

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KISANO TRADE & INVEST LIMITED,)	
TRASTECO, LTD., and VADIM SHULMAN,)	
Plaintiffs,)	
)	
vs)	Civil Action No. 11-852
)	Judge Conti
DEV LEMSTER, STEEL EQUIPMENT CORP.,)	Magistrate Judge Mitchell
AKIVA SAPIR, and SAPIR ENTITIES 1-100,)	
Defendants.)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the motion to dismiss on the grounds of forum non conveniens (ECF No. 115) filed on behalf of defendant Akiva Sapir, be granted.

II. Report

Plaintiffs, Kisano Trade & Invest Limited (“Kisano”), Trasteco, Ltd. (“Trasteco”), and Vadim Shulman (“Shulman”), bring this action under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (RICO), and state law against the Defendants, Dev Lemster (“Lemster”), Steel Equipment Corporation (“SEC”), Akiva Sapir (“Sapir”) and Sapir Entities 1-100. The Complaint alleges that Defendants engaged in at least six acts of fraud and secret deals through a pattern of related predicate acts of racketeering designed to defraud five principles for which Sapir served as agent – Shulman and Kisano, Trasteco, Plama, Ltd. (“Plama”), and Warren Steel Holdings, Inc. (“Warren Steel”), which were managed by George Svishchov (“Svishchov”) on behalf of Shulman.

Currently pending before the Court is a motion filed by Sapir. He requests that the complaint be dismissed based on the doctrine of forum non conveniens on the basis that it could

be filed in Israel, where it more properly belongs. For the reasons that follow, the motion should be granted and this case should be dismissed with the understanding that it can be refiled in Israel.

Facts

Kisano is a corporation organized under the laws of the Republic of Cyprus. (Am. Compl. ¶ 6.)¹ Trasteco is a limited liability company organized under the laws of Malta (Am. Compl. ¶ 7.) Shulman is a citizen of Israel. (Am. Compl. ¶ 8.) Svischov is a citizen of Ukraine who assisted Trasteco, Kisano and Shulman in the business dealings at issue. (Am. Compl. ¶ 10.) SEC is a Pennsylvania corporation with a principal place of business in Pittsburgh, Pennsylvania. SEC buys and sells used steel-making equipment and provides advisory, appraisal and consulting services. It is owned by Lemster, a citizen of Pennsylvania. (Am. Compl. ¶¶ 11-12.) Sapir is a citizen of Israel. (Am. Compl. ¶ 13.) Sapir Entities 1-100 are entities, identity unknown, owned or controlled by Sapir which allegedly received funds from the acts alleged in the Amended Complaint. (Am. Compl. ¶ 14.)

Plaintiffs allege that Defendants engaged in six acts of fraud as follows:

The Warren Equipment Fraud

In 2001, Sapir assisted Shulman in acquiring a steel facility in Warren, Ohio owned by Copperweld Steel Corp. (“CSC”) in bankruptcy. Shulman appointed Sapir as his agent to acquire the plant (the “Warren Plant”) and equipment (the “Warren Equipment”). Sapir arranged for Eckert Seaman’s Pittsburgh office to handle the transactions. The Warren Plant was acquired from CSC by Warren Steel Holdings, LLC, incorporated by Eckert, for Shulman. (Am. Compl. ¶¶ 19-22.)

¹ ECF No. 47.

Sapir, as Shulman's agent, purchased the Warren Equipment from CSC. Shulman alleges that Sapir led Shulman to believe the purchase price was approximately \$13 million. In October, 2001, Shulman wired \$500,000 to Sapir for an alleged down-payment on the Warren Equipment to a UBS account, and then \$6.6 million to Eckert in Pittsburgh, which paid \$6 million to the seller of the equipment and \$600,000 to the broker. (Am. Compl. ¶¶ 20-26, 78 & Ex. F.)

In October, 2001, Sapir sent two memorandum faxes dated October 28, 2001 from area code 412 (i.e. Pittsburgh) to Shulman, explaining that Shulman needed to wire \$500,000 to a Credit Suisse account "for the service that we got from Mr. Bob Stamp (helping us get the purchase price we wanted)" for the Warren Equipment, and for the balance of the purchase price, to make six payments of approximately \$908,000 each to SEC "for the financing of the purchase" of the Warren Equipment. This fax stated "Steel equipment Corp will provide me in the next few days full wire instructions." (Am. Comp. ¶¶ 23-25, 78 & Ex. F.)

