

Unilever Canada, Inc. v Mon Chong Loong Trading Corp.

2014 NY Slip Op 31791(U)

July 9, 2014

Supreme Court, New York County

Docket Number: 151380/2014

Judge: Eileen A. Rakower

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

PRESENT: Hon. EILEEN A. RAKOWER

PART 15

UNILEVER CANADA, INC.,

Plaintiff,

- v -

MON CHONG LOONG TRADING CORP.,

Defendant.

INDEX NO. 151380/~~2012~~²⁰¹⁴
MOTION DATE 001, 002
MOTION SEQ. NO. ~~002~~
MOTION CAL. NO.

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 _____

Cross-Motion: Yes X No

Plaintiff, Unilever Canada Inc. (“Unilever Canada”), moves for summary judgment in lieu of complaint pursuant to CPLR § 3213 and 5303, directing the entry of judgment for Unilever Canada and against defendant, Mon Chong Loong Trading Corp. (“MCL”), in the amount of \$371,409.00 USD plus \$1,158,00 CAD, with interest accruing at the annual rate of 3% from November 19, 2013 until the day of payment, on the ground that this action is based upon a foreign country money judgment rendered by the Ontario Superior Court of Justice, Toronto, Ontario, on November 19, 2013 and entered January 2, 2014 (“the Judgment”) in the action captioned *Unilever Canada Inc. v. Mon Chong Loong Trading Corp.*, Court File No. CV-13-489896 (“the Ontario Action”)

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]). Article 53 “applies to any foreign country judgment which is final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.” CPLR § 5302.

“The courts of this State will generally accord recognition to bilateral foreign judgments of divorce, including the terms and provisions of any agreements incorporated therein, under the doctrine of comity.” *Tal v. Tal*, 158 Misc. 2d 703 (Sup. Ct. 1993) (citations omitted). “Absent some showing of fraud in the procurement of the foreign country judgment or that recognition of the judgment would do violence to some strong public policy of this State, party who properly appeared in the action is precluded from attacking the validity of a foreign country judgment in a collateral proceeding brought in the courts of this State.” (*Id.*) (internal citations omitted).

Unilever Canada submits the affidavits of Lisa Constantine, a lawyer who practices in the Province of Ontario, Canada, and Partha Guha, the Senior Manager of Marketing and Business Development for Unilever Canada’s North American Ethic Business Unit.

Unilever Canada further submits an Affidavit of Service which attests to service on MCL by delivering to and leaving a copy of the Summons with Notice of Motion for Summary Judgment in Lieu of Complaint, Amended Notice of Motion, Memorandum, and supporting affidavits with “Tammy Alexander, an agent of the Secretary of the State of New York,” on February 21, 2014, pursuant to BCL 306.

Unilever Canada submits another Affidavit of Service, which attests to service of the motion papers on MCL on February 22, 2014 at “47-10 Austell Place, Long Island City, NY” by “personally serving and leaving the same with SAMUEL YEN, who informed deponent that he holds the position of Accounting Manager with that company and is authorized by appointment to receive service at that address.”

Lisa M. Constantine, a lawyer who practices in the Province of Ontario, Canada, submits an attorney affirmation. Constantine avers that MCL, a

distributor of Asian food products, became the exclusive distributor of Plaintiff's Asian food products in March, 2011. In 2013, MCL owed Plaintiff the outstanding balance of \$418,519.25 USD, which related to five unpaid invoices for food products that MCL had purchased from Plaintiff. Plaintiff commenced the Ontario Action against MCL seeking to recover the outstanding balance. Constantine avers that MCL was served with the "Statement of Claim" in the Ontario Action, MCL failed to respond and thereby defaulted, and Judgment was entered.

Constantine avers that the Judgment is final, conclusive and enforceable, is not subject to appeal, and MCL has made no effort to set it aside. Furthermore, Constantine avers that the Ontario Justice System "has impartial tribunals and procedures that are consistent with the requirements of due process," and that "[t]he Ontario Superior Court of Justice had personal jurisdiction over MCL based on MCL's purposeful transaction of business in Ontario and its numerous contacts with Ontario bearing a direct nexus to Unilever Canada's claim in the Ontario Action."

