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PJSC ARMADA and ARSENAL ADVISOR LTD., Plaintiffs, v. ALEXY KUZOVKIN, ALLA ROITMAN, YEFIM ROITMAN, and JOHN DOES 1-5, Defendants.	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION – BERGEN COUNTY DOCKET NO. **BER-L-197-19** Civil Action **OPINION**

Argued: **June 21, 2019**
Decided: **June 28, 2019**

HONORABLE ROBERT C. WILSON, J.S.C.

Ely Goldin, Esq. and Corinne McCann Trainor, Esq. appearing on behalf of plaintiffs PJSC Armada and Arsenal Advisor Ltd. (from Fox Rothschild LLP).

Christopher S. Porrino, Esq. and Peter Slocum, Esq. appearing on behalf of defendants Alla Roitman and Yefim Roitman (from Lowenstein Sandler LLP).

FACTUAL BACKGROUND

THIS MATTER arises out of allegations of fraud and misrepresentation concerning a Russian business venture. PJSC Armada ("Armada") is a public joint stock company registered in the Russian Federation, whose shares are traded on the Moscow Interbank Currency Exchange. Arsenal Advisor Ltd. ("Arsenal"), a corporation formed under the laws of the British Virgin Islands, is the principal shareholder of Armada. Armada's other shareholders include various U.S., European, and Russian financial institutions. Armada was the parent company of a consortium of companies (the "Armada Group") which, at its peak, ranked as one of the top five software developers in Russia. In 2012, the Armada Group had combined annual sales reaching approximately RUB 5.579 million (or $184 million) under the 2012 prevailing exchange rate.

Alexy Kuzovkin ("Kuzovkin") led Armada's management team and, from 2012 to 2014, he allegedly siphoned money and technology out of the company through the use of forty shell

companies, offshore accounts, and through "insider information." This purported illegal scheme included diverse acts of fraudulent conduct. The claimed fraudulent conduct included: transferring of Armada funds to shell companies under the guise of software development contracts; formation of a competitor company, Programmy Produkt LLC, which poached business and employees from Armada; and usurious lending schemes between Armada and three of its wholly owned subsidiaries. The profits of these endeavors were in turn transferred to Kuzovkin's shell companies. On August 19, 2014 when a new director finally entered Armada's offices, there were no employees, documents, equipment or telephones in the building. The company had essentially vanished.

As legal proceedings and foreign criminal investigations ensued concerning these illegal activities, Kuzovkin fled to Austria, a country that reportedly refuses to extradite wealthy Russian nationals who seek economic citizenship and refuge within its borders. At or around the same time, Kuzovkin purchased nearly $8.5 million worth of real estate in Austria and Russia within a span of four weeks. Among these properties was an apartment in Moscow owned by defendant Alla Roitman, a New Jersey resident (the "Transaction" for the "Apartment").

28 U.S.C. 1782 allows foreign litigants to gather evidence in aid of foreign legal proceedings. Pursuant to that statute, Plaintiffs were authorized to issue a document subpoena on Alla Roitman for records related to this Transaction. The instant Transaction occurred on October 18, 2013, when Kuzovkin purchased from Alla Roitman a luxury apartment located in one of Moscow's prestigious neighborhoods. Plaintiffs go on to allege that this apartment was purchased using funds embezzled from Armada. Plaintiffs further claim that Kuzovkin paid approximately $ 1 million for the Apartment but that comparable apartments in this neighborhood typically sell for $ 3 million.

However, Alla and Yefim Roitman allege that Armada's estimates as to the fair market value for the Apartment are unsupported, and further contain a fundamental mathematical error. Specifically, in a prior correspondence with Alla Roitman's counsel, Armada's counsel estimated that market data suggests that the true market value is closer to $3 million for an apartment in the same Moscow neighborhood that was approximately 5,100 square feet in size. The Apartment at issue is only 145.5 square meters, which equates to only 1,565 square feet. It appears that Armada simply made a math error, erroneously over-estimating the size of the apartment by more than three times. This threefold overestimation of the Apartment's size corresponds with the threefold overestimation of the Apartment's value.

