

Cadlerock Joint Venture, L.P. v Simms

2023 NY Slip Op 34978(U)

October 3, 2023

Supreme Court, Westchester County

Docket Number: Index No. 56760-2023

Judge: Janet C. Malone

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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CADLEROCK JOINT VENTURE, L.P.,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 56760-2023
Motion Seq.: 1 and 2

JERRY L. SIMMS, III,

Defendant.

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MALONE, J.

The Full Faith and Credit Clause of the United States Constitution requires New York courts to recognize a judgment rendered in another state (U.S. Const. Art. IV § 1), and “accord [it] full faith and credit,” (*TCA Global Credit Master Fund, L.P. v. Puresafe Water Systems, Inc.*, 151 A.D.3d 1098, 1099 [2nd Dep’t 2017]) unless Defendant was not properly served or where Defendant raises the issue of a “lack of long-arm jurisdiction.” *Cadle Co. v. Ayala*, 47 A.D.3d 919, 920 (2nd Dep’t 2008)¹ citing *Buckeye Retirement Co., L.L.C., LTD. v. Lee*, 41 A.D.3d 183 (1st Dept. 2007).

As relevant background, on March 9, 2007, D.A.N. Joint Venture III, L.P. (“Joint Venture”) was awarded default judgment against Precision Properties, LLC, Precision Steel Erectors, Inc. and Jerry L. Simms, III, jointly and severally, in the amount of \$668,404.38, plus interest at the rate of six and one-half percent (6.5%) from February 8, 2007 through March 9, 2007, with interest accruing at eight percent (8%) per annum until paid in full, plus attorneys' fees in the amount of \$2,500 (NYSCEF Doc. No. 5 at ¶6, 9). On December 28, 2012, Joint Venture assigned the Judgment to Plaintiff, and on March 30, 2017, the Judgment totaling principal and interest on the Judgment totaled \$1,187,912.32,² with interest accruing at the per diem rate of

¹ The caption of *Cadle Co. v. Ayala*, 47 A.D.3d 919 (2nd Dep’t 2008) sounds similar the caption and name of Plaintiff in the present action. It should be noticed that these are two different entities with coincidentally similar sounding names.

² Principal in the amount of \$668,404.38 plus accrued interest in the amount of \$519,507.94 (NYSCEF Doc. No. 5, ¶ 9).

\$148.53 was entered by default on March 30, 2017, against Joint Venture Precision Properties, LLC, Precision Steel Erectors, Inc. and Jerry L. Simms, III, by the Superior Court of the State of North Carolina, Wake County. *Id.*

Now Plaintiff moves by Notice of Motion filed on February 14, 2023, for an order granting summary judgment in lieu of a complaint pursuant to CPLR R. 3213 domesticating the Judgment against Defendant and in favor of Plaintiff, in the amount of (\$1,212,246.23) with per diem interest minus payment made by Defendant. (NYSCEF Doc. Nos. 2-5; 19-22).

Defendant opposes the motion and cross-moves to dismiss the Plaintiff's motion pursuant to CPLR R. 3211(a)(8) (NYSCEF Doc. Nos. 9), arguing that this Court does not have long arm personal jurisdiction over him because he was not present in New York pursuant to CPLR R. 301 nor does he meet any of the conditions set forth in CPLR R. 302(a) (Defendant's Memorandum of Law in Support [NYSCEF Doc. No. 11] at pgs 3-7). In opposition of Defendant's motion, Plaintiff asserts that lack of long arm personal jurisdiction in New York is not a cognizable defense to an action seeking to domesticate a judgment from a sister state and that the only defenses available to Defendant are the rendering state lacked jurisdiction, or that there was lack of service of the summons in the present action. (Plaintiff's Memorandum of Law in Opposition [NYSCEF Doc. No. 15] at pgs. 3-4).

While Plaintiff is correct that long arm jurisdiction does not need to be plead over a judgment debtor, when Defendant raised the issue, the burden shifted to Plaintiff to establish that New York has long arm jurisdiction. *Cadle Co. v. Ayala*, 47 A.D.3d at 920. Plaintiff's reliance on *Lenchyshyn v. Pelko Elec.*, 281 A.D.2d 42 (4th Dep't 2001), is misplaced because the Court in *Lenchyshyn* found New York had jurisdiction since defendant had ties to New York, namely assets within New York. *Id.* at 50. Here, the Defendant does not hold any assets in New York nor does Plaintiff assert any facts that Defendant has assets or any minimum contacts in New York. Moreover, Plaintiff misinterprets *Cadle Co.* and *Buckeye* as both Courts found that a court cannot *sua sponte* raise the issue of long arm jurisdiction, whereas here Defendant raised the defense of long arm jurisdiction in its moving papers. *Cadle Co. v. Ayala*, 47 A.D.2d at 920; *Buckeye Retirement Co., L.L.C., LTD. v. Lee*, 41 A.D.3d at 184.

As Plaintiff has failed to allege any additional facts that New York has jurisdiction over Defendant, Plaintiff's motion must be denied and Defendant's cross-motion to dismiss must be granted. *Fishman v. Pocono Ski Rental Inc.*, 82 A.D.2d 906, 907 (2d Dep't 1981).

The Court having considered the parties' remaining contentions deems them to lack merit or to be moot in light of the foregoing. Accordingly, it is hereby

ORDERED, that the Plaintiff motion for summary judgment in lieu of complaint (Sequence # 1) is **denied**; and it is further

ORDERED, that defendant's cross-motion to dismiss (Sequence #2) for lack of personal jurisdiction is **granted**; and it is further

ORDERED that the Court's NYSCEF filing of this instrument shall constitute good and sufficient service hereof on all counsel.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
October 3, 2023



HON. JANET C. MALONE, J.S.C.

To: Counsel of Record *via* NYSCEF