own the Florida Properties (including personal residences) through their alter egos, the Corporate Defendants they control, rather than in their individual names; and (vii) the Cohens acquired and or maintained the Florida Properties with fraudulently diverted proceeds.

Consistent with their denials in their answers, at their New York depositions, the Cohens denied any ownership interest in ALR, Blue Ocean Finance Ltd. (“Blue Ocean”), Caribbean Business Funds, Inc. (“Caribbean”), Compania Europamerica Hotelera (“Europamerica”), Whitebury Shipping Ltd., f/k/a Whitebury Shipping Time Sharing Ltd. (“Whitebury”), and other entities.

The Lis Pendens Hearings

The Court conducted evidentiary hearings on CDR’s lis pendens in 2008 and 2009. During these hearings, CDR submitted evidence of fraud showing that the Cohens engineered the

⁶ On September 20, 2010, this Court dismissed the Cohen Defendants’ and Corporate Defendants’ counterclaim, which they had also filed on July 2, 2009.

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