2017 IL App (1st) 172040-U

FOURTH DIVISION
June 7, 2018

No. 1-17-2040

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VINICOLA P & V,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	16-M1-500925
	)	
ALEN REDZIC,	)	Honorable
	)	John A. O'Meara,
Defendant-Appellee.	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Ellis concurred in the judgment.

O R D E R

Held: Appellant's failure to submit an adequate record of the trial court proceedings warranted summary affirmance rather than consideration of appellate arguments.

¶ 1 Vinicola P&V appeals from an order of the circuit court granting Alen Redzic's motion to quash and dismiss Vinicola's petition to "register" what is purportedly a Croatian default money judgment pursuant to the Uniform Foreign-Country Money Judgments Recognition Act (Act), 735 ILCS 5/12-661 *et seq*. (West 2016). As explained below, however, we find the record that Vinicola submitted for our review of the dismissal order to be insufficient and we affirm the circuit court ruling.

¶ 2 Because of the unusual nature of these proceedings, we briefly note that the Act governs the recognition of foreign country money judgments that are "final, enforceable, and conclusive" where rendered. 735 ILCS 5/12-663(a) (West 2016); *Nicholas v. Environmental Systems (International) Limited*, 499 S.W.3d 888, 896 (2016) (interpreting the Texas version of the uniform statute). "A party seeking registration of a foreign-country judgment has the burden of establishing that this Act applies to the foreign-country judgment." 735 ILCS 5/12-633(c) (West 2016). If the judgment is not facially final, the plaintiff has the burden of producing evidence demonstrating the judgment is final. *Nicholas*, 499 S.W.3d at 898 (where a Canadian judgment did not contain the judge's original or graphically reproduced signature as specified by Canadian procedural law, the plaintiff met his initial burden of showing finality through indications on the copy that a signed original exists and the testimony of the Canadian lawyer who obtained the certified copy of the judgment). Recognition of the judgment enables the plaintiff to proceed with enforcement measures in Illinois. See *Bianchi v. Savino Del Bene Int'l Freight Forwarders, Inc.*, 329 Ill. App. 3d 908, 920, 770 N.E.2d 684, 694 (2002).

¶ 3 On December 5, 2016, Vinicola initiated suit in the Municipal Division of the circuit court of Cook County by electronically filing 12 pages consisting of the following: (1) a four-page document written in a foreign language and entitled "Republika Hrvatska, Trgovački sud u Rijeci, Stalna služba u Pazinu, Presuda, Zbog Ogluhe," (2) a five-page notarized document entitled "Republic of Croatia, Commercial Court in Rueka, Local Court in Pazin, Judgment by Default," which concluded with the statement, "I, [Chicago attorney] Anthony Peraica, being first place[d] under oath, hereby state that I am fluent in both English and [the] Croatian language[] and that the above translation is in fact and substance [a] true and accurate translation of the attached document," (3) a two-page affidavit in which Peraica swore to the names and last

known addresses of Vinicola and Redzic, and (4) a one-page "Notice of Filing" of "Plaintiff's Petition to Register Foreign Judgment." If there was a "Plaintiff's Petition to Register Foreign Judgment" or other document that could be construed as allegations of a legal controversy between Vinicola and Redzic, it was omitted from the record compiled for our review. There is no indication that Vinicola set out any Croatian statutes or otherwise tried to objectively demonstrate that the "Presuda, Zbog Ogluhe" was subject to recognition under the Act. See *Bianchi*, 329 Ill. App. 3d at 928-29, 770 N.E.2d at 700 (Illinois courts are prohibited by statute from taking judicial notice of the laws of foreign countries); 735 ILCS 5/8-1007 (West 1982) (precluding judicial notice of foreign country laws). If Illinois courts presumed that the laws of the foreign country and Illinois were the same, every foreign judgment would be vulnerable to a showing that it failed to comply with Illinois requirements even though it was otherwise a proper final judgment in the rendering country.

¶ 4 Vinicola also sent an undated summons by certified mail to Redzic requiring him to file a written appearance. Vinicola not only failed to date the summons, it also left other portions of the notice form incomplete and did not specify a date by which Redzic was required to appear. Redzic, nevertheless, filed an appearance later that month on December 27, 2016.

