

**Change Capital Holdings I, LLC v Barroz**

2020 NY Slip Op 30323(U)

January 8, 2020

Supreme Court, New York County

Docket Number: 655960/2019

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X

INDEX NO. 655960/2019

CHANGE CAPITAL HOLDINGS I, LLC,

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION AND ORDER

CARLOS BARROZ and VICTOR MEDINA,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Plaintiff creditor Change Capital Holdings I, LLC ("Change") moves for summary judgment in lieu of complaint, pursuant to CPLR 3213, to domesticate and enforce a judgment obtained against defendants Carlos Barroz ("Barroz") and Victor Medina ("Medina") in the state of Delaware (Docs. 2). Change also seeks reasonable costs and expenses for the collection of said judgment, including attorneys' fees, and requests that its claim for costs and expenses of collection, including attorneys' fees, be severed pursuant to CPLR 3212 (e) (Doc. 2). After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is granted.

FACTUAL AND PROCEDURAL HISTORY:

In November 2018, Change entered into a Merchant Receivables Purchase and Security Agreement ("the purchase agreement") with non-parties Tres Amigos Corp. d/b/a La Pulperia 84

NYC (“Amigos”), Tres Mosqueteros Corp. d/b/a Pulperia de Tito (“Mosqueteros”), and Mon Cher LLC d/b/a Pulperia 57 (“Mon Cher”) (Doc. 15). Defendants were named personal guarantors under the purchase agreement (Doc. 15). In April 2019, Change commenced an action against defendants in the Superior Court of the State of Delaware (“the Delaware court”), asserting one cause of action for breach of the guarantee provision in the purchase agreement (Doc. 4 at 2). The Delaware court issued writs commanding Change’s counsel to summon and direct defendants to answer the complaint by serving them with the summons and copy of the complaint at their respective addresses by certified mail, return receipt in accordance with 10 Del. C. § 3104 (Doc. 5). On April 24, 2019, Change filed an “alias praecipe” and “alias summons” for Barroz (Doc. 6). On April 29, 2019, the Delaware court issued a writ for an alias summons for service upon Barroz pursuant to certified mail, return receipt requested pursuant to 10 Del. C. § 3104 (Doc. 7). By affidavit of non-service dated May 2, 2019, Change notified the Delaware court that its attempt to serve Barroz on April 16, 2019 had not been effectuated due to an incorrect address (Doc. 8). An additional affidavit of non-service was filed with the Delaware court in June 2019, informing that court that, after various attempts, the post office had failed to deliver the summons and complaint to Barroz and Medina (Doc. 9).

On June 17, 2019, Change filed “alias praecipies” and “alias summonses” for service upon defendants by way of special process server pursuant to 10 Del. C. § 3104 and, on June 24, 2019, the Delaware court issued a writ for service of alias summons and a copy of the complaint upon defendants by the same means (Doc. 10-11). Defendants were served on June 27, 2019 (Doc. 12). As set forth in affidavits of service submitted in support of this motion, a copy of the alias summons and complaint was served on a person of suitable age and discretion at their place of business, La Pulperia, located at 1626 2nd Avenue, New York, New York 10028, and an

additional copy of the documents was mailed to the same address, first class mail, in a postpaid envelope with no identifiers to indicate that the communication was from an attorney or that it concerned an action against defendants (Doc. 12).

Defendants failed to file an answer to the complaint or otherwise appear in the action, and Change moved for entry of a default judgment against them, arguing, *inter alia*, that all outstanding sums were immediately due and payable given their breach of the purchase agreement in March 2019 (Doc. 13). After a hearing, the Delaware court determined that Change established its entitlement to a default judgment against defendants and, in September 2019, it awarded Change a total of \$114,950; plus costs through the date of the order in the amount of \$3,161.12 and pre-judgment and post-judgment interest in the amount of \$2,634.27; for a total of \$120,745.39 (Doc. 4, 14). The court also awarded legal expenses totaling \$1,074.65 (Docs. 4, 14).

