SST Foundation v International Footnote (HK) Ltd.
2010 NY Slip Op 33928(U)
February 9, 2010
Sup Ct, New York County
Docket Number: 107811/08
Judge: Joan B. Lobis
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

[* 1]

8

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

--X

SST FOUNDATION,

Plaintiff,

- against -

INTERNATIONAL FOOTNOTE (HK) LTD.
FAMOUS FORTUNE INTERNATIONAL LTD.
and MIRACLE TRADING CO. LTD.,

Defendants.

--X

Index No. 107811/08

Decision, Order and Judgment

JOAN B. LOBIS, J.S.C.:

In Motion Sequence Number 004, respondents International Footnotes (H.K.) Limited, Famous Fortune International Limited, and Miracle Trading Company Limited move for an order vacating the default judgment that was entered against them and seek to vacate the underlying arbitration award. The motion is denied for the reasons set forth below.

In a decision, order, and judgment dated February 26, 2009 (the "February 2009 Order"), this court granted SST Foundation's ("SST") petition, on default, to confirm an arbitration award rendered in favor of petitioner and against respondents (Motion Sequence Number 003). Respondents had also failed to appear on the underlying arbitration. In the February 2009 Order, the court granted judgment in favor of petitioner in the amount of $383,751.85, plus interest at the statutory rate from May 23, 2008. Prior to Motion Sequence Number 003, petitioner had twice sought to confirm the arbitration award, but this court rejected those prior motions because service was not effected in accordance with the various statutes. After petitioner effected service properly, judgment was granted, and the arbitration award was confirmed in all respects. See February 2009 Order.

004

In support of this motion to vacate their default on Motion Sequence Number 003, respondents provide an affidavit of Jay Kuo, who avers that he is the President of all three corporate respondents.[1] Mr. Kuo asserts that his default on the petition to confirm arbitration should be excused because he has difficulty understanding legal, technical, or complex material in English; he believed that if he never responded to the demand for arbitration that any ruling by the arbitrator was not binding on his companies; and, that the arbitration award was procured by fraud because the demand was for $150,000, but the final award was for $383,751.85.

In order to vacate a default judgment pursuant to C.P.L.R. Rule 5015(a)(1), the moving party must demonstrate both a reasonable excuse and a meritorious defense to the underlying action. Mr. Kuo asserts that prior to entering into the contract with SST, his companies had "a robust business with United States shoe retailers." The contract signed by himself, as president of Miracle Trading Co., Ltd., and Donald Kalfin, the representative from SST, is in English and sets forth that the "agreement shall be governed and constructed solely by arbitration of the American Arbitration Association , International Section in New York City, N.Y." Respondents not only failed to respond to the underlying petition to confirm arbitration, but they also failed to appear at the arbitration hearing. The defaults are consistent with respondents' assertion that Mr. Kuo did not respond to the arbitration because he believed it was not binding. It appears that respondents' default was "intentional and, therefore, inexcusable." Fok v. Insurance Co. of North America, 151 A.D.2d 722, 722 (2d Dep't 1989). The court

---

[1] In an interim decision and order on Motion Sequence Number 004, dated September 29, 2009, this court requested that respondents submit an affidavit of a translator which sets forth that Mr. Kuo's affidavit was translated to him in Chinese before he signed it, and that Mr. Kuo understood and consented to the affidavit. Respondents submitted the affidavit on or about November 4, 2009.

does not find Mr. Kuo's professed lack of understanding of the English language persuasive as an excuse to why he purposefully defaulted on the arbitration hearing and the underlying proceeding to confirm the arbitration, in light of the English language contract between the parties, Mr. Kuo's professed experience doing business in the United States, and his admission that he received the arbitration demand and believed his interests would be protected if he chose to ignore it. Moreover, it appears that English has always been the language in which these parties conducted business; petitioner annexes copies of documents provided as evidence at the arbitration, all of which are in English and all of which were originally provided to petitioner from respondents, and which were provided to respondents from petitioner before the arbitration.

Respondents have also failed to demonstrate a meritorious defense. Counsel for respondents asserts that based on the contract between the parties, there is no legitimate basis for the award, and therefore the award must have been based upon fraud, misrepresentations, or other misconduct by petitioner; this speculation is the alleged meritorious defense. Respondents also argue that the arbitration violated several procedural rules of the International Dispute Resolution Procedures and should therefore be vacated; they claim that the notice provided in the demand is deficient and that the arbitrator rendered a "no reason" determination without the parties' agreement to that type of determination. None of these allegations rise to the level of "corruption, fraud or misconduct in procuring the award." C.P.L.R. § 7511. The demand is sufficient notice in that it sets forth a demand that the dispute be referred to arbitration; the names and addresses of the parties; a reference to the contract and arbitration clause that is invoked; a description of the claims for breach of contract, attorneys' fees, interest, and the costs of arbitration; and, the amount claimed. The fact that the award is higher than the demand is not a basis to disturb the award. Finally, an arbitrator is not obligated to

[* 4]

state the reasons for the award (In re Sussco Exterior Systems, Inc. v. Hercules Const. Corp., 120 A.D.2d 532, 533 [2d Dep't 1986]), and in this case, prior to the award being rendered, respondents received due notice in the form of a letter from the International Centre for Dispute Resolution that SST had requested a "No Reason Decision". Respondents' decision to remain silent and purposefully default in the face of continuing notices from the arbitral body, seeking their participation and input on the proceedings, notices which respondents do not deny they received, is not a basis for vacateur.

Respondents, in essence, contest the validity of the Award. "Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined." Goldfinger v. Lisker, 68 N.Y.2d 225, 230 (1986) (citations omitted). Judicial authority to set aside an arbitration award is limited. Azrielant v. Azrielant, 301 A.D.2d 269, 275 (1st Dep't 2002), app. denied, 99 N.Y.2d 509 (2003). An arbitrator's award will not be vacated "even though the court concludes that his interpretation of the agreement misconstrues or disregards its plain meaning or misapplies substantive rules of law, unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on his power." Silverman v. Benmor Coats, Inc., 61 N.Y.2d 299, 308 (1984). Respondents' speculations regarding the validity of the award do not support vacateur, especially in light of their intentional default on the underlying arbitration proceedings.

Respondents' motion to vacate the default judgment that was entered against them and vacate the underlying arbitration award is denied. This constitutes the decision, order, and judgment of the court.

Dated: February 9, 2010

JOAN B. LOBIS, J.S.C.