

Network Fin., Inc. v JP Morgan

2007 NY Slip Op 30191(U)

March 9, 2007

Supreme Court, New York County

Docket Number: 0116905

Judge: Karla Moskowitz

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

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NETWORK FINANCE, INC., et al,

Plaintiffs,

Index No. 116905/2004

-against-

DECISION and ORDER

JP MORGAN, et al,

Defendants.

-----X
Karla Moskowitz, J.:

This is an action for fraud, aiding and abetting fraud, civil conspiracy, unjust enrichment, negligence and breach of contract arising out of the demise of Banco Comercial, one of the largest and oldest banks in the Republic of Uruguay. Defendants move, pursuant to CPLR 2221, to reargue a portion of this court’s decision and order, dated April 10, 2006, that granted defendants’ motion to dismiss the action on the grounds of forum non conveniens and, upon reargument, for an order striking that portion of the decision and order. For the reasons stated below, the court denies leave to reargue.¹

In the April 10th decision and order, this court granted defendants’ motion to dismiss for forum non conveniens. However, the court premised the order upon the following conditions: 1) that defendants accept service of process and consent to the jurisdiction of the courts of Uruguay; 2) that defendants waive any statute of limitations defense they did not already have before the commencement of this action; 3) that defendants consent to the full faith and credit of any judgment that plaintiffs obtain and pay it; and 4) that plaintiffs commence any new action within 90 days from the date of service of defendants’ stipulation upon plaintiffs’ counsel.

¹ The facts of this case have been set forth in detail in this court’s April 10, 2006 decision and order.

Defendants move for reargument of that portion of the underlying decision and order requiring them to consent to the full faith and credit of any judgment that plaintiffs obtain and to pay that judgment. Defendants argue that this requirement is prejudicial and unnecessary in light of the provisions of Article 53 of the CPLR that govern recognition and enforcement of foreign money judgments.

"Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision." (EW Howell Co, Inc v SAF La Sala Corp, 36 AD3d 653 [2d Dept 2007], quoting Carrillo v PM Realty Group, 16 AD3d 611 [2d Dept 2005]; see also, CPLR 2221(d)).

The courts have previously applied the condition at issue here in forum non conveniens cases. For example, in Bewers v American Home Products Corp, (99 AD2d 949 [1st Dept], aff'd 64 NY2d 630 [1984]), the Appellate Division, First Department, reversed a denial of the defendants' motion to dismiss for forum non conveniens. However, the court's order, that the Court of Appeals affirmed, was conditional and required, among other things, the defendants "to consent to full faith and credit for any judgment obtained against them in the United Kingdom and to consent to pay the same..." (Bewers v American Home Products Corp, 99 AD2d at 949). The court stated that defendants' failure to comply with these conditions would result in affirmance of the trial court's original order that had denied the motion to dismiss. (Id.; see also Crown Cork & Seal Co, Inc v Rheem Mfg Co, Inc, 64 AD2d 545 [1st Dept 1978] [defendants required to consent to full faith and credit for any judgment obtained in South Africa]; Law Offices of Dr Mujahid Al-Sawwaf v Chase Manhattan Bank, NA, 4/13/95 NYLJ 27, col 3 [NY

Sup 1995] [defendants required to consent to full faith and credit for any judgment obtained in Saudi Arabia]).

Here, based on the foregoing decisions, the court finds that defendants have not demonstrated that this court overlooked or misapprehended the facts or law or was otherwise mistaken in requiring that they consent to the full faith and credit of any judgment that plaintiffs obtain and to pay that judgment. Accordingly, it is

ORDERED that defendants' motion for leave to reargue is denied.

Dated: March 7, 2007

ENTER:



J.S.C.

FILED

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