

**Banco Indusval S.A. v Goncalves**

2025 NY Slip Op 32232(U)

June 12, 2025

Supreme Court, New York County

Docket Number: Index No. 654109/2015

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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BANCO INDUSVAL S.A.,

Plaintiff,

- v -

ANTONIO CARLOS GONCALVES JR.,

Defendant.

-----X

INDEX NO. 654109/2015
MOTION DATE 04/29/2025
MOTION SEQ. NO. 013

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 013) 310, 311, 312, 313, 314, 315, 316

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

Previously, plaintiff moved pursuant to CPLR 3212 and 5303 for recognition and enforcement of a purportedly final foreign country judgment rendered in Brazil against defendant in the amount of \$17,332,670 (MOT SEQ 011). The court denied that motion by decision and order dated October 9, 2019, and denied plaintiff's motion to reargue (MOT SEQ 012) by decision and order dated May 6, 2020. The facts set forth in those prior decisions are incorporated herein by reference.

In short, as explained in the decision of October 9, 2019, the underlying action in Brazil was commenced by plaintiff to recover against defendant on an unpaid loan guarantee. The Brazil action was commenced as an execution process, which plaintiff explained is "a streamlined proceeding permitted in Brazil when a lender has clear documentation of a borrower's obligation, such as loan documents." An order was entered in the Brazil action on December 7, 2015, directing defendant to pay his debt to plaintiff or move for a stay of execution. Defendant thereafter moved for a stay of execution, which motion was subsequently denied due to defendant's failure to pay court fees, and without reaching the merits of defendant's claims, in an order dated August 8, 2017. Defendant appealed the denial but his appeal was also denied.

The court held, in its decision of October 9, 2019, that CPLR 5303 is intended to apply to money judgments, and that plaintiff's application was deficient in that it did not demonstrate that the December 2015 Brazilian court order was such a judgment, as it essentially stated only that defendant was required to pay his debt to plaintiff but did not state the amount of the debt. Though not expressly stated in the October 2019 decision, the court now notes that CPLR 5303 is also only applicable to judgments that are "final, conclusive and enforceable" in the country in which they are rendered (CPLR 5302[a][2]), and that the December 2015 Brazilian court order was plainly not such a final judgment, as it expressly provided for defendant to challenge the execution process by moving for a stay of execution. The court's October 2019 decision further held that plaintiff could not rely on the August 2017 Brazilian court order to obtain a money judgment against defendant because that order dealt with the disposition of defendant's assets but did not grant a money judgment for a sum certain. In the decision of May 6, 2020, denying plaintiff's motion to reargue, the court held that evidence of the amount of defendant's underlying debt was insufficient to demonstrate that CPLR 5303 was applicable to the August 2017 Brazilian court order because, again, that order did not grant plaintiff recovery of an expressly stated sum of money, and the court was "not required to step into the shoes of the Brazilian court to determine/compute the amount owed by defendant in order to issue a money judgment."

Plaintiff now moves pursuant to CPLR 2221(e) for leave to renew its summary judgment motion for recognition and enforcement of the purported Brazilian judgment against defendant (MOT SEQ 013), arguing that a newly issued Brazilian court order, dated August 9, 2024, establishes the amount of defendant's underlying debt. The motion, though unopposed, is denied.

Pursuant to CPLR 2221, a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][2] & [e][3]). Plaintiff's submission of the Brazilian court's (relatively) new August 2024 order fails to satisfy these requirements. The order "clarif[ies] that the present execution proceeding . . . going through the final proceeding, as the debtors' defense, presented via a motion to stay execution, ended without resolution of the merit, being a matter adjudged (*res judicata*)" (internal citations omitted). The order further states that "the debt under execution in

the files corresponds to R\$ 250,868,297.99 (two hundred and fifty million, eight hundred and sixty-eight thousand, two hundred and ninety-seven reals and ninety-nine cents)” as of July 2024. The order concludes by stating that, “[i]n view of the foregoing, the creditor has 15 (fifteen) days to make a statement in relation to the continuation of the proceedings.” Plaintiff contends this order, which self-evidently could not have been presented on the prior motion, constitutes “new facts . . . that would change the prior determination,” as it purportedly confirms the finality of the foreign judgment against defendant and clarifies the amount of that judgment. The court disagrees.

As to finality, the August 2024 order is ambiguous. To be sure, the order refers to the Brazilian action “going through the final proceeding” and “being a matter adjudged (*res judicata*)” following the denial of defendant’s motion to stay execution, which suggests that a final disposition has been reached. However, the order also expressly notes that defendant’s motion to stay execution was not denied on the merits and concludes with a reference to “the continuation of the proceedings[,]” which suggests the Brazilian action may still be ongoing.

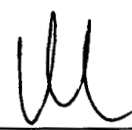
The August 2024 order is also plainly not a money judgment for a sum certain, as it merely states the amount of defendant’s underlying debt. It does not contain any language that grants plaintiff recovery against defendant for the amount stated, nor does it clarify whether a money judgment was previously awarded and, if so, when such a judgment was entered and for what amount. The court notes that the amount of the debt referenced in the August 2024 order is not the same as the judgment amount—\$17,332,670—for which plaintiff seeks recognition in the present action. Indeed, plaintiff also submits the affidavit of Victor Bulcao Martinelli Pinto, the Director of Foreign Exchange at Abrao Filho Cambio e Capitais, who avers that, based on the exchange rate on October 31, 2024, the amount of the debt stated in the Brazilian court’s order is equivalent to \$43,423,103.87 in US currency. The amount stated in the August 2024 order must therefore account for some ongoing accrual of interest and/or fees, though there is no indication in the order whether such accrual is pre-judgment or post-judgment or, indeed, whether the figure merely reflects plaintiff’s own computation without there having been any money judgment entered at all.

In short, the August 2024 order, though a “new fact,” is insufficient to warrant a change to the court’s prior determination, as it does not demonstrate that plaintiff has been awarded a final money judgment against defendant for recovery of a sum certain in the Brazilian action. Therefore, plaintiff’s motion for leave to renew is denied.

Accordingly, it is

ORDERED that plaintiff’s motion for leave to renew its prior summary judgment motion is denied.

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.

<u>6/12/2025</u> DATE	 LYNN R. KOTLER, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE