

**Citicorp Vendor Fin., Inc. v Grand Marshall Mach.,  
Inc.**

2010 NY Slip Op 30707(U)

March 23, 2010

Supreme Court, Suffolk County

Docket Number: 31496-2009

Judge: Emily Pines

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SHORT FORM ORDER

Index Number: 31496-2009

**SUPREME COURT - STATE OF NEW YORK**  
**COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY**

*Present:* **HON. EMILY PINES**  
 J. S. C.

Original Motion Date: 11-30-2009  
 Motion Submit Date: 01-13-2010  
 Motion Sequence No's.: 001 MD

CASE DISP

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 CITICORP VENDOR FINANCE, INC, f/k/a  
 COPELCO CAPITAL, INC.,

**Plaintiff,**

**-against-**

GRAND MARSHALL MACHINERY, INC.,

**Defendants.**

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**ORDERED**, that the motion (motion sequence number 001) by plaintiff for an Order pursuant to CPLR §3212, granting summary judgment to plaintiff against defendant for entry of a foreign judgment awarding money damages and possession to certain equipment is denied.

In this action, the Court must determine whether full faith and credit should be afforded to a Kansas Judgment, entered on default against defendant, Grand Marshall Machinery, Inc. (“defendant”) a New York corporation, not authorized to do business in Kansas. Such determination requires an analysis of the Kansas long-arm jurisdiction statute and an evaluation of whether defendant had such minimum contacts with Kansas as to satisfy constitutional due process standards.

The following facts, as appearing in the submission to the Court, are largely undisputed. In or about November of 2007, defendant purchased certain equipment from non-party, Champion Industries,

Inc. ("Champion"). According to the record, defendant's president, Marshall Schulman ("Schulman"), was in Kansas on other business with a colleague and happened upon Champion's shop and inquired about whether any equipment was available for sale. Schulman was shown some equipment and left his business card with an employee with a request that the owner contact him. Thereafter, Schulman was contacted by the owner of Champion and they eventually entered into an agreement wherein defendant purchased seven machines from Champion in the total amount of \$212,000.00. At Champion's direction, defendant wired the purchase amount to non-party First National Bank of Hays, Kansas ("First National") who had a security interest in the equipment. The submissions reflect that plaintiff also had a security interest in the equipment and thus commenced an action against Champion, First National, defendant and others, in Kansas in May of 2008.

In the Kansas action, Plaintiff served defendant by service upon the Kansas Secretary of State on June 3, 2008 pursuant to KSA §60-304(f) and thereafter, the Kansas Secretary of State served defendant by certified mail on June 4, 2008 at defendant's business address in New York. When defendant failed to appear in the Kansas action, plaintiff moved for a default judgment, which was granted on or about August 21, 2008 in the amount of \$90,000.00 plus statutory interest pursuant to Kansas law.

Plaintiff commenced the instant action by the filing of a Summons and Verified Complaint on or about August 10, 2009 and now moves for an Order, *inter alia*, granting it summary judgment against defendant on the basis of the Kansas judgment and for immediate and permanent title and possession of certain equipment. In support of the motion, plaintiff submits a copy of the pleadings and default judgment in the Kansas action and a memorandum of law. Plaintiff argues that it is entitled to summary judgment because there is no genuine issue of fact that it commenced the Kansas action, served defendant who failed to answer, and obtained a default judgment against defendant which has not been satisfied. Plaintiff is requesting that this Court give full faith and credit to the Kansas judgment and asserts that Kansas had proper jurisdiction over defendant. Specifically plaintiff argues that the requirements of the Kansas long-arm statute, K.S.A. §60-308(b)(1)(A) and (E) were met and that such exercise of jurisdiction comports with due process standards. Additionally, defendant was properly served pursuant to Kansas law. Thus, plaintiff asserts that since Kansas had jurisdiction over defendant, the judgment should be afforded full faith and credit, defendant is not entitled to attack the merits thereof

and summary judgment should be granted.

Defendant opposes the motion and submits an affirmation of counsel, an affidavit of Schulman, copies of invoices and a memorandum of law. The gravamen of defendant's opposition is that the Kansas Court did not have proper jurisdiction over defendant. Defendant does not dispute that it was served with process of the Kansas action and in fact, it appears that defendant's counsel was communicating with plaintiff in an attempt to resolve the matter although it admittedly refused to participate in the Kansas action. Defendant argues that the Kansas judgment is not entitled to full faith and credit because plaintiff cannot demonstrate that defendant had the requisite "minimum contacts" with Kansas in that defendant did not purposely avail itself of the privilege of doing business in Kansas, the cause of action did not arise from Grand's activities in Kansas and defendant does not have substantial enough contact with Kansas to confer jurisdiction. Specifically, defendant argues that it was Champion's owner who solicited the business in New York, all of the negotiations were in New York, the monies were wired from a New York bank and the machines were transferred to defendant's New York location. Further, defendant argues that this action arose out of Champion's misrepresentation to defendant that it had clear title to the subject equipment, as evidenced by the Warranty Bill of Sale annexed to the opposition papers.<sup>1</sup> Moreover, plaintiff never transacted business with defendant, but rather defendant's contact was with Grand only. Finally, defendant asserts that the exercise of jurisdiction by the Kansas court was not reasonable in that it did not have a substantial enough connection with Kansas, in that all Schulman did was leave a business card with Champion who thereafter initiated the sale. All of the activities surrounding the purchase took place in New York. Therefore, defendant urges the Court to deny the motion for summary judgment.<sup>2</sup>