After filing its motion for summary judgment in lieu of Complaint, Unilever Canada moved by way of Order to Show Cause seeking an order of attachment, an order restraining the transfer or other disposition of assets, and an order directing the deposition of MCL. More specifically, Unilever Canada requested the following relief:

- (1) An attachment of MCL's property subject to this Court's jurisdiction up to a value of \$371,409 USD and \$1,158 CAD including but not limited to: any and all equipment, vehicles, inventory, goods, accounts receivable, negotiable instruments, cash or other property of MCL" located at 56-72 49th Place, Maspeth, New York 11387, 47-10 Austell Place, Long Island City, New York, 11101, and at 47-16 Austell Place, Long Island City, New York, NY 11101 ("the NY locations");
- (2) An Order, pursuant to CPLR § 5229, restraining MCL and/or its agents, employees, servants, attorney(s) and/or all other persons acting through, with or on MCL's behalf from removing, alienating or encumbering any of MCL's property subject to jurisdiction in New York State, including but not limited to" the assets at the NY locations;
- (3) An Order, pursuant to CPLR 5229, ordering MCL to submit to examination by Plaintiff's counsel.

The Order to Show Cause, signed by the Court on April 10, 2014, directed service to be made upon MCL, at "56-72 49th Place, Maspeth, New York, 11378 and 47-16 Austell Place, Long Island City, New York 1101 and 47-10 Austell Place, Long Island City, New York, 11101, on or before April 14, 2014, by Federal Express overnight courier. Plaintiff submitted an affidavit of service in accordance with the Order.

Pursuant to CPLR § 5229:

In any court, before a judgment is entered, upon motion of the party in whose favor a verdict or decision has been rendered, the trial judge may order examination of the adverse party and order him restrained with the same effect as if a restraining notice had been served upon him after judgment.

Pursuant to CPLR § 6201:

An order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when:

5. the cause of action is based on a judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state, or on a judgment which qualifies for Recognition under the provisions of article 53.

MCL did not file any opposition papers on or before the May 20, 2014 return date. Oral argument on Plaintiff's Order to Show Cause was held on May 20, 2014. Hayes Young, an attorney appeared on MCL's behalf, and requested additional time to oppose Plaintiff's motion. The Court granted MCL's request for additional time to file opposition.

On May 23, 2014, Defendant's attorney, Hayes Young, filed an affirmation in opposition to Unilever Canada's Order to Show Cause, in which Defendant contends that he was not served with Unilever's motion for summary judgment in lieu of Complaint. MCL does not, however, refute the sworn Affidavits of Service filed by Unilever Canada attesting that MCL was duly served on February 21, 2014 and February 22, 2014, with Unilever Canada's motion for summary judgment in lieu of complaint.

Here, Unilever Canada has met its burden and proved prima facie that the Judgment issued by the Ontario Superior Court of Justice, Toronto, Ontario, on November 19, 2013 against MCL is entitled to full faith recognition and entry as a Judgment in New York and to enforce the Judgment. In opposition, MCL fails to raise any triable issues of fact to suggest that the Judgment was procured by fraud or that enforcement of the judgments would be repugnant to the public policies of this state or our notions of fairness or any of the other grounds for non-recognition set forth in CPLR § 5304.

Turning to Plaintiff's Order to Show Cause, Plaintiff is entitled to an attachment. CPLR § 6201(5) provides for such a remedy where a foreign judgment qualifies for recognition under Article 53. Except for the posting of an appropriate undertaking, the terms of which will be determined at a hearing, plaintiff has made the requisite showing for an attachment under CPLR § 6212. See CPLR § 6212 (b) ("On a motion for an order of attachment, the plaintiff shall give an undertaking, in a total amount fixed by the court ...").

Wherefore, it is hereby

ORDERED that plaintiff's motion for summary judgment in lieu of Complaint is granted; and it is further

ORDERED that the Judgment entered by the Ontario Superior Court of Justice, Toronto, Ontario, on November 19, 2013 and entered January 2, 2014, in favor of Plaintiff, Unilever Canada, Inc., and against defendant, Mon Chong Loong Trading Corp., is entitled to full faith and recognition and entry as a judgment in New York; and it is further

ORDERED that the Clerk enter judgment in favor of Plaintiff, Unilever Canada, Inc., and against defendant, Mon Chong Loong Trading Corp., in the amount of \$371,409.00 USC plus \$1,158 CAD, together with interest at the annual rate of 3% from November 19, 2013, until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED Plaintiff's motion for an attachment is granted; and it is further

ORDERED that the amount of the undertaking is referred to a Special Referee to hear and report with recommendations; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a Special Referee and the Clerk shall notify all parties, including defendants, of the date of the hearing.

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

Dated: 7/9/14


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

Check one: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**

Check if appropriate: **DO NOT POST** **REFERENCE**