

F L E D
Clerk of the Superior Court
DEC 04 2018
By: I.C. Rein, Clerk

1 DOUGLAS JAFFE, ESQ. Bar No. 170354
2 LAW OFFICES OF DOUGLAS JAFFE
3 501 West Broadway, Suite 800
4 San Diego, California 92101
5 Telephone: (619) 400-4945
6 Facsimile: (619) 400-4947

7 Attorneys for Razuki Investments, LLC,
8 San Diego Private Investments, LLC,
9 SH Westpoint Group, LLC, Salam Razuki
10 and Marvin Razuki

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO - CENTRAL

AVAIL SHIPPING, INC.,

Plaintiff,

v.

RAZUKI INVESTMENTS, LLC, et. al.,

Defendants.

Case No.: 37-2018-00022710-CU-FR-CTL

**OPPOSITION TO THE MALAN
DEFENDANTS' MOTION TO
CONSOLIDATE**

DATE: December 14, 2018

TIME: 9:00 a.m.

DEPT.: 67

JUDGE: Hon. Eddie C. Sturgeon

SAN DIEGO UNITED HOLDINGS GROUP,
LLC

Cross-Complainant,

v.

RAZUKI INVESTMENTS, LLC and SALAM
RAZUKI,

Cross-Defendants.

Case No. 37-2018-00034229-CU-BC-CTL

ATTACHED: Jaffe Declaration

SALAM RAZUKI,

Plaintiff,

v.

NINUS MALAN, et. al.,

Defendants.

1 Defendants/Cross-Defendants Razuki Investments, LLC, San Diego Private Investments,
2 LLC, SH Westpoint Group, LLC, Salam Razuki and Marvin Razuki in *Avail Shipping, Inc. v.*
3 *Razuki Investments, LLC, et. al.* (the "Razuki Defendants") submit their Opposition To The
4 Motion To Consolidate as follows:

5
6 I. FACTS IN THE AVAIL SHIPPING ACTION

7 Avail Shipping, Inc. ("Avail Shipping") is a tenant of Razuki Investments. Avail
8 Shipping operates a laundromat.

9 Avail Shipping filed an arbitration action against Razuki Investments and Defendant
10 Salam Razuki claiming more than a million dollars in alleged damages. Avail Shipping claimed
11 that Avail Shipping had been fraudulently induced to lease its current space, and that the leased
12 space was not sufficiently improved.

13 The Arbitrator rejected Avail Shipping's claims for fraud and negligent
14 misrepresentation, and found Avail Shipping's claims against Salam Razuki were so unsupported
15 that the Arbitrator granted a non-suit in favor of Salam Razuki and against Avail Shipping. *See*,
16 Exhibit A to the Complaint in this action.

17 The Arbitrator found in favor of Avail Shipping on the breach of contract claim,
18 awarding damages of approximately \$150,000 and some of Avail Shipping's fees and costs for a
19 total award of \$230,867.20. The judgment confirming the arbitration award was entered on
20 April 23, 2018. Since that time, Razuki Investments has attempted to resolve all issues between
21 this landlord and tenant, but Avail Shipping is trying to get Razuki Investments to pay the
22 alleged damages which the Arbitrator rejected. Avail Shipping demanded \$1.2 million in this
23 action (while Avail Shipping has failed to pay its rent in the monthly payment of over \$6,600 for
24 over five months).

25 Avail Shipping has brought this action alleging fraudulent conveyances of real property.
26 The alleged fraudulent transfers in this action were made in the ordinary course of business.
27 Razuki Investments has deposited the \$260,477.64 with the Court to further demonstrate the lack
28 of support for this action, and in response to the actions taken by Plaintiffs against Razuki

1 Investments' properties worth far in excess of the judgment or even the amount demanded by
2 Avail Shipping. This Court's Order allowing the deposit of the funds in the Court registry is
3 attached hereto as Exhibit A.
4

5 II. CONSOLIDATION IS NOT APPROPRIATE IN THESE ACTIONS

6 The Malan Defendants were included in the Avail Shipping action as recipients of
7 allegedly fraudulently conveyed property. Counsel for Avail Shipping acknowledged on the
8 record at the last hearing in the Avail Shipping matter that Avail Shipping has settled its claims
9 with the Malan Defendants.

10 The cross-complaint asserted by the Malan Defendants in the Avail Shipping matter
11 against the Razuki Defendants (not Avail Shipping) is a recitation of claims the Malan
12 Defendants have made in the *Razuki v. Malan* action. There is no support for bringing the Avail
13 Shipping case into the morass which is the *Razuki v. Malan* case.

