

T&A Insoveny Ipurl v Palade

2024 NY Slip Op 32079(U)

June 12, 2024

Supreme Court, New York County

Docket Number: Index No. 655245/2023

Judge: Louis L. Nock

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. LOUIS L. NOCK</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>T&A INSOLVENCY IPURL,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>RANI PALADE,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 38M</p> <p>INDEX NO. <u>655245/2023</u></p> <p>MOTION DATE <u>10/16/2023, 10/25/2023</u></p> <p>MOTION SEQ. NO. <u>001 002</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 11, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 108, 109, 110, 111, 112, 113, 114, 115, 116, and 117

were read on this motion for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 24, 25, 26, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, and 129

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

LOUIS L. NOCK, J.S.C.

Plaintiff commenced this action, pursuant to CPLR 3213 and Article 53 (Mot. Seq. No. 002), seeking recognition and enforcement of a judgement of the Bankruptcy Office of the Prahova Tribunal of the State of Romania entered in favor of plaintiff, as liquidator of the bankruptcy estate of nonparty Macrea Construct SRL, and against defendant, in the amount of 3,521,198 Romanian Lei (“RON”) (the “Romanian Judgment,” NYSCEF Doc. No. 4). Plaintiff also moved by order to show cause seeking an order of attachment of defendant’s property within New York (Mot. Seq. No. 001). Prior to hearing argument, the court entered a temporary restraining order prohibiting defendant and his garnishees from transferring or paying any funds in which defendant has an interest. The court heard argument on the motions, and allowed for

the submission of a sur-reply on the motion for summary judgment in lieu of complaint, which the court has considered. Upon the foregoing documents, the motion for summary judgment in lieu of complaint to domesticate the judgment is denied, the motion for attachment denied, and the action dismissed, based upon the following memorandum decision and order.

“Except as is otherwise provided in section fifty-three hundred four of this article or any controlling law of the United States, a court of this state shall recognize a foreign country judgment to which this article applies as conclusive between the parties to the extent that it grants or denies recovery of a sum of money” (CPLR 5303 [a]). CPLR 5304 lists three mandatory and nine permissive grounds for nonrecognition of foreign judgments. In addition, the foreign judgment must be “final, conclusive and enforceable” under the law of the state where it was rendered (CPLR 5302 [a] [2]). Similarly, “[a]n action to recognize a foreign country judgment must be commenced within the earlier of the time during which the foreign country judgment is effective in the foreign country or twenty years from the date that the foreign country judgment became effective in the foreign country” (CPLR 5303 [d]).

The parties each submit the affidavits of experts in Romanian Law on the enforceability of judgments. The court shall take judicial notice of “laws of foreign countries or their political subdivisions” when given “sufficient information to enable it to comply with the request” (CPLR 4511 [b]). “[T]he construction of foreign law is a legal question that may be appropriate for summary resolution when sufficient information based on documentary and other evidence is presented” (*Eccles v Shamrock Capital Advisors, LLC*, -- NY3d --, 2024 NY Slip Op 02841 [2024]). Here, the affidavits of the parties’ experts are supported by citations to statutes and case law, and the court finds it has sufficient information before it to take judicial notice of the

applicable Romanian Law (*HSBC Guyerzeller Bank AG v Chascona N.V.*, 42 AD3d 381, 382 [1st Dept 2007]).

Romanian Law provides that a judgment creditor may enforce a judgment within three years of it becoming enforceable (Official Gazette of Romania, § 7, Ch. V, Art. 706 [1], NYSCEF Doc. No. 105). “The limitation period results in the extinction of the right to obtain enforcement” (*id.*, Art. 707 [1]; *see also* Romanian Civil Code, Art. 2500, NYSCEF Doc. No. 94 [“The substantive right of action, hereinafter referred to as the right of action, shall be extinguished by prescription if it has not been exercised within the period set forth by law”]; Art. 2517 [“The limitation period is 3 years, unless the law provides otherwise”]). As stated by one commentary, “it follows from this that prescription is a penalty, provided by the legislator for the negligence of the creditor, in order to remove uncertainty from the civil circulation” (Civil Code, Commentary on Articles, Third Edition at 2945, NYSCEF Doc. No. 96). The limitation period may be suspended under circumstances not relevant here (Official Gazette of Romania, § 7, Ch. V, Art. 708, NYSCEF Doc. No. 105), and may be interrupted where the judgment creditor takes any action within the limitations period to enforce the judgment, after which a new limitations period will begin to run (*id.*, Art. 709). Moreover, the commencement of an enforcement proceeding in Romania will not interrupt the limitations period for purposes of enforcement in another jurisdiction (Gavril aff., NYSCEF Doc. No. 75, ¶¶ 32-34; Decision No. 245/2009 of 29 January 2009 of the High Court of Cassation and Justice, NYSCEF Doc. No. 97 [holding that a timely enforcement of a judgment in Romania did not interrupt the limitation period to save an untimely action commenced outside of Romania]).

Here, the parties agree that the Romanian Judgment became final on October 2, 2019, the date defendant’s appeal was decided (Appeal Decision, NYSCEF Doc. No. 8). Accordingly, the

limitations period for enforcement expired on October 2, 2022, more than a year before plaintiff commenced this action on October 16, 2023 (summons, NYSCEF Doc. No. 1). Because the limitations period for commencing an enforcement action in New York has passed, plaintiff is time-barred from attempting to enforce it (CPLR 5303 [d]; *see* Official Gazette of Romania, Art. 707 [1], *supra*; Romanian Civil Code, Arts. 2500, 2571, *supra*).

Plaintiff argues that the limitations period was interrupted by enforcement proceedings in Romania, and cites a statement from the Romanian bailiff enforcing the judgment to that effect (Taru reply aff., NYSCEF Doc. No. 104, ¶¶ 7-13). However, neither plaintiff's expert nor the bailiff offers any contradiction to defendant's expert's unchallenged statement, supported by case law, that enforcement in any jurisdiction is subject to a separate limitations period (Gavril aff., *supra*). Nor does plaintiff offer any support for its claim that defendant cannot challenge enforcement of the judgment in New York because he has not challenged enforcement in Romania. Defendant is not collaterally attacking the basis of the Romanian Judgment, but instead defending against its enforcement. The court also notes that, contrary to defendant's expert, plaintiff's expert does not support his arguments with any citations to Romanian authority other than the statutes themselves.

As the enforcement of the Romanian Judgment is time-barred for the reasons stated above, it follows that any preliminary remedies in furtherance of such enforcement are also unavailable to plaintiff. Therefore, the motion for an attachment pursuant to CPLR Article 62 is denied and the temporary restraining order in furtherance thereof must be dissolved.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment in lieu of complaint (Mot. Seq. No. 002) is denied, and for the reasons set forth above the court awards defendant summary judgment dismissing the action (CPLR 3212 [b]); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendant dismissing the action, with costs and disbursements to defendant as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff's motion, by order to show cause, for an order of attachment (Mot. Seq. No. 001) is denied. The temporary restraining order put in place by the court on January 3, 2024 (NYSCEF Doc. No. 26) is dissolved, and any and all restraints placed upon defendant or his garnishees in furtherance of said temporary restraining order are also dissolved.

This constitutes the decision and order of the court.

ENTER:

<u>6/12/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE