

Stanislaw v Stanislaw
2012 NY Slip Op 30989(U)
April 10, 2012
Supreme Court, Richmond County
Docket Number: 104092/11
Judge: Joseph J. Maltese
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

DCM PART 3

**Calendar No.: 4050-001
4524-002**

DWORAK STANISLAW,

Index No.: 104092/11

Plaintiff,
against

**DECISION
HON. JOSEPH J. MALTESE**

GRYGIEL STANISLAW,

Defendant.

The following papers numbered 1 to 6 were fully submitted on the 3rd day of February, 2012:

	Pages Numbered
Notice of Motion for Summary Judgment in lieu of Complaint by Plaintiff, with Supporting Papers and Exhibits (dated November 1, 2011) _____	1
Notion of Cross Motion to Dismiss by Defendant, with Supporting Papers and Exhibits (dated December 29, 2011) _____	2
Affirmation in Opposition to Plaintiff's Motion (dated December 29, 2011) _____	3
Affirmation in Opposition and in Response to Defendant's Affirmation in Opposition, with Supporting Papers and Exhibits (dated January 12, 2012) _____	4
Addendum to Plaintiff's Response to Defendant's Affirmation in Opposition, with Supporting Papers and Exhibits (dated January 24, 2012) _____	5
Reply Affirmation by Defendant (dated February 1, 2012) _____	6

Upon the foregoing papers, plaintiff's motion (No. 4050-001) for summary judgment in lieu of complaint pursuant to CPLR §3213 is granted; defendant's cross motion (No. 4524-002) to dismiss is denied.

This is an action to enforce a foreign judgment which plaintiff had obtained against defendant in the Commercial Division of the District Court in Rzeszow, Poland in 2002.¹

To the extent relevant, plaintiff is an owner and president of an entity known as the “Purchasing and Selling Livestock Trade Company”, and defendant is an owner and general partner of “Alar”, a meat processing plant, both of which were engaged in the business of selling and delivering of meat products in Poland. In general terms, the parties’ agreement is set forth in a “Contract for Delivery” dated February 3, 2002. In the underlying action, plaintiff alleged that defendant had defaulted in making the required payments for the delivery of goods, an amount stated to be \$72,478.00 in United States Dollars (USD).

On December 23, 2003, the Polish Court entered a judgment in plaintiff’s favor in the amount of 224,683.41 in Polish Zloty (PLN), plus statutory interest (*see* Plaintiff’s Exhibit “B”).² A Writ of Execution was issued simultaneously by the Polish District Court in Rzeszow and apparently was not honored, because on July 15, 2010, a further Writ of Execution was issued “with the aim of vindication of the debt included in the writ of execution above in the civil proceedings before the authority of the court[s] in the United States of America” (*id.*). Plaintiff now seeks to have this judgment recognized and enforced in New York under CPLR 3213.

New York has traditionally made itself available as a forum in which to enforce the money judgments rendered by foreign courts, as demonstrated by the adoption of CPLR Article 53, the “Uniform Foreign Country Money-Judgments Recognition Act” (*see John Galliano, SA v. Stallion, Inc.*, 15 NY3d 75, 79-80 [2010]). As enacted, Article 53 was designed to clarify and codify existing case law on the subject and, more importantly, to promote the efficient enforcement in New York of judgments obtained abroad by assuring foreign governments that the judgments of their courts would receive streamlined enforcement in New York (*see CIBC Mellon Trust Co v. Mora Hotel Corp NV*, 100 NY2d 215, 221 [2003]). Thus, Article 53 has been held to apply to any foreign judgment which

¹With regard to statute of limitations, a final judgment for a sum of money rendered in a court of record within the United States or elsewhere, is presumed to be paid and satisfied after the expiration of twenty years from the time when the party recovering it was first entitled to a mandate to enforce it (*see* CPLR 211[b]; *Zielinski v Zielinski*, 15 AD3d 575 [2nd Dept 2005]; *see also Baio v Mangano*, 169 Misc 155 [Sup Ct, Kings County 1938] *revd on other grounds*, 256 AppDiv 831 [2nd Dept 1939]). Hence, plaintiff’s application is timely.

²Defendant’s partner, who is not named in this case, was also ordered to be liable to plaintiff both jointly and severally.

is final, *conclusive* and enforceable where rendered, even though it may be subject to or pending appeal (CPLR 5302; *see CIBC Mellon Trust Co v. Mora Hotel Corp NV*, 100 NY2d at 221). For the purposes of CPLR Article 53, a foreign country judgment is considered to be conclusive as between the parties to the extent that it grants or denies the recovery of a sum certain (CPLR 5303; *see CIBC Mellon Trust Co v. Mora Hotel Corp NV*, 100 NY2d at 221). Thus, a foreign money judgment is entitled to be recognized and enforced in New York unless a ground for nonrecognition under CPLR §5304 applies (*see John Galliano, SA v. Stallion, Inc.*, 15 NY3d at 80). The statutory grounds for nonrecognition include a lack of personal jurisdiction over the defendant by the foreign court (*see* CPLR §5304[a][2]) and defendant's failure to receive notice of the proceedings in sufficient time to enable him to appear and defend (*see* CPLR 5304[b][2]; *see John Galliano, SA v. Stallion, Inc.*, 15 NY3d at 80).

