

Athena Resources Ltd. v Wu

2012 NY Slip Op 33198(U)

July 13, 2012

Supreme Court, New York County

Docket Number: 650442/10

Judge: Milton A. Tingling

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING
J.S.C. Justice

PART 44

Athena
-v-
Wu

INDEX NO. 650442/10
MOTION DATE 11/8/10
MOTION SEQ. NO. 4

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with
the annexed decision

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

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NYS SUPREME COURT - CIVIL

Dated: 7/13/12

amat, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

ps 1 of 4

HON. MILTON A. TINGLING
SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PART 44

ATHENA RESOURCES LIMITED, and MEADE MALONE
As Liquidator of GRAND STRENGTH LIMITED
PLAINTIFFS,

INDEX NO. 109135/2010

-v-
GERALDINE WU,
DEFENDANT.

HON. MILTON A. TINGLING, JSC

Upon the foregoing papers, it is ordered that this motion is granted.

Defendant moves for dismissal on all causes of action. Defendant seeks to dismiss plaintiff's first cause of action seeking enforcement of a default judgment obtained by a Hong Kong court against Grand Strength, Ltd, for lack of jurisdiction regarding both Grand Strength Ltd and defendant, Geraldine Wu. Defendant seeks to dismiss plaintiff's second cause of action seeking damages for the alleged fraudulent transfer of proceeds which decedent obtained from the sale of his interests in Lotus. Defendant seeks to dismiss plaintiff's third cause of action seeking damages for defendants alleged conversion of the proceeds. Plaintiff seeks to deny defendants motion to dismiss and an injunction-enjoining defendant from dissipating the funds constituting this litigation. Defendant's motion to dismiss is granted for lack of jurisdiction.

Defendants father, K.S. Wu, passed away in December of 2002. Before his passing he set up companies including Athena Resources Limited and Grand Strength Ltd. He gave these companies to his wife, Vivienne and daughter, Geraldine, respectively. K.S. Wu also possessed shares in Lotus, a company that owned First Sino Bank. K.S. Wu acted as Chairman of First Sino Bank for seven years. After finding out he only had a few months to live, Mr. Wu sold his share in Lotus for nine million dollars. He used five million to pay back a loan given to him by his partners in Lotus. Mr. Wu transferred the other four million dollars to an account owned by Grand Strength Ltd. As sole shareholder of Grand Strength Ltd., Geraldine Wu accessed these funds after her father passed. These actions lead to

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Vivienne, as sole director of Athena Resources Limited, suing Grand Strength, alleging that the four million dollars Mr. Wu transferred was property of Athena. Athena sued Grand Strength in Hong Kong and obtained a judgment for four million dollars. Athena now seeks to enforce the judgment obtained against Grand Strength through Geraldine Wu, as sole director of Grand Strength.

To obtain enforcement of a foreign judgment in New York per CPLR 5304 the foreign court must have personal jurisdiction over the defendant and the defendant in the proceedings in the foreign court must also have received notice of the proceedings in sufficient time to enable him to defend. In *Williams v. North Carolina*, 325 U.S. 226, 230 (1945), the Supreme Court stated that, "Those not parties to a litigation ought not be foreclosed by the interested actions of others." Defendant Geraldine Wu was not a party to the Hong Kong suit. The defendant was not afforded the right to defend herself in the Hong Kong suit and did not even know of the judgment. The Hong Kong court also has no jurisdiction over Geraldine or Grand Strength Ltd. Geraldine is domiciled in New York and has no contacts with Hong Kong to grant jurisdiction to the Hong Kong Courts. Plaintiff alleges the Hong Kong court had jurisdiction over Grand Strength Ltd. However Grand Strength was incorporated in the British Virgin Islands. Plaintiff contends that Grand Strength Ltd did business in Hong Kong and was owned and operated by her husband K.S. Wu, which constitutes the minimum contacts needed for jurisdiction. However Grand Strength did not do business anywhere and before his death Mr. Wu only owned 10% of Grand Strength shares. Geraldine owned 90% and was the majority holder of Grand Strength Ltd. Grand Strength also was not afforded notice of the proceedings in a sufficient way to enable a proper defense. Grand Strength was no longer recognized by the British Virgin Island as a corporation, had no employees to contact, did not have a principle place of business and had Geraldine Wu as sole shareholder, yet she was never contacted or made a party to the action. The failure of plaintiff to properly notify Grand Strength and Geraldine Wu prevents the judgment from being enforced in New York.

To enforce the judgment the Hong Kong court must have had jurisdiction by New York standards. Under CPLR 5305 personal jurisdiction to enforce a foreign judgment can be

achieved in five ways. (1) The defendant was personally served in the foreign state, (2) the defendant voluntarily appeared in the proceedings, (3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court, (4) the defendant was domiciled in the foreign state or (5) the defendant had a business office in the foreign state in which the cause of action arises from the defendant doing business out of that office. In this case defendant Geraldine Wu was not a party and therefore does not meet any of the above requirements. Grand Strength Ltd. was not served in Hong Kong; service of process was mailed by, plaintiff's own account, to the address listed in the British Virgin Islands. Grand Strength being a defunct company and having only Geraldine as sole owner was not present at the proceedings, and therefore did not voluntarily appear. Plaintiff has provided no proof that Grand Strength consented to proceedings in Hong Kong or that Grand Strength was domiciled in Hong Kong or had a business office in Hong Kong from which this cause of action arises.

There is no sufficient proof to show that the Hong Kong court had jurisdiction over Geraldine Wu or Grand Strength Ltd. Therefore the defendant's motion to dismiss for lack of personal jurisdiction is granted. The judgment cannot be enforced; therefore the second and third causes of action, which revolve around the judgment being enforced, are also dismissed.

DATED: July 13, 2012

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HON. MILTON A. TINGLING
J.S.C.