On November 6, 2001 a fax on the letterhead of SEC was sent to Shulman instructing that four payments be made to what appeared to be SEC's Credit Suisse account "re: Lemster" and two payments be made to SEC's account in this District. In 2001 and early 2002, Shulman made the \$500,000 down payment, the \$500,000 for Stump, and the six \$908,000 payments. (Am. Compl. ¶¶ 22-26, 78(b), (d) & Ex. F.) Shulman alleges that, unbeknownst to him, \$6.6 million was the full price of the Warren Equipment and Sapir kept the \$500,000 down payment, \$500,000 for Stamp, and the six \$908,000 payments. Plaintiffs allege that Sapir obtained secret profits of approximately \$6.4 million. (Am. Compl. ¶¶ 23-26, 78(b), (d), (f).) Lemster/SEC received a \$22,000 "commission" for "processing" each of the two \$908,000 payments through SEC's Pennsylvania account to Sapir's account at Credit Suisse. (Temkin Decl. ¶ 22 & Ex. 13.)²

² ECF No. 138-2.

The Trasteco Secret Deal

In 2004, Trasteco contracted with West Virginia based Winding Gulf, LLC (“Winding Gulf”) to purchase 120,000 metric tons of metallurgical coal at \$120 per ton to ship to Ukraine. Shulman alleges that Winding Gulf entered into a secret agreement to pay SEC \$2 per ton as Trasteco’s “buyer’s agent” and Winding Gulf increased the prices to cover its commission. SEC received a secret commission of \$260,000 and Sapir secretly received \$130,000 of this amount. (Am. Compl. ¶¶ 29-37, 79(e).)

The Kisano Secret Deal

In 2007, Kisano contracted with Winding Gulf to purchase 2 vessels of coal at \$117.50 per ton. Kisano amended the agreement adding eight more vessels of coal for up to \$128 per ton. Shulman alleges that Winding Gulf entered into a secret agreement to pay SEC \$5 per ton as Kisano’s “buyer’s agent” and Winding Gulf increased the prices to cover the commission. SEC received a secret commission of \$729,532.16 and Sapir received \$516,184.90 of this amount. (Am. Compl. ¶¶ 38-46, 80, 95.)

The Plama Secret Deal

In August 2005, Plama contracted with Pennsylvania based Williams Industrial Services, Inc. (“WIS”) to dismantle the Warren Plant for \$6,230,750. In September 2005, Plama contracted with WIS to ship dismantled equipment to Ukraine for \$3,646,100. Plaintiffs allege that, unbeknownst to Plama, WIS had a secret deal to pay SEC a 15% commission. WIS charged Plama a higher price to cover the commission. SEC received a secret commission of \$183,773.01 and Sapir received \$50,647.90 of this amount. (Am. Compl. ¶¶ 48-61, 81, 95.)

The Veolia Secret Deal

After cancellation of the WIS contracts, it was decided to reopen the Warren Plant.

Plaintiffs allege, however, that SEC and Veolia, a company that owned an adjacent water treatment plant, secretly agreed to split 50/50 any amounts over a \$375,000 sale price to the Warren Plant. SEC/Lemster then encouraged the then manager of the Warren Plant to pay \$650,000 for the plant; Veolia and SEC split the \$275,000 gain. SEC secretly received a profit of \$137,500 and Sapir received \$23,400 of this amount. (Am. Compl. ¶¶ 65-69.)

The N.Y. Real Estate Fraud

In 2005, Shulman appointed Sapir as his agent to acquire real estate in New York. The understanding was Shulman would provide 80% of the financing and Sapir would provide 20%. Sapir again engaged Peter Baggerman of Eckert's Pittsburgh office and New York attorney Lawrence Drath to represent Shulman's interests. In 2005, Shulman wired over \$27 million to Eckert's escrow account in Pittsburgh to purchase three real estate properties, i.e. 113 Christopher Street, 65 Bank Street, and 107 Christopher Street in New York City (the "N.Y. Real Estate"). (Pls.' Am. RICO Statement at 10-11.)³

Shulman believed he was wiring 80% of the costs of the N.Y. Real Estate and Sapir was investing 20%. In 2008, Sapir sold 113 Christopher Street for \$6.15 million and kept the proceeds. Shulman believed Sapir was repaying himself the 20% which he invested. In 2011, Shulman learned only his monies were used to purchase the N.Y. Real Estate; thus, he alleges that Sapir took \$6.15 million belonging to Shulman. (Am. RICO Statement at 11.) Numerous predicate acts of racketing were involved related to 113 Christopher Street, including (a) wires (emails, telephone calls) regarding its acquisition; (b) wires of \$700,000, \$60,000, and \$4,980,000 for its acquisition; and (c) the wire to Sapir for \$6.15 million from its sale. (Am. RICO Statement at 20.)

³ ECF No. 93.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.