¶ 5 Next, despite not having a final Illinois judgment or a final foreign judgment which had been recognized by an Illinois court and become subject to enforcement in the jurisdiction, on January 3, 2016, Vinicola initiated supplementary proceedings to compel Redzic's payment of $3,431.81, and notified him that on March 8, 2017, the court would hear Vinicola's citation to discover his assets. See *Bianchi*, 329 Ill. App. 3d at 920, 770 N.E.2d at 694 (citation proceedings to compel payment of a foreign country money judgment are not available to a creditor until after the foreign judgment has been recognized in Illinois).

¶ 6 Redzic then filed "Defendant's Opposition to Petition to Register Foreign Judgment and Verified Motion to Quash and Dismiss with Prejudice." Redzic did not specify any section of the Code of Civil Procedure, despite the fact that he was required to specifically designate whether his motion to dismiss was pursuant to section 2-615 or section 2-619. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484, 639 N.E.2d 1282, 1289 (1994). A motion to dismiss under section 2-615 motion attacks defects apparent on the face of the complaint and is based on insufficiency in the pleading rather than on the underlying facts. 735 ILCS 5/2-615 (West 2016). *Barber-Colman Co. v. A & K Midwest Insulation Co.,* 236 Ill. App. 3d 1065, 1068-69, 603 N.E.2d 1215, 1218-19 (1992). Section 2-619(a)(9) of the Code governs motions seeking dismissal of pleadings due an affirmative matter outside the complaint, such as a statute of limitations, which bars or defeats the cause of action. 735 ILCS 5/2-619(a)(9) (West 2016). Stated another way, a section 2–619(a)(9) motion assumes a cause of action has been stated. *Barber-Colman,* 236 Ill. App. 3d at 1068-69, 603 N.E.2d at 1218-19.

¶ 7 Section 2-619.1 of the Code authorizes a moving party to file a single motion relying on both section 2-615 and 2-619, provided the party clearly sets the arguments out into distinct sections. 735 ILCS 2-619.1 (West 2016).

¶ 8 It appears to this court that Redzic asserted arguments under both section 2-615 and 2-619 of the Code. Redzic first argued that Vinicola failed to meet its burden to plead under section 12-663 of the Act that the purported judgment was final, conclusive, and enforceable under Croatian law. 735 ILCS 5/12-663(c) (West 2016). Redzic also argued Vinicola was relying on a photocopied document which had been translated by its own attorney, rather than an authenticated judgment order of a foreign country and an independent translation. In the event the court deemed the petition sufficient, Redzic's alternative argument was that the Croatian

judicial system did not provide procedural due process, which was grounds under section 12-664(b)(1) to deny recognition in Illinois, or because the Croatian court did not obtain personal jurisdiction over him, which was grounds under section 12-644(b)(2) to deny recognition in Illinois. 735 ILCS 5/12-664(b)(1), 12-664(b)(2) (West 2016).

¶ 9 Redzic then set out the following factual account of the source of the Croatian default judgment, which he supported by verifying his statements pursuant to section 1-109 of the Code. 735 ILCS 5/1-109 (West 2016). While Redzic was living in Labin, Croatia in 2004 and operating a club, his corporation incurred a debt; between 2004 and 2005 he closed the club and sold the corporate assets; a buyer failed to pay the agreed upon price; a lawsuit ensued. (Redzic provided no other details about the lawsuit regarding the corporate asset sale—he did not disclose the parties' names or the legal theory asserted). Although Vinicola's president appeared as a witness in that proceeding, Vinicola did not assert its own claim for the money that was purportedly owed to it by Redzic's corporation. After the lawsuit concluded, the Croatian government sought to close Redzic's corporation as inactive, and Vinicola could have objected as a debtor, but it did not. Redzic then emigrated from Croatia in 2005. Vinicola sued Redzic individually in Croatia in 2006, and during the ensuing six years, failed to serve Redzic, as detailed in the Croatian judgment which became the subject of the current proceedings. The judgment indicates (1) service by mail was attempted in 2007 or 2008 but was unsuccessful because Redzic did not collect the mail addressed to him at Nedescina, Vrecari 26, Labin, (2) a court-appointed process server who went to the residential address in 2008 determined that Redzic had moved to the United States, and (3) correspondence between the court and the local police station confirmed in 2010 that Redzic was no longer at the residential address. There was, nevertheless, no indication that Vinicola ever attempted to serve Redzic in the United States. Instead, the Croatian court

appointed a local social worker to act as Redzic's representative, the social worker did nothing, and the court entered a default judgment in 2012 which included interest dating back to 2004.

