

Leewood Funding, Inc. v Prodigy Asset Mgt., LLC

2013 NY Slip Op 32047(U)

August 28, 2013

Supreme Court, New York County

Docket Number: 651070/2013

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER PART 15

Justice

LEEWOOD FUNDING, INC.,

Plaintiff,

- v -

INDEX NO. 651070/2013

MOTION DATE
MOTION SEQ. NO. 1, 2, 3

MOTION CAL. NO. _____

PRODIGY ASSET MANAGEMENT, LLC,
HYBRID GROWTH FUND, L.P., MARTIN B. LONDON,
individually and on behalf of PRODIGY ASSET
MANAGEMENT, LLC, and individually and on behalf of
HYBRID GROWTH FUND, L.P., DUSTIN COLLINS,
Individually and on behalf of PRODIGY ASSET MANAGEMENT,
and individually and on behalf of HYBRID GROWTH
FUND, L.P., JAMES WAGNER, individually and on behalf of
PRODIGY ASSET MANAGEMENT, LLC, individually
and on behalf of HYBRID GROWTH FUND, L.P.,
EZEKIEL RAHMAN, individually and on behalf of
PRODIGY ASSET MANAGEMENT, LLC and individually
and on behalf of HYBRID GROWTH FUND, L.P.
YEKATERINA POYARKOVA, individually and on behalf of
PRODIGY ASSET MANAGEMENT, LLC and individually
and on behalf of HYBRID GROWTH FUND, L.P.

Defendants.

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

PAPERS NUMBERED

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

Answer — Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Plaintiff Leewood Funding, Inc. (“Plaintiff”) commenced this action by filing a Summons and Notice of Motion for summary judgment in lieu of Complaint pursuant to CPLR §3213 on March 25, 2013 (Mot. Seq. #1) to enforce a foreign judgment entered in Plaintiff’s behalf against Defendants. Defendants Ezekiel Rahman and Yekaterina Poyarkova have filed motions to dismiss (Mot. Seq. #2 and 3, respectively).

In support of its motion, Plaintiff relies upon the affidavit of Andrew Sworn

sworn to on March 19, 2013. Bloom, a member of the Board of Directors for Plaintiff, alleges that on or about March 9, 2012, the Superior Court of the State of California, Orange County, granted judgment against Defendants in the amount of \$307,323 in favor of Plaintiff and Paul Feldman. Plaintiff provides a copy of the California Judgment. Plaintiff contends that to date, Defendants have failed to make any payments to Plaintiff in connection with the foreign judgment.

After Plaintiff filed its initial Summons and Notice of Motion on March 25, 2013, Plaintiff then filed an amended notice of motion for summary judgment in lieu of Complaint on April 5, 2013 under Mot. Seq. 1.¹

The only affidavits of service filed in this matter are with respect to the following defendants: Prodigy Asset Management, LLC on April 9, 2013, Yekaterina Poyarkova, “individually and on behalf of Prodigy Asset Management, LLC, and individually and on behalf of Hybrid Growth Fund, LP” on April 17, 2013, and on defendant Ezekiel Rahman, “individually and on behalf of Prodigy Asset Management, LLC, and individually and on behalf of Hybrid Growth Fund, LP,” on April 24, 2013.

Plaintiff has failed to provide affidavits of service with respect to the following defendants: Hybrid Growth Fund, L.P., Martin B. London, Dustin Collins, and James Wagner.

“It is the filing and service of the summons with notice, or the summons and accompanying pleading or motion, that invokes the court’s jurisdiction in Supreme Court.” *Green v. State of New York*, 16 Misc. 3d 434, 437 (N.Y. Ct. Cl. 2007).

CPLR §306-b provides:

¹ Plaintiff filed another amended notice of motion on May 7, 2013 (which defendant Yekaterina Poyarkova opposed and cross moved to dismiss), another amended notice of motion on June 20, 2013, and another notice of motion to dismiss on August 22, 2013 (all under Mot. Seq. #1). Pursuant to CPLR 3025(a), “A party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within twenty days after service of a pleading responding to it.” Here, Plaintiff’s successive filings of amended notices of motion have been made without leave of the court. Furthermore, Plaintiffs fail to provide proof of service of these additional amended notices of motion on defendants.

Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause shall be made within one hundred twenty days after the commencement of the action or proceeding . . . If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.

Here, as Plaintiff has failed to serve all other defendants with the exception of Prodigy Asset Management, LLC, Yekaterina Poyarkova, and Ezekiel Rahman, and more than 120 days have passed since the commencement of this action on March 25, 2012, Plaintiff's motion for summary judgment in lieu of Complaint is denied.

As for those defendants served, pro se defendants Ezekiel Rahman and Yekaterina Poyarkova filed motions to dismiss (Mot. Seq. #2 and 3), which shall be treated as opposition to the motion for summary judgment in lieu of complaint.

CPLR §3213 states, in relevant portion:

When an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint. The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion . . .

CPLR §3213 is an instrument that may be used to enforce foreign judgments. (see generally; *Schultz v. Barrows*, 94 NY2d 624[2000]). "Foreign judgments obtained by default may only be enforced in a plenary action which may be initiated . . . by a motion for summary judgment in lieu of complaint. In reviewing such foreign judgments, this court's inquiry is limited to ascertaining whether the courts of the [sister state] possessed personal jurisdiction over defendants." *Glass Contractors, Inc. v. Target Supply & Display, Inc.*, 152 Misc. 2d 782, 783 (N.Y. App. Term 1992).

Here, pro se defendants Rahman and Poyarkova filed affidavits in opposition to Plaintiff's motion, contending that "there is no evidence that the Superior Court of California County of Orange had personam jurisdiction" over Defendants or "subject matter jurisdiction." Defendants have therefore raised significant issues of material

fact, precluding the granting of summary relief to Plaintiff.

Wherefore, it is hereby

ORDERED that Plaintiff's motion for summary judgment in lieu of complaint is denied; and it is further

ORDERED that defendant Ezekiel Rahman's motion to dismiss the second amended pleading is denied (Mot. Seq. #2); and it is further

ORDERED that defendant Yekaterina Poyarkova's motion to dismiss the second amended pleading is denied (Mot. Seq. #3); and it is further

ORDERED that in light of the careless successive filings the court declines to convert the pleading and directs Plaintiff to bring an ordinary action on judgment and serve Defendants consistent with service of a summons and complaint.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: 8/28/03



HON. EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE