

NLG, LLC v Hazan

2014 NY Slip Op 30078(U)

January 15, 2014

Sup Ct, New York County

Docket Number: 101288/13

Judge: Barbara Jaffe

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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: JAFFE
Justice

PART 12

NLG

INDEX NO. 101288/13

- v -

MOTION DATE _____

ELIZABETH HAZEN

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

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

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 1/15/14

[Signature]
BARBARA JAFFE
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

-----X

NLG, LLC,

Plaintiff,

- against -

Index No. 101288/13

Mot. seq. no. 001

DECISION AND ORDER

ELIZABETH HAZAN,

Defendant.

-----X

BARBARA JAFFE, J.:

For plaintiff:
James Costo, Esq.
275 Seventh Ave., Ste. 1505
New York, NY 10001
212-213-2617

For defendant:
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Marzec Law Firm, PC
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By order to show cause, defendant moves for an order vacating the filing of a foreign judgment, enjoining and restraining plaintiff now and in the future from taking any steps to enforce the judgment, and granting sanctions. Plaintiff opposes.

I. PERTINENT BACKGROUND

In June 2008, plaintiff filed a judgment against defendant in this court seeking to domesticate a default final judgment it obtained in the Circuit Court of the Eleventh Judicial District of Florida (Florida judgment). The Florida action was based on defendant's failure to pay plaintiff pursuant to the terms of a promissory note. After plaintiff sued defendant, the parties settled the action in February 2008, with defendant agreeing to sell her property on Fisher Island (Florida home), which she had purchased using the proceeds of the loan, and satisfy her debt to plaintiff with the proceeds of the sale of the Florida home. As pertinent here, defendant agreed to pay plaintiff \$250,000 on or before April 22, 2008. Upon defendant's alleged failure to

tender the payment, in April 2008 plaintiff was granted by the Eleventh Judicial Circuit of Florida a judgment for \$1,618,071.29, plus interest and reasonable attorneys and costs.

(Affirmation of Darius A. Marzec in Support of Order to Show Cause to Vacate Judgment/Protective Order, dated Oct. 15, 2013 [Marzec Aff.], Exh. B).

In the latter part of 2008, defendant appealed the Florida judgment, and on October 28, 2008, the parties executed a second settlement agreement with a new payment schedule. Defendant therein acknowledged that the “current debt owed to [plaintiff] pursuant to its April 28, 2008 Judgment equals \$1,707,309.03” and that the “Promissory Note and Mortgage and the Judgment will remain in full force and effect until paid or satisfied,” waived any and all defenses, and agreed to seek dismissal of her appeal with prejudice. Plaintiff agreed to suspend execution of the judgment temporarily and reduce the total amount owed to \$1.23 million and forego future interest, pending defendant’s performance of all of the obligations set forth therein. The parties also acknowledged having had the opportunity to consult and obtain independent counsel and they included counsels’ name, and agreed that the agreement “contains the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous settlement agreements or understandings, written or oral, pertaining to this matter.” (Affirmation in Opposition to Defendant Hazan’s Order to Show Cause, dated Oct. 28, 2013, Exh. A).

In November 2008, after defendant allegedly defaulted on the second agreement, plaintiff foreclosed on and sold the Florida home. Defendant sought an emergency application to vacate the sale, which was granted by the Florida court in December 2008, having found that defendant did not breach the second agreement and that plaintiff’s action in selling the home was unconscionable. (*NLG LLC v Elizabeth Hazan*, index No. 108020/08, NYSCEF 6-2).

By order to show cause dated February 3, 2009, defendant moved for an order vacating the June 2008 filing of the Florida judgment and enjoining and restraining plaintiff from enforcing or collecting it. (Marzec Aff., Exh. C). By order dated July 22, 2009, the justice previously presiding in this part granted defendant's motion, finding that plaintiff had failed to register the judgment pursuant to CPLR 5402 and 5403 as it had not mailed notice of the filing to defendant's last known address and did not send the notice timely. The court also indicated that even if he had not vacated the judgment, he would have stayed its enforcement and required the parties to return to Florida to ascertain the validity of their claims there. He thus dismissed the proceeding. (*Id.*, Exh. D).

By Satisfaction of Judgment filed in Florida on February 21, 2012, Raymond Houle, identified as the manager of NLG, LLC, by 9197-5904 Quebec Inc., stated that defendant had satisfied the judgment held against her by plaintiff (Marzec Aff., Exh. G), and by stipulation dated February 28, 2012, Arthur Rosenberg, an attorney for 9197-5904 Quebec, Inc., which had been granted the authority to manage plaintiff pursuant to a charging order issued by a Pennsylvania court, and defendant's attorney agreed to discontinue plaintiff's action with prejudice and without costs to either party. (*Id.*, Exhs. J, K). By order of a Florida Circuit Court Judge, dated January 2, 2013, the satisfaction of judgment was vacated as of February 21, 2012. (Affirmation of James Costo, Esq., dated Oct. 28, 2013, Exh. C). The Pennsylvania charging order was vacated as of May 1, 2013.

By decision and order dated August 29, 2013, I denied plaintiff's motion to vacate the stipulation of discontinuance. (*Id.*, Exh. L).

On September 10, 2013, plaintiff obtained a Florida default final judgment against

defendant in Florida based on her failure to pay \$250,000 by April 22, 2008 pursuant to the February 9, 2008 agreement. (*Id.*, Exh. M). On September 17, 2013, it filed the judgment with the New York County Clerk and mailed it to defendant at her Florida and New York addresses via priority mail. (*Id.*, Exh. N).

III. ANALYSIS

Defendant claims that plaintiff is precluded from filing the judgment based on the July 2009 decision and my August 2013 decision, arguing that plaintiff failed to move to vacate the July 2009 decision or to return to Florida to ascertain the validity of the parties' claims there. She also relies on the satisfaction of judgment, denies receipt of notice of the Florida judgment, and argues that plaintiff's service of the judgment is flawed. (*Marzec Aff.*).

Plaintiff maintains that it is entitled to re-file the judgment against defendant on the ground that it is valid and unsatisfied, denying that the second agreement supersedes the judgment and claiming, rather, that it incorporates it. It also discounts defendant's contentions as to service of the judgment to her. (*Costo Aff.*).

As the Florida Circuit Court has issued an order vacating the satisfaction of judgment, and issued the September 2013 final default judgment, and given plaintiff's satisfaction of the requirements of CPLR Article 54, it is entitled to enforce the judgment here. That the judgment is based on the superseded agreement is of no legal significance here and defendant's arguments about service on her of the judgment are meritless.

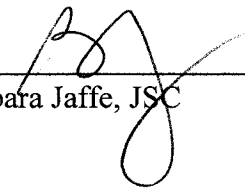
III. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant's motion to vacate the filing of a foreign judgment, enjoin

and restrain plaintiff now and in the future from taking any steps to enforce the judgment, and grant sanctions is denied in its entirety.

ENTER:



Barbara Jaffe, JSC

DATED: January 15, 2014
New York, New York