

**Cadles of Grassy Meadows II, L.L.C. v Hossain**

2017 NY Slip Op 31903(U)

September 8, 2017

Supreme Court, New York County

Docket Number: 158665/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED  
*Justice*

PART 2

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CADLES OF GRASSY MEADOWS II, L.L.C.,  
Plaintiff,

INDEX NO. 158665/2016

MOTION DATE \_\_\_\_\_

- v -

MOTION SEQ. NO. 002

SAIJAD HOSSAIN, HAO TE INTERNATIONAL TRADING  
CORP.

**DECISION AND ORDER**

Defendant.

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The following e-filed documents, listed by NYSCEF document number 10, 11, 12, 13, 14, 15, 16, 17, 22, 23, 24, 25, 26

were read on this application to/for Summ. Judgmt. in Lieu of Complaint/Renew Judgmt.

Upon the foregoing documents, it is

Ordered that the motion is **granted**.

Plaintiff, Cadles of Grassy Meadows II, LLC, as assignee and successor in interest to HSBC Bank USA, National Association, moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint on a judgment in the amount of \$61,279.80 entered against defendants Saijad Hossain and Hao Te International Trading Corp. by plaintiff's assignor in 2007. Plaintiff also moves, pursuant to CPLR 5014, to renew the judgment entered against defendants in 2007 as well as its lien on the judgment. Defendants do not oppose the motion. After a review of the papers, and after a review of the relevant statutes and case law, the motion is **granted**.

**FACTUAL AND PROCEDURAL BACKGROUND:**

On February 14, 2007, the Supreme Court of the State of New York, New York County entered a judgment in an action entitled *HSBC Bank USA, National Association, successor by merger to HSBC Bank USA formerly known as Marine Midland Bank, successor by conversion to Marine Midland Bank, N.A. v Hao Te International Trading Corp. and Saijad Hossain*, New York County Index No. 117722/06. Doc. 12.<sup>1</sup> The judgment was in favor of plaintiff HSBC Bank USA, National Association, successor by merger to HSBC Bank USA formerly known as Marine Midland Bank, Successor by conversion to Marine Midland Bank, N.A. against defendants Hao Te International Trading Corp. (“Hao Te”) and Saijad Hossain (“Hossain”) in the amount of \$61,279.80. *Id.* A certified copy of the amended assignment of the judgment, entered in the office of the New York County Clerk on March 8, 2016, establishes that the judgment was assigned by HSBC Bank USA, National Association to the plaintiff in the captioned action, Cadles of Grassy Meadows II, L.L.C., a West Virginia limited liability company located at 100 North Center Street, Newton Falls, Ohio 44444. *Id.*

On or about December 9, 2016, plaintiff moved, pursuant to CPLR 3213 (motion sequence 001), for summary judgment in lieu of complaint. Doc. 2. In support of the motion, plaintiff submitted an affidavit of service of the summons and the motion, a copy of the judgment, the assignment and amended assignment of the judgment, and the affirmation of Steven Vlock, Esq., attorney for plaintiff, dated October 14, 2016. Docs. 2-4. In his affirmation, Vlock set forth the history of the entry of the judgment set forth above, represented that the judgment had not been

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<sup>1</sup> All references are to the documents filed with NYSCEF in connection with the motion.

satisfied, and stated that the ten year anniversary of the docketing of the judgment was to occur on February 14, 2017. Doc. 3.

By order entered May 9, 2017, this Court held that the February 14, 2007 judgment entered against Hossain and Hao Te Trading Corp. could not be renewed because plaintiff sought to alter the judgment to enforce it only as against Hossain. Doc. 9. Additionally, this Court held that summary judgment in lieu of complaint could not be granted to plaintiff because it failed to establish that its application had been properly served. *Id.* The motion was denied with leave to renew on proper papers. *Id.*

Plaintiff now moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint as against Hossain and Hao Te, and pursuant to CPLR 5014, renewing its judgment and judgment lien against Hossain and Hao Te, *nunc pro tunc*, to February 14, 2017. Doc. 10.

