Loeffler v. European Acquisition Capital Limited

2002 | Cited 0 times | Court of Appeals of Texas | March 14, 2002

OPINION

This is an appeal from an order denying a Motion for Non-recognition of Foreign Judgment. For the reasons stated, we affirm the judgment of the trial court.

I. SUMMARY OF THE EVIDENCE

In January 1995, Appellant, Richard H. Loeffler, approached Appellee, European Acquisition Capital Limited, about a business plan to purchase ADS-Anker GmbH ("ADS"), a German company that manufactured electronic point-of-sale equipment. The plan basically called for Appellee to purchase ADS for 60,000,000 Deutsche Marks and then allow Appellant to run the company for at least three years. After meeting and corresponding via mail, Appellee agreed to consider Appellant's plan. In March 1995, Appellee arranged to have its accountants, KPMG, visit ADS's premises to investigate its business and Appellant's business plan. Appellant learned in April 1995, that Appellee decided to proceed with the acquisition without him.

Appellant demanded that Appellee pay him $25,000,000 in damages and $800,000 in brokerage fees. Appellee refused so Appellant filed suit in New York in November, 1995. The New York court dismissed the suit for lack of personal jurisdiction. In October, 1996, Appellant filed another suit in New York based on the same allegations. The New York court again dismissed the suit for lack of personal jurisdiction.

Appellee then filed a declaratory action in London, England. Appellee sought an injunction to keep any litigation in the High Court of Justice, London, England, and a declaration that any agreement between Appellee and Appellant was only a non-binding agreement to negotiate. Appellant filed his "Defence and Counterclaim," in which he admitted that England was the appropriate forum for a trial of the dispute.

Appellee moved to compel Appellant to post security for court costs in the amount of $32,000 (British Currency), since he was the true plaintiff in the action and lived outside the jurisdiction. The English court so ordered and Appellant deposited the money with the court. The parties continued with discovery. Shortly before trial, Appellee requested additional security for costs in the amount of $68,000 (British Currency), which the court ordered Appellant to deposit. Appellant claimed he could not afford to post the security. The court then dismissed his counterclaims. Appellee withdrew its declaratory action and the English court granted its anti-suit injunction, which restrained Appellant

from litigating the subject matter anywhere other than the High Court of Justice, London. Appellee then sought judgment for the cost of its claim and Appellee's counterclaims. Appellant did not reply and the English court granted a default costs certificate against him for $298,725.60.(British Currency)

On November 12, 1999, Appellee filed two foreign judgments and a default costs certificate which had been rendered in its favor and against Appellant by the High Court of Justice of England and Wales in the County Court of Law No. 1 of Dallas County, Texas. On February 14, 2000, Appellant filed an Original Counterclaim and a Motion for Non-recognition of Foreign Judgment. The trial court denied Appellant's Motion for Non-recognition of Foreign Judgment for want of jurisdiction, finding that it was untimely filed under Chapter 36 of the Texas Civil Practice and Remedies Code. In the alternative, the Court found that the foreign judgment at issue was not so repugnant to the public policy of Texas as to warrant non-recognition. [1] This appeal follows.

II. DISCUSSION

Appellant presents three issues on appeal. First, Appellant argues he should be allowed to maintain his counterclaims. Second, Appellant argues that Appellee did not comply with the statutory requirements for filing a recognition of a foreign judgment. Finally, Appellant argues that the English judgment violates Texas public policy.

Texas will recognize a foreign country judgment under The Uniform Foreign Money Judgments Recognition Act ("UFMJRA") if four conditions are met:

(1) The judgment is final and conclusive and enforceable where rendered;

(2) An authenticated copy of the judgment is filed in the office of the clerk of a court in the county of residence (or in any other court of competent jurisdiction allowed under the Texas venue laws) of the party against whom recognition is sought;

(3) Notice of the filing of the judgment is given to the party against whom recognition is sought; and

(4) There are no grounds because of which the judgment should be refused recognition under Tex. Civ. Prac. & Rem. Code Ann. § 36.005 (Vernon 1997). Tex. Civ. Prac. & Rem. Code Ann. §§ 36.002, 36.004, 36.0041 (Vernon 1997).

