

**Ocean Field Enters. Ltd. v Linray Ltd.**

2015 NY Slip Op 32306(U)

December 7, 2015

Supreme Court, New York County

Docket Number: 652559/2015

Judge: Eileen A. Rakower

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

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OCEAN FIELD ENTERPRISES LIMITED,

Plaintiff,

Index No.  
652559/2015

- against -

**DECISION  
and ORDER**

Mot. Seq. 01

LINRAY LIMITED,

Defendant.

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

Plaintiff, Ocean Field Enterprises Limited (“Plaintiff” or “Ocean Field”), moves for summary judgment in lieu of the complaint pursuant to CPLR §3213 and 5303, granting plaintiff summary judgment to domesticate and enforce in New York a judgment issued by the High Court of the Hong Kong Special Administrative Region, Court of First Instance, in favor of Plaintiff and against defendant, Linray Limited (“Limited” or “Defendant”) in the amount of US \$4,300,000.00, with an interest of 15% per annum from March 10, 2012 through the date of payment, as well as HK \$11,045 of fixed costs.

Plaintiff submits the affidavit of Chan Kit Yin, a solicitor admitted to practice law in Hong Kong and a partner in the law firm Tony Kan & Co., Solicitors & Notaries, which has acted as solicitors for Plaintiff in a lawsuit brought against Defendant in 2015 before the High Court of the Hong Kong Special Administrative Region, Court of First Instance, entitled High Court Action No. 817 of 2015 (the “Hong Kong Action”).

As set forth in Yin’s affidavit, Ocean Field is an entity incorporated in the Hong Kong Special Administrative Region of the People's Republic of China. Linray is an entity incorporated in the British Virgin Islands, with a registered address at Trinity Chambers, PO Box 4301, Road Town, Tortola, British Virgin Islands.

As set forth in Yin's affidavit, in the Hong Kong Action, Ocean Field sought to recover the amount due under a promissory note, dated March 10, 2012 (the "Promissory Note"), pursuant to which Linray unconditionally promised to repay the sum of US \$4,300,000 by March 9, 2015, as well as interest at the rate of 15% per annum from March 10, 2012 to the actual date of repayment. Attached to Yin's affidavit is a copy of the Promissory Note.

The Promissory Note provides that it "shall be governed by the laws of the Hong Kong Special Administrative Region", and that "[i]n case of dispute, this is subjected to the law of the Hong Kong Special Administrative Region, which can be solved by bringing suit to the court of the Hong Kong Special Administrative Region." Yin avers that under Hong Kong Law, this provision of the Promissory Note "constitutes their consent to resolve any disputes arising under the Promissory Note before the Hong Kong courts, and to submit to the jurisdiction of such courts with respect to any such dispute, including the High Court of Hong Kong Special Administrative Region, Court of First Instance, which has general jurisdiction over all civil matters."

Upon Linray's default and failure to pay the amount due under the Promissory Note when it became due, Ocean Field commenced proceedings against Linray before the High Court of Hong Kong Special Administrative Region, Court of First Instance. Yin avers:

The Hong Kong Basic Law provides the constitutional framework of the legal system in Hong Kong. Under its legal framework, Hong King is a common law jurisdiction that was modeled upon the English common law system. The Hong Kong judiciary is independent and dispenses justice in an impartial and unbiased manner. Under Hong Kong law, litigants in an adversarial proceedings are entitled to notice and a fair opportunity to be heard . . . The guarantees of due process and impartiality under Hong Kong law have not changed following the transfer of sovereignty over Hong Kong from the United Kingdom to China. Under the Hong Kong law, the High Court also known as the Court of First Instance, is a court of general jurisdiction that has authority to hear any type of civil disputes without regard to subject matter, the amount in dispute or the nature of the relief sought. Appeals from the judgments of the Court of First Instance may be taken to the Court of Appeal within the prescribed time . . .

Yin avers that in accordance with the Rules of High Court, on April 16, 2015, the Registrar of the High Court issued a sealed copy of the writ of summons to be served by Yin's law firm on Linray. On April 22, 2015, the Writ of Summons was served on Lee Chan Cheng, who had been appointed by Linray to represent it in connection with the action commenced by Ocean Field before the High Court. Linray, acting through its solicitor, returned to the Court the Acknowledgment of Service containing a statement to the effect that it did not intend to contest the Hong Kong Action.

On May 12, 2015, the High Court issued a default judgment against Linray, ordering it to pay Ocean Field US \$4,300,000, plus interest at the rate of 15% per annum from March 10, 2012 through the date of payment, plus court costs (the "Hong Kong Judgment"). On or about May 12, 2015, Yin's law firm served a copy of the Hong Kong Judgment on Linray, and demanded full payment in accordance with the terms of the Hong Kong Judgment. Yin avers, "Despite having received notice of the Hong Kong Judgment, upon information and belief, Linray has not (i) satisfied any portion of the outstanding sums the High Court ordered it to pay Ocean Field; and (ii) applied to the High Court to set aside the Hong Kong Judgment up to the present."

Yin avers that Judgment "was issued in accordance with the laws and procedures of Hong Kong," "was not obtained by fraud", "does not conflict with any other final and conclusive judgment between Ocean Field and Linray," "is final and conclusive, and has immediate legal effect in Hong Kong."

As averred to by Yin, Ocean Field now seeks to enforce the Hong Kong Judgment in New York because it believes that Linray has assets in the jurisdiction.

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]). Article 53

“applies to any foreign country judgment which is final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.” CPLR § 5302. “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, 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).

Wherefore, it is hereby

ORDERED that plaintiff’s motion for summary judgment in lieu of complaint is granted without opposition; and it is further

ORDERED that the Judgment issued by the High Court of the Hong Kong Special Administrative Region, Court of First Instance, in favor of Plaintiff and against Defendant 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 plaintiff, Ocean Field Enterprises Limited, and against, defendant, Linray Limited, in the amount of US \$4,300,000.00, together with interest of 15% per annum from March 10, 2012 through the date of payment, until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with HK \$11,045.00 of fixed costs and costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs

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

DATED: 12/7/15

DEC 07 2015



EILEEN A. RAKOWER, J.S.C.