

Gazprombank (Switzerland) Ltd. v Karpov
2018 NY Slip Op 31419(U)
January 23, 2018
Supreme Court, New York County
Docket Number: 656130/16
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.PART 8GAZPROMBANK (SWITZERLAND) LTD.

INDEX NO. 656130/16

- v -

MOT. DATE

MOT. SEQ. NO. 001

ANATOLY KARPOV

The following papers were read on this motion to/for summary judgment

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits

NYSCEF DOC No(s). _____

Notice of Cross-Motion/Answering Affidavits — Exhibits

NYSCEF DOC No(s). _____

Replying Affidavits

NYSCEF DOC No(s). _____

In this action, plaintiff seeks to recognize and enforce a final money judgment in the principal amount of \$8,942,455 million, plus interest, court costs and legal fees, issued on August 23, 2016 by the Zurich District Court against defendant Anatoly Karpov (Karpov). Defendant opposes the motion. Issue has been joined and therefore, summary judgment relief is available. For the reasons that follow, the motion is granted.

Facts

Plaintiff Gazprombank (Switzerland) Ltd. (Gazprombank) is incorporated under the laws of Switzerland and. Defendant Karpov is a resident of Russia.

In or about April 11, 2011, Gazprombank entered into a Loan Agreement N 1417 with Dateline Overseas Limited (Dateline) of which Karpov holds 100% of its shares/or is the sole shareholder. Pursuant to the loan terms, it extended to Dateline a secured credit facility from which Dateline could withdraw up to \$10 million. Karpov, according to the guarantee, guaranteed Dateline's obligations under the loan agreement by executing Guarantee No. 1417. Pursuant to the Loan Agreement and the draw-down notices, Gazprombank disbursed \$8.5 million dollars to Dateline. As of February 2014, Dateline only repaid \$1 million dollars and was in breach of its repayment obligations. Gazprombank granted Dateline a grace period to make repayment but Dateline failed to make any of the required payments. Gazprombank sent a default notice to Dateline and followed up with two demand letters, dated January 28, 2015 and June 3, 2015, to Karpov. Karpov failed to make any repayment.

Since Karpov did not make any payments under the guarantee, Gazprombank commenced an action in a Swiss Court in June 2015. In December 2015, Karpov appeared in person at the Swiss Court and received a copy of the complaint and related exhibits. Karpov executed a power of attorney authorizing IDC Legal GmbH (IDC) to receive documents from the Swiss Court on his behalf. IDC filed the power of attorney with the Swiss Court that confirmed it was an authorized recipient for Karpov.

Dated: 1/23/18

 HON. LYNN R. KOTLER, J.S.C.

1. Check one:



CASE DISPOSED

NON-FINAL DISPOSITION

2. Check as appropriate: Motion is

GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

3. Check if appropriate:

☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

The Swiss Court set deadlines in which Karpov was to respond to the complaint as well as issued an extension of time. Karpov did not respond to the Swiss Complaint nor did he appear in the Swiss action. In accordance with the Swiss Code of Civil Procedure, the Swiss Court rendered a judgment which directed that Karpov "must pay" Gazprombank "the amount of USD 8,942,445.00 plus interest of 15% on USD 7,500,000.00 from June 4, 2015, and interest of 5% on USD \$2,500,00 from February 23, 2015". The Swiss judgment also provided that Karpov pay all court costs and legal fees in the amount of CHF 75,600.00.

In the Swiss judgment, the Swiss Court set forth the factual and legal basis for its determination that Karpov is liable under the guarantee and for the amounts awarded therein. The Swiss Court held, among other things, that Dateline did not fulfill the Loan Agreement, that Karpov "obligated himself irrevocably and unconditionally to pay, at the first demand of the plaintiff, the amount which is due to the plaintiff based on the loan agreement with Dateline". The Swiss Court concluded that the demand preconditions of the guarantee were met and that Gazprombank made a valid demand declaration that triggered Karpov's payments obligations. Karpov failed to appeal the Swiss judgment within the time required by Swiss law.

