

Home Loan Inv. Bank, F.S.B. v Sassouni

2011 NY Slip Op 31039(U)

April 11, 2011

Supreme Court, Nassau County

Docket Number: 22729/10

Judge: Michele M. Woodard

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SCAN

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

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HOME LOAN INVESTMENT BANK, F.S.B.,

Plaintiff,

-against-

SASSAN SASSOUNI,

Defendant.

**MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 11
Index No.: 22729/10
Motion Seq. No.: 01**

DECISION AND ORDER

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In motion sequence number one, plaintiff, Home Loan Investment Bank, F.S.B. (Hereinafter referred to as "Home Lona"), moves for an Order of this Court granting summary judgment in lieu of complaint pursuant to CPLR §3213 for enforcement of a default judgment against defendant, Sassan Sassouni, entered in South Carolina based on an underlying foreclosure action.

FACTS

On or about November 15, 2007, defendant through the limited liability companies, Zeden, LLC ("Zeden") and SCLE, LLC ("SCLE") of which he is the sole member and managing agent, executed a Small Business Administration ("SBA") Note in the amount of \$675,000.00 which was secured by a mortgage encumbering improved real property located at 102 Bolt Dr., Laurens, South Carolina, known

as the Henry Laurens Motor Lodge. Defendant requested a loan in the amount of \$340,000.00 for acquisition of the real property and \$300,000.00 for new construction.

Defendant identified and selected the subject real property for purchase and he secured a lender by way of the internet through his home computer in his Great Neck, New York residence. He negotiated the terms of the transaction in New York and closed title and executed the Note, Mortgage, and Assignment of Leases and Rents in Home Loan's New York office.

The defendant failed to make payments as required by the Note, and did not make any payments upon plaintiff's demand for payment in full. In September 2009, the plaintiff commenced a foreclosure action seeking to foreclose on the mortgage securing repayment of the Note in the Court of Common Pleas for Laurens County, South Carolina under the caption, *Home Loan Investment Bank, F.S.B. vs. Sassan Sassouni*, Case No. 09-CO-10-5651. The defendant was personally served at his Great Neck, New York address when the summons and complaint was left with his wife. As he failed to appear, a default judgment in the amount of \$755,466.68 was entered against him in January 2010. The subject real property was sold by a Special Referee for \$600,000.00 at a foreclosure sale on March 31, 2010.

PROCEDURE:

In support of its motion, plaintiff argues that invoking CPLR §3213 to enforce a judgment entered in a foreign jurisdiction is proper, that South Carolina had "long arm" jurisdiction over defendant, and the default judgment was properly entered against the defendant in South Carolina.

In opposition, the defendant contends that the plaintiff's basis for jurisdiction pursuant to the relevant South Carolina statute conferring jurisdiction in that state based on a persons's entry into a contract to be performed in whole or in part by either party in South Carolina, is inapplicable in that the

Note was negotiated and executed in New York, payments on the Note were to be made a jurisdiction other than South Carolina, defendant never entered the state of South Carolina for purposes of the subject real estate transaction, and the plaintiff lender's main office is in Rhode Island. Even if jurisdiction is proper, service of process was defective. Consequently, the default judgment entered against the defendant in South Carolina was improper.

Foreign judgments obtained by default may be enforced in a plenary action which may be initiated, as in the instant case, by a motion for summary judgment in lieu of complaint. In general, under the Constitutional principle of full faith and credit, a judgment rendered by a court of a sister State is accorded the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced even if the judgment is obtained by default. (*All Terrain Properties, Inc. v Hoy*, 265 AD2d 87, 92 [1st Dept 2000], *Fiore v Oakwood Plaza Shopping Ctr.*, 78 NY2d 572 [1991] see also, *F.D.I.C. v De Cresenzo*, 207 AD2d 823 [2nd Dept 1994]).

The proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]). In support of its motion, the plaintiff submits a copy of the South Carolina default judgment, an affidavit of service of the initial summons and complaint left at the defendant's last known address in New York, and an affidavit of service of the instant motion indicating service at the defendant's last known address in New York.

As to matters of full faith and credit, this Court's review of the foreign judgment at issue is limited to whether the rendering court had jurisdiction. In other words, while a collateral attack on the

merits is precluded, a party aggrieved by the judgment may challenge the basis of the judgment court's personal jurisdiction (see *JDC Fin. Co. I v Patton*, 284 AD2d 164 [1st Dept 2001]). The Court will then determine whether the sister State's long arm statute has been complied with, and whether that court's exercise of jurisdiction complies with Constitutional principles of due process (see *City Fed. Sav. Bank v Reckmeyer*, 178 AD2d 503 [2d Dept 1991], *Mortgage Money Unlimited v Schaffer*, 1 AD3d 773 [3rd Dept 2003]).

South Carolina's "long-arm" statute permits the courts to exercise jurisdiction over a person who enters into a contract to be performed in whole or in part by either party in that state (see Affidavit of Morris Ellison, Exhibit B, Code of Laws of South Carolina 1976 Annotated §36-2-803). Further, service of process is effective upon an "...individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with someone of suitable age and discretion residing therein..." (see Affidavit of Morris Ellison, Exhibit C, Code of Laws of South Carolina 1976 Rule 4. Process).

