

Eridan Shipping Ltd. v Filatov

2009 NY Slip Op 30166(U)

January 27, 2009

Supreme Court, New York County

Docket Number: 104543/08

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Jane S. Solomon
Justice

PART 55

Index Number : 104543/2008

ERIDAN SHIPPING LTD

VS.

FILATOV, STANISLAV

SEQUENCE NUMBER : # 001

DISMISS COMPLAINT

INDEX NO. 104543-08

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

were read on this motion to/for dismiss.

PAPERS NUMBERED

1-4

5-11

12-22

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the annexed Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
JAN 29 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 1-27-2009

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ERIDAN SHIPPING LTD., as successor in interest
to KAMA SHIPPING CO. LTD., and ANTARUS
SHIPPING CO. LTD., as successor in interest to
KAMA MALTA 1011 SHIPPING CO. LTD.,

INDEX NO. 104543/08

Plaintiffs,

DECISION AND ORDER

-against-

STANISLAV FILATOV,

Defendant.
-----X

JANE S. SOLOMON, J.:

INTRODUCTION

Plaintiffs Eridan Shipping Ltd. ("Eridan") and Antarus Shipping Co. Ltd. ("Antarus")¹ commenced this action to enforce a foreign judgment under CPLR Article 53. Defendant Stanislav Filatov ("Filatov") moved to dismiss. Plaintiffs cross-moved for summary judgment and an order of attachment. For the reasons stated below, Defendant's motion to dismiss is granted. Plaintiffs' cross-motion for summary judgment is denied.

FACTS

Eridan is a successor in interest to Kama Malta Shipping Co. Ltd. ("Kama Malta"). Antarus is a successor in interest to Kama Malta 1011 Shipping Co. Ltd.

¹ Eridan and Antarus will be collectively referred to as the "Plaintiffs."

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("Kama Malta 1011").² The Kama Companies were engaged in the shipping business and were incorporated and headquartered in Malta. Filatov claims that he has merely an employee of Kama Malta and Kama Malta 1011. However, Plaintiffs have shown that he was a director of the Kama Companies. Filatov, a Russian national, owned a home in Malta and managed the operations of the Kama Companies. In August 1997, Todor Hristov Vassilev ("Vassilev"), also a director of the Kama Companies, began to investigate Filatov's financial management. The investigation revealed that Filatov was misappropriating corporate funds by, *inter alia*, withdrawing money from corporate bank accounts and using the money for his own personal interests. Filatov was removed as a director of the Kama Companies and now resides in New York.

Plaintiffs, along with others (the "Malta Plaintiffs"), commenced an action (the "Malta Action") in the Malta Civil Court (the "Malta Court") for the misappropriated funds. The Malta Action was brought against Filatov, members of his family, and other allegedly culpable parties (the "Malta Defendants"). Before the action was brought, the Malta Plaintiffs learned that Defendant and his wife had left Malta. Pursuant to Maltese law, a party who seeks to proceed in an action against absentees must apply for the appointment of curators to appear for the absent parties and offer a defense on their behalf. Before an appointment is made, the party making the request must prepare a notice that contains a request to whomever is interested to appear and request that they undertake the curatorship of the absent parties. The notice must be published in an official government newspaper and is posted in the court on a notice board. Under

² Kama Malta and Kama Malta 1011 will be collectively referred to as the "Kama Companies."

Maltese law, curators are statutorily obligated to "use their best diligence for the benefit of the interest which they represent." Code of Organization and Civil Procedure § 936, attached as Exh. 6 to Affidavit of Dr. Jotham Scerri-Diacono. Their specific duties include the following:

- (a) to fully inquire as to the rights of the persons whom they represent and to identify these rights;
- (b) to take all the necessary measures to safeguard the aforesaid rights;
- (c) to contact forthwith the person or persons whom they represent, if the address is known; if unknown, they are to take all possible measures to find out their address including that of publishing, with the authority of the court, a notice in a newspaper of the place where last known;
- (d) to inform the person or persons whom they represent of any judicial act and of the contents hereof;
- (e) to obtain all the necessary information to defend the interests of the person or persons whom they represent.

Id.

