

<b>Batbrothers LLC v Golden E. Mongolia LLC</b>
2016 NY Slip Op 31069(U)
June 8, 2016
Supreme Court, New York County
Docket Number: 161364/2015
Judge: Barry R. Ostrager
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 61

\_\_\_\_\_  
BATBROTHERS LLC,

Plaintiff,

-against-

GOLDEN EAST MONGOLIA LLC  
GOLDEN EAST SIBERIA LLC,

Defendants.

Index No. 161364/2015  
DECISION & ORDER  
Motion Seq. No. 002

\_\_\_\_\_  
OSTRAGER, J:

Plaintiff's motion for leave to serve process on defendants Golden East Mongolia, LLC (GEM) and Golden East Siberia, LLC (GES) by alternate means is denied without prejudice to renewal. This is an action by plaintiff pursuant to Article 53 of the CPLR to enforce a foreign country money judgment entered in the Moscow City Court of Arbitration on July 3, 2012, in favor of plaintiff's purported assignor Gazprombank against: (1) defendants GEM and GES jointly and severally in the amount of \$25,030,650.18; (2) defendant GEM in the amount of \$22,679,398.15 in default interest; (3) defendant GEM in the amount of 200,000 Russian rubles for court fees; and (4) defendant GES in the amount of 200,000 Russian rubles for court fees.

Previously, plaintiff moved to extend the time to serve process. By decision dated March 24, 2016, the Court granted the motion with instructions to support any further application with a detailed affidavit based on personal knowledge as to the efforts made to locate a valid address so as to effectuate proper service on the defendants. The

Court further instructed that absent such an affidavit, any future motion would be denied as deficient. Plaintiff now moves for permission to serve defendants by alternate means. Specifically, Plaintiff requests an order authorizing service by personally delivering the summons and complaint to the addresses in Mongolia and Russia where plaintiff believes the defendant corporations, respectively, to be headquartered.

Pursuant to CPLR § 311-a, subdivision (a), personal service on a foreign limited liability company like the defendants in this case shall be made by delivering a copy personally to:

(i) any member of the limited liability company in the state, if the management of the limited liability company is vested in its members; (ii) any manager of the limited liability company in the state, if the management of the limited liability company is vested in one or more managers; (iii) to any other agent authorized by appointment to receive process; or (iv) to any other person designated by the limited liability company to receive process, in the manner provided by law for service of a summons as if such person was a defendant.

Plaintiff correctly notes that service under CPLR § 311-a, subdivision (a) cannot be accomplished because Mongolia, where plaintiff believes GEM to be located, is not a signatory to the Hague convention, and Russia, where plaintiff believes GES to be located, has ceased cooperation with the United States under the Hague Convention. However, the Court has discretion to allow alternative means for service of process. CPLR § 311-a, subdivision (b), provides that, "if service is impracticable under subdivision (a) of this section, it may be made in such manner as the court, upon motion without notice, directs."

Passing the issue of whether these foreign judgments could be recognized, the question before the Court is whether the addresses provided by plaintiff for service of the pleadings on defendants are reasonably calculated to notify defendants of the pending action. Despite the instructions in the prior order, plaintiff failed to submit an affidavit on personal knowledge demonstrating efforts to locate a valid address to effectuate service. Plaintiff offers only a memorandum of law from counsel stating in wholly conclusory fashion, presumably upon information and belief, where plaintiff believes defendants are headquartered. The Court, by its own efforts, found reference to an address for Defendant GEM in the Loan Agreement dated February 22, 2006, attached to plaintiff's complaint as Exhibit 1. However, plaintiff has not demonstrated that the address noted there remains defendant GEM's current address. Additionally, there is no reference whatsoever to any address for Defendant GES anywhere in any of the documents produced by the plaintiff.

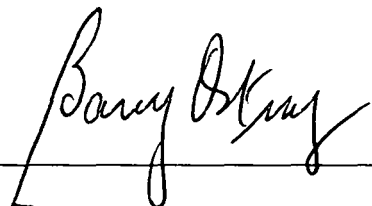
Under these circumstances, the Court denies plaintiff's motion for alternative means of service without prejudice. Plaintiff has a duty to conduct an appropriate investigation and come forward with adequate evidence demonstrating the following: (1) valid addresses of both defendant GEM and defendant GES; (2) that both defendant GEM and defendant GES are still viable entities against whom judgment can be entered in this State; and (3) documentation of the assignment agreement between plaintiff and the non-party assignor so as to establish plaintiff's standing to attempt to enforce the foreign judgment.

Accordingly, it is hereby

ORDERED that plaintiff's motion for leave to serve defendants by alternate means is denied without prejudice to renewal. Plaintiff shall have 30 days to renew this motion in compliance with this order. Failure to do so will result in a dismissal of this action without prejudice. A control date of September 7, 2016 at 9:30 is set for that purpose.

This constitutes the decision and order of this Court.

Dated: June 8, 2016

  
\_\_\_\_\_  
J.S.C.  
**BARRY R. OSTRAGER**  
JSC