

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 0048

HOWARD JOHNSON INTERNATIONAL, INC.

VERSUS

ROBERT DUPREE

Judgment Rendered:

MAY - 8 2009

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On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 551,959

Honorable Wilson Fields, Judge Presiding

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Parro, J., concurs.

McCLENDON, J.

This is an appeal from a judgment that denied appellant's motion to annul a foreign judgment that was made executory in Louisiana. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On March 12, 2001, Howard Johnson International, Inc. (HJI) filed suit against Cupola Enterprises, LLC (Cupola) and Robert Dupree in the United States District Court for the District of New Jersey.¹ In the New Jersey action, HJI sought money damages arising out of a breach of a hotel franchise license agreement between HJI and Cupola. Mr. Dupree was a guarantor to that agreement. The claims against Cupola were stayed as a result of its bankruptcy, and the case continued against Mr. Dupree as Cupola's guarantor. A motion *in limine* filed by HJI was treated as a motion for summary judgment and granted by the court. On March 30, 2004, a final judgment was entered in favor of HJI and against Mr. Dupree in the amount of \$240,267.45. Mr. Dupree appealed the judgment, and, on November 2, 2004, the United States Third Circuit Court of Appeal affirmed the decision of the district court, finding that summary judgment was properly entered in favor of HJI. Subsequently, Mr. Dupree filed a motion for relief from judgment, pursuant to Federal Rule of Civil Procedure 60(b)(6), which was denied by order dated March 9, 2006.

On February 6, 2007, HJI instituted this matter in Louisiana by filing a Petition to Make Foreign Judgment Executory, in accordance with the Enforcement of Foreign Judgments Act, LSA-R.S. 13:4241, *et seq.* An order making the judgment executory was signed by the trial court on February 9, 2007. Thereafter, Mr. Dupree filed a Motion for Annulment of Judgment, New Trial, Stay of Enforcement of Judgment, and Exception of Lack of Personal Jurisdiction. The motion was denied on November 8, 2007, and Mr. Dupree filed a Motion for New Trial/Reconsideration, which was also denied, on July 8, 2008. Mr. Dupree now appeals, asserting that the trial court was

¹ The matter was entitled **Howard Johnson International, Inc. v. Cupola Enterprises, LLC and Robert Dupree**, Case Number 01-1205. For consistency, we will use this spelling of appellant's last name, although the record shows different spellings.

manifestly erroneous in failing to allow testimony and the presentation of evidence, in denying his motion for annulment of judgment, and in denying his motion for new trial.²

DISCUSSION

Under the United States Constitution, Article 4, Section 1, a court in Louisiana must give full faith and credit within this state to a judgment of a court in a sister state unless the court in the foreign forum lacked jurisdiction. **McMillan v. Noble**, 538 So.2d 714, 716 (La.App. 4 Cir.), writ denied, 543 So.2d 19 (La. 1989), cert. denied, 493 U.S. 992, 110 S.Ct. 540, 107 L.Ed.2d 538 (1989) (citing **Milliken v. Meyer**, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940), and **Swain v. Swain**, 339 So.2d 453 (La.App. 1 Cir. 1976)). This rule is so well established that in a suit for the recognition of a foreign judgment, the only issue in the foreign proceeding which a Louisiana court may review is the question of the foreign court's jurisdiction over the parties. **McMillan**, 538 So.2d at 716. There is a general presumption that a judgment of a sister state is valid, and the burden of undermining such a judgment rests heavily upon the party attacking the judgment to show by clear and positive proof that the rendering court lacked jurisdiction. **McMillan**, 538 So.2d at 717.

Further, a court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. **Stobart v. State, Dep't of Transp. and Dev.**, 617 So.2d 880, 882 n.2 (La. 1993).

In his appeal, Mr. Dupree asserts that the New Jersey district court lacked personal jurisdiction over him to render judgment against him. Mr. Dupree contends that he has never been allowed to fully litigate this issue. Mr. Dupree also alleges that the signature on the guaranty is not his and that he was not allowed to offer expert testimony or his own affidavit to prove this issue. Alternatively, Mr. Dupree argues that the foreign judgment was obtained by fraud or ill practice because he was never given the opportunity to prove a lack of jurisdiction.

² Mr. Dupree's petition for appeal states that he desires to appeal devolutively from the July 8, 2008 judgment denying his motion for new trial. Although the appeal of the denial of a motion for new trial is interlocutory and non-appealable, the Louisiana Supreme Court has instructed us to consider an appeal of the denial of a motion for new trial as an appeal of the judgment on the merits, when it is clear from appellant's brief that the appeal was intended to be on the merits. **Carpenter v. Hannan**, 01-0467, p. 4 (La.App. 1 Cir. 3/28/02), 818 So.2d 226, 228-29, writ denied, 02-1707 (La. 10/25/02), 827 So.2d 1153.

Conversely, HJI contends that the Louisiana trial court in this case was not manifestly erroneous in denying the motions filed by Mr. Dupree. HJI asserts that the trial court considered the entire record, including the fact that in the New Jersey matter, Mr. Dupree admitted in his answer, counter-claim, and own affidavit that he signed the guaranty. Thus, according to HJI, the trial court simply rejected Mr. Dupree's argument that he did not sign the guaranty, and there was a reasonable basis for the trial court's decision, which was not clearly wrong.

It is apparent that Mr. Dupree wants a retrial of the New Jersey action in Louisiana. However, the trial court's inquiry was correctly limited to whether the New Jersey federal district court had jurisdiction over the parties. Upon a thorough review of the record, we find no error by the trial court in denying Mr. Dupree's motion to annul, and we affirm the judgment in accordance with Uniform Court of Appeal Rule 2-16.1B.

CONCLUSION

The judgment of the trial court is affirmed. All costs of this appeal are assessed to Robert Dupree.

AFFIRMED.