Plaintiff now seeks to recognize and enforce the foreign money judgment in New York.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

"New York has traditionally been a generous forum in which to enforce judgments for money damages rendered by foreign courts," and, in accordance with that tradition, the State adopted the Uniform Foreign Country Money-Judgments Recognition Act as CPLR article 53 (*CIBC Mellon Trust Co. v. Mora Hotel Corp.*, 100 NY2d 215, 221 [2003]). CPLR 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), and "a foreign country judgment is considered 'conclusive between the parties to the extent that it grants or denies recovery of a sum of money' " (*CIBC Mellon Trust Co., supra* at 221, quoting CPLR 5303).

Generally, a foreign money judgment is to be recognized in New York under Article 53 unless a ground for nonrecognition under CPLR 5304 is applicable. Grounds for nonrecognition include a lack of personal jurisdiction over the defendant by the foreign court (see CPLR 5304 [a] [2]), a defendant's failure to receive "notice of the proceedings in sufficient time to enable him to defend" (CPLR 5304 [b] [2]) and if "the judgment was obtained by fraud". (CPLR 5304[b][3]).

To enforce a foreign money judgment in New York, "the judgment creditor does not seek any new relief against the judgment debtor, but instead merely asks the court to perform its ministerial function of recognizing the foreign country money judgment and converting it into a New York judgment" (*CIBC*

Mellon Trust Co., 100 NY2d at 222). "[T]he inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law" (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 83 [2006]). "If the above criteria are met, and enforcement of the foreign judgment is not otherwise repugnant to our notion of fairness, the foreign judgment should be enforced in New York under well-settled comity principles without microscopic analysis of the underlying proceeding" (id).

Gazprombank argues that this Court should recognize and enforce the Swiss Court's judgment dated August 23, 2016 against Karpov because the judgment meets all the criteria under CPLR Section 5302, that none of the grounds for non-recognition of a foreign money judgement apply, and that the Swiss legal system comports with New York's requirement of due process.

Karpov asserts that New York should not recognize the judgment of the Swiss Court against it because that court lacked personal jurisdiction over him, that he was fraudulently induced into appearing in the Swiss Court and that he did not have adequate notice concerning the judgment and the underlying Swiss action. Karpov further contends that he didn't have effective notice of the Swiss proceeding and that his lack of notice of the foreign proceeding which resulted in a foreign money judgment should not be recognized in New York.

For the reasons that follow, the court finds that Gazprombank has established entitlement to summary judgment and that the Swiss Court's foreign money judgment should be recognized and enforced. Karpov's self-serving and unsubstantiated statements that he was fraudulently induced into appearing in Switzerland, that he was physically brought to Gazprombank and that he was forced to sign documents are unavailing. Karpov is a sophisticated businessman involved in the airline industry. Karpov executed a guaranty that provided in part that he consented to the jurisdiction of the Swiss Court. Further, on this record, it is undisputed that Karpov appeared in the Swiss Court in December 2015 and was given a copy of the Swiss complaint and related documents which he signed for acknowledging receipt.

Moreover, Karpov's claims that he was unaware of the documents he signed and that he never authorized a power of attorney appoint IDC Legal GmbH (IDC) are disingenuous. These arguments are contradicted by documents executed by both Karpov and his agent IDC Legal GmbH acknowledging that IDC was authorized to accept service of legal documents. Karpov was on notice of the judgment in August 2016, the judgment was not appealed and therefore the Swiss judgment was final and enforceable as of September 28, 2016. Karpov cannot prove by credible evidence that any of the grounds for non-recognition apply in the instant case.

Furthermore, Gazprombank has shown that the Swiss legal system comports to the same requirements/standards of due process as the New York legal system by the submission of the Rohner affidavit which provides a detailed recitation and description of the Swiss judicial system and its related procedures.

Based on the foregoing, plaintiff's motion for summary judgment is granted in its entirety.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion for summary judgment as against defendant Anatoly Karpov is granted; and it is further

ORDERED that plaintiff's Swiss judgment in its favor is hereby recognized by this Court, pursuant to CPLR Article 53 and is hereby converted to a judgment of this Court, along with costs and statutory interest effective as of the dates those judgment was entered by the Swiss Court; and it is further

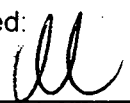
ORDERED that plaintiff shall submit a proposed judgment on notice to the New York County Clerk in its favor and against defendant Anatoly Karpov in accordance herewith.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated:

1/23/18
New York, New York

So Ordered:


Hon. Lynn R. Kotler, J.S.C.