Plaintiff submits a reply memorandum of law and reiterates that Kansas had proper jurisdiction over defendant. Plaintiff notes that defendant admits it was properly served with the Kansas lawsuit and

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<sup>1</sup> In the Warranty Bill of Sale it states that "Seller warrants to Buyer it has good and marketable title to said property, full authority to sell and transfer said property, and that said property is sold free of all liens, encumbrances, liabilities and adverse claims of every nature and description. Seller further warrants to Buyer that it will fully defend, protect, indemnify and hold harmless the Buyer and its lawful successors and assigns from any adverse claim thereto."

<sup>2</sup> Defendant also notes that since plaintiff is a national corporation, it cannot demonstrate any prejudice by having this action heard on the merits in New York.

the Kansas long-arm statute, K.S.A. §60-308(b)(1)(A) and (E) is constitutional and has previously been declared same by the Kansas courts.

The law is settled that in the absence of a jurisdictional challenge, a final judgment entered upon a defendant's default in appearing in an action (in another state) is conclusive and entitled to be given full faith and credit in the New York courts. *GNOC Corp. v. Cappelletti*, 208 A.D.2d 498, 616 N.Y.S.2d 1018 (2d Dept. 1994). The Court of Appeals has stated that "inquiry into the merits of the underlying dispute is foreclosed; the facts have bearing only in the limited context of our jurisdictional review." *Fiore v. Oakwood Plaza Shopping Center, Inc.*, 78 N.Y.2d 572, 578 N.Y.S.2d 115, 585 N.E.2d 364 (1991). In personam jurisdiction over a defendant not present in the territory of the forum may only be obtained where the statute of the forum confers jurisdiction to the extent necessary and if it does, where its application to a particular defendant satisfies the requirements of due process. *Gladding Corp. v. Balco-Pedrick Parts Corp.*, 76 A.D.2d 1, 429 N.Y.S.2d 940 (4<sup>th</sup> Dept. 1980). The Court will not enforce a sister state judgment where the exercise of jurisdiction by the sister state does not comport with principles of due process under Federal constitutional law. *See, e.g., Crawford v. LNP Realty Corp.*, 275 A.D.2d 773, 713 N.Y.S.2d 537 (2d Dept. 2000).

In this case, plaintiff bases jurisdiction on the long-arm statute found in K.S.A. §60-308(b)(1)(A) and (E) which states:

Any person, whether or not a citizen or resident of this state, who in person or through an agent or instrumentality does any of the acts hereinafter enumerated, thereby submits the person and, if an individual, the individual's personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of these acts: (A) Transaction of any business within this state...(E) entering into an express or implied contract, by mail or otherwise, with a resident of this state to be performed in whole or in part by either party in this state.


The Kansas Courts have upheld the constitutionality of the long-arm statute and found that the statute is to be liberally construed to assert personally jurisdiction over non-resident defendants to the full extent permitted by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *St. Francis Mercantile Equity Exchange, Inc., v. Newton*, 27 Kan.App.2d 18, 996 P.2d 365 (2000). *See also, Tilley v. Keller Truck*, 200 Kan. 641, 438 P.2d 128 (Sup. Ct. 1968).

In this case, defendant does not contest that it received service of process as permitted by the Kansas statute and in fact was aware of the lawsuit. The issue before the Court is whether defendant transacted business in Kansas or entered into a contract with a resident of Kansas to be performed, in whole or in part, in that state. Clearly, defendant did not transact business with plaintiff, but if anything, with Champion. It is undisputed that defendant's owner was present in Kansas, visited Champion's facility and inquired whether any machinery was available for sale. That is the entire extent of defendant's contact with Kansas. Champion's owner thereafter contacted defendant in New York, where defendant is located, the machinery was shipped to New York and defendant, at Champion's instruction, wired the funds to a bank in Kansas. This, without more, is insufficient for the Court to find that defendant transacted business in Kansas or entered into a contract to be performed in Kansas such that it had the requisite minimum contacts to satisfy constitutional due process standards.

Based on the foregoing, the motion for summary judgment is denied.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: March 23, 2010  
Riverhead, New York

  
EMILY PINES  
J. S. C.