

Credit Europe Bank (Dubai) Ltd. v Shetty
2023 NY Slip Op 33204(U)
September 15, 2023
Supreme Court, New York County
Docket Number: Index No. 651931/2023
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M-----X
CREDIT EUROPE BANK (DUBAI) LTD.

Plaintiff,

- v -

BAVAGUTHU RAGHURAM SHETTY,

Defendant.

INDEX NO. 651931/2023MOTION DATE 05/23/2023MOTION SEQ. NO. 002**DECISION + ORDER ON
MOTION**-----X
HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion for SUMMARY JUDGMENT IN LIEU OF A COMPLAINT.

Plaintiff Credit Europe Bank (Dubai) Ltd.'s ("CEBD") second motion in this action, and third overall, pursuant to CPLR 3213 and 5303 for summary judgment in lieu of a complaint to domesticate a foreign judgment entered in Dubai, United Arab Emirates, against Defendant Bavaguthu Raghuram Shetty ("Shetty") is, again, **denied without prejudice**.

On September 20, 2022, Justice Saunders denied CEBD's motion for summary judgment in lieu of a complaint against Shetty in the action bearing Index Number 656803/2021 ("Prior Action") for failure to establish service of process. CEBD discontinued the Prior Action and commenced this action for summary judgment in lieu of a complaint. CEBD filed an affirmation of service indicating that it served Shetty's counsel in another case (NYSCEF 18).

On May 9, 2023, the Court denied CEBD's first motion in this action without prejudice because it had, again, not established personal service on, and therefore personal jurisdiction over, Shetty (*Credit Europe Bank (Dubai) Ltd. v Shetty*, 2023 WL 3439643 [N.Y. Sup Ct, New

York County 2023])). Specifically, the Court held that service on a party's attorney in another action is insufficient under CPLR 306(e) which requires a "writing admitting service by the person to be served. . ."

Service on an attorney is proper only where the attorney has appeared in the action in which service is claimed to have been admitted (CPLR 2103[b]). "Absent a formal appearance by counsel of record, serving process on a party's attorney is not sufficient to establish personal jurisdiction absent proof of the attorney's authorization" (*Credit Europe Bank (Dubai) Ltd* at *1 citing *Redbridge Bedford, LLC v 159 N. 3rd St. Realty Holding Corp.*, 175 AD3d 1569, 1571 [2d Dept 2019])). As previously determined by the Court, summary judgment in lieu of complaint should be denied where apparent counsel for the defendant admits service but fails to provide any proof of their authorization to accept it (*Id. citing Lord Sec. Corp. v Moorer*, 2021 N.Y. Slip Op. 33706[U], 1 [N.Y. Sup Ct, New York County 2021] [other citations omitted])). The Court's prior order was "without prejudice to renewal and properly serving Shetty" (*Id.* at *2 [citations omitted])).

In an effort to demonstrate proper service of its second motion for summary judgment in lieu of a complaint in this action, CEBD submits an affirmation of service of its counsel (NYSCEF 34) annexed to which is an affirmation of Benjamin Bianco, Esq. (NYSCEF35), whose firm represents Shetty in another action. Mr. Bianco states that he is authorized to accept service in this action but does not attach any authorization *from Shetty* – the person to be served – or other evidence of his authority. While the Court does not have reason to question the truthfulness of Mr. Bianco's statement, it remains insufficient to establish personal jurisdiction over Shetty.

CEBD cites two cases to support its contention that it has established proper service (*Annaly CRE LLC v Ashkenazy*, 2021 N.Y. Slip Op. 30119[U], 4 [N.Y. Sup Ct, New York County 2021]) and *Riordan v Garces*, 2020 N.Y. Slip Op. 34169[U], 5 [N.Y. Sup Ct, New York County 2020]). Contrary to CEBD's argument, *Annaly* is inapposite because in that case "[t]he Guaranty expressly designated [counsel] as an agent for service on behalf of the Guarantor" and there is no similar designation here. *Garces* is inapposite because service was accepted by an attorney who had recorded an appearance in the matter and because the relevant defendant had actual knowledge that counsel was acting on its behalf in the relevant matter.

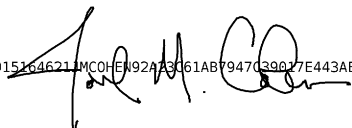
Neither case relied on by CEBD is sufficient to establish proper service on and personal jurisdiction over Shetty. Proper service is necessary to establish personal jurisdiction prior to the entry of a judgment (*Avis Rent A Car Sys., LLC v Scaramellino*, 161 AD3d 572, 572 [1st Dept 2018]). "[A]bsent proof that a defendant has designated his or her attorney as an agent for the acceptance of process, an attorney lacks the authority to accept service on the defendant's behalf" (*Born To Build, LLC v Saleh*, 139 AD3d 654, 655 [2d Dept 2016] [collecting cases]). As determined in another case denying summary judgment in lieu of a complaint, there exists no authority "where service of process is deemed sufficient to satisfy a defendants' rights to due process when no effort is made to serve the summons on the defendant, and plaintiff does not attempt service specified under the CPLR or seek court approval of service by other means" (*Orix Fin. Services, Inc. v Baker*, 1 Misc 3d 288, 291 [Sup Ct New York County 2003]).

Accordingly, it is

ORDERED that Plaintiff CEBD's motion is **DENIED** without prejudice to properly serving Defendant Shetty, or obtaining a proper waiver, or moving for appropriate relief within thirty (30) days of this order.

This constitutes the decision and order of the Court.

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9/15/2023

DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE