

Beach v Touradji

2022 NY Slip Op 34426(U)

December 29, 2022

Supreme Court, New York County

Docket Number: Index No. 654426/2019

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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GENTRY T. BEACH and ROBERT A. VOLLERO,

Plaintiff,

- v -

PAUL TOURADJI, PEGAH TOURADJI, TOURADJI
 CAPITAL MANAGEMENT, LP, TOURADJI CAPITAL GP,
 LLC, TOURADJI CAPITAL PARTNERS, LLC, TOURADJI
 GLOBAL RESOURCES MASTER FUND, LP, TOURADJI
 GLOBAL RESOURCES FUND, LP, TOURADJI GLOBAL
 RESOURCES INTERMEDIATE FUND, LTD, TOURADJI
 GLOBAL RESOURCES OFFSHORE FUND, LTD,
 TOURADJI INDEX PLUS I, LP, TOURADJI PRIVATE
 EQUITY MASTER FUND, LTD, TOURADJI PRIVATE
 EQUITY INTERMEDIATE FUND, LTD, TOURADJI
 PRIVATE EQUITY OFFSHORE FUND, LTD, and
 TOURADJI PRIVATE EQUITY ONSHORE FUND, LTD,

Defendants.

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INDEX NO. 654426/2019

MOTION DATE _____

MOTION SEQ. NO. 007

**DECISION + ORDER ON
 MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 205, 206, 207, 208, 209, 210, 212, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

Upon the foregoing documents, it is

Plaintiffs Gentry T. Beach and Robert A. Vollero move pursuant to CPLR 602 to either fully consolidate this 2019 action (Fraudulent Conveyance Action) with the 2008 action, *Gentry T. Beach and Robert A. Vollero v Touradji Capital Mgt., LP and Paul Touradji*, (Index No. 603611/2008) (Employment Action), or order a joint trial of both actions.

In the Employment Action, plaintiffs claim that defendants breached plaintiffs' employment contracts; defendants' counterclaims concern the propriety of plaintiffs'

conduct while they were employed at Touradji Capital Management, LP (TCM) between 2005 and 2008. In the Fraudulent Conveyance Action, plaintiffs allege that defendants' transfers between 2012 and 2019 were made with fraudulent intent and question the solvency of TCM. (NYSCEF 1, Complaint.) In the Fraudulent Conveyance Action, plaintiffs allege that defendant Paul Touradji, also a defendant in the Employment Action, made certain transfers "during the pendency of Plaintiffs' litigation to avoid paying Plaintiffs, including (i) transferring almost \$192 million in a single payment to himself on the eve of trial, (ii) transferring more than \$13 million to his sister, and (iii) waiving fees owed to TCM by the hedge funds managed by TCM and controlled by [Touradji]", rendering TCM insolvent and unable to satisfy plaintiffs' judgment. (*Id.* at 3.) The parties are the same in the two actions, but the Fraudulent Conveyance Action has an additional thirteen defendants which are Touradji funds.

In 2019, after a twelve-day trial in the Employment Action, a jury awarded plaintiffs \$90.8 million for breach of contract. (Employment Action, NYSCEF 885, Judgment.)

In August 2019, the Fraudulent Conveyance Action was assigned to this court. Following reversal of the jury verdict in the Employment Action (Employment Action NYSCEF 1005, January 14, 2020, Remittitur), that action was reassigned to this court on June 9, 2022. (Employment Action, NYSCEF 1009, Order.) On July 12, 2022, at a pre-trial conference in the Employment Action, a trial date of January 30, 2023 to February 14, 2023 was selected. On October 21, 2022, plaintiffs informed the court that they would be moving "shortly" to consolidate trial of the two actions. On November 2, 2022, when no motion was filed, the court found that plaintiffs' time to make the motion

had expired. (Employment Action, NYSCEF 1064, Case Management Order.) Finally, plaintiffs filed this motion on November 17, 2022. Plaintiffs' delay in filing this motion has determined this result.

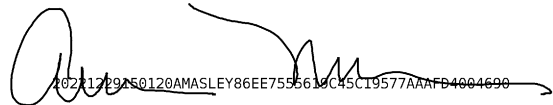
The note of issue was filed in the Fraudulent Conveyance Action on June 17, 2022.¹ (NYSCEF 193, Note of Issue.) Defendants are represented by different counsel in the two actions. It would be unfair and unnecessary to require Fraudulent Conveyance Action defendants to prepare for trial in the next 30 days.

The Employment Action trial is scheduled to begin January 30, 2023 and end by February 14, 2023. The court disagrees with plaintiffs that consolidating the actions for trial will not add trial days, and the court's calendar does not allow it to add more trial days to accommodate this action at this late date. The Employment Action trial will be closely followed by a trial in another action before the court. The court is then scheduled for trial for 1 to 3 weeks per month through October 2023. It would not be fair to these other actions to change the court's trial calendar, particularly when plaintiffs waited for months to bring this motion.

Further, trying the cases together is inefficient. If plaintiffs are unsuccessful at the Employment Action trial, there will be no trial in the Fraudulent Conveyance Action. The viability of the Fraudulent Conveyance Action rests on the Employment Action. That plaintiffs may have to wait to have the Fraudulent Conveyance Action trial is not prejudicial. Whether the cases are tried together or not, plaintiffs intend to inject the issue of Toruadji's 2012 to 2019 transfers into the Employment Action trial as evidence

¹ The parties had 30 days from this filing to make dispositive motions; no motions were filed and the time to do so has long expired.

of Touradji’s consciousness of liability to plaintiffs.² If plaintiffs are allowed to put in such evidence at the Employment Action trial, then there is no such prejudice. However, the court notes putting in a few documents to show consciousness of liability is not the same level of evidence necessary to prove a fraudulent transfer which again the court believes would require additional trial days that the court does not have at this late stage.



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<u>12/29/2022</u>			<u>ANDREA MASLEY, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE

² Although the time for motions in limine has long expired, the parties are briefing this issue: January 6, 2023 for defendants’ motion; January 13, 2023 for opposition.