Here, in opposition to the motion, defendant has failed to substantiate either his general denial of receiving proper notice or his statement that "the proceedings [in Rzeszow, Poland] were conducted under an impartial system of justice" (*see* Affirmation of Jerzy Sokol, Esq. annexed to Affirmation in Opposition, paras 29-32). In fact, notwithstanding defendant's denials, plaintiff has submitted copies of letters written by the defendant under the date of May 16, 2003 and April 14, 2004 acknowledging the subject debt (*see* Exhibits annexed to Plaintiff's Reply papers). In any event, defendant has failed to prove *any* of the accepted grounds for non-recognition set forth in CPLR §5304(a) or 5304(b) (*see generally* *Byblos Bank Europe SA v. Sekerbank Turk Anonym Syrketi*, 10 NY3d 243, 248 [2008]; *see e.g. Bridgeway Corp v Citibank*, 45 FSupp2d 276, 286 [SDNY 1999] *affd on other grounds* 201 F3d 134 [2d Cir 2000]), or to raise a triable issue of fact with regard thereto. Hence, plaintiff's motion for summary judgment in lieu of complaint must be granted (*see Vector Adver & Mktg Ltd v. Large*, 6 AD3d 694 [2nd Dept 2004]).

In cross-moving to dismiss, defendant claims that he was not properly served in New York pursuant to CPLR §308 since service was allegedly made upon his minor daughter. However, the affidavit of plaintiff's process server attests that "[t]he door [of defendant's New York residence] was answered by a young girl who [appeared] to be about 12 years old", and continues as follows: "I asked first to speak with [defendant] and when informed that he was not home[,] to speak with an adult who lived in the house. The girl called for her grandmother who came to the door. I asked her if she lived in the residence and she responded that she did. I then informed her that I was serving papers on Mr. Grygiel and asked her to accept them. She refused to accept them and before I could ask her for her name she slammed the door. I then left the papers in an envelope marked 'Legal Papers for Mr. Stanislaw Grygiel' in the mailbox" (*see* Affidavit of Service sworn to by Paulina Rezler annexed to

Plaintiff's Motion). A copy of the papers was then mailed to defendant's residence on the following day (id.).

Valid service pursuant to CPLR §308(2) may be made by delivery of the summons and complaint to a person of suitable age and discretion who answers the door at a defendant's residence, notwithstanding that he or she may not be an actual resident of the subject property (*see Bank of New York v. Espejo*, __AD3d__, 939 NYS2d 105 [2nd Dept 2012]). Under CPLR 308(1) delivery of a summons may be accomplished by leaving it in the general vicinity of the person to be served who resists service (*see Lefton v. Freedman*, 163 AD2d 360, 362 [2nd Dept 1990]). Concordantly, it has been held that the delivery requirement of CPLR §308(2) may be satisfied by leaving a copy of the summons outside the door of the person to be served upon the refusal of a person of suitable age and discretion to open the door to accept it, provided that the process server informs the person upon whom delivery was attempted that this is being done (*see Bossuk v. Steinberg*, 58 NY2d 916, 918 [1983]). Here, it was only the closing of the door in the process server's face which prevented this notification from being made (*see e.g. Matter of Towns v. Joseph*, 10 AD3d 435 [2nd Dept 2004]).

Based on the foregoing, it is the Court's opinion that service of plaintiff's motion was properly made in New York (*see Matter of Towns v. Joseph*, 10 AD3d at 436). Moreover, the conclusory affidavit of defendant's 16-year-old daughter that she "was presented with documents by an unknown person" is insufficient on its face to rebut the presumption of proper service contained in the process server's affidavit and to require a traverse hearing (*see Bank of New York v. Espejo*, __AD3d__, 939 NYS2d 105 [2nd Dept 2012]). The law in this State, is that a child of 16 years of age can be considered a person of suitable age and discretion under CPLR §308(2) (*see generally Bossuk v. Steinberg*, 58 NY2d at 918; *see also Durham Prod, Inc v. Sterling Film Portfolio Ltd*, 537 FSupp1241, 1244-1245 [SDNY 1982]).

Accordingly, it is hereby:

ORDERED that plaintiff's motion for summary judgment in lieu of complaint is granted; and it is further

ORDERED that defendant's cross motion to dismiss is denied; and it is further

ORDERED that the Clerk enter judgment and mark his records accordingly.

ENTER,

DATED: April 10, 2012

Joseph J. Maltese
Justice of the Supreme Court