

1 2. Avail Shipping, Inc. (“Avail Shipping”) is a tenant of Razuki Investments
2 pursuant to a written lease. Avail Shipping operates a laundromat at the leased premises.

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

7 4. The Arbitrator rejected Avail Shipping’s claims for fraud, negligent
8 misrepresentation, and found Avail Shipping’s claims against Razuki were so unsupported that
9 the Arbitrator granted a non-suit in favor of Razuki and against Avail Shipping.

10 5. The Arbitrator found in favor of Avail Shipping on the breach of contract claim,
11 awarding damages of approximately \$150,000 and some of Avail Shipping’s fees and costs for a
12 total award of \$230,867.20. The Judgment was entered and Razuki Investments immediately
13 attempted to satisfy the Judgment. Avail Shipping refused to accept the full amount of the
14 judgment as full satisfaction of the Judgment, claiming it was owed an additional \$1,000,000 in
15 this action.

16 6. After the claims against Razuki were dismissed by non-suit, the parties had
17 settlement discussions as the arbitration continued including, without limitation, whether Razuki
18 would receive an award of fees and costs due to the non-suit of the claims against him in the
19 arbitration.

20 7. The alleged fraudulent transfers in this action were made in the ordinary course of
21 business as demonstrated by Razuki’s declarations in the *Razuki v. Malan, et. al.* case, San Diego
22 Superior Court Case No. 37-2018-00034229-CU-BC-CTL.

23 8. Avail Shipping was awarded attorney’s fees in the Arbitration Action for work
24 regarding collection of the Judgment. Attached hereto as Exhibit A is a true and correct copy of
25 this Court’s Minute Order dated February 22, 2019.

26 9. Attached hereto as Exhibit B is a true and correct copy of the transcript of the
27 hearing that was conducted in this action on August 21, 2018. I was present at the hearing and
28 know what was said and the transcript is accurate.

EXHIBIT A

Petitioner's request for an increase in the judgment in the amount of \$6,277.76, in interest accruing at the rate of 10% from the end of the period included in the amended judgment (7/19/18) up to the date that respondent deposited the funds on October 16, 2018, is denied. Any interest requested would have been offset by the credit on the rent.

Petitioner's request for \$3,670.00 in attorney's fees and \$850.00 in costs incurred in collections efforts, including the preparation and delivery of abstract of judgment (general real property lien) for the original judgment and the subsequently issued amended judgment, issuance of notarized monthly acknowledgments of partial satisfaction of judgment in lieu of rent, including the costs of preparing this motion is denied. Petitioner should not recover fees for work prior to the amended judgment. Exhibit F is not a list of fees, but the acknowledgments filed. The court awards \$1,500 in attorney's fees, plus costs of \$180 for the notary fees on the acknowledgments of partial satisfaction, plus the recording costs of \$190.00, and the \$227.60 for the withdrawal of the lis pendens. These amounts (\$1,500 for attorney's fees and \$597.60 in costs) shall be offset to the credits due RI.

Petitioner's request for \$13,185.00 in attorney's fees and \$5,062.79 costs incurred in the preparation and prosecution of a uniform fraudulent transfer action against respondent is denied. That is a different case, and there is no prevailing party at this time.

Petitioner's request for \$1,615.00 in attorney's fees and \$125.31 in costs incurred in the issuance of collection discovery is denied.

The court orders the clerk of the court to release the funds deposited with the court in the amount of \$260,477.64 as follows:

\$186,092.11 (\$183,994.51 in principle, plus costs and fees of \$2,097.60) to petitioner.
\$ 74,385.53 to respondent.

If any interest has accrued on the deposit with the court, it shall be granted to the parties in proportion to this distribution.

Petitioner is strongly encouraged to withdraw its memorandum of costs to avoid future hearings./n [1] The court notes the judgment lists respondent as "Razuki Investments L.L.C." but respondent's counsel uses Razuki Investments, LLC."

Petitioner's request for \$3705.00 in attorney's fees and \$1000.91 costs incurred in ex parte fees is denied.

Petitioner is directed to prepare an order for disbursement of funds.

EXHIBIT B

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

AVAIL SHIPPING, INC.,

Plaintiff,

vs.

RAZUKI INVESTMENTS, LLC,
et al.,

Defendants.

Hon. Eddie C. Sturgeon

CASE NO. 37-2018-
00022710-CU-FR-CTL

Hearing

TRANSCRIPT OF PROCEEDINGS

August 21, 2018

9:00 a.m.

330 West Broadway, Dept. 67

San Diego, California

REPORTED BY:

Leyla S. Jones

CSR No. 12750

1 APPEARANCES:

2 For Plaintiff:

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9 For Defendants Razuki Investments, LLC;
10 San Diego Private Investments, LLC;
11 SH Westpoint Group, LLC; Salam Razuki;
12 Marvin Razuki:

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14 DOUGLAS JAFFE, ESQ.
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27 Also present: Ninus Malan
28 Salam Razuki

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SAN DIEGO, CALIFORNIA;

TUESDAY, AUGUST 21, 2018; 9:00 A.M.

THE COURT: Let's talk about Avail Shipping, Inc., vs. Razuki Investments.

MR. YAEGE: Good morning, Your Honor. Kyle Yaege for Avail Shipping, Inc.

MS. LEETHAM: Good morning, Your Honor. Tamara Leetham for cross-complainant, San Diego United Holdings Group.

MR. JAFFE: Good morning, Your Honor. Doug Jaffe on behalf of the Razuki defendants, Razuki Investments and Mr. Razuki. Mr. Razuki is here in court.

MS. LEETHAM: Mr. Malan is also present in the court.

THE COURT: And who do you represent again?

MS. LEETHAM: San Diego United Holdings Group. We're the cross-complainant. We're also defendants, but we settled.

THE COURT: Okay. There's no conflicts here with the attorneys? And I'm not talking about you two. I'm talking about him.

No conflict?

MR. YAEGE: Your Honor, my only client is Avail Shipping, the tenant at one of the Razuki Investments' properties.

THE COURT: Okay. Is someone complaining

1 of a conflict that --

2 MS. LEETHAM: I am against Mr. Jaffe.

3 MR. JAFFE: Did you get any papers other
4 than ours? because I didn't get any papers other
5 than the moving papers.

6 MS. LEETHAM: I haven't filed anything yet.

7 THE COURT: I read somewhere -- who worked
8 with the arbitrator? That's the allegation. What's
9 the conflict?

10 MR. YAEGE: So, Your Honor, the
11 arbitration -- my client was the claimant in the
12 arbitration.

13 THE COURT: And your client again is?

14 MR. YAEGE: Avail Shipping --

15 THE COURT: Thank you, sir.

16 MR. YAEGE: -- which was a tenant at one of
17 the Razuki Investments' properties. Mr. Malan, who
18 is San Diego United Holdings related --

19 THE COURT: Got it.

20 MR. YAEGE: -- and represented by
21 Ms. Leetham, was the property manager at that
22 property for Razuki Investments, who -- Mr. Razuki
23 was the principal that appeared in the arbitration.

24 So Mr. Jaffe represented Razuki Investments
25 in the underlying arbitration and actually
26 affirmatively represented that he was representing
27 Mr. Malan in his deposition in that proceeding.

28 THE COURT: We will cross that bridge.

1 MR. YAEGE: Okay.

2 THE COURT: But there was an arbitration,
3 right?

4 MR. JAFFE: Right.

5 THE COURT: What are we litigating?

6 MR. JAFFE: Exactly, Your Honor. It's
7 our ex parte, our --

8 MR. YAEGE: Your Honor --

9 THE COURT: Go ahead. It's your ex parte.
10 Go ahead, Mr. Jaffe.

11 MR. JAFFE: So as you know from yesterday's
12 more than 2 1/2 hour hearing regarding a lot having
13 to do with --

14 THE COURT: Learned a lot.

15 MR. JAFFE: -- the reason properties needed
16 to be transferred from Razuki Investments to
17 San Diego Private for the refinance that took place
18 regarding, you know, the financing that was going
19 on, well, what's happened here is Avail Shipping, in
20 just a simple landlord/tenant dispute with Avail --
21 Avail Shipping is the tenant; Razuki Investments is
22 the landlord. They rented this space to them.

