

Art Optic Ltd. v Tomashover
2017 NY Slip Op 30984(U)
May 12, 2017
Supreme Court, New York County
Docket Number: 159673/2015E
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

ART OPTIC LTD., an Israeli corporation,
Plaintiff,

Index No.: 159673/2015 E

Motion Date: _____

- v -

Motion Seq. No.: 01

SAMUEL TOMASHOVER and MERYL TOMASHOVER,
Defendants.

Motion Cal. No.: _____

The following papers, numbered 1 to 20 were read on this motion for summary judgment in lieu of complaint.

Notice of Motion/Affidavits -Exhibits _____
Notice of Cross-Motion/Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

<u>PAPERS NUMBERED</u>
1 - 10
11 - 17
18- 20

Cross-Motion: **Yes** **No**

Upon the foregoing papers,

Plaintiff brings this action by motion for summary judgment in lieu of complaint pursuant to CPLR 3213 and 5303 seeking recognition of a foreign judgment rendered in the State of Israel against the defendants in the District Court in Tel Aviv in Civil Case Nos.: 1661/07 & 2101/08 on December 30, 2012, as modified by the Supreme Court of Israel (Civil Appeal 1203/13) in a judgment dated May 6, 2015, in the amount with interest of \$319,575 as of September 13, 2015. Defendants oppose the application and cross-move pursuant to CPLR 8501 and 8502 for an order directing the

Check One: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**

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

SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING

plaintiff to post security for costs and staying the action until such security is posted.

For the reasons that follow the court shall grant the motion and deny the cross-motion.

CPLR 5303 provides that

a foreign country judgment meeting the requirements of section 5302 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. Such a foreign judgment is enforceable by an action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense.

This court finds that the submissions of the plaintiff establish compliance with the finality and enforceability requirements of CPLR 5302. The judgments submitted by plaintiff explicitly provide for the recovery of a fixed sum of money, that is damages in the the amount of \$251,000.00 with interest from the date of December 30, 2012, as set forth by the Israeli Supreme Court, the date of the District Court judgment, with legal fees as set forth by the District Court of 60,000 Israeli Shekels.

Defendants' argument that the decisions of the Israeli courts do not constitute judgments because they do not include the amount of interest is unsupportable, as binding authority holds that "[p]ostjudgment interest is a procedural matter governed by the law of the forum" (Abu Dhabi Commercial Bank PJSC v Saad Trading, Contr. and Fin. Services Co., 117 AD3d 609, 613 [1st Dept 2014]).

Moreover, defendants do not dispute the plaintiff's interest calculations. In addition, plaintiff waives certain additional interest amounts to which it may have been entitled. Therefore, the court finds that plaintiff's application complies with CPLR 5302.

The court's inquiry does not stop with CPLR 5302 because "[a] plaintiff seeking enforcement of a foreign country judgment bears the burden of making a prima facie showing that the mandatory grounds for nonrecognition [under CPLR 5304] do not exist." Daquerre, S.A.R.L. v Rabizadeh, 112 AD3d 876, 878 (2d Dept 2013) (citations omitted). As far as the whether the foreign court had jurisdiction over the defendants, this court notes that defendants not only availed themselves of their right to appeal, and partially prevailed via a reduction in damages, before Israel's highest tribunal, the Supreme Court of Israel; they do not assert, and the record does not show, that they raised their jurisdictional objection before the Supreme Court. Thus, not only did defendants appear and litigate the matter in the foreign jurisdiction, but also they were afforded the opportunity to appeal and failed to raise any jurisdictional objection upon such appeal. See CPLR 5305 (a) (2); CIBC Mellon Trust Co. v Mora Hotel Corp. N.V., 296 AD2d 81, 97 (1st Dept 2002), affd, 100 NY2d 215 (2003) (defendants' conduct provided the necessary predicate for foreign tribunal's exercise of

personal jurisdiction). Further, the extensive opinions authored by the District Court of Israel and the Supreme Court of Israel clearly demonstrate the impartiality of the tribunals and the due process accorded all parties. See Schwartz v Schwartz, 251 AD2d 648, 649 (2d Dept 1998) (comity properly to Israeli court judgment).

As the plaintiff has established a prima facie case for recognition in that none of the factors in CPLR 5304 are present, the court shall grant the motion.

The court shall deny defendants' cross-motion seeking security for costs, since the court has granted summary judgment to the plaintiff and therefore the action is no longer "pending." As stated by a previous term of this court

Here, plaintiff has moved for summary judgment on its entire complaint and I have granted it the requested relief. To stay plaintiff's motion, pending its filing of security for costs, would serve no purpose except to generate additional unnecessary motion practice and delay plaintiff's right to a judgment which it is entitled to. Thus, any suggestion here that, by virtue of defendant's cross motion, I am precluded from even considering the merits of plaintiff's motion for summary judgment until such time as plaintiff has posted security is rejected.

Since this action is now virtually at a close and plaintiff has been awarded judgment in its favor, defendant's cross motion pursuant to CPLR 8501 (a) is denied. If defendant decides to pursue an appeal in this matter, it may bring a new motion for security for costs and the Justice to whom that motion is submitted will then need to decide whether a defendant, on appeal, has a right to demand security for costs from a nonresident plaintiff where the plaintiff was the successful party below.

Cie Noga, S.A. v Heather Fin. Corp., 130 Misc2d 1086, 1089-91 (Sup Ct, NY County, February 6, 1986). Therefore, there is no need to grant a stay of a matter, which is hereby concluded by the recognition of the judgment.

Accordingly, it is

ORDERED and ADJUDGED that the plaintiff's motion pursuant to CPLR 3213 and 5303 for Summary Judgment in Lieu of a Complaint is hereby GRANTED; and it is further

ORDERED AND ADJUDGED, that the plaintiff's Israeli Judgment entered against the Defendants in the sum of \$319,575.00 is hereby RECOGNIZED by this Court pursuant to CPLR Article 53, and it is further

ORDERED and ADJUDGED that the Clerk enter judgment in favor of the plaintiff and against the defendants in this action in the amount of \$319,575.00 together with interest at the statutory rate from the date of September 21, 2015, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, 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 defendants' cross-motion is DENIED.

This constitutes the decision and order of the court.

Dated: May 12, 2017

ENTER:

~~Debra A. James~~
DEBRA A. JAMES J.S.C.