UJA Fedn. of Greenwich, Inc. v Prime Experience, Inc.
2017 NY Slip Op 30635(U)
April 1, 2017
Supreme Court, New York County
Docket Number: 158010/2016
Judge: Eileen A. Rakower

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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UJA FEDERATION OF GREENWICH, INC., d/b/a UJA GREENWICH,

Plaintiff

Index No. 158010/2016

DECISION and ORDER

- against -

Mot. Seq. #001

PRIME EXPERIENCE, INC., THE PRIME GRILL, PRIME HOSPITALITY GROUP, and PRIME CATERING OF NEW YORK,

Defendants

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HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff UJA Federation of Greenwich Inc ("UJA"), commences this motion for summary judgment in lieu of complaint pursuant to CPLR 3213 against defendants Prime Experience, Inc. d/b/a The Prime Grill, Prime Hospitality Group, and Prime Catering of New York (collectively, "Prime"). UJA is a corporation organized under the laws of Connecticut located in Greenwich Connecticut. Prime is a corporation organized under the laws of New York and located at 25 West. 56th St., New York, New York 10019. (Plaintiff's exhibit D, E) The parties agree that Prime is unauthorized to do business in Connecticut. On or about November 2013, UJA engaged Prime to provide catering and event planning services for a fundraising event on March 6, 2014. Throughout the month of November 2013, the parties exchanged emails. On December 9, 2013, UJA tendered a check in the amount of $5,000, made payable to Prime, as a deposit for Prime's services. On January 27, 2014, representatives from UJA and Samual Friedman, a representative of Prime, met at a private home in Greenwich where the event was to be held. On that day, UJA tendered an additional check made payable to Prime in the amount of $4,142.15. On February 26, 2014, Prime provided a proposal for the event. With the exception of a trucking fee and some unrequested but included items, UJA approved the proposal. On February 28, 2014, UJA was informed that

Prime would not be providing the services because UJA did not approve the trucking fee among other things. On March 3, 2014, UJA made a demand for the $9,142.15 deposit but Prime did not return it.

On September 5, 2014, UJA commenced an action against Prime in Connecticut Superior Court alleging conversion, unjust enrichment, breach of implied covenant of good faith and fair dealing, and fraud among other things. On November 26, 2014, the Complaint and Amended Summons were delivered by certified mail, return receipt requested, to Prime at its corporate address and primary place of business by Connecticut State Marshal, Joseph A. Homelson. (Plaintiff's exhibit E) A signed certified mail receipt was returned on December 1, 2014. (Plaintiff's exhibit F)

Prime did not appear and UJA filed a motion for default judgment. On January 26, 2016, the Honorable A. William Mottlese entered a default judgment for $53,331.74 in favor of UJA against Prime. The judgment was entered for specified damages in the amount of $13,293, prejudgment interest in the amount $2,170.63, attorneys' fees in the amount of $37,020.00 and costs taxed in the amount of $847.96. The decision states that it was entered on January 6, 2016 and all counsel and self-represented parties of record were notified on January 6, 2016.

On September 23, 2016, UJA filed a Notice of Motion for Summary Judgment in Lieu of Complaint to domesticate the judgment in this Court. In support, UJA submits the Affidavit of Jeffrey M. Norton Esq.; the Default Judgment entered by the Honorable A. William Mottlese on January 26, 2016; bank checks written by UJA and made payable to Prime with evidence of deposit; the Summons and Complaint filed in Connecticut Superior Court dated September 5, 2014; the Affidavit and Return of Service of Connecticut State Marshal, Joseph A. Homelson, dated November 26, 2014; the Supplemental Return of Service with Signed Certified Mail Receipt dated December 4, 2014; Plaintiff's Motion for Default for Failure to Appear against defendants Prime dated December 18, 2014; and the Supplemental Affidavit of Attorney Jeffrey M. Norton with respect to interest and attorney's fees among other things. UJA submitted in reply to Prime's opposition, the Memorandum of Law in Support of Motion for Summary Judgment in Lieu of Complaint prepared by Jeffrey M. Norton.