Upon issuance and service of a document subpoena, Alla Roitman's former attorney wrote to Plaintiffs' counsel that she possessed only one document related to the transaction – a purchase agreement written in Russian. Alla Roitman's former attorney also explained that the Apartment was purchased in U.S. currency, and the proceeds were placed in a safe deposit box. Alla Roitman's father, Yefim Roitman, simultaneously sold automobile parking rights associated with the Apartment for $200,000.

Plaintiffs' thereby conclude that Alla and Yefim Roitman assisted co-defendant Kuzovkin in concealing embezzled funds from Armada by the cash sale of their Apartment and parking rights. That they therein laundered the monetary proceeds in New Jersey by orchestrating the sale of the Apartment from New Jersey.

However, Plaintiffs' proofs submitted for these allegations are attenuated at best. The Complaint only offers the following: (1) the sale of the Apartment was around the same time that Kuzovkin was embezzling money from Armada; (2) the purchase price of the Apartment was below what Armada believes should have been the fair market value; and (3) there is a letter from the Russian real estate agent that handled the transaction for Alla Roitman, stating in

response to a document demand that there are no longer any records related to the transaction in its archive, and that its role in the transaction was largely to organize the documents to transfer the property for state registration.

Alla and Yefim Roitman now move for dismissal of the following causes of action against them: (1) aiding and abetting Kuzovkin's breach of fiduciary duty; (2) fraud; (3) fraudulent transfer; (4) civil conspiracy; and (5) violation of the New Jersey Racketeering Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-1 ("NJRICO"). Defendants also argue that dismissal of the entire Complaint is appropriate under the doctrine of *forum non conveniens.* Plaintiffs oppose the motion, arguing that the information they have set forth in the Complaint is satisfactory to survive a motion to dismiss. For the reasons set forth below, Alla and Yefim Roitman's motion is **GRANTED**.

MOTION TO DISMISS STANDARD UNDER RULE 4:6-2(e)

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . ." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See, NCP Litigation Trust

v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The "test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts." Printing Mart, 116 N.J. at 746. However, "a court must dismiss the plaintiff's complaint if it has failed to articulate a legal basis entitling plaintiff to relief." Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULES OF LAW AND DECISION

I. Plaintiffs' Complaint is Dismissed for Failure to State a Claim

A. Arsenal Lacks Standing to Pursue Any Claims Against the Roitmans

Lawsuits in New Jersey may be maintained by the "real party in interest." R. 4:26-1. "The real party in interest rule is ordinarily determinative of standing to prosecute an action. Standing has been held to be an element of justiciability, neither subject to waiver nor conferrable by consent." Pressler & Verniero, cmt. 2.1 on R. 4:26-1.

"A corporation is regarded as an entity separate and distinct from its shareholders." Delray Holding, LLC v. Sofia Design & Development at S. Brunswick, LLC, 439 N.J. Super. 502, 510 (App. Div. 2015). For that reason, "suits to redress corporate injuries which secondarily harm all shareholders alike are brought only by the corporation." Id. "Shareholders in a corporation may only sue individually when they suffer a 'special injury,' as distinct from injuries suffered by all shareholders." Id.

Here, the only connection that Arsenal has to the allegations in the Complaint is that it claims to be Armada's principal shareholder, and therefore presumably suffered a loss in its investment because of the alleged wrongful conduct. "The law is clear and uniform: shareholders cannot sue for injuries arising from the diminution of value of their shareholding resulting from wrongs allegedly done to their corporations." Delray Holding, 439 N.J. Super. at

511 (finding no standing where shareholders sued for tortious interference and NJRICO claims that belonged to the corporation). As such, all claims of Arsenal as to Alla and Yefim Roitman are dismissed without prejudice.

