No. 93

John Galliano, S.A.,
Respondent,
v.
Stallion, Inc.,
Appellant.

Alan M. Sclar, for appellant.
Ted Poretz, for respondent.

LIPPMAN, Chief Judge:

A court in Paris, France entered a money judgment in favor of John Galliano, S.A. (Galliano) against Stallion, Inc. (Stallion), and Galliano seeks to have that judgment recognized in New York. The Appellate Division, applying New York's Uniform Foreign Country Money-Judgments Recognition Act, codified at CPLR article 53, concluded that the French judgment should be recognized in New York (62 AD3d 415 [1st Dept 2009]). We granted

leave to appeal and now affirm.

The underlying dispute is a contractual one. In 1998, Stallion entered into a licensing agreement with Les Jardins D'Avron, a French company, concerning the use of the "John Galliano" trademark for the production and distribution of luxury fur items in the United States, and Galliano was later substituted for Les Jardins D'Avron as a party to the agreement. The agreement provides that it is governed by the laws of France, and the agreement's forum selection clause, entitled "Competent jurisdiction," further provides that "[a]ny dispute which may arise in connection with this Agreement . . . shall be submitted to the competent court for the district over which the Paris Court of Appeals has jurisdiction."

Disputes between Galliano and Stallion arose with respect to royalty payments Galliano alleged that Stallion owed it under the licensing agreement and expenses Galliano believed it was owed in connection with a fashion show. For its part, Stallion believed it was owed money for various goods it had delivered to Les Jardins D'Avron.

The parties were unable to resolve these ongoing disagreements, prompting Galliano in 2002 to sue Stallion in the Commercial Court in Paris. Three attempts to serve Stallion with the French equivalent of a summons and complaint were made under the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Convention) (see

Volkswagenwerk Aktiengesellschaft v Schlunk, 486 US 694 [1988]). In each instance the documents were delivered to Stallion and a certificate of service completed. Stallion, however, did not appear in the French proceeding, and judgment amounting to "the exchange value in euro as of the date of payment of the amount of USD 178,810," plus specified interest, was entered in Galliano's favor in October 2004. Galliano commenced this proceeding three years later to enforce the judgment in New York.

Stallion argues that New York should not recognize the judgment of the French court against it because that court lacked personal jurisdiction over Stallion. Stallion asserts that the purported service under the Hague Convention was ineffective because the documents delivered to it were written in French and were not accompanied by an English translation. Absent proper service, the argument continues, Stallion cannot be said to have received effective notice of the proceeding in Paris, and a defendant's lack of notice of the foreign proceeding that resulted in a money judgment against it must result in non-recognition of that judgment in New York under CPLR article 53 (see CPLR 5304 [a] [2], [b] [2]).*

"New York has traditionally been a generous forum in which to enforce judgments for money damages rendered by foreign courts," and, in accordance with that tradition, the State

* Below, Stallion also relied on CPLR 2101 (b), an argument rejected by Supreme Court that Stallion has since abandoned.

adopted the Uniform Foreign Money-Judgments Recognition Act as CPLR article 53 (CIBC Mellon Trust Co. v Mora Hotel Corp., 100 NY2d 215, 221 [2003]). Article 53 "applies to any foreign country judgment which is final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal" (CPLR 5302), and "a foreign country judgment is considered 'conclusive between the parties to the extent that it grants or denies recovery of a sum of money'" (CIBC Mellon Trust Co., 100 NY2d at 221 [quoting CPLR 5303]).

Generally, a foreign money judgment is to be recognized in New York under article 53 unless a ground for non-recognition under CPLR 5304 is applicable. Grounds for non-recognition include a lack of personal jurisdiction over the defendant by the foreign court (see CPLR 5304 [a] [2]) and a defendant's failure to receive "notice of the proceedings in sufficient time to enable him to defend" (CPLR 5304 [b] [2]).

CPLR 5304's grounds for non-recognition of foreign money judgments must be read together with CPLR 5305, however, which provides that a "foreign country judgment shall not be refused recognition for lack of personal jurisdiction if ... the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved" (CPLR 5305 [a] [3]). Plainly, as the Appellate Division rightly concluded (see 62 AD3d at 416), Stallion did just that when it entered into the licensing

agreement given that agreement's forum selection clause.