¶ 10 Redzic argued that because Vinicola knew he was in the United States, it should have attempted to personally serve him here, and that even if the Illinois court deemed the service on the Croatian social worker to be valid, awarding interest for the entire period when Vinicola was obviously not diligent in pursuing service was not due process. In other words, if for some reason the Illinois court decided "Plaintiff's Petition to Register Foreign Judgment" was facially sufficient, the court should deny recognition of the judgment for lack of due process or for lack of personal service, which the Illinois statute specifies are grounds for non-recognition.

¶ 11 At the next status hearing, the circuit court struck the March hearing date that Vinicola had selected for its premature citation to discover assets and entered an agreed briefing schedule on Redzic's motion to reject Vinicola's petition.

¶ 12 In its subsequent written brief, Vinicola argued that its petition was competent. Vinicola first contended that the foreign judgment order was "final, conclusive, and enforceable" within the meaning of the Act, because (1) "even a cursory review of the translation of the judgment clearly indicates that it was a default judgment entered by the Croatian court," and (2) the translation included the statement, "Notice of Appeal Rights: A party against whom this order has been entered has eight (8) days from the receipt of this decision to file an appeal." Vinicola did not attempt to provide any Croatian authority confirming that the statement was indicative of a final judgment. Vinicola then argued that Redzic had not cited any authority which required that someone other than Vinicola's attorney translate the foreign judgment order and Redzic had not pointed to any facts which would cause the court to doubt the veracity of the attorney's translation. Vinicola's third argument in opposition to the motion to dismiss its pleading was that

Redzic's arguments regarding due process and lack of notice were an improper attempt to relitigate the underlying case, which the Illinois court should not entertain, and the arguments were unpersuasive, because the procedures were satisfactory to the Croatian court and were analogous to the special forms of service that an Illinois court might authorize pursuant to section 2-203.1 of the Code. 735 ILCS 5/2-203.1 (West 2016).

¶ 13 In his reply brief, Redzic emphasized that Vinicola had not met its initial burden to prove that the purported judgment was subject to recognition under the Act, and argued in the alternative that the Illinois court should refuse to recognize a judgment which was infirm for lack of due process and personal jurisdiction.

¶ 14 After hearing oral arguments on April 27, 2017, the circuit court granted Redzic's motion and also struck a date in May 2017 which Vinicola had scheduled for presentation of its citation to discover Redzic's assets. The court's written order was a form order merely stating the motion was granted but not specifying the court's findings, and the record on appeal does not include a hearing transcript, bystander's report of the proceedings, or agreed statement of facts. Accordingly, we are unable to summarize the circuit court's ruling and specify whether the court was persuaded by Redzic's first argument that the petition was facially defective, or second argument that the petition was facially sufficient but not subject to recognition due to a lack of due process and effective service of process.

¶ 15 Vinicola filed a motion for reconsideration which the circuit court heard and denied on July 19, 2017. The written order entered that day does not specify the court's reasons and there is no verbatim transcript, bystander's report, or agreed statement of facts which summarizes what occurred in the courtroom that day.

¶ 16 On appeal, Vinicola reiterates arguments it presented in the trial court. Redzic responds,

in part, that the record is insufficient to support Vinicola's arguments that the trial court erred, and that we should resolve any doubts that arise from the absence of a hearing transcript or bystander's report against the appellant and presume that the ruling was adequately supported by the facts and the law. Vinicola counters, "The absence of a transcript or bystander's report is mitigated in this instance *** [because the ruling] was based on arguments contained in the parties' written submissions which are part of the record. (C. 38-C-58, C.68-C96.)." Vinicola proposes that we proceed with our review and address all of the arguments that made their way into the record. We find, however, that Redzic is correct.