B. The Complaint Fails to Plead Causes of Action Sounding in Fraud With Particularity

Under Rule 4:5-8(a), "[i]n all allegations of misrepresentation, fraud, mistake, breach of trust, willful default or undue influence, particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable." This heightened standard applies not just to allegations of "fraud," but also to allegations of "breach of trust" or any other similar "allegations of misrepresentation." R. 4:5-8(a). For that reason, courts routinely apply this heightened-pleading standard to a wide array of actions based on alleged misrepresentations or similar misconduct. See, e.g., Levinson v. D'Alfonso & Stein, 320 N.J. Super. 312, 315 (App. Div. 1999) (applying heightened standard to common law fraud); Hoffman v. Hampshire, 405 N.J. Super. 105, 109 (App. Div. 2009) (applying standard to Consumer Fraud Act, N.J.S.A. 56:8-1); Beaver v. Magellan Health Servs., 433 N.J. Super. 430, 444 n.1 (App. Div. 2013) (applying standard to breach of fiduciary duty claim).

In this matter, Plaintiffs accuse Alla and Yefim Roitman of: (1) aiding and abetting a breach of fiduciary duty; (2) committing fraud and a fraudulent transfer; (3) conspiring to commit those offenses; and (4) violating NJRICO through fraudulent activity. Because each of these allegations sounds in either "fraud," a "breach of trust," or a similar "allegation [] of misrepresentation," under Rule 4:5-8(a), the heightened pleading standard applies to all the aforementioned causes of action.

To state a claim under the heightened pleading standard, a plaintiff must "plead specific facts that would allow a fact-finder to draw th[e] specific conclusion" that a violation of the law

occurred. Hoffman, 405 N.J. Super. at 114. "The allegations cannot be based upon unsupported assumptions," but rather "must be based on competent evidence and, where required, the opinion of an expert." Id. at 115. For that reason, it is insufficient to merely allege "upon information and belief" that the defendants "knew" that their statements were false. The complaint must allege "specific facts which would establish that defendants had such knowledge." Id. at 116. A complaint containing "conclusory allegations which parrot the language of the "cause of action, consisting of "mere generalizations devoid of specified factual support," is insufficient under Rule 4:5-8(a). Miller v. Bank of Am. Home Loan Servicing, LP, 439 N.J. Super. 540, 552 (App. Div. 2015).

Here, a family of New Jersey residents are accused of having conspired with a Russian citizen, by allegedly selling him property in furtherance of some scheme of embezzlement from his Russian employer. In support, Plaintiffs point to attenuated, speculated information regarding an inflated real estate purchase price that, at best, marginally supports their allegations. This slim factual assertion falls woefully short of what is required to state a claim sounding in fraud, breach of trust, or misrepresentation under Rule 4:5-8(a). Plaintiffs offer no factual support for their allegation that the Apartment was undervalued compared to comparable apartments in the same Moscow neighborhood.

Similarly, Plaintiffs are unable to substantiate specific facts supporting their allegation that the transaction was structured in a way to conceal the purchase by avoiding any registrations or public filings. In fact, the Complaint includes a document showing that Alla Roitman granted a Russian agent the power of attorney specifically for the purpose of performing state registration of this real estate transaction and documents to record the transfer of title.

Finally, there are no facts plead to demonstrate that the Roitmans intentionally helped conceal these transactions to assist Kuzovkin in his embezzlement or his siphoning of assets

away from Armada and its shareholders. Therefore, for the reasons set forth above, Plaintiffs' Complaint is dismissed without prejudice as to Alla and Yefim Roitman.