The Malta Plaintiffs requested that the Malta Court appoint curators to represent the interests of Defendant and his wife. The Malta Plaintiffs published a notice containing the requisite information (the "Curator Notice") in an authorized newspaper and posted it in the courthouse. The Curator Notice states that Defendant and his wife were residing in the United States. The Malta Plaintiffs attempted to serve a copy of the Curator Notice on Defendant's brother at Defendant's Malta house because they believed that his brother was living at that location. However, the court officer who attempted service certified that no one opened the door. A copy of the notice was affixed to the door of the home.

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After no one responded to the Curator Notice by expressing an interest in acting as a curator, the Malta Court appointed deputy curators to represent Defendant and his wife in the proceedings commenced against them. On February 27, 2006, the First Hall of the Civil Court of Malta issued a judgment in favor of Plaintiffs and against Filatov in the amount of \$1,054,656 with interest and costs (the "Malta Judgment"). The Malta Court subsequently awarded \$58,483.29 in costs. The Malta Plaintiffs were able to recover \$16,741.07 in Malta. As such, \$1,096,398.22 is still owed under the Malta Judgment.

Plaintiffs brought the instant action to enforce the Malta Judgment against Defendant under Article 53 of the CPLR (Uniform Foreign Country Money-Judgments Recognition Act). Defendant moves to dismiss Plaintiffs' complaint on the ground that the judgment should not be recognized. Plaintiffs cross-move for summary judgment and for an order attaching Defendant's New York real estate.

DISCUSSION

"CPLR Article 53, the Uniform Foreign Country Money-Judgments Recognition Act, was enacted in 1970 to 'promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive streamlined enforcement here.'" *Sung Hwan Co., Ltd. v. Rite Aid Corp.*, 7 N.Y.3d 78, 82 (2006) (quoting *CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 221 (2003)). Under CPLR § 5304(a), a foreign judgment will not be recognized if: (1) "the judgment was rendered under a system which does not provide

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impartial tribunals or procedures compatible with the requirements of due process of law"; or (2) "the foreign court did not have personal jurisdiction over the defendant."

Certain discretionary grounds may also be a basis for refusing to recognize a foreign judgment. CPLR § 5304(b). A foreign judgment need not be recognized if "the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend." CPLR § 5304(b)(2). "Fair notice and adequate time to defend goes to the roots of due process and our legal system's sense of fairness." *Wehbe v. Continental Ins. Co.*, No. 111140/94, 1995 WL 619936, at *5 (Sup. Ct. N.Y. Co. October 11, 1995); *see also Bachchan v. India Abroad Publ'ns. Inc.*, 154 Misc.2d 228, 230-31 (Sup. Ct. N.Y. Co. 1992).

Here, Defendant claims that he did not receive notice of the Malta Action, and Plaintiffs do not show that any efforts were made to serve Defendant in the United States. The Malta Plaintiffs and the curators appointed to represent Defendant and his wife knew that Defendant was living in the United States at the time. In fact, the Curator Notice says precisely that. Further, Defendant has established that Vassilev had previously contacted Defendant in the United States.

After the Malta Judgment was entered, a simple asset search revealed addresses for the Defendant in the United States. Defendant resides at one of the addresses identified by the asset search. The ease with which Plaintiffs were able to discover Defendant's whereabouts after entry of the Malta Judgment strongly indicates that an American address for Defendant could have been found at the outset of the Malta Action.

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Moreover, as noted, the deputy curators were obligated to search for Defendant's address and attempt to contact him (so that they could notify him of the Malta Action and obtain information for his defense). Glaringly absent from Plaintiffs' submission is any showing that the deputy curators fulfilled their statutory duties. Under the circumstances, the Malta Judgment should not be recognized in New York. Plaintiffs' cross-motion for summary judgment and for an order of attachment is moot.

Accordingly, it hereby is

ORDERED that Defendant's motion to dismiss Plaintiffs' complaint is granted; and it is further

ORDERED that Plaintiffs' cross-motion is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly with costs and disbursements as taxed.

Dated: January 27, 2009

ENTER:



J.S.C.

JANE S. SOLOMON