On November 12, 1995, Appellee filed authenticated copies of two Final Judgments and a Default Costs certificate with the clerk of the County Court at Law No. 1 in Dallas County, Texas, and requested that notice be sent to Appellant. As required by Section 36.0042, Appellee attached an affidavit showing the name and last known post office address of Appellant, the judgment debtor, and Appellee, the judgment creditor. See Tex. Civ. Prac. & Rem. Code Ann. § 36.0042 (Vernon 1997). Additionally, Appellee sent via certified mail, return receipt requested, letters containing copies of

the filing to Appellant's business and home addresses and filed proof of the mailing with the court. See Tex. Civ. Prac. & Rem. Code Ann. § 36.0043 (Vernon 1997).

In Issue No. Two, Appellant argues that Appellee failed to mail the notice by regular mail and failed to file proof of notice as required by the UFMJRA. He maintains that because the notice was sent to him via certified mail rather than regular mail, the mailing does not conform to the statute. However, Appellant cites no authority in support of this position and thus has waived this issue. See Tex. R. App. P. 38.1; see also Leyva v. Leyva, 960 S.W.2d 732, 734 (Tex. App.--El Paso 1997, no writ). Nonetheless, we note that Section 35.005 of the Civil Practice and Remedies Code contains almost identical language for the notice provisions of the Uniform Enforcement of Foreign Judgments Act as that of Section 36.0043. See Tex. Civ. Prac. & Rem. Code Ann. §§ 35.005, 36.0043 (Vernon 1997). At least one court has held that certified mail is sufficient to provide notice under Section 35.005 and we believe it is sufficient under the very similar language of Section 36.0043. See Tri-Steel Structures, Inc. v. Hackman, 883 S.W.2d 391, 394 (Tex. App.-- Fort Worth 1994, writ denied). Because the record establishes that Appellee filed authenticated copies of the final judgments and default costs certificate with the clerk, requested notice be sent to Appellant, sent via certified mail letters containing copies of the filing to Appellant's business and home addresses, and filed proof of the mailing with the court, we find that Appellee complied with the statutory requirements for filing a recognition of a foreign judgment. Issue No. Two is overruled.

In Issue No. One, Appellant argues that he should be allowed to maintain his counterclaims. Appellant filed his Original Counterclaim, his Motion for Non-recognition of Foreign Judgment and his brief in support thereof on February 14, 2000. Under Section 36.0044 of the Civil Practice and Remedies Code, the party against whom recognition of a foreign judgment is sought may file with the court and serve the opposing party with a copy of a motion for non-recognition of the judgment no later than the 30th day after the date of service of the notice of filing. See Tex. Civ. Prac. & Rem. Code Ann. § 36.0044 (Vernon 1997). Thus, Appellant's motions were untimely and the trial court did not err in denying the motions.Assuming his motions were timely filed, Appellant cites no authority which permits the assertion of counterclaims in a procedure to recognize a foreign judgment.

Section 36.0044 only allows for the filing of a motion for non-recognition, along with supporting affidavits, briefs, and other documentation. See Tex. Civ. Prac. & Rem. Code Ann. § 36.0044 (Vernon 1997). Moreover, Section 36.005(b) limits the grounds for non-recognition to the following:

(b) A foreign country judgment need not be recognized if:

(1) the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend;

(2) the judgment was obtained by fraud;

(3) the cause of action on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

(6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action; or

(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of "foreign country judgment." Tex. Civ. Prac. & Rem. Code Ann. § 36.005(b) (Vernon 1997).

Thus, even if we assumed Appellant's counterclaim were timely, we find no provisions for the assertion of counterclaims in the UFMJRA or in Texas case law and Appellant directs us to none.

Accordingly, Issue No. One is overruled. Given our disposition of Issues No. One and Two, we need not address Issue No. Three. We affirm the judgment of the trial court.

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1. The trial court noted in its order that it was denying Appellant's motion "on its merits in the event this Court is incorrect in its analysis of its jurisdiction."