

G.F.A. Advanced Sys. Ltd. v Local Ocean LLC

2013 NY Slip Op 31376(U)

June 24, 2013

Supreme Court, New York County

Docket Number: 104522-12

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 104522/2012
G.F.A. ADVANCED SYSTEMS LTD.
vs.
LOCAL OCEAN LLC.
SEQUENCE NUMBER : 002
LEAVE TO INTERVENE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	■ No(s). <u>1, 2, 3</u>
Answering Affidavits — Exhibits _____	■ No(s). <u>4, 5, 6, 7, 8</u>
Replying Affidavits _____	■ No(s). <u>9, 10</u>

Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION

FILED

JUN 28 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/24/13


_____, J.S.C.
HON. EILEEN A. RAKOWER

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
G.F.A. ADVANCED SYSTEMS LTD. and
G.F.A. ADVANCED SYSTEMS INC.,

Plaintiffs,

Index No. 104522-12

- against -

DECISION

Mot. Seq. 01, 2

LOCAL OCEAN LLC, LOCAL OCEAN HOLDINGS
LLC, LOCAL OCEAN GFA NY, LLC, SANIT CORP.,
SANIT DISTRIBUTION, SANIT LLC, THE SANIT
GROUP INC. AND EFRAIM BASSON,

Defendants.
-----X

FILED

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COUNTY CLERK'S OFFICE
NEW YORK

HON. EILEEN A. RAKOWER

This is an action pursuant to CPLR §3213 and 5303 to domesticate a foreign country judgment obtained by plaintiffs G.F.A. Advanced Systems Ltd. ("GFA") and G.F.A Advanced Systems Inc. ("GFA Inc.") (collectively, "GFA" or "Plaintiffs") in Israel against the named defendants ("the Israel Judgment"). Plaintiffs now move for summary judgment in lieu of complaint to domesticate the Israel Judgment. The named defendants in this action do not oppose.

In support of their motion, Plaintiffs submit the Affirmation of Rachel Sims, Affidavit of Ayal Klinemintz, counsel of record for Plaintiffs in the action brought in Israel, and the Supplemental Affirmation of Rachel Sims.

As set forth in Klinemintz's affidavit, on or about May 14, 2011, Plaintiffs filed a lawsuit in the Tel Aviv District court against defendants Sanit Group ("Sanit") and Efraim Basson ("Basson") based on an alleged breach of a joint venture agreement with GFA in connection with Local Ocean, LLC ("LO"), which operates a fish farm

in the vicinity of Greenport, New York (the "Hudson Farm"). Basson and Sanit filed statements of defense to Plaintiffs' action. Defendants Sanit and Basson, jointly with defendants LO, Local Ocean Holdings LLC, Local Ocean GFA NY LLC, Sanit Corp., Sanit Distribution and Sanit LLC, also filed a claim against Plaintiffs with the Tel Aviv District Court. The proceedings were brought before the Honorable Judge Yizkah Inbar in the Tel Aviv District Court, who combined the hearings of all the legal proceedings in one action ("the Israel Action").

The Israel Action was settled by the parties on May 20, 2012, and the Tel Aviv District Court issued a judgment by way of settlement in the Israel Action in June 2012 ("the Israel Judgment"). Attached to Klinemintz's affidavit is a copy of the Issuance of a Judgment by way of Settlement, executed on May 20, 2012, among the parties, and the a certified copy of the Israel Judgment. Pursuant to the Israeli Judgment, GFA will receive financial compensation in the amount of \$4 million to be paid in several interest bearing installments and to be secured by a pledge over 49% of holdings in the entity that holds and operates the Hudson Farm, and a Deed of Securities and Undertakings submitted to the Israel Court on June 19, 2012.

CPLR §3213 states, in relevant portion:

When 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. The summons served with such motion papers shall require the defendant to submit answering papers on the motion within the time provided in the notice of motion . . .

CPLR §3213 is an instrument that may be used to enforce foreign judgments. (see generally; *Schultz v. Barrows*, 94 NY2d 624[2000]). "The courts of this State will generally accord recognition to bilateral foreign judgments of divorce, including the terms and provisions of any agreements incorporated therein, under the doctrine of comity." *Tal v. Tal*, 158 Misc. 2d 703 (Sup. Ct. 1993) (citations omitted). "Absent some showing of fraud in the procurement of the foreign country judgment or that recognition of the judgment would do violence to some strong public policy of this State, a party who properly appeared in the action is precluded from attacking the validity of a foreign country judgment in a collateral proceeding brought in the courts of this State." (*Id.*)(internal citations omitted).

