

Sea Trade Mar. Corp. v Stylianos Coutsodontis

2014 NY Slip Op 32489(U)

September 23, 2014

Supreme Court, New York County

Docket Number: 653407/2011

Judge: Anil C. Singh

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

-----X

Sea Trade Maritime Corporation,

Plaintiff,

Index Number:
653407/2011

-against-

Motion Seq. 002

Stylianos Coutsodontis,

Defendant.

-----X

Hon. Anil C. Singh, J.:

Plaintiff Sea Trade Maritime Corporation (Sea Trade) moves, pursuant to CPLR 3212, for summary judgment, in this action under CPLR Article 53 to recognize a foreign judgment. For the reasons set forth below, the motion is granted.

Parties and Procedural Background

Plaintiff Sea Trade Maritime Corporation (Sea Trade or plaintiff) is a company authorized to do business in New York that owns an ocean going cargo vessel M/V Athena (the Ship) (amended complaint, ¶¶ 2, 4,; admitted in answer, ¶¶ 2, 4). On or about July 16, 2008, Stylianos Coutsodontis (Coutsodontis or defendant) had the Ship seized in the port of Tarragona, Spain, based upon an ex-parte application by his counsel that raised a maritime claim of \$6 million (amended complaint, ¶ 5; admitted in answer, ¶ 5). Sea Trade challenged the detention and, after a hearing on August 4, 2008, the Tarragona Commercial Court (the

Spanish Trial Court) issued a decision that found that there was no valid claim, that the Ship should be released and that Coutsodontis was liable for the damages and legal fees resulting from the Ship's detention (complaint, ¶ 7; admitted in answer, ¶ 7). On July 19, 2009, the appeal from the Spanish Trial Court's decision was dismissed by the Tarragona Court of Appeals (the Spanish Appeals Court) and, on March 11, 2011, the trial for damages was held before the Spanish Trial Court (complaint, ¶¶ 8-9).

On July 29, 2011, the Spanish Trial Court issued its decision on the damages issue (the Spanish Trial Court Decision), finding damages in the amount of \$704,066.41 (*id.*, ¶¶ 10-11; Rodriguez affidavit dated April 28, 2014 [the Rodriguez Affidavit], ¶ 14).

Subsequently in New York, Sea Trade filed a summons with notice and a motion for summary judgment in lieu of complaint in order to enforce the Spanish Trial Court Decision, commencing this case on December 9, 2011. This court granted plaintiff summary judgment for the reasons set forth on the record on March 9, 2012. On November 14, 2013, the Appellate Division, First Department reversed the judgment, stating that "the court was not provided adequate information to determine as a matter of law that the document is a final judgment under Spanish law and ripe for enforcement in New York" (*Sea Trade Mar. Corp. v*

Coutsodontis, 111 AD3d 483, 485 [1st Dept 2013]). The Appellate Division permitted plaintiff to file a formal complaint and, thereafter, the parties filed their respective pleadings.

While this New York case seeking to enforce the Spanish Trial Court Decision was pending, the parties appealed the Spanish Trial Court Decision in Spain and the Spanish Appeals Court affirmed liability against *Coutsodontis* and modified the damages award increasing damages to \$914,514.41 by decree dated May 29, 2013 (the Spanish Appeals Court Order; amended complaint, ¶¶ 12-14; Rodriguez Affidavit, ¶¶ 15-16). Plaintiff asserts that the Spanish Appeals Court Order is final and enforceable under Spanish law (Tuñón affidavit dated March 17, 2014 [the Tuñón Affidavit], ¶¶ 23-27).

In response to the Spanish Appeals Court Order, plaintiff in the instant case, amended the complaint now seeking to enforce the Spanish Appeals Court Order.

The Spanish Appeals Court Order states in the translated copy, which is certified by the provincial court clerk, that it is "binding and enforceable" (amended complaint, ¶ 15; Tuñón Affidavit, ¶ 28) and it is unsatisfied (amended complaint, ¶ 17). Defendant does not dispute that the Spanish Appeals Court Order found that the Ship's detention was improper, that he was liable for the resultant damages and that the amount assessed was \$914,541.41 plus interest (Rodriguez Affidavit, ¶¶ 14-16).

Defendant asserts that he is a 50% shareholder in plaintiff, Sea Trade (*id.*, ¶ 6; Coutsodontis affidavit, ¶ 2) and, he detained the ship in order to protect his interest from his sister, Anna Peters (Anna), and her son, George Peters (George), who own 40% and 10% shares, respectively, in Sea Trade (Rodriguez Affidavit, ¶ 6). The underlying Spanish action sought damages for defendant's improper detention of the ship. (Rodriguez Affidavit, ¶¶ 6-17.

Defendant notes that in a separate action entitled *Stelios Coutsodontis v Sea Trade Maritime Corp., George Peters, Anna Peters and Colonial Navigation, Inc.*, Supreme Court, New York County, index number 653956/2012 (the Sea Trade Discovery Action), he was awarded access to Sea Trade's books and records. Defendant contends that, since he has not yet received this access, plaintiff lacks standing to prosecute this action. He also contends that the Spanish Appeals Court Order is not an enforceable judgment but rather it requires a separate enforcement proceeding (Rodriguez Affidavit, ¶¶ 18-20, 23-24).

On March 17, 2014, plaintiff made the instant motion for summary judgment.

