

Ying Sum Tsui v Kaufman

2025 NY Slip Op 33923(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 651086/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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YING SUM TSUI,

Plaintiff,

- v -

REUVEN KAUFMAN, REUVEN KAUFMAN, INC.

Defendant.

-----X

INDEX NO. 651086/2024

MOTION DATE 03/04/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

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

Upon the foregoing documents, it is

Plaintiff, Ying Sum Tsui a/k/a Vivian Tsui (Tsui), commenced this action via summons with notice of motion for summary judgment in lieu of complaint against Defendants, Reuven Kaufman (Kaufman) and Reuven Kaufman, Inc. (the Company), to domesticate a money judgment issued by a Massachusetts Superior Court, entered on default and against Defendants, in the amount of \$2,417,425.00. Tsui now seeks an order, pursuant to CPLR § 3213, granting summary judgment in lieu of a complaint, in her favor and against Defendants, and domesticating the sister-state money judgment.

Defendants have cross-moved pursuant to CPLR § 3211(a)(8), seeking to dismiss Tsui’s motion and the instant action for a lack of personal jurisdiction over Kaufman and on grounds that the underlying judgment is invalid because Massachusetts did not confer personal jurisdiction over Defendants. The motion for summary judgment in lieu of complaint must be granted in part in the amount of \$2,417,425 in favor of Tsui and against Kaufman, and denied in part against Tsui and in favor of the Company.

Personal Jurisdiction in the Present Action:

This Court has personal jurisdiction over Kaufman pursuant to CPLR §§ 308(4) and 313. CPLR § 313 governs out-of-state service, providing that a nonresident defendant may be served in the same manner as service within the state. As the Kaufman is a natural person, service must have been made in accordance with one of the prescribed methods set forth under CPLR § 308. Under CPLR § 308(4), where personal service by delivery of the summons within the state upon the person or to a person of suitable age and discretion cannot be made with due diligence, personal

service may be completed by affixing the summons to the door of the person's residence and mailing the same.

Here, Tsui has established proper service in accordance with CPLR § 308(4). The affidavit of service (NYSCEF Doc. No. 9) indicates that the process server attempted to serve Kaufman on five different dates and at times ranging from 2:22 PM to 6:40 PM (see *Barnes v City of New York*, 51 NY2d 906, 907 [1980] [the term due diligence is applied on a case-by-case basis and refers to the quality of the efforts made]). The multiple attempts at service in this case constitutes the due diligence required under CPLR § 308(4) (see *Albert Wagner & Son, Inc. v Schreiber*, 210 AD2d 143, 143 [1st Dept 1994] ["the process server's three unsuccessful attempts to gain access to defendant's apartment building, including a visit at 7:00 p.m. when a working person would normally be home, constituted due diligence warranting substituted service pursuant to CPLR 308[4]"]).

In opposition, Kaufman states that "no summons and complaint was ever affixed to my door at 957 County Line Road, Lakewood, New Jersey" (Kaufman Aff. ¶ 4, NYSCEF Doc. No. 18). However, "[a]n affidavit of service constitutes prima facie evidence of proper service and the mere denial of receipt of service is insufficient to rebut the presumption of proper service created by a properly-executed affidavit of service" (*HSBC Bank USA v Gifford*, 224 AD3d 447 [1st Dept 2024] [citations omitted]). Furthermore, contrary to contentions otherwise, Tsui was not required to attempt to serve Kaufman at his place of employment (see *Eros Intl. PLC v Mangrove Partners*, 191 AD3d 464 [1st Dept 2021] [plaintiff "not required to try to serve defendant at his place of business before nailing and mailing"]). Accordingly, Tsui has established that this Court has personal jurisdiction over Kaufman and, without more, Kaufman's denial of receipt is insufficient (*Museum Bldg. Holdings, LLC v Schreiber*, 236 AD3d 526, 526 [1st Dept 2025]).