Stallion urges, however, that the Appellate Division's reading of CPLR 5305 effectively negates the notice component of a court's proper exercise of personal jurisdiction over a defendant, and Stallion asserts that it did not receive adequate notice of the proceedings in Paris because the documents purportedly served on it pursuant to the Hague Convention were written in French, unaccompanied by an English translation.

Notice of a proceeding is, of course, a fundamental component of a court's proper exercise of personal jurisdiction over a party, and CPLR 5304 itself expressly recognizes a lack of notice as a ground for not recognizing a foreign money judgment in New York (see CPLR 5304 [b] [2]). We agree with Stallion that if recognition of a foreign money judgment were sought in New York and the defendant had received no meaningful notice of the foreign proceeding, that lack of notice would serve as a legitimate basis for not enforcing the judgment in our State, as the entry of such a judgment would not comport with our conception of personal jurisdiction or our notion of fairness. This, however, is not that case. The Appellate Division concluded that Stallion "received notice of the French action [and] its service by personal delivery is unlikely to give rise to any objections based on due process" (62 AD3d at 416). We agree.

We first note that, in seeking enforcement of a foreign

money judgment in New York, "the judgment creditor does not seek any new relief against the judgment debtor, but instead merely asks the court to perform its ministerial function of recognizing the foreign country money judgment and converting it into a New York judgment" (CIBC Mellon Trust Co., 100 NY2d at 222). "[T]he inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law" (Sung Hwan Co., Ltd. v Rite Aid Corp., 7 NY3d 78, 83 [2006]). "If the above criteria are met, and enforcement of the foreign judgment is not otherwise repugnant to our notion of fairness, the foreign judgment should be enforced in New York under well-settled comity principles without microscopic analysis of the underlying proceeding" (id.).

Those criteria are met here, and, on this record, the enforcement of the French judgment is not repugnant to our notion of fairness. Stallion was well aware of its ongoing disputes with Galliano, and it was also aware that, under the licensing agreement, those disputes, if litigated, would be adjudicated in accordance with French law by a court in France. Stallion was delivered court papers written in French, first by a U.S. Marshal, then subsequently on two occasions by process servers from Process Forwarding International (the entity selected by the Department of Justice to carry out service in the United States under the Hague Convention), all in an effort to notify it of the

commencement of the French proceeding.

Stallion disputes that these service efforts complied with the Hague Convention because the papers written in French were not accompanied by an English translation. However, as long as we do not find the procedure used to be fundamentally unfair, the propriety of the service under the Hague Convention was an issue for the court in France. Our inquiry now under CPLR article 53 is more circumscribed; we need only determine at this stage whether the recognition requirements of article 53 have been met.

Significantly for our purposes in applying article 53 in this case, before it could properly issue a judgment against Stallion in Stallion's absence, Article 15 of the Hague Convention required the Paris Commercial Court to consider whether service on Stallion was properly made or whether "the document was actually delivered to the defendant or to his residence by another method provided for by" the treaty (for example, service "voluntarily" accepted as contemplated by the second paragraph of Article 5)(Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, [1969] 20 U.S. T. 361, T.I.A.S. No. 6638). Moreover, in whatever form service takes, Article 15 further requires that it be "established" - again, before judgment may be entered in a foreign defendant's absence - that the service abroad was made "in sufficient time to enable the

defendant to defend" itself in the proceeding (id.) (notably, language that is identical to that used by our Legislature in CPLR 5304 [b] [2]). Given that the Paris Commercial Court entered a judgment in Galliano's favor in Stallion's absence, it would seem clear that it was "established" to that court's satisfaction that Article 15's requirements were met.

On this record, we are satisfied that Stallion had notice of the proceeding in France "in sufficient time to enable [it] to defend" itself in that action (CPLR 5304 [b] [2]), and the Paris Commercial Court's exercise of personal jurisdiction over Stallion under these circumstances was not unfair. Moreover, as noted, in the licensing agreement Stallion agreed to submit any contractual disputes to the jurisdiction of the French courts prior to the commencement of the proceeding in Paris and, pursuant to CPLR 5305 (a) (3), the French judgment should not be refused recognition.

On this record, because the French court's money judgment in favor of Galliano does not run afoul of our conception of personal jurisdiction or our notion of fairness, well settled CPLR article 53 law compels the recognition and enforcement of the French judgment in New York.

The Appellate Division order, insofar as appealed from, should be affirmed, with costs.

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Order, insofar as appealed from, affirmed, with costs. Opinion by Chief Judge Lippman. Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 8, 2010