

John Galliano SA v. Stallion Inc., 109292/07

Decided: February 13, 2008

Justice Marylin G. Diamond

NEW YORK COUNTY

Supreme Court

Justice Diamond

It is ordered that: The plaintiff has moved, pursuant to CPLR 3213, for summary judgment in lieu of complaint to enforce a foreign judgment entered on default by a French Court in Paris on October 7, 2004 against the defendant Stallion, Inc., a New York corporation. The judgment is in the amount of \$335,297.81, plus interest.

Background

On or around February 25, 1998, Stallion entered into a licensing agreement with a company named Les Jardins D'Avron, a French company which has a principal place of business in Paris but also maintains an office in New York and, according to the defendant, transacts business in New York. The licensing agreement concerned the use of the "John Galliano" trademark for the production and distribution of luxury fur garments in the United States. It provided that Les Jardins would receive the rights to various trademarks in exchange for royalty payments in amounts specified in the agreement and payable in American dollars. The agreement was in English and, according to the defendant, all of the negotiations and correspondence both before and after the agreement was executed were in English. However, the agreement provided that it was to be governed by the laws of France and that any dispute which might arise in connection with the agreement should be submitted to a Paris court.

At some point, the plaintiff, a French company, assumed the obligations of Les Jardins with respect to the licensing agreement. Thereafter, a dispute arose in which plaintiff accused Stallion of failing to make all of the required royalty payments due under the licensing agreement and Stallion claimed that the plaintiff owed money for various goods and merchandise that Stallion had delivered to Les Jardins. The plaintiff also claimed that Stallion owed it money for expenses related to a haute couture show. Sometime in 2002, the plaintiff commenced a lawsuit against Stallion arising from this dispute in the Commercial Court in Paris. Stallion, however, never appeared and, following a trial, the judgment which is the subject of this proceeding was entered on default on or about October 7, 2004. This proceeding was commenced three years later because the judgment has never been satisfied.

Discussion

To prevail on a motion for summary judgment in lieu of complaint, the plaintiff must establish that there are no triable issues of fact regarding its entitlement to the money sought. See *Popular Construction, Inc. v. Bhutta*, 208 AD2d 514 (2nd Dept. 1994); *Neuman v. Otto*, 114 AD2d 791 (1st Dept. 1985). Article 53 of the CPLR sets forth the

substantive requirements which must be met before a foreign country money judgment will be recognized in New York. See CPLR 5303-5305. These provisions require that (1) the foreign court which issued the judgment had both personal jurisdiction over the judgment debtor and subject matter jurisdiction over the case, (2) the foreign court was an impartial tribunal utilizing procedures compatible with due process of law and (3) the enforcement of the foreign judgment would not be unfair, conducive to fraud or violate New York public policy. See *CIBC Mellon Trust Co. v. Mora Hotel Corp.*, 100 NY2d 215, 222 (2003); *Lenchyshyn v. Pelko Elec.*, 281 AD2d 42, 46 (4th Dept 2001). Generally, if the foreign country money judgment satisfies these requirements, it is conclusive and should be recognized. See CPLR 5302, 5303, 5305(a).

The sole issue in this proceeding is whether the French court had personal jurisdiction over the defendant Stallion. In support of its motion, the plaintiff has submitted two affidavits from Veronique Proix, an attorney who represented the plaintiff in France. Ms. Proix asserts that the plaintiff's lawsuit in France was commenced by serving three writs upon the defendant's New York office and that such service was effected pursuant to the Hague Convention. See Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated November 15, 1965, 20 UST 361, TIAS No. 6638 (1965). A French writ is the equivalent of a summons and complaint. According to Ms. Proix, the three writs were served upon the defendant by personal delivery at its New York office on, respectively, December 16, 2002, February 5, 2004 and March 16, 2004 and were all accepted by Stallion employees. Ms. Proix claims that the March 16, 2004 writ was the one upon which the French court rendered its judgment. The plaintiff also claims that it served Stallion with a copy of the judgment on February 9, 2005. Stallion has not submitted any affidavits or evidence which contradicts the affidavit of Ms. Proix or the process servers.