In opposition, Prime submits the 3 page affirmation of attorney Thomas Rubertone Jr. Esq. and nothing else. Prime argues that Connecticut's long arm jurisdiction does not apply here. However Prime contends that even if it did, UJA failed to comply with the statute by failing to personally serve process on

Connecticut's Secretary of State. On March 28, 2017, the Court heard oral argument.

The Full Faith and Credit Clause of article IV of the United States Constitution requires the courts of New York to enforce judgments rendered in other states and precludes inquiry into the merits of the judgment. (*Buckeye Retirement Co., LLC v Lee*, 41 AD3d 183 [1st Dept 2007] Such judgments rendered in sister states may be filed with a County Clerk in New York pursuant to Article 54 of the CPLR. (CPLR 5402 [b]). However, "article 54 does not apply to foreign judgments obtained by a default in appearance" (*Steinberg v Metro Entertainment Corp.*, 145 AD2d 333, 334 [1st Dept 1988]) Instead default judgements rendered in sister states may be enforced in New York under CPLR 3213. (*Westland Garden State Plaza, L.P. v Ezat, Inc.*, 25 A.D.3d 516 [1st Dept 2006]) CPLR 3213 provides that "[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint." Although the merits of a sister state judgment may not be collaterally attacked, a party may challenge the judgment on the basis of lack of personal jurisdiction. (*Westland Garden State Plaza, L.P* at 516) If such a challenge is made, this Court "must look to the jurisdictional statutes of the forum in which the judgment was rendered as well as due process considerations." (*Ho v McCarthy*, 90 AD3d 710, 711 [2d Dept 2011]; *China Express v Volpi & Son Mach. Corp.*, 126 A.D.2d 239, 242 [1st Dept 1987]) The laws of the forum in which the judgment was rendered determine whether jurisdiction was properly obtained even though those laws may be at odds with the New York rule. (*China Express, Inc. v Volp & Son Machine Corp*, 126 AD2d 239, 242 [1st Dept 1987])

Connecticut General Statutes Annotated § 33-929 (f) provides that "[e]very foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state or to be performed in this state . . ." With respect to serving the foreign corporation, the statute provides that if the action is brought under subsection (f), "service of process on such corporation may be made as provided in subsection (b) . . . except that the service shall be addressed to the corporation at its principal office. (Ct Gen Stat Ann § 33-929 [g]) Subsection (b) provides, "A foreign corporation may be

served by any proper officer or other person lawfully empowered to make service by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation: (1) Has no registered agent or its registered agent cannot with reasonable diligence be served . . ." (Ct Gen Stat Ann § 33-929 [b])

With respect to Due Process considerations, the Supreme Court articulated the standard by which exercises of personal jurisdiction are measured as follows:

> "[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice" (*International Shoe Co. v Washington*, 326 U.S. 310 [1945])

To satisfy the minimum contacts requirement, there must be "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." (*Hanson v. Denckla*, 357 U.S. 235, 253 [1958] "Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant himself that create a 'substantial connection' with the forum state. (*Burger King Corp v Rudzewicz*, 471 U.S. 462, 475 [1985] Parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state have effectively consented to the imposition of jurisdiction over them in the other state. (*Travelers Health Assn. v Virginia*, 339 U.S. 643, 647 [1950] Even a single contract can support in personam jurisdiction as long as it creates a "substantial connection" with the forum. (*Burger King Corp v Rudzewics*, *supra*, 471 U.S. at 475 n. 18) A critical consideration in such cases is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into courts there." (*World-Wide Volkswagen Corp. v Woodson,* 444 U.S. 286, 297 [1980]

Connecticut has expressly adopted the Supreme Court's minimum contacts test. (*Cogswell v American Transit Ins. Co.*, 282 Conn. 505, 525 [2007]). The Connecticut rule is that "the court must first determine whether the defendant has sufficient contacts with the forum state to justify the court's exercise of personal jurisdiction." (*id.* at 524) "Once minimum contacts have been established, '[t]he second stage of the due process inquiry asks whether the assertion of personal

jurisdiction comports with 'traditional notions of fair play and substantial justice'- that is, whether it is reasonable under the circumstances of the particular case." (*id.* at 525)