23 Avail Shipping had this huge claim for over
24 a million dollars that they couldn't open up their
25 business, and then they wanted out of the lease.
26 And the arbitrator gave them about \$150,000 worth of
27 damage for some swamp coolers and some minor items,
28 which they got some award of attorney's fees, about

1 \$230,000 total.

2 The value of the property that -- where
3 they're leasing space right now has more than enough
4 equity, multiple times the equity to pay off this
5 judgment. But what they did was as soon as the
6 arbitration order was confirmed, they put
7 lis pendens and filed this case for fraudulent
8 conveyance on all of those properties, which you
9 know of from the other case.

10 They weren't fraudulent conveyances, as
11 detailed in all of those declarations. And in
12 further support of that, we have the check, which
13 I've had since July 6th. The Court didn't have
14 ex parte spots available for us until August 9th,
15 and then counsel for Avail wasn't available until
16 today. That's why we're only in here today.

17 But we want to try and stop interests. It
18 shouldn't be accruing attorney's fees. This case
19 should be over, ready to pay it off. They still
20 want more than a million dollars on top of the
21 250,000, which is still their claim from that
22 arbitration, which they weren't ordered, which
23 they're now claiming is some kind of punitive damage
24 in this case for fraudulent conveyance, which I
25 think you have some experience from those
26 declarations as to why the conveyances were made and
27 they weren't fraudulent.

28 We just want to deposit the money with --

1 since they won't agree that -- they won't -- they
2 want more than a million dollars excess, we want to
3 deposit this money. And then we can determine later
4 its impact.

5 THE COURT: So in this case -- in this
6 case, Counsel -- this is the Avail case -- this case
7 that's before me, there was an arbitration?

8 MR. JAFFE: Yes.

9 THE COURT: There was an award?

10 MR. JAFFE: Yes.

11 THE COURT: Confirmed by the Court?

12 MR. JAFFE: Correct.

13 THE COURT: And that's about 230,000,
14 correct?

15 MR. JAFFE: Correct.

16 THE COURT: And you want a million more?

17 MR. YAEGER: No, Your Honor. So the case
18 that's before you is the fraudulent transfer action,
19 not the underlying breach of contract and product
20 dispute. I'm not aware if the Court heard a motion
21 to quash in my absence yesterday or what -- I was
22 not copied on Mr. Jaffe's papers in this motion
23 hearing that somehow the Court is now familiar with
24 all of these transfers, but --

25 THE COURT: Well, I'm not too familiar with
26 this one.

27 MR. YAEGER: Yeah. The substance of this
28 case is, Your Honor, there was a landlord/tenant

1 dispute about what improvements needed to be made to
2 the property.

3 THE COURT: Yeah.

4 MR. YAEGE: The allegations by the tenant
5 were that the landlord made certain representations
6 that they were going to make certain improvements.
7 They didn't. The tenant had to pay to improve
8 various types of service. They got their award,
9 et cetera.

10 During that process, the property in which
11 this laundromat is located went into foreclosure.
12 And basically, every property showing on the
13 grantor/grantee index in Razuki Investments' names
14 got transferred to Mr. Razuki's relatives and to
15 other entities that Mr. Razuki controlled for a big,
16 fat zero dollars. So if --

17 THE COURT: But you're not claiming title
18 to this, are you?

19 MR. YAEGE: We're claiming a fraudulent
20 transfer, which entitles us to record lis pendens to
21 make sure the property doesn't bounce from person to
22 person to person, which has been the practice
23 between these folks. And if they have a problem
24 with the lis pendens, they can file a motion to
25 quash. It --

26 THE COURT: I understand what you're
27 saying. I'm confused, though. You're claiming
28 that, therefore, the lease is --

1 MR. YAEGE: No, no, no. There's no dispute
2 about the -- whether the lease is valid or not,
3 Your Honor. The question is whether Razuki
4 Investments made a coordinate -- did a coordinated
5 effort to render itself insolvent by transferring
6 its assets to other entities and other people.