14 The complexity that would result from granting the motion to consolidate, the risks of
15 jury confusion, the untimeliness of the motion, and the prejudice to the parties heavily weigh in
16 favor of denying the motion. When deciding whether or not to consolidate two cases, the Court
17 looks primarily at whether the actions involve common questions of law or fact. *See*, Code of
18 Civ. Proc. §1048(a). The Court also considers whether consolidation would prejudice the parties.
19 *See, State Farm Mut. Auto. Ins. Co. v. Superior Court of San Francisco* (1956) 47 Cal.2d 428,
20 432.

21 The *Razuki v. Malan* case involves different parties, real properties, and issues than the
22 Avail Shipping lawsuit, and would cause prejudice. Counsel for Avail Shipping acknowledged
23 on the record at the last hearing in the Avail Shipping matter that Avail Shipping would seek to
24 bifurcate its claims if a consolidation is ordered.

25 The motion is also untimely. The Malan Defendants entered their appearance in the
26 *Razuki v. Malan* matter on July 17, 2018. The motion gives no support or justification for
27 waiting months to file the motion while vigorously pursuing the Malan Defendants' defense and
28 a cross-complaint.

1 The motion appears designed to try and obtain a "second chance" for a CCP § 170.6
2 challenge and should not be allowed. *See, Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.
3 App. 4th 150, 155.

4 Finally, the Malan Defendants offered to dismiss their cross-complaint in the Avail
5 Shipping action and the Razuki Defendants agreed. On November 13, 2018, counsel for the
6 Razuki Defendants inquired to counsel for the Malan Defendants whether Avail Shipping should
7 be included in the agreement regarding the dismissal of the cross-complaint. Counsel for the
8 Malan Defendants has failed to respond. *See, Exhibit B hereto and Jaffe Declaration at*
9 paragraph 9.

10
11 III. CONCLUSION

12 The Razuki Defendants request the Court deny the motion, and for other and further
13 relief as the Court deems appropriate.

14
15 Dated: December 3, 2018

16 LAW OFFICES OF DOUGLAS JAFFE

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18 By:

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21 Douglas Jaffe
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DECLARATION OF DOUGLAS JAFFE

Douglas Jaffe declares as follows:

1. Defendants/Cross-Defendants Razuki Investments, LLC, San Diego Private Investments, LLC, SH Westpoint Group, LLC, Salam Razuki and Marvin Razuki in the *Avail Shipping, Inc. v. Razuki Investments, LLC, et. al.* (the "Razuki Defendants"). As such, I have personal knowledge of the facts contained in this declaration and if called to testify I could and would competently testify thereto.

2. Plaintiff Avail Shipping, Inc. ("Avail Shipping") is a tenant of Razuki Investments. Avail Shipping operates a laundromat.

3. Avail Shipping filed an arbitration action against Razuki Investments and Defendant Salam Razuki claiming more than a million dollars in alleged damages. Avail Shipping claimed that Avail Shipping had been fraudulently induced to lease its current space, and that the leased space was not sufficiently improved.

4. The Arbitrator rejected Avail Shipping's claims for fraud and negligent misrepresentation, and found Avail Shipping's claims against Salam Razuki were so unsupported that the Arbitrator granted a non-suit in favor of Salam Razuki and against Avail Shipping. *See*, Exhibit A to the Complaint in the Avail Shipping action.

5. The Arbitrator found in favor of Avail Shipping on the breach of contract claim, awarding damages of approximately \$150,000 and some of Avail Shipping's fees and costs for a total award of \$230,867.20. The judgment confirming the arbitration award was entered on April 23, 2018. Since that time, Razuki Investments has attempted to resolve all issues between this landlord and tenant, but Avail Shipping is trying to get Razuki Investments to pay the alleged damages which the Arbitrator rejected. Avail Shipping demanded \$1.2 million in this action (while Avail Shipping has failed to pay its rent in the monthly payment of over \$6,600 for over five months).

1 6. Avail Shipping has brought this action alleging fraudulent conveyances of real
2 property. The alleged fraudulent transfers in this action were made in the ordinary course of
3 business. Razuki Investments has deposited the \$260,477.64 with the Court to further
4 demonstrate the lack of support for this action, and in response to the actions taken by Plaintiffs
5 against Razuki Investments' properties worth far in excess of the judgment or even the amount
6 demanded by Avail Shipping. This Court's Order allowing the deposit of the funds in the Court
7 registry is attached hereto as Exhibit A.

8 7. The Malan Defendants were included in the Avail Shipping action as recipients of
9 allegedly fraudulently conveyed property. Counsel for Avail Shipping acknowledged on the
10 record at the last hearing in the Avail Shipping matter that Avail Shipping has settled its claims
11 with the Malan Defendants.

12 8. Counsel for Avail Shipping acknowledged on the record at the last hearing in the
13 Avail Shipping matter that Avail Shipping would seek to bifurcate its claims if a consolidation is
14 ordered.