Under CPLR 3213, the non-moving party may defeat a motion for summary judgment in lieu of complaint by raising an issue of fact. (*Nordea Bank Finland PLC v Holten*, 84 AD3d 589, [1st Dept 2011]) Additionally, reasonable attorney's fees are to be determined by the court. (*Manufactuers Hanover Trust Co. v Green*, 95 AD2d 737, 738 [1st Dept 1983])

CPLR 5004 provides that, "Interest shall be at the rate of nine per centum per annum, except where otherwise provided by statute. In *Buckeye Retirement Co., LLC v Lee*, the Plaintiff moved pursuant to CPLR 3213 for summary judgment in lieu of complaint to domesticate a default judgment entered in Florida. (41 Ad3d 183 [1st Dept 2007]) The plaintiff sought interest at the rate of 12% per year. (*id.*) Upon remand, the First Department directed the lower court to calculate the amount of interest based on the New York rate. (*Buckeye Retirement Co., LLC* at 184) Similarly, in *Sung Hwan Co., Ltd. v Rite Aid Corp.*, where the Plaintiff sought to domesticate a Korean default judgment, the First Department determined that the lower court properly applied New York's statutory 9% post-judgment interest rate to the Korean judgment. (46 AD3d 288 [1st Dept 2007])

The issue before this Court is whether Connecticut's long arm jurisdiction reaches Prime under Connecticut General Statutes Annotated § 33-929 (f) and whether Connecticut's assertion of *in personam* jurisdiction can be sustained under the minimum contacts analysis developed by the United States Supreme Court.

Connecticut's long arm jurisdiction reaches Prime pursuant to Connecticut General Statutes Annotated § 33-929 (f). The plain language of the statute provides that every foreign corporation is subject to suit in Connecticut by a person having a usual place of business in that state on any cause of action arising out of a contract to be performed in the state. Here, UJA is a domestic corporation organized under the laws of Connecticut located in Greenwich Connecticut. It is bringing suit against Prime, a foreign corporation organized under the laws of New York located at 25 West. 56th St., New York, New York 10019. The suit is for breach of a contract wherein Prime promised to cater and provide event planning services for a fundraising event in Connecticut. Because Prime, a foreign corporation, promised to perform the contract in Connecticut, UJA, a resident of Connecticut, can properly assert jurisdiction under 33-929 (f).

Prime was properly served in accordance with Connecticut General Statutes Annotated § 33-929 (b). On November 26, 2014, the Complaint and Amended Summons were delivered by certified mail, return receipt requested, to Prime at its corporate address and primary place of business by Connecticut State Marshal, Joseph A. Homelson. (Plaintiff's exhibit E) A signed certified mail receipt was returned on December 1, 2014. (Plaintiff's exhibit F)

Connecticut's assertion of *in personam* jurisdiction over Prime can be sustained under the minimum contacts analysis developed by the United States Supreme Court. Prime reached out beyond the state of New York and created a continuing relationship and obligation with UJA by sending its representative Samuel Friedman to meet with representatives of UJA in Connecticut on January 27, 2014, by accepting a deposit in November 2013 in the amount of $5,000 as part of a good faith promise to perform services in Connecticut, by accepting a second deposit in the amount of $4,142.15 on January 27, 2014 as part of a continuing good faith promise to perform services in Connecticut, and by providing UJA with a proposal for the event on February 26, 2014 that UJA approved. Based on this conduct, Prime should have reasonably anticipated being hailed into a Connecticut court when it informed UJA that it would not honor its promises days before the event. Additionally, Prime should have anticipated the same when it refused to return UJA's deposits. Connecticut's assertion of personal jurisdiction over Prime therefore comports with traditional notions of fair play and substantial justice.

Prime does not raise any material issues of fact in its 3 page opposition nor submit any arguments in opposition to UJA's request for reasonable attorney's fees.

Wherefore it is hereby,

ORDERED that Plaintiff UJA FEDERATION OF GREENWICH, INC., d/b/a UJA GREENWICH's motion for Summary Judgment in lieu of Complaint pursuant to CPLR 3213 in the amount of $53,331.74 with interest at the statutory rate of 9% per annum from January 6, 2016 until entry of judgment, as calculated by the Clerk, is granted with costs in the amount of $1,073.80, disbursements, and attorney's fees in the amount of $10,980.00.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: ~~March~~ Apr. 1 4, 2017

EILEEN A. RAKOWER, J.S.C.