In support of the instant motion, Change submits, *inter alia*, the purchase agreement, documents establishing that service of the summons and complaint were effectuated, and the judgment issued by the Delaware Court (Docs. 2-15). It also submits affidavits of service reflecting that the instant motion and accompanying exhibits were delivered to defendants at their place of business and left with a co-worker, a person of suitable age and discretion (Docs. 17-18). The documents were also mailed to the business address in the same manner described above (Docs. 17-18). Change argues, *inter alia*, that the judgment rendered by the Delaware court should be domesticated in New York because “the Delaware Judgment was properly ordered and entered against [d]efendants where the Delaware Judgment concerns the guarantee of the [p]urchase [a]greement providing for jurisdiction in Delaware and where [d]efendants were duly served and noticed under Delaware law” (Doc. 3 at 7-8). Moreover, it asserts that

Delaware had both subject matter and personal jurisdiction over defendants (Doc. 3 at 8-11). As it pertains to attorneys' fees, Change claims, *inter alia*, that it is entitled to these fees and costs given the contractual provision in the purchase agreement (Doc. 3 at 11).

### LEGAL CONCLUSIONS:

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” (*see Cooperatieve Centrale Raiffeisen-Boerenbank, B.A., “Rabobank Intl.,” N.Y. Branch v Navaro*, 25 NY3d 485, 491-492 [2015]). “The purpose of CPLR 3213 is ‘to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless’” (*SpringPrince, LLC v Elie Tahari, Ltd.*, 173 AD3d 544, 545 [1st Dept 2019], quoting *Weissman v Sinorm Deli*, 88 NY2d 437, 443 [1st Dept 1996]; accord *Cooperatieve Centrale Raiffeisen-Boerenbank, B.A., “Rabobank Intl.,” N.Y. Branch v Navaro*, 25 NY3d at 491-492).

“New York courts are required to enforce judgments rendered in other states under Article IV of the United States Constitution. The constitutional requirement of full faith and credit precludes any inquiry into the merits of the judgment, the logic or consistency of the decision underlying it or the validity of the legal principles on which it is based. While the merits of a judgment of a sister state may not be collaterally attacked, a judgment debtor may challenge the judgment on the basis of lack of personal jurisdiction” (*Rancho Santa Fe Assn. v Dolan-King*, 36 AD3d 460, 461 [1st Dept 2007] [quotation marks and citations omitted]; *see Boudreaux v State of La, Dept. of Transp.*, 49 AD3d 238, 240-241 [1st Dept 2008], *cert denied* 557 US 936

[2009]; *Buckeye Retirement Co., L.L.C., Ltd. v Lee*, 41 AD3d 183, 183 [1st Dept 2007]). As a matter of full faith and credit, “[t]he sole inquiry [before this Court], *if raised by a judgment debtor*, is the determination of whether the rendering court had jurisdiction to issue the judgment” (*Robert Walters Assoc. Cal v Further Lane Sec., L.P.*, 2016 NY Slip Op 31603[U], 2016 NY Misc LEXIS 3070, \*5-6 [Sup Ct, NY County 2016] [emphasis added]; *see Fiore v Oakwood Plaza Shopping Ctr.*, 78 NY2d 572, 577 [1991], *cert denied* 506 US 823 [1992]; *TCA Global Credit Master Fund, L.P. v Puresafe Water Sys., Inc.*, 151 AD3d 1098, 1099-1100 [2d Dept 2017]; *JDC Fin. Co. I v Patton*, 284 AD2d 164, 166 [1st Dept 2001]; *Ionescu v Brancoveanu*, 246 AD2d 414, 416 [1st Dept 1998]). Where a judgment is entered upon default in a sister state, a plaintiff may proceed to enforce it in New York by motion for summary judgment in lieu of complaint (*see Morin Boats v Acierno*, 150 AD3d 844, 845 [2d Dept 2017]; *Ho v McCarthy*, 90 AD3d 710, 711 [2d Dept 2011]; *Ionescu v Brancoveanu*, 246 AD2d at 416).

Here, Change has established its entitlement to recognition and enforcement of the Delaware judgment against defendants insofar as it was awarded to Change upon personal jurisdiction over defendants (*see Westland Garden State Plaza, L.P. v Ezat, Inc.*, 25 AD3d 516, 516 [1st Dept 2006]; *see Robert Walters Assoc. Cal v Further Lane Sec., L.P.*, 2016 NY Misc LEXIS 3070 at \*6-7). Defendants expressly consented to Delaware’s jurisdiction by contract insofar as the forum selection clause in section 18 of the purchase agreement, which was signed by both defendants, provided that the contract would be “governed by and construed in accordance with the laws of the State of Delaware, without regard to any conflicts of laws provision” (Doc. 15). Additionally, it designated the State of Delaware as the forum for “[a]ll legal action[s] filed as a result of th[e] [purchase a]greement” and expressly stated that “the parties [were] submitting themselves to the exclusive personal jurisdiction of such courts for any

such actions” (Doc. 15) (*see Genuine Parts Company v Cepec*, 137 A3d 123, 148 [Del. 2016]; *see Prime Rock Energy Capital, LLC v Vaquero Operations, Ltd*, No. CV N17C-04-066 VLM, 2017 WL 4856851, \*3 [Del Sup Ct 2017]; *UJA Federation of Greenwich, Inc. v Prime Experience, Inc.*, 2017 NY Slip Op 30635[U], 2017 WL 1246571, \*2-4 [Sup Ct, NY County 2017]). Further, Change’s proof in support of the instant motion establishes that defendants were personally served at their place of business in accordance with CPLR 308 (2) (*see Westland Garden State Plaza, L.P. v Ezat, Inc.*, 25 AD3d at 516).

In any event, by failing to answer to the complaint or oppose the instant motion, defendants have failed to raise personal jurisdiction as a defense to the enforcement of the judgment against them (*see TCA Global Credit Master Fund, L.P. v Puresafe Water Systems, Inc.*, 151 AD3d at 1099; *Buckeye Retirement Co., L.L.C., Ltd. v Lee*, 41 AD3d at 183). Given the foregoing, the judgment rendered by the Delaware court on September 19, 2019 is entitled to full faith and credit and is enforceable in New York.

This Court also grants that branch of Change’s motion seeking “such costs and expenses, including attorneys’ fees, as incurred by [Change] in enforcing [d]efendants’ obligations” in the instant motion. As set forth in section 12 of the purchase agreement, Change shall be entitled to recover reasonable costs and attorneys’ fees resulting from the enforcement of its rights under the agreement (Doc. 15). By failing to oppose the motion, defendants have failed to set forth any reason for the denial of such relief. Thus, the claim for such fees and costs is hereby severed and referred to a special referee to determine (*see 815 Park Ave Owners, Inc. v Metzger*, 250 AD2d 471, 471 [1st Dept 1998]).

Therefore, in accordance with the foregoing, it is hereby:

**ORDERED** that the branch of the motion by Plaintiff Change Capital Holdings I, LLC seeking summary judgment in lieu of complaint, pursuant to CPLR 3213, is granted without opposition; and it is further

**ORDERED** that the default judgment issued by the Superior Court of the State of Delaware on September 19, 2019 in favor of Change Capital Holding I, LLC and against defendants Carlos Barroz and Victor Medina, Index No. N19C-04-100 MMJ, is entitled to full faith and recognition and enforcement in New York; and it is further

**ORDERED** that the Clerk is directed to enter judgment in favor of plaintiff and against defendants, in the sum of \$120,745.39, plus interest accrued from the date of the entry of the Delaware judgment on September 19, 2019, at the statutory rate of 5% pursuant to 6 Del. C. § 2301 (a), as calculated by the Clerk; and it is further

**ORDERED** that plaintiff is entitled to expenses and costs incurred in this litigation, including reasonable attorneys' fees, and it is further



**ORDERED** that the issue of calculation of plaintiff's reasonable attorneys' fees and costs incurred in litigating this action is severed and referred to a Special Referee to hear and report, and it is further

**ORDERED** that plaintiff shall serve a copy of this order on defendant and on the Trial Support Office at 60 Centre Street, Room 158; and it is further

**ORDERED** that within 14 days of the entry of this order on the NYSCEF system, plaintiff shall file a Note of Issue, pay the appropriate fees, and serve a copy of this order with notice of entry, as well as a completed information sheet, on the Special Referee Clerk at spref-nyef@nycourts.gov, who is directed to place this matter on the calendar of the Special Referee's part for the earliest convenient date and notify all parties of the hearing date;, and it is further

**ORDERED** that this constitutes the decision and order of this Court.

KATHRYN E. FREED, J.S.C.

1/8/2020  
DATE

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER  
 FIDUCIARY APPOINTMENT  REFERENCE