

PD Cargo, CA v Lacteos CDS
2016 NY Slip Op 31495(U)
August 3, 2016
Supreme Court, New York County
Docket Number: 653101/2014
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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PD CARGO, CA,

Index No. 653101/2014

Plaintiff,

-against-

DECISION/ORDER

LACTEOS CDS a/k/a CAPILLA DEL SENOR, SA a/k/a
CDS, PATEN INTERNATIONAL SA and MORGAN
STANLEY a/k/a MORGAN STANLEY INC. a/k/a
MORGAN STANLEY, LLC,

Defendants.
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HON. CYNTHIA KERN, J.S.C.
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this
motion for: _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3, 4</u>
Exhibits.....	<u>5</u>

Plaintiff P.D. Cargo, CA (“PD Cargo”) has brought the present motion for renewal of this court’s prior decision dismissing the case against defendant Paten International SA (“Paten”), to amend plaintiff’s complaint and to vacate this court’s previous orders to the extent they awarded damages arising out of an attachment vacated by this court. Paten has made a cross-motion for sanctions and plaintiff has made a cross-cross motion for sanctions. As will be explained more fully below, all of the motions are denied in their entirety.

The relevant history is as follows. Paten previously moved by order to show cause to dismiss the complaint as against it, to vacate the order of attachment and to award it costs, disbursements and attorney’s fees incurred in this action. This court granted the motion in its

entirety and dismissed the action as against Paten for lack of in personam jurisdiction. Plaintiff then moved for an order: (1) vacating this court's order to the extent that it awarded damages arising from the order of attachment on the ground that the account which was allegedly attached never existed; (2) reinstating the attachment which was vacated; and (3) permitting plaintiff to renew and reargue its opposition to Paten's motion to dismiss and, upon renewal or reargument, vacating this court's order dismissing the action as against Paten. That motion was denied in its entirety. Plaintiff now moves once again for renewal of this court's decision granting the motion by Paten to dismiss.

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and...shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR § 2221(e) (2)-(3). A motion for "renewal is granted sparingly...it is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation." *Mundo v. SMS Hasenclever Maschinenfabrik*, 224 A.D.2d 343 (1st Dept 1996).

In the present case, plaintiff's motion to renew, which is being made for the second time, is denied on the grounds that plaintiff has not offered any new facts not available on the prior motion and has failed to present a reasonable justification for failing to present these facts on the prior motion for renewal. To the contrary, plaintiff did in fact present these facts to the court on the prior motion for renewal, which in effect makes the present motion one for reargument rather than renewal.

In its prior renewal motion, plaintiff argued that it was entitled to renewal based on subsequent discovery it obtained from former defendant Morgan Stanley consisting of the bank

records of Paten, which demonstrate that Paten had engaged in more than 1000 transactions a year through its Morgan Stanley account which involved millions of dollars in deposits and withdrawals, foreign-currency sales and purchases, domestic and international fixed income sales and purchases and domestic and international securities sales and purchases. In its present renewal motion, plaintiff alleges that the new facts are provided by the affidavit of its Argentine attorney, prepared after the submission of its prior motion, which prompted it to re-analyze Paten's Morgan Stanley bank records and also by the subsequent release of the Panama Papers leaked from Paten's Panamanian law firm.

The new facts being offered by plaintiff on this second renewal motion are the same facts that were offered on the prior motion to renew. Initially, the primary new evidence which plaintiff relies on is Paten's Morgan Stanley bank records. However, these are the same exact bank records which formed the basis for plaintiff's first motion for renewal, which has already been denied by this court. Moreover, the new affidavit offered by plaintiff's Argentinian attorney, which is the alleged basis for plaintiff re-analyzing Paten's Morgan Stanley bank records, contains the same facts as those offered in the prior affidavit submitted with the original renewal motion. Both of these affidavits allege that the reason CDS had plaintiff deposit its security with Paten in New York was for the criminal purpose of avoiding Argentinian currency and money laundering restrictions. Although plaintiff alleges that the release of the Panama Papers after the original motion was filed constituted new facts, plaintiff has not pointed to any facts leaked in the Panamanian papers that involve Paten.

Both of the motions for sanctions are denied as neither party has established that sanctions are appropriate under the circumstances of this case.

Based on the foregoing, all of the motions are denied in their entirety. The foregoing

constitutes the decision and order of the court.

Dated: 8/3/16

Enter: CK

J.S.C.

HON. CYNTHIA S. KERN
J.S.C.