

2015 ONCA 195
Ontario Court of Appeal

Kavoussi v. Moos

2015 CarswellOnt 3864, 2015 ONCA 195, 251 A.C.W.S. (3d) 64

Howard Kavoussi, The Estate of Key Kavoussi, deceased, by her Executor Howard Kavoussi and Iran Kavoussi, Respondents and Bernd Moos, Appellant

Gloria Epstein J.A., S.E. Pepall J.A., M.L. Benotto J.A.

Heard: March 12, 2015
Judgment: March 12, 2015
Docket: CA C58865

Proceedings: affirming *Kavoussi v. Moos* (2014), 2014 ONSC 2612, 2014 CarswellOnt 6044 (Ont. S.C.J.)

Counsel: Bernd Moos, for himself
Kevin D. Sherkin, Ryan Wozniak, for Respondents

Subject: International

Headnote

Conflict of laws --- Enforcement of foreign judgments — Prerequisites for enforcement — Jurisdiction of foreign court over defendant — Submission to jurisdiction — By appearance

Plaintiffs, who were residents of California, brought action there against defendant for fraud and negligent misrepresentation — Defendant, who was resident of Ontario, unsuccessfully challenged jurisdiction of California court — Defendant defended action on its merits and with assistance of counsel, participating in depositions and testifying at trial — Action was allowed — Defendant’s appeal was dismissed — Plaintiffs commenced action to enforce California judgment in Ontario — Plaintiffs motion for summary judgment was granted — Motion judge ordered that defendant not be allowed to file additional material and that defendant attorned to jurisdiction of California court, judgment was final and defendant had not established any applicable defences — Defendant appealed — Appeal dismissed — Defendant’s argument depended on appellate court admitting fresh evidence, which it could not do — Motion judge refused to allow defendant to submit same evidence and that order was not appealed and was final — Proposed evidence did not meet test for admitting fresh evidence — There was no basis to interfere with motion judge’s decision to enforce California judgment.

Conflict of laws --- Enforcement of foreign judgments — Types of foreign judgments not enforced — Obtained by fraud

laintiffs, who were residents of California, brought action there against defendant for fraud and negligent misrepresentation — Defendant, who was resident of Ontario, unsuccessfully challenged jurisdiction of California court — Defendant defended action on its merits and with assistance of counsel, participating in depositions and testifying at trial — Action was allowed — Defendant’s appeal was dismissed — Plaintiffs commenced action to enforce California judgment in Ontario — Plaintiffs motion for summary judgment was granted — Motion judge ordered that defendant not be allowed to file additional material and that defendant attorned to jurisdiction of California court, judgment was final and defendant had not established any applicable defences — Defendant appealed — Appeal dismissed — Defendant’s argument depended on appellate court admitting fresh evidence, which it could not do — Motion judge refused to allow defendant to submit same evidence and that order was not appealed and was final — Proposed evidence did not meet test for admitting fresh evidence — There was no basis to interfere with motion judge’s decision to enforce California judgment.

Conflict of laws --- Enforcement of foreign judgments — Types of foreign judgments not enforced — Contrary to public policy of *lex fori*

plaintiffs, who were residents of California, brought action there against defendant for fraud and negligent misrepresentation — Defendant, who was resident of Ontario, unsuccessfully challenged jurisdiction of California court — Defendant defended action on its merits and with assistance of counsel, participating in depositions and testifying at trial — Action was allowed — Defendant’s appeal was dismissed — Plaintiffs commenced action to enforce California judgment in Ontario — Plaintiffs motion for summary judgment was granted — Motion judge ordered that defendant not be allowed to file additional material and that defendant attorned to jurisdiction of California court, judgment was final and defendant had not established any applicable defences — Defendant appealed — Appeal dismissed — Defendant’s argument depended on appellate court admitting fresh evidence, which it could not do — Motion judge refused to allow defendant to submit same evidence and that order was not appealed and was final — Proposed evidence did not meet test for admitting fresh evidence — There was no basis to interfere with motion judge’s decision to enforce California judgment.

Table of Authorities

Cases considered by *Gloria Epstein J.A., S.E. Pepall J.A., M.L. Benotto J.A.*:

Beals v. Saldanha (2003), [2003] 3 S.C.R. 416, 314 N.R. 209, 182 O.A.C. 201, 70 O.R. (3d) 94 (note), 113 C.R.R. (2d) 189, 2003 CSC 72, 70 O.R. (3d) 94, 39 B.L.R. (3d) 1, 39 C.P.C. (5th) 1, 2003 SCC 72, 2003 CarswellOnt 5101, 2003 CarswellOnt 5102, 234 D.L.R. (4th) 1 (S.C.C.) — referred to

APPEAL by defendant from judgment reported at *Kavoussi v. Moos* (2014), 2014 ONSC 2612, 2014 CarswellOnt 6044 (Ont. S.C.J.), granting plaintiffs motion for summary judgment.

Gloria Epstein J.A., S.E. Pepall J.A., M.L. Benotto J.A.:

1 In July 2009, the respondents sued the appellant in California for damages based on fraud and negligent misrepresentation. In January 2010, the appellant, who resides in Ontario, unsuccessfully challenged the jurisdiction of the California court, a decision that was not appealed. The appellant then participated in the trial by defending the respondents’ action on its merits. The trial resulted in a judgment in March of 2012, of approximately \$3,000,000. The appellant’s appeal from that judgment was dismissed in October 2013. His attempt to have the dismissal reviewed by the Supreme Court of California was dismissed in January 2014.

2 The respondents commenced this action for, among other relief, enforcement of the judgment in Ontario.

3 The respondents moved for summary judgment. Problems arose out of the appellant’s attempts to file additional materials. On January 6, 2014, the motion judge ordered that the appellant not be allowed to file additional material in response to the motion for summary judgment and adjourned the motion to be heard by her.

4 In her reasons of March 28, 2014, the motion judge applied the test for recognition of a foreign judgment articulated by the Supreme Court in *Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416 (S.C.C.). She held that the appellant had attorned to the California court, the judgment was final and that the appellant had not established any applicable defences including that the judgment had been obtained by fraud or that he was not afforded a process in accordance with Ontario’s minimum standards of fairness or that the judgment was obtained on laws contrary to the fundamental morality of the Canadian legal system.

5 The motion judge therefore concluded that there was no issue requiring a trial and ordered that the California judgment be recognized and enforced in Ontario.

6 On appeal, relying on his proposed fresh evidence, the appellant urges us to find that the California judgment was obtained by fraud.

7 The appellant's argument depends on our admitting the fresh evidence. This we cannot do. First, the motion judge refused to allow the appellant to submit this same evidence for the purposes of the summary judgment motion. That order was not appealed and is final. Second, the proposed evidence does not meet the *Palmer* test.

8 We see no reason to interfere with the motion judge's decision to enforce the California judgment and the appeal is therefore dismissed.

9 The respondents are entitled to their costs fixed in the amount of \$7,000, inclusive of disbursements and applicable taxes.

Appeal dismissed.