CLOSED CIVIL CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 98-8309-CIV-MOORE

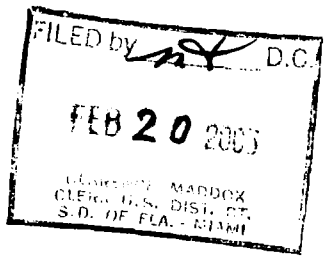
LUKOIL-LANGEPASNEFTEGAZ,
Plaintiff,

vs.

YOX WARENHANDELSGESELLSCHAFT M.B.H., RAMOIL HOLDING COMPANY, RAMOIL MANAGEMENT COMPANY, RAMOIL MANAGEMENT LTD., f/k/a AMERICAN CORPORATE INVESTORS, INC., RODOLJUB RADULOVIC, and JASNA RADULOVIC,
Defendants.

_____/

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT



THIS CAUSE is before the Court upon Plaintiff's Motion for Summary Judgment (**DE # 121**). Defendants have filed a response and Plaintiff has filed a reply thereto. The Motion is ripe for adjudication. Accordingly, the Court enters the following Order granting Plaintiff's Motion for Summary Judgment.

BACKGROUND

Plaintiff, Lukoil-Langepasneftegaz ("Lukoil"), a Russian oil company, alleges that the Defendant, Rodoljub Radulovic ("Radulovic"), through the use of a worldwide web of interrelated companies that operated out of the same offices, employed the same persons, used the same bank accounts and financial resources, and conducted the same type of business transactions, avoided payment of a foreign arbitration award that arose from a debt incurred under a 1991 contract for the sale of crude oil, and a subsequent 1995 agreement negotiated to repay that debt. On May 15, 1995, the Moscow Arbitration Court awarded Lukoil a judgment in the amount of $ 12,162,453.23 against Yox Warenhandelsgesellschaft m.b.H. ("Yox"), an Austrian company owned and controlled by Radulovic, for the sale of 165 million metric tons of

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crude oil. On May 23, 1995, Radulovic, on behalf of Ramoil Holding Company ("RHC"), another one of Radulovic's companies, and Lukoil entered into a written agreement (the "Boca Raton agreement") setting forth the terms of payment for the arbitration award between RHC and Lukoil. Plaintiff alleges that neither RHC nor Radulovic ever made any payments under the Boca Raton agreement and as a result seeks: (1) that the Court recognize and enforce the Moscow Arbitration Award; (2) an award of damages for breach of the Boca Raton agreement; and (3) an award of damages for fraud in the inducement.

Defendants counter that Radulovic was not involved in the original 1991 oil transaction and therefore has no knowledge of whether the oil was actually delivered or sold. Additionally, Defendant Radulovic claims not to have been represented by counsel when he signed the Boca Raton agreement in 1995 and that in any case, the agreement was written in English, not Radulovic's first language. Finally, the Defendants rebut Plaintiff's assertion that the Radulovics, RHC, etc. are alter egos of Yox and are therefore liable for the arbitration award.

DISCUSSION

A. Summary Judgment Standard

Under Rule 56(c) of the Federal Rules of Civil Procedure:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). Summary judgment may be entered only where there is **no** genuine issue of material fact. *See Twiss v. Kury,* 25 F.3d 1551, 1555 (11th Cir. 1994). The moving party has the burden of meeting this exacting standard. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). In applying this standard, the district court must view the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion. *Id.* at 157.

However, the non-moving party

> [m]ay not rest upon the mere allegations and denials of the adverse party's

> pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Fed. R. Civ. P. 56(e). "The mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The party opposing summary judgment "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986). In fact,

> the plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial and requires the court to grant the motion for summary judgment. *Id.* at 323.

B. Plaintiff's Motion for Summary Judgment

Plaintiff's motion asserts that summary judgment is warranted on all three of Plaintiff's claims because (1) the record evidence shows that the Moscow Arbitration Award is enforceable under the provisions of 9 U.S.C. § 207; (2) the record evidence shows that defendants do not dispute that the Boca Raton agreement was breached; (3) the record evidence shows that defendants are liable for fraud in the inducement as they induced Lukoil to sign the Boca Raton agreement under the misrepresentation that RHC was able and intended to pay Yox's debt; and (4) the record evidence demonstrates that the Radulovics are the alter egos of the defendant corporations, and that the defendant corporations are alter egos and/or mere continuations of each other.

1. The Radulovics and the Defendant Companies

The issues raised by Plaintiff's claims against the Defendants require a showing that the defendant corporations and the individual defendants operated as alter egos of one another in order to ground liability against them. The parties to this action involve two individuals, Rodoljub and Jasna Radulovic (the "Radulovics"), and an assortment of interrelated companies. The record evidence demonstrates that these companies used the same or similar office space, the same or similar employees, the same shareholders, officers and directors, and used the same bank accounts to conduct substantially similar business activities throughout the world. This information, by itself, however, fails to sufficiently base liability against them under Florida law.

In Florida, to find liability through an alter ego theory, the party asserting liability must prove that: (1) the shareholder dominated and controlled the corporation to such an extent that the corporation's independent existence was in fact non-existent and the shareholders were in fact alter egos of the corporation; (2) the corporate form must have been used fraudulently or for an improper purpose; and (3) the fraudulent or improper use of the corporate form caused injury to the claimant. *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114, 1121 (Fla. 1984). The true test of liability rests on the determination of whether the corporation was organized or used to mislead creditors to work a fraud upon them. *Id.* at 1119-20.

