

<b>Smart Union Min. Invs. v Tang Xue Jin</b>
2014 NY Slip Op 33776(U)
May 2, 2014
Supreme Court, Queens County
Docket Number: 703421/2013
Judge: Marguerite A. Grays
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ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

FILED  
MAY 27 2014  
COUNTY CLERK  
QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS IA Part 4  
Justice

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SMART UNION MINING INVESTMENTS

Index  
Number 703421 2013

Plaintiff(s)

Motion  
Date November 18, 2013

-against-

Motion  
Cal. Number 136

TANG XUE JIN.

Motion Seq. No. 1

Defendant(s)

\_\_\_\_\_  
X

The following papers numbered 1 to 9 read on this motion by plaintiff Smart Union Mining Investments Limited (In Liquidation) (Smart Mining) for an order pursuant to CPLR 3213 granting summary judgment in its favor upon the grounds that plaintiff is entitled to recognition and enforcement of a foreign judgment pursuant to CPLR 5303 and 3213; and on the cross motion by defendant pursuant to CPLR 3213 dismissing the action.

	Papers <u>Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-4
Notice of Cross Motion - Affidavits - Exhibits.....	5
Answering Affidavits - Exhibits.....	6
Reply Affidavits.....	7-9

Upon the foregoing papers it is ordered that this motion and cross motion are determined as follows:

Plaintiff brought this motion for summary judgment in lieu of complaint to enforce a foreign money judgment obtained in Hong Kong. The plaintiff seeks entry of judgment against the defendant in an amount not less than \$9,357,495.50.

The Judgment arises out of a contract dated October 17, 2007 between Smart Union (then known by its prior name Queen Glory Limited) and the defendant for the sale of a 45.51% interest in China Mining Corporation. The plaintiff commenced an action for breach of contract. On November 29, 2011, plaintiff obtained leave to serve sealed copies of the Concurrent Writ of Summons by mailing it to Defendant at his Hong Kong and Elmhurst, New York addresses, by publishing notice in newspapers in Hong Kong, the People's Republic of China and New York. The plaintiff allegedly effectuated service pursuant to the order. After the defendant defaulted, plaintiff applied for the Judgment by filing a proposed judgment on March 21, 2012. On April 25, 2012, the High Court of the Hong Kong Special Administrative Region issued the judgment, which ordered the defendant to pay plaintiff damages in the sum of HKD72,295,000 (and interest until payment) and pay plaintiff's costs, which were assessed at HKD300,000 for a total monetary judgment of HKD72,595,000.<sup>1</sup> The plaintiff has now moved to enforce the judgment. The defendant has opposed the motion and has cross moved to dismiss the action.

Here, the affidavit the plaintiff submitted in support of the motion by John Robert Leeš, was notarized in Hong Kong, but did not contain a certificate of conformity (CPLR 2309; *see Freedom Mortg. Corp. v Toro*, 113 AD3d 815 [2014]). However, this is not a fatal error and the motion will be denied without prejudice to renewal (*see Fredette v Town of Southampton*, 95 AD3d 940 [2012]). Additionally, while the plaintiff submitted a stamped copy of the judgment, it did not submit a certified copy of the Hong Kong judgment (*see Shaw v Krebs*, 85 AD2d 913 [1981]).

As to the cross motion, the defendant alleges that he did not receive notice of the action in Hong Kong and that the motion should be denied and the action dismissed under CPLR 5304(b). In support, the defendant submitted an affidavit in Chinese and translation from Chinese to English. CPLR 2101(b) requires that an affidavit not in English must be accompanied by a translator's affidavit stating his or her qualifications and that the translation is accurate (*Reyes v Arco Wentworth Mgt. Corp.*, 83 AD3d 47 [2011]). Here, the affidavit of the translator did not set forth her qualifications and therefore is not in conformance with CPLR 2102(b).

Accordingly, both the motion and cross motion are denied without prejudice and with leave to renew upon submission of proper papers.

Dated: **MAY 02 2014**

  
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J.S.C.

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The moving papers annex (exhibit K) a copy of the Wall Street Journal Exchange Rate for April 25, 2012, which indicates the U.S. Dollar foreign exchange rate for the Hong Kong dollar on said date was \$0.1289. Plaintiff thus avers that the HKD 72,595,000 judgment was in equivalent to \$9,357,495.50 in U.S. currency.