

**Cadles of Grassy Meadow II, L.L.C. v Lapidus**

2011 NY Slip Op 34159(U)

October 5, 2011

Supreme Court, New York County

Docket Number: 106421/06

Judge: Barbara R. Kapnick

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IA PART 39

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CADLES OF GRASSY MEADOW II, L.L.C.,

Plaintiff,

-against-

EDWARD B. LAPIDUS and DAVID GLASER,

Defendants.  
-----x

BARBARA R. KAPNICK, J.:

DECISION/ORDER  
Index No. 106421/06  
Motion Seq. No. 015

**FILED**

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This is a proceeding by plaintiff Cadles of Grassy Meadow II, L.L.C. ("Cadles") to enforce a money judgment originally entered by Suffield Bank against defendant Edward B. Lapidus ("Lapidus") and others on January 10, 1991 in Superior Court, Judicial District of Hartford-New Britain at Hartford, Connecticut, in the amount of \$341,863.97 plus costs of \$706.00. Plaintiff domesticated the judgment in this Court, pursuant to CPLR 5402, on May 10, 2006.<sup>1</sup>

Lapidus now moves for a protective order pursuant to CPLR 5240 and 211(b), restraining plaintiff from any further enforcement efforts, on the grounds that, pursuant to CPLR 211(b), the judgment is conclusively presumed to be paid and satisfied based upon the expiration of twenty years since the judgment was originally

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<sup>1</sup> This case, as well as a related proceeding seeking to enforce a separate judgment against Lapidus and others (Index No. 110219/06), has a long and tortured factual and procedural history which this Court will not recount here.

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entered in Connecticut and Suffield Bank was first entitled to enforce it. Cadles opposes the motion and cross-moves for an order pursuant to CPLR 5210, 5251 and 2308, punishing defendant Lapidus and no-party Raquette Lake Camps for contempt for failing to comply with the September 17, 2009 Order of this Court and a Judicial Subpoena Duces Tecum dated October 22, 2007, and issuing sanctions against defense counsel for the filing of this motion.

Lapidus' Motion for Protective Order

CPLR 211(b) provides, in relevant part:

On a money judgment. A money judgment 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 enforce it. This presumption is conclusive, except as against a person who within the twenty years acknowledges an indebtedness, or makes a payment, of all or part of the amount recovered by the judgment, or his heir or personal representative, or a person whom he otherwise represents. . . . The presumption created by this subdivision may be availed of under an allegation that the action was not commenced within the time limited.

According to Lapidus, more than twenty years has elapsed since the original judgment creditor, Suffield Bank, "was first entitled to enforce" the judgment, and, therefore, the judgment is conclusively presumed to have been satisfied. As a result, Lapidus argues that he should be granted an order of protection restraining plaintiff from further enforcement efforts or from proceeding with

its application pursuant to CPLR 5226 with respect to an installment payment order.<sup>2</sup>

According to Cadles, a foreign judgment docketed in New York is valid and enforceable for twenty years from the date that it becomes a New York judgment. In this case, there is no dispute that the judgment was docketed in New York on May 10, 2006, which Cadles contends made it a New York judgment subject to a twenty year statute of limitations from that date.<sup>3</sup> This is consistent, Cadles argues, with the United States Supreme Court's decision in *Roche v McDonald*, 275 US 449 (1928), which held that valid and enforceable judgments of a sister state must be afforded full faith and credit.

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<sup>2</sup> It should be noted that Lapidus made lengthy arguments both in his papers and at oral argument, regarding the validity of the assignments submitted to the Connecticut Court in order to secure the original judgment. These arguments are virtually identical to the arguments made in support of a motion to dismiss the related proceeding (Index No. 110219/06), which motion was denied on the record dated June 6, 2011. For the reasons stated on the record, this Court declines to further address these arguments.

<sup>3</sup> Strictly speaking, this twenty year limit on enforceability is not a statute of limitations, but a legal presumption, or rule of evidentiary law sometimes referred to as a statute of limitations. See, *Palazzo v Hyde*, 82 Misc2d 765, 766 (Sup Ct, Oneida Co., 1975). While there are differences, the twenty year limitation of time set forth in CPLR 211(b) will be referred to herein as a statute of limitations.

A review of the cases cited by Lapidus makes clear that they do not compel the result he urges. Many of the cases on which he relies do not involve foreign judgments registered in New York at all, but rather judgments rendered in New York found to have become unenforceable by virtue of CPLR 211(b). See *Scherer v Pfuntner*, 207 Misc 7 (Sup Ct, Yates Co., 1955) (judgment rendered in Livingston County but no execution issued or proceeding instituted thereon for more than twenty years);<sup>4</sup> *Palazzo v Hyde, supra* (motion by defendant to have judgment declared satisfied granted when New York judgment creditor died without seeking to enforce judgment within twenty years from entry).

Although Lapidus argues that in an action by a nonresident plaintiff on a foreign judgment, New York will hold the action untimely if it is barred either under CPLR 211(b) or the corresponding statute in the foreign state, the cases he presents do not support a finding in his favor. In *Chesapeake Coal Co. v Mengis*, 102 AD 15 (1<sup>st</sup> Dept 1905), for example, the Court determined that a judgment rendered in Maryland expired pursuant to a twelve year statute of limitations nearly five months prior to the commencement of the New York action. The Court, thus, declined to enforce a judgment that was no longer enforceable in the state in

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<sup>4</sup> Case cited as *In re La Force's Estate* in defendant's papers.

which it was rendered, a circumstance not present here. There is no dispute here that at the time Cadles filed the judgment in New York, it was enforceable in the state of Connecticut.