In opposing the plaintiff's motion, Stallion nevertheless contends that the plaintiff did not properly serve the writs or the judgment and that this court, pursuant to CPLR 5304(a)(2), should therefore deny recognition of the French judgment. It first argues that service of the writs was improper under the Hague Convention because the writs were never translated into English. However, contrary to the defendant's contention, the Hague Convention does not require that documents served in the United States be translated into English. Article 5 of the Hague Convention provides that the "Central Authority" of the country where service is made shall effect service by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory. It goes on to provide that the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the country where service is made. In this respect, the Central Authority designated by the United States is the Department of Justice. The defendant has not cited to any rule or regulation promulgated by the Department of Justice which requires that foreign judicial documents be translated into English prior to service within this country's borders. Nor has Stallion cited to any case law, and this court has found none, which holds that the United States requires foreign judicial documents served in the United States pursuant to the Hague Convention to be translated into English. Although Stallion refers to a website which states that service of documents in the United States pursuant to article 5 of the

Hague Convention requires that the documents be translated into English, the website is of unknown origin and Stallion does not offer any explanation as to why this court should give it the force of law. Indeed, as the plaintiff points out, the fact that the Central Authority accepted its papers and effected service is prima facie proof that the papers were in the proper form and that service was made in compliance with the Convention. See *Resource Trade Finance, Inc. v. PMI Alloys, LLC*, 2002 WL 1836818 * 4 (SDNY 2002)

As a second argument, Stallion relies on CPLR 2101(b), which requires that all papers served in New York be in English. However, this provision clearly requires a translation only when a foreign language document is filed with the court or introduced into evidence as an exhibit. See *Rosado v. Mercedes-Benz of North America*, 103 AD2d 395 (2nd Dept 1984). The plaintiff fulfilled this requirement when it served translated copies of the French judgment along with its motion papers. The CPLR does not otherwise even address the issue of whether a pleading in a foreign legal proceeding has to be translated into English prior to service upon a party located in New York. In any event, as already discussed, such service is governed by the Hague Convention.

Notwithstanding the defendant's protestations to the contrary, there is nothing unfair or inappropriate about the service of the French court documents herein without a translation. As already noted, the Licensing Agreement between the parties which forms the basis of the French lawsuit and judgment states that it was to be governed by the laws of France and that any dispute which might arise in connection with the agreement should be submitted to a Paris court. Thus, Stallion had every reason to anticipate that, in the event of litigation between the parties, it would be subject to proceedings in a French court conducted in French. The fact that the Stallion employees who were served with the three writs may not have spoken French does not mean that Stallion was deprived of adequate notice that the French action had been filed. Rather, at best, it shows that Stallion received papers it did not immediately understand and choose simply to ignore them. This is not a basis for denying recognition of an otherwise valid foreign judgment.

Stallion's third argument is that the plaintiff served the writs improperly and in violation of CPLR 311 because it delivered them to employees of Stallion who were not authorized to accept service of legal documents. This argument is without merit. The plaintiff has submitted the affidavit of Maria Bass, who served the third writ upon Fran Cannara, a Stallion employee. According to Bass, Cannara not only accepted service of the writ voluntarily, but also represented that she was authorized to do so. Notably, neither Cannara nor any other Stallion employee has submitted an affidavit which contradicts Bass. The plaintiff has also submitted affidavits of service which assert that the judgment and copies of the other writs were served and accepted by Stallion employees. Stallion has not offered any affidavits or evidence which casts doubt on these assertions. By not refuting the plaintiff's evidence that its employees voluntarily accepted service, Stallion has failed to raise any issue of fact regarding the propriety of service on these individuals. See *Fashion Page v. Zurich Ins. Co.*, 50 NY2d 265, 273-74 (1980); *Arvanitis v. Bankers Trust Company*, 286 AD2d 273, 273-74 (1st Dept. 2001); *Cambio Delgado v. Puebla*, 196 Misc2d 1, 9 (Sup Ct. Queens Co 2003). Although Stallion contends that Cannara and

the other employees who accepted the papers were not authorized to do so, the process server cannot be expected to know the defendant's internal practices. Since service was otherwise made in a manner calculated to give the defendant fair notice of the legal proceedings against it, the court is persuaded that service was properly made. See *Seward & Kissel v. Smith Wilson Co., Inc.*, 814 F Supp 370, 375 (SDNY 1993). See also *Carlin v. Crum & Forster Ins. Co.*, 170 AD2d 251 (1st Dept. 1991); *De Vore v. Osborne*, 78 AD2d 915, 916 (3rd Dept. 1980).

Since service was proper under the Hague Convention and the CPLR, Stallion has failed to show the existence of any of the grounds set forth in article 53 of the CPLR which supports the denial of recognition of the French judgment. Accordingly, the plaintiff's motion for summary judgment in lieu of complaint should be and is hereby granted.

Settle judgment.

Supreme Court Justice Diamond