The constitutional standard for the acquisition of in personam jurisdiction of a defendant in a foreign jurisdiction is whether defendant has sufficient minimum contacts with that jurisdiction subjecting that defendant to litigation in the forum state consistent with traditional notions of fair play and substantial justice (see *International Shoe Co. v Washington*, 326 US 310 [1945]). Sufficient minimum contacts exist where a defendant purposefully avails himself of the privilege of conducting activities in the forum state, thereby invoking the benefits and protection of the laws of the forum state (see *Burger King Corp. v Rudzewicz*, 471 U.S. 462 [1985]). With respect to the contractual disputes, the minimum contacts prong of the due process test is met if the defendant reached out beyond one state

and created continuing relationships and obligations with citizens of another state (*see Burger King Corp. supra at 473*), or if the suit arises out of a contract which had a substantial connection with the forum state.

DISCUSSION

Here, the SBA Unconditional Guarantee and Note indicate that the borrowers are SCLE, and Zeden. The Note was executed by plaintiff in his name, as “Sassan Sassouni, Managing Member” under signature recitals, “SCLE, LLC” and “ZEDEN, LLC”. The Operating Agreement for Zeden, sets forth the purpose of this entity accordingly; “manage motor lodge business located at 102 Bolt Dr., Lauren, S.C.” (*see Affidavit of Kevin Murphy, Exhibit J, Operating Agreement, Zeden, LLC*). The purpose of the entity SCLE, pursuant to its Operating Agreement name, is “to acquire, improve own, develop, finance, lease and otherwise operate the Asset...” and such Asset is defined as being the real property located at 102 Bolt Drive, Laurens, South Carolina (*see Affidavit of Kevin Murphy, Exhibit I, Operating Agreement, SCLE, LLC*). Further, the Security Agreement, securing payment in full of the Note and duly executed by the defendant on behalf of Zeden, indicates that Zeden’s office is located at 102 Bolt Dr., Laurens, South Carolina. In addition, ¶4 provides; “the Borrower represents and warrants that the principal place of business of the Borrower is located at 102 Bolt Dr., Laurens, South Carolina” (*see Affidavit of Kevin Murphy, Exhibit D, Security Agreement*). Finally, ¶ 6 of the Security Agreement not only sets forth obligations requiring maintenance and repairing the real property, it specifically provides in ¶ 11 (H) that the Agreement “has been executed and delivered and shall be construed and enforced in accordance with the laws of the State of South Carolina...including, but not limited to, matters of construction, validity and performance...” (*see Affidavit of Kevin Murphy, Exhibit D, Security Agreement*).

Based on the foregoing, the South Carolina statutory language conferring long arm jurisdiction upon a party who “enters into a contract to be performed in whole or in part by either party in that state” applies as the defendant entered into a Security Agreement which required him to perform specific acts regarding the South Carolina real property and such acts were to be performed in that state.

In addition, the South Carolina statute regarding personal service of process, which is broader than New York’s statutory requirements, only requires delivery of a summons and complaint at the party’s residence on an individual residing therein that is neither an infant under the age of 14 or an incompetent individual. It does not require an inquiry as to whether the individual accepting process is an actual relative nor does it require an additional mailing of the summons and complaint to the residence. It is undisputed that defendant’s wife was served and that she met statutory criteria of an appropriate individual that could accept service. The Court has considered the defendant’s other arguments regarding this issue and has found them to be unavailing. The plaintiff has therefore established that South Carolina has jurisdiction over the defendant.

It is noted that the defendant argues that because the recital in the Note entitled “State-Specific Provisions” has been left blank, the plaintiff should and did not expect the defendant to consent to jurisdiction in South Carolina. However, the Security Agreement incorporating the terms and conditions of the Note expressly provides for its enforcement pursuant to the laws of South Carolina. It is disingenuous for the defendant to now claim that he did not expect to be “haled” into a court in South Carolina especially when he created two entities, Zeden and SCLE, for the purposes of doing business in that state with South Carolina addresses.

In sum, not only did the defendant engage in purposeful activity in his purchase of the South

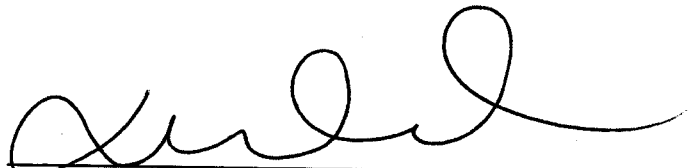
Carolina hotel, he created continuing obligations between himself and South Carolina. The foregoing facts, taken together, indicate that the defendant has sufficient minimum contacts with South Carolina, and should reasonably expect to defend his actions there (see *International Shoe Co. v Washington*, 326 U.S. 310 [1945]).

Accordingly, plaintiff's motion is **granted**; the sum of \$600,000.00 shall be applied against the default judgment.

Settle judgment on notice.

DATED: April 11, 2011
Mineola, N.Y. 11501

ENTER:



HON. MICHELE M. WOODARD
J.S.C.

ENTERED

APR 14 2011

NASSAU COUNTY
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