#### **PLAINTIFF'S CONTENTIONS:**

Plaintiff argues that it is entitled to summary judgment in lieu of complaint pursuant to CPLR 3213 in the amount of \$61,279.80 and that the judgment be renewed for an additional ten years pursuant to CPLR 5014, *nunc pro tunc* to February 14, 2017, since 10 years have elapsed since the initial docketing of the judgment and it has gone uncollected.

In support of the motion, plaintiff asserts that there was no reason to seek the renewal judgment against Hao Te because that entity "has been defunct since 2009." *Aff. In Supp.*, at par. 9. Plaintiff also asserts that this Court improperly raised the issue of personal jurisdiction over Hossain *sua sponte*.

## CONCLUSIONS OF LAW:

### **Motion to Renew Judgment and Lien**

A New York money judgment is enforceable for 20 years. See CPLR 211(b). A judgment creditor is permitted to commence an action to renew the judgment pursuant to CPLR 5014 “where [10] years have elapsed since the judgment was originally docketed.” *Pangburn v Klug*, 244 AD2d 394, 395 (2d Dept 1997). Such action must be commenced “during the year prior to the expiration of ten years since the first docketing of the judgment.” CPLR 5014. An assignee of a judgment is an “original party” to a judgment for the purpose of renewal of a judgment. *Id.*, citing *Saxe v Peck*, 139 A.D. 419 (3d Dept 1910). Plaintiff seeks to establish its entitlement to a renewal judgment pursuant to CPLR 5014(1) by submitting the prior judgment entered February 14, 2007; proof that the judgment was first docketed at least nine years ago; the assignment of the judgment by HSBC Bank USA, National Association to the plaintiff in the captioned action, Cadles of Grassy Meadows II, L.L.C., effective March 8, 2016; and proof that the judgment remains unsatisfied.

The proof submitted by plaintiff herein is sufficient to entitle it to a renewal judgment. See *Rose v Gulizia*, 104 AD3d 757, 758 (2d Dept 2013). Although plaintiff asserts that the judgment cannot be enforced as against Hao Te because it is “defunct”, the judgment must nevertheless be renewed in the form identical to which it was originally entered or the Clerk of this Court will not renew the same. Since plaintiff now seeks renewal of the February 14, 2007 judgment in the form in which it was originally entered, i.e., as against Hossain and Hao Te, this branch of its motion is granted, *nunc pro tunc*, to February 14, 2017.

**Motion for Summary Judgment In Lieu of Complaint**

Since plaintiff has properly re-served Hossain with the instant motion in accordance with this Court's directive in motion sequence 001, and has now served Hao Te as well, the motion for summary judgment in lieu of complaint pursuant to CPLR 3213 is granted against those defendants. *Cf. Cadle Co. v Ayala*, 47 AD3d 919 (2d Dept 2008).

Therefore, in light of the foregoing, it is hereby:

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

ORDERED that the branch of plaintiff's motion seeking to renew the judgment of February 14, 2007 as well as the judgment lien is granted, *nunc pro tunc*, to February 14, 2017; and it is further

ORDERED that plaintiff may submit a renewal judgment and lien against defendants in the amount of \$61,279.80, plus interest thereupon at the statutory rate from February 14, 2007; and it is further

ORDERED that the Clerk of the Court enter judgment accordingly; and it is further

ORDERED that this constitutes the decision and order of the court.

HON. KATHRYN FREED  
JUSTICE OF SUPREME COURT



KATHRYN E. FREED, J.S.C.

9/8/2017

DATE

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

OTHER

APPLICATION:

GRANTED

GRANTED IN PART

CHECK IF APPROPRIATE:

SETTLE ORDER

SUBMIT ORDER

DO NOT POST

FIDUCIARY APPOINTMENT

REFERENCE