Courts must consider the following factors when determining whether the alter ego test has been established: (1) common stock ownership; (2) common directors or officers; (3) consolidated financial statements or tax returns; (4) one company finances the other; (5) undercapitalization; (6) one company pays for the salaries and expenses of the other company; (7) company receives no business except that given to it by the other company; (8) daily operations of the two companies are not kept separate; (9) corporate formalities are not kept; (10) substantially identical business purpose; and (11) identical business operations. *United States v. Jon-TCchemicals*, 768 F.2d 686 (5th Cir. 1985); *United States v. JBA Motor Cars, Inc.*, 839 F.Supp. 1572 (S.D. Fla. 1993).

The evidence before the Court establishes that the Radulovics and the defendant corporations are alter egos of each other. For example, the Radulovics have admitted to

operating Ramoil Management Company ("RMC") out of the same office it ran Yox in Moscow. RMC represented that as of April 1993 Yox was operating in Moscow as RMC. Yox and RMC had the same personnel and management such as Kamenko Komnenovich ("Komnenovich") who attested to entering an employment contract with Yox but also claims to have performed substantial duties for RMC. Even after Yox's bankruptcy in 1996, Komnenovich continued to work for RMC despite never entering into an employment agreement with RMC. Komnenovich also testified that Radulovic directed and controlled Yox, RMC and RHC from his offices in Florida. Additionally, the Radulovics have admitted to commingling the funds of Yox, RHC, RMC, and Ramoil Ltd. The use of these corporations to hide funds from the Plaintiff and others represents the clearest evidence of the Defendants' attempts to mislead and work a fraud upon creditors. These actions and others, all on record before the Court, clearly establish that the Radulovics conducted the business of the defendant corporations as a unitary enterprise without maintaining corporate distinctions among them. As a matter of law the defendant corporations and the individual defendants are alter egos and should be treated as such for liability purposes.

2. Plaintiff's Arbitration Award Claim

Plaintiff has demonstrated through the presentation of record evidence that Lukoil properly obtained the Moscow Arbitration Award on May 15, 1995. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention") entitles a foreign arbitration award to recognition and enforcement in the courts of the United States of America. *See* 9 U.S.C. §§ 201-208. Thereunder, a party who has duly obtained a foreign arbitration award may apply to a district court for recognition and enforcement of that award. *See* 9 U.S.C. § 207. Indeed, it is well settled that district courts must give great deference to foreign arbitration awards. *DanDong Shuguang Axel Corp., Ltd. v. Brilliance Machinery Co.*, No. C 00-4480 SC, 2001 U.S. Dist. LEXIS 7439 (N.D. Cal. June 1, 2001).

The Convention sets forth the seven defenses to enforcement of a foreign arbitral award in Article V. The party opposing confirmation bears the burden of proving one of the seven circumstances as a basis for the district court's refusal to recognize or enforce an award. *Id.* at

*11. The Defendants have failed to sufficiently raise or prove each element of any one of the seven defenses to bar recognition. Therefore, as no genuine issue of material fact exists as to the recognition and enforcement of the Moscow Arbitration Award, the Plaintiff is entitled to summary judgment on Count I as a matter of law.

3. Plaintiff's Breach of the Boca Raton Agreement Claim

Defendants do not dispute the material facts supporting the execution of the Boca Raton Agreement, that RHC did not make payments under that agreement, or that a failure to pay constitutes a breach of contract. Defendants sole contention regarding Plaintiff's breach of contract claim is that the Boca Raton agreement acted as a novation of the arbitration award which would thereby bar its enforcement. As clearly set forth in Article V of the Convention, and as previously discussed, novation is not a defense to the recognition and enforcement of the Moscow Arbitration Award. Therefore, Defendants may not claim that Lukoil, through the Boca Raton agreement, effectively surrendered its rights to enforcement of the award. The language of the agreement clearly states, "In consideration of the payment provided for in this Agreement, Langepasneftegaz shall stay the legal proceedings against Yox in the City of Moscow, Russia, provided the payment is made in full as provided in this Agreement." It is apparent that Lukoil agreed to stay enforcement of the Moscow Arbitration Award in consideration for full payment of it. Accordingly, no genuine issue of material fact exists as to whether RHC is liable under the agreement, therefore Plaintiff is entitled to summary judgment on Count II as a matter of law.

4. Plaintiff's Fraud in the Inducement Claim

Under Florida law, to state a claim for fraudulent inducement, a plaintiff must allege the following: (1) a false statement regarding material fact; (2) knowledge by the person making the statement that the representation is false; (3) intent by the person making that representation to induce another to act upon it; and (4) reliance on the representation to the injury of the other party. *Mettler, Inc. v. Ellen Tracy, Inc.*, 648 So. 2d 253, 255 (Fla. 2d DCA 1994).

Radulovic, by way of the Boca Raton agreement, represented to Plaintiff's attorneys that

RHC would assume the debt Yox incurred under the original 1991 crude oil contract. Plaintiff entered into the Boca Raton agreement with Radulovic signing for RHC based on Radulovic's representations that the debt would be paid. Radulovic testified, however, that he had no intention of paying the debt owed to the Plaintiff. He knew that RHC did not have the capital necessary to make the payments - he was merely "trying to get time" by representing to the Plaintiff that RHC would repay the debt. Radulovic's own testimony illuminates that RHC had neither the ability nor the capacity to assume the debt. Accordingly, no genuine issue of material fact exists as to whether RHC and Radulovic engaged in fraudulent inducement, therefore Plaintiff is entitled to summary judgment on Count III as a matter of law.

CONCLUSION

Based on the foregoing, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Summary Judgment (**DE # 121**) is **GRANTED** in its entirety.

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of February, 2003.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

copies provided:
All counsel of record