Recognition of Foreign Judgments

Recognition of the judgments of foreign countries is a matter of comity and "New York has traditionally been a generous forum in which to enforce judgments for money damages rendered

by foreign courts" (*CIBC Mellon Trust Co. v Mora Hotel Corp.*, 100 NY2d 215, 221 [2003], cert denied 540 US 948 [2003]; *Lenchyshyn v Pelko Elec.*, 281 AD2d 42, 45-46 [4th Dept 2001]). The purpose of CPLR Article 53 was "to codify and clarify existing case law and, more importantly, to promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive streamlined enforcement here" (*CIBC*, 100 NY2d at 221).

"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]. Simply put, a foreign country judgment is considered 'conclusive between the parties to the extent that it grants or denies recovery of a sum of money' [CPLR 5303] unless '1. the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law' [or] '2. the foreign court did not have personal jurisdiction over the defendant' (CPLR 5304 [a] [1], [2])" (*CIBC*, 100 NY2d at 221-222).

The failure to recognize a foreign country judgment is limited to cases with "'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' [and] [t]he public policy inquiry rarely results in

refusal to enforce a judgment" (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 82 [2006], quoting *Greschler v Greschler*, 51 NY2d 368, 376 [1980]; *Matter of Weil*, 202 AD2d 838, 839 [3d Dept 1994]).

A judgment is not enforceable where rendered, pursuant to CPLR 5302, where the "plaintiff [previously] agreed that it would not enforce that judgment against [that party]" (*Stumpf AG v Dynegy, Inc.*, 32 AD3d 232, 233 [1st Dept 2006]).

Discussion

In analyzing whether the Spanish Appeals Court decision is entitled to recognition and enforcement in New York, the court notes on the onset that defendant has not claimed there was "fraud in the procurement of the foreign country judgment" (*Sung Hwan Co.*, 7 NY3d at 82). Defendant has also not raised any issue as to "the overall fairness of [the foreign country's] legal 'system'" (*CIBC*, 100 NY2d at 222). He has also failed to claim that "some strong public policy of this State" would be affected by recognition of the Spanish Appeals Court Order (*Sung Hwan Co.*, 7 NY3d at 82; see also *Sea Trade*, 111 AD3d at 486).

Rather, defendant has claimed that plaintiff has not complied with a previous judgment, the *Sea Trade Discovery Action*, thus Anna and George as part owners of plaintiff *Sea Trade* lack the ability to prosecute this case. Enforcement of the judgment in the previous *Sea Trade Discovery Action* is not

the issue before this court. This action concerns the recognition of the Spanish Appeals Court Order.

If Coutsodontis's claims against Anna and George challenged their rights to act on behalf of Sea Trade, this claim relates to the underlying merits of the foreign country judgment and such a relitigation of the merits would be contrary to the court's "ministerial function of recognizing the foreign country money judgment and converting it into a New York judgment" (*Lenchyshyn*, 281 AD2d at 49; see also *CIBC*, 100 NY2d at 221-222).

Defendant also contends that the Spanish Appeals Court Order is not enforceable where rendered, since he claims that a separate enforcement action is required under Spanish law (*Rodriguez Affidavit*, ¶¶ 18-20, 23-24). Plaintiff contends that a separate enforcement action is not required under Spanish law and that the Spanish Appeals Court Order is "the equivalent of a final judgment in Spain in terms of its finality and enforceability" (*Tuñón Affidavit*, ¶ 27).

Defendant's argument that the Spanish Appeals Court Order is not a "final judgment" because a separate enforcement proceeding is required under the Spanish Civil Procedure (LEC) is without merit. In support of defendant's argument he relies upon the following translated sections of Spanish Law:

Barring a legal provision to the contrary, the court that is competent to hear a case shall be equally competent to determine its effects, to put into effect the rulings and orders that it may pass and to execute the sentences or covenants and transactions that it may sanction.

(LEC Article 61)

If the enforcement title consists of court rulings, decisions issued by Court Clerks considered enforcement titles herein, or settlements and agreements sanctioned or approved by the courts, the competent Court to issue the court order containing the general order of enforcement and its handling shall be the same Court that heard the matter in its first stage of proceedings or certified or approved the settlement or agreement.

(LEC Article 545.1)

These provisions relate to the Spanish Court's authority to implement and enforce its own rulings in Spain. It does not relate to whether the Spanish Appeals Court judgment is final. The applicability of these sections to the Spanish Appeals Court Order support that it is final, since at this stage it is enforceable.

Here, plaintiff seeks to enforce the ruling in New York pursuant to Article 53 of the CPLR since defendant does not have assets in Spain. Requiring plaintiff to commence an enforcement proceeding in Spain, where defendant has no assets, is an exercise in futility and not supported by the sections of Spanish civil procedure cited by defendants.

Article 53 of the CPLR allows this court to enforce the foreign judgment rendered by the Spanish Appeals Court Order

since it is final, conclusive and enforceable under comity.
(John Galliano, S.A. v Stallion, Inc., 15 NY3d 75, 79 [2010]).
Significantly, the Spanish Appeals Court Order has been certified by the Clerk of the Spanish Appeals Court stating that it is "binding and enforceable" (*id.*, ¶ 28). Therefore, the enforceability of the Spanish Appeals Court Order has been determined by the court that issued it and this determination is binding on this court (*Overseas Dev. Bank*, 64 NY2d at 928). Plaintiff's motion for summary judgment for recognition of the Spanish Appeals Court Order is granted. Accordingly it is,

ORDERED that the motion of Sea Trade Maritime Corporation for summary judgment is granted and the Clerk is directed to enter judgment in favor of said plaintiff and against defendant in the amount of \$ 914,514.41 plus interest at the rate of 6% from July 29, 2011 until the date of the entry of judgment, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

Date: September 23, 2014
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**