Likewise, in *State of New York v International Asset Recovery Corp.*, 56 AD3d 849 (3d Dept 2008), the original judgment was entered in Oregon on January 28, 1992 and expired, pursuant to Oregon law, on January 28, 2002. Nonetheless, the Clerk permitted the judgment to be filed in New York on February 27, 2002. In an action by the judgment debtor to recover sums inadvertently paid on the expired judgment, the Court granted the judgment debtor summary judgment and ordered the return of all sums paid after the expiration of the judgment, noting that "New York is required to give a foreign judgment only the same validity and effect as the judgment would be given in its state of rendition." 56 AD3d at 851. The Court acknowledged that the Oregon judgment was improperly permitted to be registered in New York after it had expired and become unenforceable in Oregon, but made no comment on whether it would have been enforceable in New York had it been properly registered in New York prior to its expiration, making it essentially irrelevant to the facts of this case.

Nor is the Court persuaded that *Zielinski v Zielinski*, 15 AD3d 575 (2d Dept 2005) is applicable to the instant dispute. In that

case, the plaintiff obtained a money judgment against the defendant in New York in October 1983. Thereafter, the plaintiff obtained a foreign money judgment, upon defendant's default in Pennsylvania, reviving it three times, the last being in 1997. In November 2003, the defendant-judgment debtor commenced an action in New York on a related issue and the plaintiff-judgment creditor cross-moved to enforce the *Pennsylvania judgment*. The defendant-judgment debtor argued that CPLR 211(b) must be applied to bar enforcement. The Court, finding for the judgment debtor, held that:

since the original judgment was rendered in New York, and the Pennsylvania judgment and subsequent revivals were based solely on the New York judgment, the New York judgment is controlling and CPLR 211(b) is applicable. (citation omitted). The plaintiff failed to bring an action in the State of New York to enforce the New York judgment within the 20-year period provided by CPLR 211(b), and there is no evidence that the defendant "acknowledged" the New York judgment or made any payments thereon to extend the 20-year period of limitations under CPLR 211(b). Consequently, the New York judgment is presumed paid and satisfied under CPLR 211(b), ...

Cadles also points to a recent case in this Court, *Swezey v Merrill Lynch, Pierce, Fenner & Smith*, 2009 WL 4009121 (Sup Ct, NY Co) (Ramos, J.),<sup>5</sup> in which Justice Ramos explicitly rejected a similar argument:

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<sup>5</sup> Just shortly after the oral argument on this motion, the Appellate Division reversed the judgment issued by Justice Ramos and granted the motion to dismiss by the intervenors on the ground that the Republic of the Philippines was a necessary party. (87 AD3d 119 [1<sup>st</sup> Dept 2011]).

New York courts will disregard the statute of limitations of the state where a foreign judgment has been initially returned when that judgment has been registered in New York, because the judgment is then treated as if it were a New York judgment, even if the statute of limitations in the foreign state where the judgment was returned had already run. *Id.* (citing, *inter alia*, *Roche v McDonald*, *supra*).

In *Swezey*, a judgment was originally obtained in Hawaii, was revived in Illinois and the Illinois judgment was then registered in New York. Although the ten year limitations period under the law of Hawaii had expired prior to the commencement of the action to enforce the judgment in New York, that expiration was irrelevant because the judgment was valid when it was registered in Illinois and the action was not to enforce the Hawaii judgment, but rather the Illinois judgment.

The cases above make clear, therefore, that where a judgment was rendered in a sister state and remained valid and enforceable at the time that it was registered in New York, it is enforceable within this State for at least twenty years pursuant to CPLR 211(b) and is no longer subject to the time limitations of the original state of the judgment. *Mee v Sprague*, 144 Misc2d 1057 (Sup Ct, Westchester Co, 1989), (judgment registered in New York is "a distinct entity and hence not subject to the" limitations period of Oklahoma).



Although Lapidus argues that the cases relied on by Cadles, and discussed above, involving actions to enforce a judgment are inapposite, this is a proceeding brought on a judgment domesticated pursuant to CPLR 5402, not an "action to enforce a foreign judgment." Lapidus can cite to no New York case addressing CPLR 211(b), in which the Courts make any distinction whatsoever between various enforcement mechanisms.

#### Cadles' Cross-Motion

Cadles cross-moves to punish Lapidus for alleged contempt of, violation of and non-compliance with the September 17, 2009 Order of this Court and the Judicial Subpoena Duces Tecum of October 22, 2007, and "for conduct that was calculated to, or actually did defeat, impair, impede, or prejudice Plaintiff's rights or remedies, in that the Defendant failed to produce full books and records." Cadles also seeks sanctions against Lapidus' counsel for filing a meritless motion intended to harass, pursuant to Rule 130-1.1.

Cadles alleges that there are myriad documents which Lapidus has not yet provided pursuant to the prior order and the subpoena. Lapidus contends that it has either provided all the documents sought or made them available for on-site inspection, which inspection Cadles has never sought to schedule.

The Court is exercising its discretion, at this time, to deny Cadles' cross-motion to punish Lapidus for contempt and to issue sanctions against his counsel. However, to the extent that Lapidus or his counsel are in possession of any documents listed in Ex. J to plaintiff's cross-motion which have not been produced to plaintiff, said documents must be produced to counsel for plaintiff within 30 days of entry of this Decision/Order. If defendant Lapidus does not have any such documents, he must state in an Affidavit what efforts he has made to locate them. If compliance is not timely and complete, this Court will then schedule a hearing on plaintiff's cross-motion for contempt.

The parties shall appear for a discovery conference on Wednesday, December 7, 2011 at 10:00 a.m. at which point any outstanding discovery issues will be addressed with the Court, so that the previously scheduled hearing before the Special Referee may finally proceed.

This constitutes the decision and order of this Court.

Dated: October 5, 2011



BARBARA R. KAPNICK  
J.S.C.

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