

Robert Walters Assoc. Cal v Further Lane Sec., L.P.
2016 NY Slip Op 31603(U)
August 22, 2016
Supreme Court, New York County
Docket Number: 651859/2016
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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Robert Walters Associates California,

Index No.
651859/2016

Plaintiff,

- v -

**DECISION
and ORDER**

Mot. Seq. 001

Further Lane Securities, L.P., and J. Michael Araiz,

Defendants.

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

Plaintiff Robert Walters Associates California (“Robert Walters” or “Plaintiff”) moves for summary judgment in lieu of complaint pursuant to CPLR 3213 to recognize and enforce a default judgment obtained in the State of California against defendants Further Lane Securities, L.P. (“Further Lane”) and J. Michael Araiz (“Araiz”) (collectively, “Defendants”). Plaintiff submits the attorney affirmation of Diane L. Gibson; a copy of the Summons and Complaint filed by Robert Walters in the Superior Court of California, County of San Francisco (“California Action”) on May 22, 2015; copies of proof of service on Further Lane and Araiz in the California Action; and documents supporting Plaintiff’s application for default judgment; court-exemplified copy of the Judgment. Araiz opposes. Further Lane does not oppose.

On May 22, 2015, Robert Walters filed a summons and complaint in the California Action. The California Action arose from the breach of a sublease in which Robert Walters subleased office space from defendant Further Lane, through Araiz, in San Francisco, California (“California Property”). In the California Action, Roberts Walters claimed that Defendants misappropriated the rental payments Robert Walters made under the sublease and did not turn those payments over to the landlord of the property. Robert Walters claimed, as a result, it was forced to make additional payment under the master lease to keep its office space. Robert Walters sought damages in (1) the amount paid by Robert Walters to cure Further Lane’s default in failing to remit Robert Waters’ payment (\$41,626.64), (2) Robert Walters’

security deposit allegedly wrongfully retained by Further Lane (\$31,843.20), and (3) the increased renew due under the direct new lease that Robert Walters entered into with Prudential Insurance Company of America (“Prudential”), the master landlord of the Lease (\$57,310.48). As for Araiz, the Complaint described him as:

Defendant J. Michael Araiz is an individual. Araiz is, and at all times relevant was, domiciled in the state of New York. Plaintiff is informed and believes that, at all times relevant to this Complaint, Araiz was the Chief Executive of Further Lane. Plaintiff is informed and believes, and thereon alleges, that Araiz is a limited partner of Further Lane, who, at all times relevant to this Complaint, participated in the control of the business of Further Lane. Paragraph 3 of California Complaint.

Venue is proper in this Court under California Code of Civil Procedure section 395(a) because, at all times relevant to this Complaint, Further Lane and Araiz conducted business in San Francisco, the property at issue located in San Francisco and the contracts at issue were negotiated and executed, at least in part, San Francisco. Paragraph 4 of California Complaint.

As for the basis to impose liability to Araiz, Robert Walters further states:

Mr. Araiz is the owner of Further Lane (directly and indirectly), and he participated in the control of the business of Further Lane. RJN, Exh. A, p. 3, ¶ 5. An Order of the U.S. Securities and Exchange Commission (“the SEC Sanctions Order”), imposing sanctions on Mr. Araiz on an unrelated matter, finds that Araiz, directly and through Osprey Securities Corp., owns 100% of Further Lane Securities, LP, a Delaware Limited Partnership. RJN, Exh. A at p 3, ¶ 5. See also Gibson Decl., Exh. A. at p. 5 (Certificate of Publication of Further Lane Securities, LP, Araiz as CEO of Osprey Securities Corp., which is General Partner of Further Lane Securities, LP). The SEC Sanctions Order also finds that Araiz has been President, Chief Executive Officer and Chief Compliance Officer of Further Lane. As the SEC determined, “Araiz, directly and through OSC, owns 100% of FLS [Further Lane Securities, LP]. See, also, id. at ¶ 9.

On May 27, 2015, Further Lane was served with a copy of the summons and complaint by personal delivery to its designated agent for service of process in the State of California, CT Corporation System, 818 West 7th Street, Los Angeles, CA 90017, pursuant to § 416.10 of the California Code of Civil Procedure. On May 27, 2015, Araiz was served with a copy of the summons and complaint by this firm’s mailing of those documents via certified mail, postage prepaid, with return receipt requested as prescribed for service on a person outside of the State of California pursuant to § 415.40 of the California Code of Civil Procedure. Robert Walters states

Mr. Araiz's receipt of the summons and complaint is evidenced by his signature on a return receipt.

Defendants did not respond or otherwise appear in the California Action. On September 30, 2015, Robert Walters filed a motion for entry of judgment based upon the defendants' defaults in appearance. After a hearing, a judgment was rendered on January 12, 2016 ("the California Judgment") in favor of the plaintiff and jointly and severally against Defendants in the amount of \$130,780.32, plus attorneys' fees of \$11,500, costs of \$699.75, and prejudgment interest of \$7,741.22, for a total award of \$150,721.29. No appeal of the judgment has been taken nor has any motion or action been taken with reference to the judgment. The judgment remains completely unpaid.

CPLR § 3213 provides an expedited procedure for the recognition of sister state judgments in lieu of the filing of a plenary action. CPLR § 3213 ("When an action is based . . . 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."); *see also Cadle Co. v. Tri-Angle Assocs.*, 18 A.D.3d 100, 103 (1st Dep't 2005) ("Judgment creditors may enforce their foreign judgments by motion for summary judgment in lieu of complaint.").

