[* 1]

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

PRESENT: EDWARD H. LEHNER PART 19

Justice

Index Number : 106735/2007

CDR CREANCES S.A.S.

VS.

COHEN, MAURICE

SEQUENCE NUMBER : 009

CONFIRM/REJECT REFEREE REPORT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

motion is decided in accordance with accompanying memorandum decision

FILED
APR 02 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: MAR 31 2009

_____ J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 19

----------x

CDR CREANCES, S.A.S.,

Plaintiff,

Index No.
106735/07

- against -

MAURICE COHEN,

Defendant.

----------x

EDWARD H. LEHNER, J.;

The issue before me on the motions to confirm and disaffirm portions of the report of Special Referee Leslie Lowenstein is whether plaintiff is entitled to recover interest on a judgment entered here based on a judgment by a Florida court which held that a deposit of monies by defendant stopped the accrual of interest and the judgment has recently been satisfied.

On May 20, 2003 plaintiff recovered a judgment in the Court of Appeals of Paris against defendant for 1,886,712.36 euros ("€"), which included €1,186,077.11 of principal and €700,635.25 of interest (the "French judgment"). Plaintiff then sued upon the French judgment in Florida and, by order dated August 2, 2006, a Florida court directed judgment against defendant on default for $2,210,000.52, which consisted of $1,389,311.42 of principal and $820, 689.10 of interest through February 28, 2006 (the "Florida judgment"). Said sum was determined by applying the

conversion rate of 1.17135 dollars to the euro that was in effect on May 20, 2003, and applying the interest rate of 7.11% which was employed by the French court. The Florida court also directed that interest on the judgment accrue at that rate. A motion by defendant to vacate his default was denied by the Florida court.

Plaintiff then sued on the Florida judgment in this court and, by order dated September 25, 2007, I granted plaintiff summary judgment which resulted in the entry of judgment in this court (the "New York judgment") on October 3, 2007 for the said $2,210,000.52, plus interest thereon at the rate of 7.11% from February 28, 2006 of $250,548.67, plus costs of $673.50, for a total judgment in the amount of $2,461,222.69.

Plaintiff then sought to enforce the New York judgment and issued subpoenas for the purpose of locating assets of defendant. On a motion to quash the subpoenas, it was shown that on December 19, 2007 defendant had deposited the sum of $2,424,178.55, which included a fee of the depositary of $35,644.34, with the court in Florida as security for the Florida judgment. By reason thereof, by order dated February 15, 2008, I quashed the subpoenas on condition that defendant deposit with the Clerk of this court an amount which "combined with the security deposited in Florida, is in the amount of the (New York) judgment plus interest thereon at 9% per annum from October 3, 2007 to and including December 31, 2008." On March 11,

2008, defendant deposited $41,514.14 with the Clerk of this court. When plaintiff disputed whether said amount was sufficient to comply with the aforesaid order, on June 19, 2008 I referred the controversy to a Special Referee to hear and report with recommendations.

A hearing was then held before Referee Lowenstein on September 3, 2008, after which he issued his report with recommendations dated October 16, 2008. On the one hand, plaintiff contended before the referee that defendant was required to deposit an additional $308,098.51 in order to be in compliance with order of February 15, 2008, said sum being interest at 9% on the amount of the New York judgment from the date of entry. Plaintiff also produced a lawyer admitted to practice in Florida and France who testified that under the French judgment there was then owing €2,123,860.82 and that on the date of his testimony the conversion rate was $1.4522 for one euro. Based thereon, plaintiff asserted that the amount owing on the New York judgment should be adjusted accordingly.

The referee concluded that the amount required to be deposited to stay proceedings by plaintiff to execute upon the judgment was the aforesaid sum of $308,098.51, and rejected plaintiff's alternative request for a higher amount based on the then current conversion rate. The referee also rejected the position of defendant that interest should not accrue on the New York judgment based on the contention that under Florida law the aforesaid deposit stopped the accrual of interest.

Before me is: plaintiff's motion to confirm the report with respect to the amount of the required deposit, or alternatively to require defendant to pay the said sum of $308,098.51 directly to plaintiff; and defendant's application to confirm the portion of the report that recommends against altering the amount of the judgment to reflect changed exchange rates, and to disaffirm the portion adding interest to the New York judgment.

