

Lorret v Kosachuk

2013 NY Slip Op 34165(U)

April 30, 2013

Supreme Court, New York County

Docket Number: 103896/04

Judge: Debra A. James

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V

SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

EUGENIA LORRET and NINA GOGITIDZE,

Plaintiffs,
- v -

CHRIS KOSACHUK and NLG, LLC,

Defendants.

Index No.: 103896/04
Motion Date: 04/25/13
Motion Seq. No.: 13
Motion Cal. No.: _____

The following papers, numbered 1 to 2 were read on this motion to vacate order entered on January 11, 2013.

Order to Show Cause -Affidavits -Exhibits.
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

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PAPERS NUMBERED	
Order to Show Cause -Affidavits -Exhibits.	1
Answering Affidavits - Exhibits	2
Replying Affidavits - Exhibits	

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that the motion of defendant Kosachuk to vacate this court's order entered on January 23, 2013 is denied.

Defendant's application to vacate is actually one to re-argue or renew this court's prior order since defendant fully contested the previous motion brought by 9197-5904 Quebec, Inc., assignee of plaintiffs (the "assignee"), which sought to vacate this court's order entered on September 6, 2012 declaring that the Modified Judgment entered on September 3, 2008 is satisfied. No matter the grounds, defendant has not demonstrated that he is entitled to the relief he now seeks, to wit, to restore the vacated order entered on September 6, 2012.

First, defendant does not meet the standard under CPLR 2221 for reargument or renewal. As to reargument, he fails to state what fact or law the court overlooked in vacating the order entered on September 6, 2012. Defendant fails to append to his moving papers his papers in opposition to the previous motion so the court is unable to determine what law or facts defendant contends it overlooked. Certainly the arguments

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING

that defendant made about the death of assignor Lorret had no bearing on the question of his position that the judgment ought to be declared satisfied since she predeceased the alleged assignment.

As for renewal, defendant does not explain why in his previous motion he failed to put before the court the fact that the assignee is an out of state corporation without authority/not registered to do business in New York State. In any event, this court notes that the failure of the assignee to include a certificate of conformance with the acknowledgment of the assignment in compliance with CPLR 2309(c) is a defect that can be corrected nunc pro tunc, and the court orders the assignee to seek permission to do so in its next applications to this court. Moccia v Carrier Car Rental, Inc., 40 AD3d 504 (1st Dept 2007).

In regard to the right of the assignee, a foreign corporation, to maintain a lawsuit in New York, defendant is correct that Business Corporation Law § 1312 provides that a foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in the state. However, contrary to the implication of defendant's argument, such provision "exists to regulate business within New York State and not to enable avoidance of contractual obligation". Acno-Tec Limited v Wall Street Suites, LLC, 24 AD3d 392, 393 (1st Dept 2005). Defendant has not met his burden of demonstrating that the assignee is doing business in New York State. The assignee's single business transaction of accepting the assignment from the judgment creditors is insufficient to demonstrate that the assignee is "engaged in a regular and systematic business activities in New York and thus 'doing business' within the meaning of the statute." Acno-Tec, supra.

On the above basis, Chase Bank USA v Cardello, 27 Misc3d 791 (NYC Civil Court, Richmond County 2010), from which defendant extensively cites, is distinguishable on its facts. It is distinguishable on several further grounds discussed below.

Unlike in Cardello, the assignment here was prepared by the attorney for the assignors, one David Blum, Esq., and is properly acknowledged by the assignors. Moreover, unlike the assignee DebtOne in Cardello, Quebec, the corporate assignee at

bar, has appeared and been represented at all times by an attorney, Marius A. Marzec, Esq.

In addition, a notice dated March 14, 2011 from David Blum, Esq., which indicates that it was sent to defendant, was recorded in the county clerk's office on March 21, 2011. Moreover, plaintiff submitted papers on the previous motion that clearly establish that defendant appeared in state courts in Florida and Pennsylvania on the same assignment at issue here, which were domesticated in those states. Finally, in his show cause order dated July 12, 2012 defendant sought to set aside the assignment, thus acknowledging that he had notice of such assignment. By contrast in Cardello, the debtor defaulted in the bank's/bank's assignee's action to collect on a consumer debt. Therefore, unlike defendant at bar, defendant Cardello never interposed any defense to the action against him on a debt. Defendant here has appeared in three states contesting at every turn the assignee's supplementary proceedings to enforce the judgment herein.

Nor are defendant's other arguments meritorious. Whether or not Nina Gogitidze, one of the plaintiffs, had any interest in the judgment to assign to Quebec is of no significance, since defendant does not deny that the entire judgment assigned to Quebec belonged to plaintiff/assignor Eugenia Lorret.

Defendant submits a copy of a Stipulation of Dismissal with Prejudice dated February 22, 2012 of an action entitled NLG, LLC v Hazan, (New York State Supreme Court, New York County Index No. 108020/08), which is signed by an attorney for Quebec, on NLG's behalf. It appears that by way of the Charging Lien from the Pennsylvania court which defendant asserts has now been vacated, the assignee took control of that lawsuit. It is a compelling mystery how attorney Marius Marzec arranged for the assignee/judgment creditor here to execute on non-party NLG's asset in the form of a judgment against Hazan in NLG, LLC v Hazan. Unfathomable is how the assignee has been able to execute on a Charging Lien as to NLG, Inc in amount that exceeds the judgment assigned to it by approximately ten times the amount of the judgment NLG, Inc has against Hazan. In any event, defendant does not state how the existence of such Stipulation discontinuing the lawsuit in NLG, Inc v Hazan is a basis

for upsetting the order here of which he seeks reconsideration. Any relief from the Stipulation must be sought from either or both of the judges presiding over that action and the action before the Pennsylvania court.

Accordingly, it is

ORDERED that the motion of defendant to vacate the order entered on July 31, 2012 is denied in its entirety.

This is the decision and order of the court.

Dated: April 30, 2012

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.

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