7 THE COURT: He has --

8 MR. YAEGE: That's what this action
9 alleges.

10 THE COURT: He has a check for \$250,000
11 [sic] he wants to give you.

12 MR. YAEGE: He hasn't give me the check for
13 \$250,000.

14 MR. JAFFE: I have it in my office right
15 across the street.

16 THE COURT: Do you want a check for
17 \$230,000 [sic]?

18 MR. YAEGE: Your Honor, if he wants to give
19 me a check, I will send him an acknowledgment of
20 satisfaction of judgment to whatever the dollar
21 amount is. We had this discussion, Your Honor. We
22 had this discussion on July the 19th in front of --
23 in -- in front of Judge Parsky. I said, "If you
24 want to give me a check, give me a check. I'll give
25 you the acknowledgment." And we keep coming back in
26 here for him to try to deposit it with the court.

27 MR. JAFFE: He's saying it would be a
28 partial satisfaction of judgment, and then they

1 would continue on for the million. I mean, I asked
2 him, "Let's settle it."

3 He said, You got to pay it for a million
4 more to settle it. We'll take your 230,000, and
5 we'll keep litigating for the million.

6 MR. YAEGE: Your Honor, to the extent that
7 there is a fraudulent transfer action, we're not
8 just limited to the face value of the judgment.
9 There's case law to that effect.

10 Mr. Jaffe asked me what it would take to
11 settle this particular case about these transfers,
12 which we are informed and believe were specifically
13 designed to render this entity insolvent and make
14 collection of the judgment harder, and I gave him
15 that number.

16 Now, the settlement negotiations between
17 the parties really isn't something that's
18 appropriate to even bring up in an ex parte or
19 motion hearing.

20 THE COURT: Is there an attorney
21 fees position in this?

22 MR. YAEGE: Yes, Your Honor.

23 THE COURT: So, therefore, whoever I decide
24 is right or wrong, I got to award attorney fees?

25 MR. JAFFE: You could go to the defendant
26 as well if they --

27 THE COURT: Absolutely. I go on both sides
28 of the table.

1 You've been awfully quiet.

2 MS. LEETHAM: I know. It's unusual for me.

3 THE COURT: Go.

4 MS. LEETHAM: I mean, our interest is
5 different. I filed a quiet title action against
6 8861 and 8363 Balboa.

7 THE COURT: In this lawsuit?

8 MS. LEETHAM: It -- I file -- mine is the
9 low number case, actually, Your Honor. So I filed
10 my quiet title action --

11 THE COURT: Let me interrupt again.

12 MS. LEETHAM: Yes.

13 THE COURT: You said low number case. Is
14 that a --

15 How do you say your client's --

16 MR. YAEGE: Avail Shipping.

17 THE COURT: Is it in this case?

18 MS. LEETHAM: Correct. So on --

19 THE COURT: When you say your case is the
20 low number case, is that case this lawsuit, then,
21 Avail?

22 MS. LEETHAM: Yes. So -- just so I'm being
23 clear, on June 27th, I sued Razuki Investments for
24 quiet title of two of the properties that are at
25 issue in Razuki vs. Malan, which is what the parties
26 were here on yesterday.

27 THE COURT: Got it.

28 MS. LEETHAM: So my action has been

1 pending. So title is actually related in both
2 cases. But I mean, we're -- we're all in your
3 department. So my cross-complaint remains pending
4 regardless of what these sides do.

5 THE COURT: In Avail?

6 MS. LEETHAM: In Avail.

7 MR. YAEGE: Well -- and, Your Honor, Avail
8 Shipping is actually the -- to the extent that --
9 the petition to confirm the Avail Shipping
10 arbitration award case, that case was in front of
11 Judge Parsky and it's a 2017 case. It predates all
12 the rest of this mess.