A sister state judgment is entitled to recognition in New York under the full faith and credit clause of article IV of the United States Constitution. *Buckeye Retirement Co., L.L.C., Ltd. v. Lee*, 41 A.D.3d 183-184 (1st Dep't 2007) ("The Full Faith and Credit Clause of article IV of the United States Constitution requires the courts of New York to enforce judgments rendered in other states, and precludes inquiry into the merits of the judgment."). The sole inquiry, if raised by a judgment debtor, is the determination of whether the rendering court had jurisdiction to issue the judgment. *Fiore v. Oakwood Plaza Shopping Center, Inc.*, 78 N.Y.2d 572, 577 (1991) ("As a matter of full faith and credit, review by the courts of this State is limited to determining whether the rendering court had jurisdiction, an inquiry which includes due process considerations. Thus, inquiry into the merits of the underlying dispute is foreclosed; the facts have bearing only in the limited context of our jurisdictional review.").

Robert Walters claims the California Judgment is entitled to recognition and enforcement against Defendants in New York as a matter of full faith and credit. Robert Walters claims that the California Judgment was awarded upon personal jurisdiction over Defendants, and should be enforced against Defendants in New York. With respect to personal jurisdiction over Araiz, Robert Walters states:

Personal jurisdiction over Mr. Araiz was proper due to his status as a general partner of Further Lane. General partners in Delaware limited partnerships have the same liability to third parties as partners in general partnerships under the Delaware Uniform Partnership Act. General partners in Delaware limited partnerships are liable jointly for all debts and obligations of the partnership, and are liable jointly and severally for a wrongful act or breach of trust by a partner. See 6 Del. C. § 17-403(b). Mr. Araiz wholly controlled Further Lane and has participated directly in its business affairs as its CEO. His participation has been general, as established by the SEC Sanctions order, and specific to the Sublease that he executed on behalf of Further Lane. See, Bromwell Decl., ¶¶ 4-5, and Exhs. A, B and C. In his role, Mr. Araiz must have made the decision on behalf of Further Lane to accept Robert Walters' security deposit and sublease payments for January and February 2015 and not to turn them over. In addition to his status as general partner, those actions more than satisfy sufficient minimum contacts for the assertion of personal jurisdiction over Mr. Araiz.

Araiz opposes Plaintiff's motion for summary judgment in lieu of complaint, seeking to domesticate the Judgment against him on the grounds that the California court that granted default judgment against him did not have jurisdiction over him. Araiz attests that he has been a resident of and domiciled in New York and has continuously lived in the State of New York and in the City of New York. Araiz attests that he does not own property in California, does not have a bank account in California and never resided in California, never had a telephone number in his name in California, and never in his individual capacity had any business interests in California. Araiz states that his sole contact with California consists of a 6 month employment in 1998 as a registered representative in Los Angeles, California.

Araiz attests that from February 2002 until November 2013, he was the CEO and President of Further Lane. Further Lane was a broker-dealer registered with the Financial Services Regularity Authority ("FINRA") that provided investment banking and financial advisory services. Further Lane was a Delaware limited liability partnership with its headquarters located in New York, New York. In September 2010, Further Lane entered into a lease with 100 Spear Street Owners Corp., to lease the Property. Araiz signed the Lease as CEO of Further Lane. In May 2013, Plaintiff entered into a sublease with Further Lane ("the Sublease"). Araiz signed the Sublease as CEO of Further Lane. Araiz states that he never provided a personal guaranty for either the Lease or the Sublease. Araiz attests that he never consented to the jurisdiction of California and never contractually agreed to

jurisdiction in the State of California. Araiz further attests that he is not and has never been a general partner of Further Lane.

Lastly, Araiz attests that he was never served with the summons and complaint in the California Action. Araiz states:

I was never served with the summons and complaint in the California Action. The Affidavit of Service states that I was served pursuant to Cal. Code. Civ. Proc. 415.40 by mail and acknowledgment of receipt of service. The domestic return receipt, however, does not contain my signature and the printed name beneath the signature is likewise not in my handwriting. I have not authorized anyone to accept mail on my behalf and I do not know who signed or printed my name on the return receipt.

Plaintiff has demonstrated entitlement to an Order recognizing and enforcing the California Judgment against Further Lane in New York as a matter of full faith and credit. As for Araiz, Araiz has raised issues of fact concerning whether the California Court had personal jurisdiction over him which are sufficient to warrant the denial of Plaintiff's motion for summary judgment in lieu of Complaint as against him.

Wherefore it is hereby

ORDERED that Plaintiff's motion for summary judgment against defendant, Further Lane Securities, L.P., is granted without opposition; and it is further

ORDERED the California Judgment obtained against Further Lane Securities, L.P., is entitled to recognition and enforcement in New York as a matter of full faith and credit; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant, Further Lane Securities, L.P., in the sum of \$150,721.29, together with interest as prayed for allowable by law (at the rate of 9% per annum from January 12, 2016) 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 that Plaintiff's motion for summary judgment in lieu of complaint as against defendant, J. Michael Araiz, is denied; and it is further

ORDERED the Plaintiff's moving papers, consisting of a notice of motion and the affidavits of Plaintiff in support of Plaintiff's motion, are hereby deemed the complaint in this action and the Defendant J. Michael Araiz's answering papers, consisting of the affidavit of J. Michael Araiz, are hereby deemed the answer.

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

DATED: AUGUST 2, 2016

AUG 22 2016



EILEEN A. RAKOWER, J.S.C.