Plaintiffs contend that the Israel Judgment complies with CPLR §5303, that none of the grounds for non-recognition listed in CPLR §5304 apply here, and the Israel Judgment should therefore be recognized by this Court pursuant to CPLR §5302. Plaintiff states that no application to set aside the Judgment has been brought to date, and such judgment is enforceable in Israel and was not obtained by default.

While the named defendants in this action do not oppose Plaintiffs' motion, Three60, LLC ("Three60"), moves pursuant to (a) CPLR §1012 and 1013 to intervene as an additional defendant in this matter and to oppose Plaintiffs' motion and (2) pursuant to CPLR §602 to consolidate this action with *Three60, LLC v. Local Ocean Holdings, LLC, Sanit Corp., Local Ocean LLC, and Local Ocean GFA, NY, LLC*, Index No. 652188/2012 ("Three60 Action"), currently pending in the Supreme Court of the State of New York, County of New York, Commercial Division before the Honorable Barbara R. Kapnick. In the Three60 Action, Three60, among other claims, seeks to enforce certain contractual obligations, including an anti-dilution provision that Three60 contends was violated by the Israel Judgment.

Three60 submits the supporting affirmation of Lani A. Adler.

Three60 seeks to intervene on the basis that it has property rights that will be affected by enforcement of the Israel Judgment because the Judgment requires Defendants to pledge equity in violation of an anti-dilution provision of Three60's agreement with Defendants.

Three60 contends that the Israel Judgment was obtained by fraud when Defendants misrepresented to the Tel Aviv District Court that their settlement agreement did not violate or conflict with any contract when in fact Three60 maintains that it breached the LOH Subscription Agreement which provided that the settlement would "not dilute or in any way diminish or affect the value of the Class A Units."

Three60 also contends that GFA's action and its Action should be consolidated because they share common questions of law and fact.

Three60, a member of defendant Local Ocean Holdings, LLC, initiated the Three60Action in June 2012, and filed an amended Complaint on December 18, 2012, against Defendants.

GFA, Defendants, and LOH oppose Three60's motion to intervene.

CPLR §1012 provides upon timely motion, intervention as of right “when a statute of the state confers an absolute right to intervene,” or “when the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment,” or “when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.”

CPLR §1013 provides that upon timely motion, intervention by permission “when a statute of the state confers a right to intervene in the discretion of the court, or when the person’s claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.”

Here, in light of the fact that all of the parties to the Israel Action consented to the settlement before the Israel court and the Israel Judgment entered thereto and that Three60 has already commenced a separate action to recover damages for dilution of its shares as a result of the Israel Judgment, and that intervention will unduly delay the determination of this action and prejudice the substantial rights of the parties in this action, Three60's motion to intervene and oppose Plaintiffs’ summary judgment is denied.

Wherefore, it is hereby

ORDERED that plaintiffs’ motion to domesticate the Judgment entered by the District Court of Tel Aviv-Yaffo, Israel, on June 13, 2012 in favor of Plaintiffs and against Defendants is granted without opposition; and it is further

ORDERED that the Judgment entered by the District Court in Tel Aviv-Yaffo, Israel, on June 13, 2012 in favor of Plaintiffs and against Defendants is entitled to full faith and recognition and entry as a judgment in New York; and it is further

ORDERED that the Clerk enter judgment in favor of Plaintiffs G.F.A. Advanced Systems Ltd. and G.F.A. Advanced Systems Inc. and against defendants

Local Ocean LLC, Local Ocean Holdings LLC, Local Ocean GFA NY LLC, Sanit Group, Sanit Distribution, Sanit LLC, The Sanit Group, and Efraim Basson in the amount of \$4,000,000 (U.S. dollars), together with interest as prayed for allowable by law (at the rate of 9% per annum) until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that Three60's motion to intervene is denied in its entirety.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: 6/24/13


EILEEN A. RAKOWER, J.S.C.

FILED
JUN 28 2013
COUNTY CLERK'S OFFICE
NEW YORK