The said motions came on for oral argument before me on December 18, 2008. However, on the prior day (December 17) an order was issued by a Florida court which included the following determinations:

> i) interest on the Florida judgment from the date of entry on August 2, 2006 was to be 9% in accordance with Florida law, rather than the rate of 7.11% previously ordered,
>
> ii) plaintiff's request to apply the currency conversion rate in effect on December 19, 2007 when defendant made the said deposit of $2,424,178.55 was denied,
>
> iii) the amount of the Florida judgment as of August 2, 2006, the date thereof, was adjusted to be $2,251,677.54, consisting of $1,389,311.42 principal, $820,689.10 of interest through February 28, 2006, and $41,677.02 as interest from March 1, 2006 through August 2, 2006. Adding interest of $172,312.71 from August 3, 2006 until December 19, 2007, when defendant made the said deposit, at the rate of 9%, brought the total amount owing as of that date to $2,423,990.21,
>
> iv) defendant's deposit on December 19, 2007 "stopped the accrual of interest on the Florida judgment," citing the Florida case of Devolder v. Sandage, 575 So. 2d 312 and Gerardi v. Carlisle, 232 So. 2d 36, and concluded that the total amount owing as of the date of the order was the aforesaid sum of $2,423,990.21 as no interest accrued from the date of the deposit,

v) plaintiff was entitled to an award of reasonable attorneys' fees and costs, to be determined at a later hearing, and

vi) apparently because $35,644.34 of the deposit constituted a fee payable to the depository, the court directed the Clerk of the court to execute and record a satisfaction of judgment upon defendant paying the "balance of the post-judgment interest due and the recording charge."

On the following day (December 18, the day of oral argument before me), the Florida court issued a further order directing the release to plaintiff's attorneys of the $2,388,345.86 deposit made by defendant, but directed the Clerk not to issue a satisfaction of judgment until it is paid in full. At a conference call held on March 27 with both counsel, it was agreed that defendant had deposited sufficient monies with the Florida court, which was released to plaintiff, so that the Florida judgment is now deemed satisfied.

The issue now before me is whether, in light of the foregoing orders of the Florida court and the subsequent satisfaction of the Florida judgment, defendant remains liable for the statutory interest that accrued on the New York judgment subsequent to its entry on October 3, 2007. I find that, since the Florida judgment has admittedly now been satisfied and under Florida law interest ceased to accrue when defendant made the said deposit, plaintiff is not entitled to recover such interest.

In De Nunez v. Bartels, 241 AD2d 414, 416 (1st Dept. 1997), it was held that a judgment entered here on a judgment of another state is "merely incidental" to that judgment and "to the extent the underlying judgment is vacated or modified, the

judgment entered here is similarly affected ... (and) can be accorded no greater effect than the foreign judgment upon which it is based, and is subject to the same defenses for purposes of modification or vacatur." In State of New York v. International Asset Recovery Corporation, 56 AD3d 849 (3rd Dept. 2008), a judgment was entered in New York based on an Oregon judgment which had expired one month prior to such entry by virtue of Oregon's statutory ten-year period for the duration of a judgment. The court held that under such circumstances "to recognize the Oregon judgment in New York would be to give it greater effect than it would be given in Oregon ... (and) because the Oregon judgment was expired and thus unenforceable under Oregon law on January 28, 2002, it was likewise unenforceable in New York subsequent to that date." In Boudreaux v. State of Louisiana, 11 NY 3d 321 (2008), plaintiffs obtained a multi-million dollar judgment against the State of Louisiana in the courts of that state. Since Louisiana law prohibited enforcement thereof unless funds were appropriated therefor by the legislature, it was held that the judgment could not be enforced here as to do so would circumvent Louisiana law. See also, Borman v. Deutsch, 152 AD2d 48, 52 (1st Dept. 1989). Further, CPLR 5402(b) provides that a foreign judgment "is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the supreme court of this state and may be enforced or satisfied in like manner."

In light of the foregoing, by reason of the recent satisfaction of the Florida judgment, defendant is now entitled to a satisfaction of the New York judgment on payment only of the costs included therein (which defendant has agreed to pay).

This decision constitutes the order of the court.

Dated: March 31, 2009

J.S.C.