C. The Fraudulent Transfer Cause of Action Fails to State a Claim and is Barred by the Statute of Limitations

Count Four of Plaintiffs' Complaint alleges "fraudulent transfer" on the theory that through this real estate transaction, Kuzovkin fraudulently converted Armada's property by selling it for less than full value in an effort to divert profits from Armada. While the Complaint does not specifically cite the Uniform Fraudulent Transfers Act ("UFTA"), N.J.S.A. 25:2-20, it is clear that Count Four must comply with those statutory provisions to state a claim. The New Jersey Supreme Court has held, "an amorphous [common law] creditor fraud claim that requires plaintiffs to prove neither reliance nor misrepresentation does not exist in New Jersey." Banco Popular N. Amer. v. Gandi, 184 N.J. 161, 175 (2005). Instead, "[a] creditor asserting a claim against a conspirator [to a fraudulent transfer] must satisfy the agreement and knowledge aspects of civil conspiracy for all of the underlying components of a UFTA claim." Id. at 178.

Here, Plaintiffs fail to make out a *prima facie* UFTA claim. "The purpose of the [UFTA] is to prevent a debtor from placing his or her property beyond a creditor's reach." Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463, 475 (1999). To serve that general purpose, the UFTA sets forth multiple avenues for aggrieved creditors, and Plaintiffs' Complaint fails to state a claim under any of them.

The first of Plaintiffs' deficiencies is that the "actual fraud" provision of the UFTA states that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." N.J.S.A. 25:2-25(a). There are two relevant inquiries for a

claim under Section 25(a): (1) "whether the debtor or person making the conveyance has put some asset beyond the reach of creditors which would have been available to them at some point in time but for the conveyance;" and (2) "whether the debtor transferred property with an intent to defraud, delay, or hinder the creditor." Gilchinsky, 159 N.J. at 475, 476 (commonly referred to as the "badges of fraud").

Plaintiffs' claim for a fraudulent transfer would fail under Section 25(a) because there are no allegations that Kuzovkin put assets beyond the reach of creditors by the operation of this conveyance. The Complaint does not allege that the real property he purchased in Russia is now somehow beyond the reach of creditors. The Complaint merely alleges that Kuzovkin took one asset, cash, and exchanged it for another asset, to wit real property. If one merely exchanges one asset in exchange for another, either of which a creditor may seize, then the transfer is "not fraudulent as defined under the UFTA." Barsotti v. Merced, 346 N.J. super. 504, 516 (App. Div. 2012). As such, a claim under Section 25(a) would fail.

The second deficiency is that a claim under Section 25(b) must concern a "constructive fraudulent transaction[]," that demonstrates that an insolvent debtor disposed of their assets below their fair market value. MSKP Oak Grove, LLC v. Venuto, 875 F. Supp. 2d 426, 438 (D.N.J. 2012) (explaining the elements of the cause of action). The Complaint alleges that Kuzovkin transferred Armada's assets for less than their full value in order to divert profits from Armada, and that Kuzovkin transferred $3.7 million in cash for real property priced at $3.7 million. If either of these inconsistent statements is accepted, Plaintiffs still fail to state a claim under Section 25(b), as there are no allegations that Kuzovkin was financially insolvent. Therefore a UFTA claim under this section must fail as well.

Finally, Section 27(a) states the following:

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
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> N.J.S.A. 25:2-27(a).

As previously stated, Plaintiffs do not appear to allege that the cash was exchanged without receiving equivalent value in exchange for the transfer. In any event Plaintiffs do not claim that Kuzovkin was insolvent at the time of or as a result of the transfer. Therefore, there is no *prima facie* UFTA claim under this subsection as well.

The Court also notes that a UFTA claim under Section 25(b) or Section 27 (a) would be barred by a statute of limitations of either four years from the date of the transfer or one year after the transfer or obligation was discovered by the Claimant. Plaintiffs' causes of action would be barred under either statute of limitations because: (1) the Apartment was transferred on October 18, 2013, five years and twenty-two days before Plaintiffs filed their Complaint; and (2) Plaintiffs admitted that they were aware of the transfers when they filed a discovery application in Federal Court on June 30, 2017, which was one year, six months, and ten days from the date they filed the instant Complaint.

D. The Individual Fraud Count Fails to State a Claim

The five elements of common law fraud are as follows: "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Banco Popular N. Amer., 184 N.J. at 172-73 (quoting Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997)).

