

Larocca v Soon Lim
2016 NY Slip Op 30271(U)
February 17, 2016
Supreme Court, New York County
Docket Number: 651967/15
Judge: Barry R. Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 61

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JOHN LAROCCA and THERESA LAROCCA,

Petitioners,

Index No. 651967/15
Motion Seq No. 002

-against-

SOON LIM, L & J NEW YORK MANAGEMENT, INC.,
JANE DOES, JOHN DOES, OCCUPANTS and
ANDY OH,

Respondents.

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OSTRAGER, J.:

The motion by respondent Andy Oh, an attorney acting on behalf of himself and his co-respondents Soon Lim and L&J NY Management, Inc., to dismiss this proceeding to confirm an arbitration award for lack of personal jurisdiction is denied on procedural grounds and on the merits.

On June 17, 2014 a lengthy arbitration hearing was held before the Honorable Ira Gammerman at National Arbitration and Mediation (NAM) in Garden City, New York, on the issues of liability and damages. The central issue was the amount of rent due under a commercial lease between petitioners and respondents Soon Lim and L&J NY Management, Inc., which included a personal guarantee by their counsel, respondent Andy Oh. Judge Gammerman issued a decision on August 17, 2014 awarding petitioners \$103,255.75 against the three respondents jointly and severally. As indicated in that decision, the evidence considered by Judge Gammerman at the hearing included the testimony of five witnesses and 24 exhibits, and the transcript consisted of 187 pages.

It is undisputed that respondents took no action to vacate or modify the August 17, 2014 arbitration award within the 90 days permitted by CPLR §7511. Indeed, no such motion or challenge to the arbitration award has been made even as of this date, though any would be clearly untimely.

However, in June 2015, within the one year allowed by CPLR §7510, petitioners commenced this proceeding to confirm the arbitration award. Respondents did not appear or oppose the petition. By decision and order dated July 9, 2015, this Court granted the petition on default and directed petitioners to settle a judgment on notice, which they did by e-filing the proposed judgment and supporting documents and by mailing copies to Mr. Oh and the other respondents in early October.

Shortly thereafter, respondents made this motion to dismiss pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. The motion is supported only by an affirmation from Mr. Oh. In his affirmation, Mr. Oh claims that he first learned of this proceeding when he received the proposed judgment, even though the petition commencing this proceeding had been sent to the same address. The papers do not include any statement from respondent Soon Lim on his own behalf or on behalf of the management company denying receipt of any of the papers served in this case.

Petitioners' counsel responds with a copy of an email exchange between him and Mr. Oh dated July 24, 2013 in which Mr. Oh indicated that he would accept service of process on behalf of himself and the two co-respondents at the very address used by petitioners' counsel to serve the papers in this case. Mr. Oh indicates in reply that he made that arrangement in connection with a proceeding commenced in the Landlord & Tenant Part of the Civil Court and that petitioners' counsel wrongly assumed that the agreement was valid for service in this proceeding.

The Court finds Mr. Oh's position disingenuous, to say the least. The earlier proceeding and this proceeding involved identical parties and the same issue of rent and possession under the commercial lease. Mr. Oh continues to represent his co-respondents. At no point did Mr. Oh advise petitioners' counsel that he was withdrawing his agreement to accept service in connection with the continued litigation between the parties. Therefore, it was reasonable for petitioners to rely on the agreement between counsel and effectuate service on all parties through Mr. Oh.

What is more, respondents' motion is procedurally defective in various ways. All three respondents defaulted, and an order was issued by this Court on July 9, 2015 on default. Respondents mailed a copy of that decision to Mr. Oh and the other respondents. Nevertheless, at no point in the papers being considered today does Mr. Oh indicate that he is moving under CPLR 5015 to vacate the default, as is required by law. Even if that defect were overlooked, the moving papers contain no statement on personal knowledge from respondent Lim on his behalf or that of his company denying service. Thus, the motion is defective on that ground as well.

Great deference is given to arbitration awards, and the grounds for vacating such an award are strictly limited by CPLR 7511 and governing case law. *See, e.g., NY City Transit Auth. v Transp. Workers' Union, Local 100*, 6 NY3d 332 (2005). As indicated earlier, Mr. Oh did not seek to challenge Judge Gammerman's arbitration award within the 90 days permitted by law, and even now he does not allege any defect in the award. His plan, which he readily acknowledges in his papers and which he confirmed at oral argument on February 16, 2016, is to get this proceeding dismissed in the eleventh hour based on a claim of defective service, along with a finding that petitioners would

then be time-barred from commencing a new proceeding today to confirm the award, more than one year after the award was issued. This Court will not countenance such gamesmanship.

Accordingly, it is hereby

ORDERED that respondents' motion to dismiss is in all respects denied.

Petitioners shall present a copy of this decision to the Judgment Clerk, who shall proceed to enter judgment based on this Court's July 9, 2015 decision without further delay. Consistent with the confirmed arbitration award, the Clerk shall enter judgment in favor of petitioners against respondents Soon Lim, L & J New York Management, Inc., and Andy Oh, jointly and severally, in the sum of \$103,255.75 with interest at the statutory rate as calculated by the Clerk of the Court from August 17, 2014, along with costs and disbursements as taxed by the Clerk.

Dated: February 17, 2016


S.C.
BARRY R. OSTRAGER
JSC