Further, Defendants do not seem to challenge a lack of personal jurisdiction or improper service for the Corporate Defendant, Reuven Kaufman, Inc., that was served via the Secretary of State, pursuant to BCL § 306 (see NYSCEF Doc. No. 11). Therefore, this Court's jurisdiction over the Company is not at issue.

Jurisdiction in the Massachusetts Action:

Additionally, this Court may grant Tsui's motion in part because the Massachusetts Superior Court had personal jurisdiction over Kaufman considering the loan agreement contained a waiver of personal jurisdiction and pursuant to Massachusetts Rules of Civil Procedure (Mass R Civ P), Rule 4 §§ (d)(1), (d)(2), (e), and (f). However, this Court must also deny Tsui's motion in part because the Massachusetts Superior Court did not have personal jurisdiction over the Company, pursuant to Mass R Civ P §§ 4(d)(2) and (e).

Under the Full Faith and Credit Clause of the United States Constitution, foreign sister-state judgments, such as the one issued by the Massachusetts Superior Court judgment, are recognized and given full credit, strength and validity by the Courts in

other jurisdictions (US Const, art IV, § 1; see *Matter of Luna v Dobson*, 97 NY2d 178, 183 [2001]). Out-of-state judgments are eligible CPLR § 3213 treatment (see CPLR § 5406) and may be given full faith and credit where the foreign judgment is final, conclusive and enforceable where rendered (*CIBC Mellon Tr. Co. v Mora Hotel Corp. N.V.*, 100 NY2d 215, 221 [2003]). Even if a sister-state judgment is entered upon the defendant's default, the judgment's adequacy as a basis for CPLR § 3213 summary judgment relief is unaffected (*Westland Garden State Plaza, L.P. v Ezat, Inc.*, 25 AD3d 516, 516 [1st Dept 2006]). A party against whom the judgment is rendered may challenge the validity whenever enforcement is attempted, in which case "[w]hile inquiry into the underlying merits is precluded, the court will ascertain whether the foreign court had jurisdiction to enter judgment" (*All Terrain Properties, Inc. v Hoy*, 265 AD2d 87, 91 [1st Dept 2000]).

Since Defendants raise a challenge against the validity of the Massachusetts Superior Court judgment based on personal jurisdiction, this Court's inquiry is limited to an assessment of the jurisdictional basis of the Massachusetts Superior Court's decree (see *Fiore v Oakwood Plaza Shopping Ctr., Inc.*, 78 NY2d 572, 577 [1991]). Furthermore, the jurisdictional inquiry is limited since the judgment on its face appears to be a record of a court of general jurisdiction, in which case, "such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself" (*V.L. v E.L.*, 577 US 404, 407, 136 S Ct 1017, 1020, 194 L Ed 2d 92 [2016]). Based on the evidence and the record, the Massachusetts Superior Court had personal jurisdiction over Kaufman but lacked personal jurisdiction over the Company. Thus, the underlying judgment entered into default is a valid judgment against Kaufman, but not the Company, and must be domesticated in the State of New York by this Court against Kaufman, but not the Company.

In the prior proceeding, the Massachusetts Superior Court had jurisdiction over Kaufman because service of process was proper: Kaufman received "in-hand personal service" while in New York, as permitted under Mass R Civ P §§ 4(d)(1) and (e) (see NYSCEF Doc. No. 4; see also Mass Gen Laws Ann 223A § 6). While Kaufman does not seem to object to Tsui's assertion that the parties consented to jurisdiction in Massachusetts, he does claim that he was never served with the summons and complaint for that action. Kaufman claims that the affidavit of service is patently false, and since the affidavit of service for such service was devoid of a description of the person who was served, Kaufman could not add details or directly controvert the service other than deny such service occurred (see NYSCEF Doc. No. 18 ¶¶ 3, 35, 9). Kaufman asserts that as there was not proper service in the Massachusetts action, the judgment is unenforceable.