15 9. Finally, the Malan Defendants offered to dismiss their cross-complaint in the
16 Avail Shipping action and the Razuki Defendants agreed. On November 13, 2018, I inquired to
17 counsel for the Malan Defendants whether Avail Shipping should be included in the agreement
18 regarding the dismissal of the cross-complaint. Counsel for the Malan Defendants has failed to
19 respond. True and correct copies of my emails with counsel for the Malan Defendants dated
20 October 31, 2018, November 8, 2018 and November 13, 2018 are attached hereto as Exhibit B.

21
22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 Executed on December 3, 2018 in San Diego, California

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26 _____ DOUGLAS JAFFE
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PROOF OF SERVICE

I am over the age of 18 years and not a party to or interested in the within entitled action. My business address is 501 West Broadway, Suite 800, San Diego, California 92101.

On December 3, 2018, I served the foregoing

OPPOSITION TO THE MALAN DEFENDANTS' MOTION TO CONSOLIDATE

by electronic service through One Legal, by email addressed as follows:

Kyle Yaege, Esq.
Hickman & Robinson
701 B Street, Suite 1310
San Diego, CA 92101
kyle@hickmanrobinsonlaw.com

Tamara Leetham, Esq.
Austin Law Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110
tamara@austinlegalgroup.com

Steven A. Elia
LAW OFFICES OF STEVEN A. ELIA, APC
2221 Camino Del Rio South, Suite 207
San Diego, California 92108
steve@elialaw.com

I am readily familiar with the firm's practice of collection and processing for service through One Legal. It is submitted to One Legal and sent by email to the above email addresses on the same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 3, 2018 at San Diego, California.



Douglas Jaffe

EXHIBIT A

1 DOUGLAS JAFFE, ESQ. Bar No. 170354
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2 501 West Broadway, Suite 800
San Diego, California 92101
3 Telephone: (619) 400-4945
Facsimile: (619) 400-4947
4

5 Attorneys for Razuki Investments, LLC,
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F I L E D
Clerk of the Superior Court
OCT 12 2018
By: P. Ashworth, Clerk

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO - CENTRAL

11 AVAIL SHIPPING, INC.,

12 Plaintiff,

13 vs.

14 RAZUKI INVESTMENTS, LLC, et. al.,

15 Defendants.
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Case No.: 37-2017-00042459-CU-PA-CTL

**ORDER ON EX-PARTE APPLICATION
FOR ORDER ALLOWING THE
DEPOSIT OF FUNDS IN THE COURT
REGISTRY**

20 On October 9, 2018 Defendant Razuki Investments, LLC presented an Ex-Parte
21 Application For Order Allowing The Deposit Of Funds In The Court Registry, and

22 This Court having read and considered the application, and good cause appearing
23 therefore:

24 IT IS ORDERED that the application is granted and Razuki Investments, LLC may
25 deposit the sum of \$260,477.64 with the Court, and the deposit shall prevent further interest on
26 the judgment from continuing to accrue as of October 9, 2018; and

27 The funds deposited may be refunded upon order of this Court.
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1 Dated: October 12, 2018

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5 SUPERIOR COURT JUDGE
6 Eddie C. Sturgeon
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EXHIBIT B

From: Douglas Jaffe <douglasjaffe@aol.com>
To: Leetham, Tamara <tamara@austinlegalgroup.com>
Subject: Re: Response on Dismissing Avail Cross-complaint
Date: Tue, Nov 13, 2018 1:39 pm

Do you want Avail Shipping to be included in the agreement regarding the dismissal of the cross-complaint to confirm its dismissal of claims against your clients?

Douglas Jaffe, Esq.
501 West Broadway, Suite 800
San Diego, CA 92101
(619) 400-4945

On Nov 8, 2018, at 11:12 AM, Douglas Jaffe <douglasjaffe@aol.com> wrote:

We are willing to that. We need a settlement agreement which I will draft.

Douglas Jaffe, Esq.
501 West Broadway, Suite 800
San Diego, CA 92101
(619) 400-4945

On Oct 31, 2018, at 1:33 PM, Leetham, Tamara <tamara@austinlegalgroup.com> wrote:

Doug,

I am renewing my prior offer to dismiss San Diego United Holdings Group's Cross-complaint against Razuki Investments et al. in exchange for your agreement to waive costs.

Please advise.

Tamara M. Leetham, Esq. | Austin Legal Group, APC | tamara@austinlegalgroup.com
3990 Old Town Ave., Ste A-112, San Diego, CA 92110
Office Phone: 619-924-9600
Fax Number: 619-881-0045
www.austinlegalgroup.com

Confidentiality Notice:

This message is being sent on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named

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Attorneys for Plaintiff
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 FOR THE COUNTY OF SAN DIEGO - CENTRAL BRANCH

11 CHRISTOPHER JAIME,

12 Plaintiff,

13 v.

14 CARMAX AUTO SUPERSTORES
CALIFORNIA, LLC,

15
16 Defendant.
17

Case No.: 37-2015-00001014-CU-FR-CTL

**RESPONSE TO DEFENDANT'S EX-
PARTE APPLICATION TO SPECIALLY
SET CARMAX'S MOTIONS FOR NEW
TRIAL AND JUDGMENT
NOTWITHSTANDING THE VERDICT**

DATE: December 5, 2018
TIME: 9:00 a.m.
DEPT: 74
JUDGE: Hon. Ronald L. Styn

ATTACHED: Jaffe Declaration
18
19

20
21 Plaintiff Christopher Jaime submits his Response To Defendant's Ex-Parte Application
22 To Specially Set CarMax's Motions For New Trial And Judgment Notwithstanding The Verdict:

23
24 The Court has the discretion to add CarMax's two motions to its already full calendar on
25 December 14, 2018 (only 7 court days from the ex-parte hearing). However, there are certainly
26 grounds to find that CarMax's delay with regard to scheduling the hearing date means the
27 motions should be denied by operation of law.
28

1 On November 1, 2018, counsel for the parties were present in Court for CarMax's ex-
2 parte application for a limited stay pursuant to CCP § 918. The Court granted the application
3 and enforcement of the judgment is stayed until December 26, 2018. The Court at that hearing
4 also directed counsel for CarMax to immediately calendar its post-judgment motions. See, ROA
5 # 387. Counsel for Jaime told CarMax's counsel immediately after the hearing that getting a
6 hearing date on or before December 14, 2018 seemed unlikely (as of November 1, 2018), and
7 therefore counsel for CarMax would have to make an ex-parte application to specially set the
8 hearings. See, attached Jaffe Declaration at paragraph 2.

9 CarMax calendared its motions on November 1, 2018. The calendar clerk gave the first
10 available hearing date, which was January 25, 2019. CarMax knew no later than November 1,
11 2018 that it had to apply ex-parte to specially set the motions.

12 CarMax improperly blames Court staff for the delay from November 1st to December 5th
13 to seek to specially set the hearing of the motions, and the delay severely prejudices the proper
14 consideration of these motions.

15 Judgment was entered on October 16, 2018 with service of the judgment by the Court on
16 the same day. Notice of entry of the judgment was filed and served by Plaintiff on October 17,
17 2018. CarMax's motions are denied as a matter of law on December 15, 2018. See, *Uzyel v.*
18 *Kadisha* (2010) 188 Cal.App.4th 866, 899 ("A trial court ruling on a new trial motion must do so
19 within 60 days after the earlier of the date of mailing by the court clerk or service by a party of a
20 notice of entry of judgment or the date of filing of a notice of intention to move for a new trial.
21 [CCP § 660.] If the court fails to rule on the motion within that time period, the motion is
22 denied by operation of law. [Citation omitted.] An order ruling on a new trial motion after the
23 60-day period is beyond the court's jurisdiction and is void").

24
25 Dated: December 4, 2018

LAW OFFICES OF DOUGLAS JAFFE

26 By:

27 Douglas Jaffe

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DECLARATION OF DOUGLAS JAFFE

1. I am the attorney for Plaintiff Christopher Jaime ("Jaime"). I have personal knowledge of the facts set forth herein and if called to testify I could and would competently testify thereto.

2. On November 1, 2018, counsel for the parties were present in Court for CarMax's ex-parte application for a limited stay pursuant to CCP § 918. The Court granted the application and enforcement of the judgment is stayed until December 26, 2018. The Court at that hearing also directed counsel for CarMax to immediately calendar its post-judgment motions. *See*, ROA # 387. I told CarMax's counsel immediately after the hearing that getting a hearing date on or before December 14, 2018 seemed unlikely (as of November 1, 2018), and therefore counsel for CarMax would have to make an ex-parte application to specially set the hearings.

3. CarMax calendared its motions on November 1, 2018. The calendar clerk gave the first available hearing date, which was January 25, 2019. CarMax knew no later than November 1, 2018 that it had to apply ex-parte to specially set the motions.

4. CarMax improperly blames Court staff for the delay from November 1st to December 5th to seek to specially set the hearing of the motions, and the delay severely prejudices the proper consideration of these motions.

5. Judgment was entered on October 16, 2018 with service of the judgment by the Court on the same day. Notice of entry of the judgment was filed and served by Plaintiff on October 17, 2018. CarMax's motions are denied as a matter of law on December 15, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 4, 2018 in San Diego, California.



DOUGLAS JAFFE