13 THE COURT: Is that case before me?

14 MR. YAEGE: That case is not before you, at
15 least I'm not aware of any motion to consolidate,
16 which is one of the reasons that I think the
17 ex parte application is defective on its face,
18 because it's requesting to deposit a check in a case
19 where the judgment was issued in a different
20 department on a different -- different matter.

21 THE COURT: You want -- I'm confused. I
22 just heard -- I'm confused. First of all, I finally
23 understood the marijuana case. I finally got my
24 head around that one, but I really don't have my
25 head around this case. I'll be quite honest with
26 you. I thought I did, but now I'm hearing there's
27 another in Judge Parsky's that --

28 MR. JAFFE: That was just to confirm the

1 arbitration award, and the judgment has been
2 entered. Then they filed a new case for fraudulent
3 conveyance. We want to deposit it here just to
4 simply show there was never a fraudulent conveyance
5 in --

6 THE COURT: I understand that. Hold on.
7 No, no, no, no, no. To stop the interest, Counsel,
8 you should go to Judge Parsky. That's where it
9 needs to be filed, Counsel, not in this lawsuit,
10 because that's where the judgment is, correct?
11 That's where the 10 percent interest is running,
12 correct?

13 MR. JAFFE: But they're claiming all the
14 attorney's fees and damages in this case saying it's
15 a fraudulent conveyance.

16 THE COURT: You file your motions. No, I
17 understand that. Two lawsuits. I thought it was
18 all wrapped up. Let me give you my thoughts real
19 quick. Counsel, this -- in my humble opinion, this
20 should be made in front of Judge Parsky. You know,
21 she's been transferred over to criminal.

22 So I'm afraid to even say what's coming out
23 of my mouth, but you know what I'm going to say,
24 right? Get it over here. No other judge needs to
25 deal with all this. And I say that so respectfully,
26 unless there's going to be a 176. Let me know.
27 Have that case transferred here. I understand the
28 dynamics.

1 But I think, Mr. Jaffe, the appropriate
2 place is not in this lawsuit. It should be filed in
3 the lawsuit that you have the judgment, because that
4 stops the interest.

5 MR. YAEGE: That motion was made orally by
6 Mr. Jaffe a month ago in front of Judge Parsky, who
7 encouraged him to file an ex parte in your
8 department.

9 THE COURT: Okay. Well, it should be done
10 here. But I'm also suggesting, send it here. Okay?

11 MR. JAFFE: Understood.

12 THE COURT: Okay. I'll leave it up to you.
13 Everybody got it? So get it over here. I'll hear
14 your motion.

15 MR. JAFFE: Okay.

16 THE COURT: And you can do an ex parte.
17 It's not hard for me.

18 MS. LEETHAM: Does Your Honor want us to
19 try to consolidate everything then?

20 THE COURT: Leave them separate at this
21 time. I'll make a determination of that. There's
22 a lot of issues when you consolidate, especially
23 with the computer.

24 MS. LEETHAM: Okay.

25 THE COURT: That's the problem, because you
26 have to have a lead case. Everything has to be
27 filed under the lead case. Let's keep them separate
28 at this time.

1 MS. LEETHAM: Okay.

2 THE COURT: All right. Everybody good?

3 MS. LEETHAM: Today.

4 THE COURT: All right. I'll be seeing you
5 all. Thank you.

6 MS. LEETHAM: Thank you, Your Honor.

7 THE COURT: Always a pleasure.

8 (The proceedings concluded at 9:13 a.m.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN DIEGO)

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4 I, Leyla S. Jones, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness
7 in the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing
9 but the truth;

10 That said proceedings were taken before me
11 at the time and place therein set forth and were
12 taken down by me in shorthand and thereafter
13 transcribed into typewriting under my direction and
14 supervision;

15 I further certify that I am neither counsel
16 for, nor related to, any party to said proceedings,
17 nor in any way interested in the outcome thereof.


18 In witness whereof, I have hereunto
19 subscribed my name.

20

21 Dated: August 23, 2018

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Leyla S. Jones
CSR No. 12750

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