However, Massachusetts law requires the submission of the return of service which, for proof of service outside the Commonwealth, shall be made by affidavit of the person who made service but this proof of service does not require a description to be provided of the person personally served (see Mass R Civ P § 4[f]). Additionally, Kaufman has failed to include any allegations or documentation to contradict the substance of the affidavit of service- such as, establishing he was not at the hotel location or indicating his whereabouts outside the City on the alleged date or time.

Therefore, without more, Kaufman's claim that he was never served with process is insufficient to defeat the prima facie presumption of service presented by the affidavit of service. Since the Massachusetts Superior Court had jurisdiction over Kaufman, this Court may grant Plaintiff's motion in favor of Plaintiff and against Defendant Kaufman to domesticate the underlying judgment.

However, the judgment may not be entered against the Company as the Massachusetts Superior Court did not have jurisdiction over the Company. The Company was not properly served in accordance with any of the prescribed methods set out under Mass R Civ P § 4(d)(2). Plaintiff's own documents demonstrate that Kaufman was served a copy of process, but fail to establish service for the Company (see NYSCEF Doc. No. 4). The affidavit of service states that the person served was Kaufman but does not include any documentation that this service was made in any capacity other than individual- i.e. as officer or agent of the Company. While the Plaintiff has included an Affidavit and an Affirmation from Jordan Shapiro, Plaintiff's alleged counsel in the Massachusetts action (NYSCEF Doc. No. 5; 29), claiming that the Superior Court accepted service on Kaufman as sufficient for the Company and service was proper under Massachusetts law, the Affidavit and Affirmation are inadmissible as they have not been notarized, verified, properly sworn to, and do not conform with the required language of CPLR 2106, as amended, so as to constitute admissible affirmations (*Fifth Partners LLC v Foley*, 227 AD3d 543, 544 [1st Dept 2024]; *Akhmedova v Akhmedov*, 189 AD3d 602, 604 [1st Dept 2020]; *Harris v Krauss*, 87 AD3d 469 [1st Dept 2011]; *Gao v Coconut Beach/Hawaii, LLC*, 83 Misc 3d 1223[A] [Sup Ct 2024]). Additionally, the Affidavit and Affirmation do not state that Shapiro had personal knowledge of relevant facts and the documents were not supported by documentary evidence or other proof (NYSCEF Doc. No. 5). Accordingly, the Shapiro affidavit cannot support Tsui's motion for summary judgment in lieu of complaint (*Olan v Farrell Lines Inc.*, 64 NY2d 1092, 1093 [1985]). Thus, the presumption that Massachusetts Superior Court had jurisdiction over the Company has been disproved by the record presented to this Court and the Court may not domesticate the judgment as against the Company.

The Court has considered all other remaining arguments and finds them unavailing. Based on the foregoing, Plaintiff's motion for summary judgment may be granted as against Kaufman but denied as to the Company.

Accordingly, it is hereby

ORDERED that motion for summary judgment in lieu of complaint by Plaintiff, Ying Sum Tsui a/k/a Vivian Tsui is GRANTED IN PART; to the extent that the motion may be granted in favor of Plaintiff and against Defendant Reuven Kaufman; and it is further

ORDERED that motion for summary judgment in lieu of complaint by Plaintiff, Ying Sum Tsui a/k/a Vivian Tsui is DENIED without prejudice as against Defendant Reuven Kaufman, Inc., and the action may be dismissed as against said Defendant; and it is further

ORDERED that the money judgment, entered in favor of Plaintiff, Ying Sum Tsui a/k/a Vivian Tsui and against the Defendant Reuven Kaufman by the Trial Court of Massachusetts, Essex County Superior Court on May 12, 2021, in the amount of \$2,417,425.00, may be now recognized by this Court, pursuant to CPLR Article 53; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff, Ying Sum Tsui a/k/a Vivian Tsui and against Defendant Reuven Kaufman in the total amount of \$2,417,425.00, with interest at the statutory rate and as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that Plaintiff shall serve a copy of this order with notice of entry together with a certified copy of the Massachusetts judgment on the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website).

This constitutes the decision and order of the court.


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10/10/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

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| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION |
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| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
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