With respect to the Roitmans, the Complaint does not explain how any of these elements apply to their conduct. The Roitmans are not alleged to have communicated with Armada or its shareholders on any topic at any time, and thus, the elements are lacking. "Misrepresentation and reliance are the hallmarks of any fraud claim, and a fraud cause of action fails without them." Id. at 174. An "amorphous" allegation of fraud "that requires plaintiffs to prove neither reliance nor misrepresentation does not exist in New Jersey." Id. at 175. Accordingly, Plaintiffs' cause of action for common law fraud is dismissed without prejudice as to defendants Alla and Yefim Roitman.

E. The Aiding and Abetting Breach of Fiduciary Duty Cause of Action Fails to State a Claim

Count Two of the Complaint alleges that the Roitmans assisted Kuzovkin in breaching his fiduciary duties to Plaintiffs by assisting to conceal the purchases of the Moscow Apartment and parking spot. Under Rule 4:6-2(e), "the essential facts supporting [a] plaintiff's cause of action must be presented in order for the claim to survive; conclusory allegations are insufficient in that regard." Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012). Merely setting forth bare conclusions that "defendants violated their fiduciary duties of loyalty" and that other defendants "aided and abetted those breaches," absent well-pled facts to support those assertions, is insufficient to state a claim. Id. at 194.

To state a claim against the Roitmans for aiding and abetting Kuzovkin in any alleged breach of fiduciary duty to Armada, Plaintiffs were required to plead: "(1) the existence of a fiduciary duty; (2) a breach of the fiduciary's duty; and (3) a knowing participating in that breach by the defendants who are not fiduciaries." Scheidt, 424 N.J. Super. at 209. However, Plaintiffs offer no factual basis to support that there was a "knowing participation in that breach by" the Roitmans. As such, this claim is dismissed without prejudice as to the Roitmans.

F. The Civil Conspiracy Count Fails to State a Claim

"[A] civil conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damages." Banco Popular N. Am., 184 N.J. at 177 (internal citations omitted). "Most importantly, the gist of the wrong is not the unlawful agreement, but the underlying wrong which, absent the conspiracy, would give a right of action." Id. at 177-78. If the defendant has not committed an underlying tort, then by definition the defendant has not conspired with others to commit that tort. Middlesex Concrete Prods. & Excavating Corp. v. Carteret Indus. Ass'n, 37 N.J. 507, 516 (1962). See also, Tynan v. Gen. Motors Corp., 248 N.J. Super. 654, 668 (App. Div. 1991) ("a conspiracy is not actionable absent an independent wrong").

As set forth above, Plaintiffs have failed to make out a *prima facie* case against Alla and Yefim Roitman for any of the asserted common-law claims. Because those claims fail, Plaintiffs' claim for civil conspiracy must also fail. Therefore, Plaintiffs' cause of action for civil conspiracy against the Roitmans is dismissed without prejudice.

G. The NJRICO Count Fails to State a Claim, and is Otherwise Barred by the Statute of Limitations

Count Seven of the Complaint contains a cause of action under NJRICO against Alla and Yefim Roitman. "The gravamen of a RICO violation, frequently referred to as 'racketeering,' is the involvement in the affairs of an enterprise through a pattern of racketeering activity." State v. Ball, 141 N.J. 142, 155 (1995). While the NJRICO statute provides for various theories for liability, the theory advanced by the Plaintiffs is Section 2(c). That section states that it is unlawful "for any person employed by or associated with any enterprise engaged in or activities

of which affect trade or commerce to conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." N.J.S.A. 2C:41-2(c). For several independent reasons, Plaintiffs' fail to successfully bring forth a *prima facie* NJRICO case.

First, every provision of Title 2C, including NJRICO, in subject to the territorial limits of N.J.S.A. 2C:1-3, which states that the law only applies to conduct that occurs within New Jersey. State v. Casilla, 362 N.J. Super. 554, 563 (App. Div. 2003) (stating that Title 2C's territorial limits apply to NJRICO actions). The NJRICO statute itself repeats this territorial limitation, emphasizing that the purpose of the law was to prevent racketeering conduct from interfering with "the legitimate trade or commerce of this State." N.J.S.A. 2C:41-1.1(c). "[T]he Legislature would have no reason to address the effects of racketeering in other states, many of which have their own RICO statutes, or in interstate commerce, as to which federal legislation applies." Fairfax Fin. Holdings Ltd. v. S.A.C. Capital Management, LLC, 450 N.J. Super. 1, 39-40 (App. Div. 2017).

Accordingly, to implicate NJRICO a plaintiff must "show that defendant was employed by or associated with a racketeering enterprise which engaged in trade or commerce in New Jersey or affected trade or commerce in New Jersey." Casilla, 362 N.J. Super. at 565. Thus, if the conduct largely takes place elsewhere with only minimal activity in New Jersey, there is no NJRICO claim. Id. Here, all of the alleged conduct took place in Russia. The only connection to New Jersey is that the Roitmans are residents of this State. This is insufficient to meet the territorial requirements of the NJRICO statute.

Second, the NJRICO claim fails because it does not allege a "pattern of racketeering activity." N.J.S.A. 2C:41-2(c). A "pattern of racketeering activity" requires, at a minimum,

> (1) Engaging in at least two incidents of racketeering conduct one of which shall have occurred after the effective date of this act and the last of which shall have occurred within 10 years (excluding any period of imprisonment) after a prior incident of racketeering activity; and
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> (2) A showing that the incidents of racketeering activity embrace criminal conduct that has either the same or similar purposes, results, participants or victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.
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> N.J.S.A. 2C:41-1(d).

"Some degree of continuity, or threat of continuity, is required and is inherent in the 'relatedness' element of the 'pattern of racketeering activity.'" Ball, 141 N.J. at 168. If the alleged crimes consist of merely "disconnected or isolated" acts without an element of "relatedness" or "continuity," then there is no "pattern." Id. at 169. Here, the only allegation against Alla and Yefim Roitman is that they sold the Apartment to Kuzovkin knowing that he had allegedly embezzled money from Armada. However, this one Transaction is not a "pattern" as a matter of law, and the NJRICO count fails for this reason as well.

Third, Plaintiffs have not properly alleged that the Roitmans participated in an "enterprise" as required by N.J.S.A. 2C:41-2(c). N.J.S.A. 2C:41-1(c) defines an "enterprise" as persons "associated in fact." "[U]nder the RICO Act, 'enterprise' is an element separate and apart from the 'pattern of racketeering activity,'" and a plaintiff "must prove the existence of both in order to establish a RICO violation." Ball, 141 N.J. at 161-62.

To properly plead an "enterprise" under NJRICO, a complaint must demonstrate that the association of persons "ha[s] an 'organization'" which is "those kinds of interactions that become necessary when a group, to accomplish its goal, divides among its members the tasks that are necessary to achieve a common purpose." Id. at 162. To determine the sufficiency of the pleadings, the reviewing court should look holistically at the following factors: (1) whether

there is some sort of "ascertainable structure" to the alleged "enterprise;" (2) the number of people involved and their knowledge of the objectives of their association; (3) how the participants associated with each other; (4) whether the participants each performed discrete roles in carrying out the scheme; (5) the level of planning involved; (6) how decisions were made; (7) the coordination involved in implementing decisions; (8) how frequently the group engaged in incidents or committed acts of racketeering activity; and (9) the length of time between them. Id. at 162-63.

Failure to allege facts sufficient to find an "enterprise" under this framework warrants dismissal for failure to state a claim. In re Refco Inc. Securities Litig., 826 F. Supp. 2d 478, 533 (S.D.N.Y. 2011). Here, the Complaint alleges no facts sufficient to believe that the Roitmans participated in an "enterprise" as defined by the New Jersey Supreme Court. None of the nine factors identified in Ball were addressed by Plaintiffs. Instead, Plaintiffs simply allege "on information and belief," lacking any factual support required by the heightened-pleading standard, that Alla and Yefim Roitman were aware of Kuzovkin's alleged misdeeds when they sold the Apartment in 2013. Therefore, the causes of action for violation of the NJRICO statute are dismissed without prejudice as to the Roitmans.

II. The Complaint is Dismissed for *Forum Non Conveniens*, as both Private-Interest and Public-Interest Factors Favor Dismissal

The equitable doctrine of *forum non conveniens* empowers a court to decline to exercise jurisdiction when a trial in another available jurisdiction will best serve the convenience of the parties and the ends of justice." Yousef v. Gen. Dynamics Corp., 205 N.J. 543 (2011). While deference is normally afforded to the plaintiff's choice of forum, if the plaintiff is not a resident of the chosen forum, that deference is diminished. Id. In all circumstances, however, "a plaintiff's choice of forum is not dispositive, because ultimately it is for the court to decide

whether the ends of justice will be furthered by trying a case in one forum or another." Id. Therefore, if the plaintiff's choice of forum is "demonstrably inappropriate," then the case should be dismissed. Id.

"The first step in a *forum non conveniens* inquiry is to determine whether there is an adequate alternative forum for the case." Rippon v. Smigel, 449 N.J. Super. 344, 364 (App. Div. 2017). "An adequate forum is one where the defendant is amenable to service of process, and where the subject matter of the dispute may be litigated." Id. Here, the Complaint alleges that the Roitmans each owned property in Russia, and as such, there is no reason that Russia would be unable to resolve a dispute against such owners in a matter involving real property ownership. The Complaint itself states that Armada has been pursuing legal action against Kuzovkin in the Russian judicial system, demonstrating Plaintiffs believe Russia offers them appropriate avenues of legal redress. As Russia is an "adequate forum," the relevant inquiry thus calls for a balance of the "public and private interest factors." Rippon, 499 N.J. Super. at 364.

The four private-interest factors are as follows:

> (1) the relative ease of access to sources of proof, (2) the availability of compulsory process for attendance of unwilling witnesses, (3) whether a view of the premises is appropriate to the action and (4) all other practical problems that make trial of the case easy, expeditious and inexpensive, including the enforceability of the ultimate judgment.
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> Id. at 365.

The four public-interest factors are as follows:

> (1) the administrative difficulties which follow from having litigation pile up in congested centers rather than being handled at its origin, (2) the imposition of jury duty on members of a community having no relation to the litigation, (3) the local interest in the subject matter such that affected members of the community may wish to view the trial and (4) the interest in having localized controversies decided at home.

Id.

The factual record necessary to examine these factors varies from case to case. If the face of the complaint itself makes it clear that the plaintiff has chosen a "demonstrably inappropriate" forum, then the complaint may be dismissed based on that pleading alone. Yousef, 205 N.J. at 559, 567. In this instance, there is no need to conduct discovery regarding the appropriateness of Plaintiffs' choice of forum, as the Complaint sets for all sufficient facts to determine that New Jersey is "demonstrably inappropriate."

A. The Private-Interest Factors Favor Dismissal

All four private-interest factors favor dismissal. First, the relative ease of access to sources of proof makes Russia the most appropriate forum. The core set of conduct, that Russian executives defrauded a Russian company, occurred in Russia. Furthermore, the executives, banks and properties involved in this litigation are all located in Russia, not New Jersey. Finally, documentary evidence and lay or expert testimony would presumably be in the Russian language and involve issues of Russian law. The evidence available in New Jersey is limited, as it consists only of information known to the Roitmans, which they have already turned over to Armada in response to the 2017 subpoena. Accordingly, the first factor supports Russia as the appropriate forum for this matter.