¶ 17 As we summarized above, Redzic presented two distinct arguments in his motion to dismiss, one regarding the facial sufficiency of Vinicola's petition in Illinois, and one regarding the fairness of the procedures that were used in Croatia to obtain the judgment. Furthermore, we have identified additional concerns about Vinicola's petition which were not addressed by the parties' written submissions in the circuit court, but which may have been why the circuit court granted the dismissal. Thus, the circuit court's ruling might have been based on any or all of the following issues that were raised by Redzic: (1) Vinicola relied on a photocopy rather than an authenticated foreign country judgment, (2) Vinicola relied on a translation authored by its own attorney, rather than a disinterested, independent translator, (3) the Croatian judicial procedure of serving a social worker who had no connection to the case or interest in its outcome was unfair and did not provide procedural due process, and (4) the Croatian court did not obtain personal jurisdiction over Redzic before rendering judgment. Or the circuit court's ruling might be attributable to other facial defects that were not discussed in the parties' written submissions in the circuit court: (5) Vinicola's attorney attested only to the accuracy of his translation, and did not attest to the authenticity of the Croatian document, did not specify how the photocopied

paper came into his hands, and did not otherwise indicate he had an original judgment document which could be presented for the trial judge's consideration, (6) Vinicola's 12-page filing essentially consisted of the foreign language document and the dubious translation, and failed to include an actual petition to the Illinois court, or (7) Vinicola did file a petition which was omitted from the record on appeal, but that petition lacked allegations about Croatian law or Croatian authority indicating that the wording of the foreign order demonstrated it was a final and enforceable order which was worthy of recognition under the Act.

¶ 18 Therefore, one or all of the following might have occurred. First, the circuit court might have been persuaded by Redzic's argument that the petition itself was lacking and should be dismissed pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2016). Second, the circuit court might have shared the concerns we have noted about the face of petition, and granted the dismissal pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2016). Third, the circuit court might have found merit in Redzic's argument that even assuming the petition was facially sufficient, the procedural irregularities in Croatia warranted dismissal pursuant to section 2-619 of the Code. 735 ILCS 5/2-619 (West 2016).

¶ 19 It is not appropriate for us to guess at why the circuit court granted the dismissal, nor is appropriate for us to address any and all possible reasons that we can identify for the dismissal. As the appellant, Vinicola bore the burden of presenting a sufficiently complete record of the proceedings to support the claim of error. *Foutch v. O'Bryant,* 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). When a record is insufficient to support an appellant's claim, we may presume that the information that was omitted would support the trial court's ruling. *Foutch,* 99 Ill.2d at 391-92, 459 N.E.2d at 959; *Coleman v. Windy City Balloon Port, Ltd.,* 160 Ill. App. 3d 408, 419, 513 N.E.2d 506, 514 (1987) (when a record is incomplete, we may presume that the trial court

acted properly by entering the challenged order and that the order is supported by what was omitted from our consideration). Illinois Supreme Court Rule 323 (eff. Dec.13, 2005) *mandates* that the record on appeal contain a report of the trial court proceedings, consisting of a transcript or, if no transcript is available, a bystander's report or an agreed statement of facts. Assertions in an appellant's brief, such as the ones Vinicola has made, are not acceptable substitutes for a report of proceedings, bystander's report, or agreed statement of facts in compliance with the rule. *Teitelbaum v. Reliable Welding Co.,* 106 Ill. App. 3d 651, 661, 435 N.E.2d 852, 860 (1982).

¶ 20 When a record on appeal lacks information that is essential to our review, we are to presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law. *Webster v. Hartmann*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001), citing *Foutch*, 99 Ill. 2d at 391-92, 459 N.E.2d at 959. In light of the deficient record, we conclude that the ruling was proper and supported by the law, we reject Vinicola's appeal, and we affirm the circuit court's ruling in favor of Redzic.

¶ 21 Affirmed.