Regarding the second private-interest factor, there is nothing in the Complaint to indicate that any former executives, real estate agents, bankers, real estate appraisers, or any other relevant witnesses have ties to New Jersey sufficient to exercise jurisdiction over them. In fact, the record shows that Plaintiffs have been unable to successfully serve Kuzovkin, the central figure in this litigation, with New Jersey process. Even if Plaintiffs do eventually effectuate New Jersey service on Kuzovkin, it is unclear whether New Jersey would have personal jurisdiction over him, as the only alleged tie between him and the forum state is purchasing the Apartment in

Moscow from a person who happened to reside in New Jersey. Case law suggests that such an attenuated contact is insufficient to confer personal jurisdiction. See, e.g., Regan v. Lowenstein, 292 Fed. Appx. 200, 204 (3d Cir. 2008) (finding no personal jurisdiction where defendant merely entered into a contract with a resident of the forum); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985) (holding that "an individual's contact with an out-of-state party" does not alone "establish sufficient minimum contacts in the other party's home forum"); Dutch-Run-Mays Draft, LLC v. Wolf Block, LLP, 450 N.J. Super. 590, 598 (App. Div. 2017). Because compelling attendance by virtually all of the witnesses in this case appears impossible, and because the cost of obtaining any voluntary cooperation in Russia would be substantial, the second factor also favors Russia as the appropriate forum.

Regarding the third factor, a view of the premises could be necessary in this action, as the value of the Apartment compared to comparable apartments in the neighborhood in Moscow is an issue. The real property that allegedly facilitated Kuzovkin's fraudulent transactions is located in Russia, not New Jersey. Therefore, as it is impossible to view any of the properties at issue in New Jersey, this factor supports Russia as a more appropriate forum as well.

A review of the fourth factor also supports Russia as the more appropriate forum for adjudication, since the witnesses, documents, evidence, property, and all other sources of facts and discovery are located there. The fact that Kuzovkin, the lead defendant, may not be subject to personal jurisdiction in New Jersey also lends credence to the conclusion that New Jersey is not the appropriate forum

A final consideration compounding all the difficulties laid out above includes that, should there be any substantive differences between Russian law and New Jersey law, then Russian law would apply to this action. P.V. v. Camp Jaycee, 197 N.J. 132, 149 (2008). Each side would need to hire Russian legal experts to opine on all aspects of the substantive law, and this Court

would need to weigh in on potentially complicated issues of foreign jurisprudence should those experts disagree. This would be yet another cumbersome and unnecessarily expensive process that would make New Jersey an inappropriate forum for this litigation.

B. The Public-Interest Factors Favor Dismissal

The four public-interest factors also favor dismissal of this action. Considering the first factor, the core of this Complaint is that a Russian executive defrauded a Russian company, and then in turn allegedly purchased property in Russia using money improperly obtained from that company. Forcing New Jersey courts to address that Russian controversy, thereby increasing the workload of New Jersey jurists, is uncalled for and supports a finding that New Jersey is not the appropriate forum for adjudication. Similarly, under the second factor, there is no reason why New Jersey citizens should be summoned for jury duty to decide whether a Russian company was harmed by its Russian executives in Russia.

The third factor also supports a finding that New Jersey is an inappropriate forum, as the local interest in the subject matter would be nonexistent. New Jersey citizens would be unaffected by a Russian executive's alleged malfeasance concerning a Russian software company, and therefore have no interest in the trial. In fact, if there were several Russian citizens who lost their livelihoods due to the alleged misdeeds of Kuzovkin, Russian citizens would certainly be more affected by the proceedings than New Jersey citizens. Likewise, the fourth factor, the local interest in having localized controversies decided at home, also points to Russia as the appropriate forum, because the key facts and events surrounding this case occurred there. Therefore, the third and fourth public-interest factors also support a finding that Russia is the appropriate forum for this matter.

CONCLUSION

For the aforementioned reasons, defendants Alla and Yefim Roitman's Motion to Dismiss the Plaintiffs' Complaint is **GRANTED**.