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| <b>Really Useful Group Ltd. v Option Clause<br/>Entertainment LLC</b>                                                                                                                                                                                                |
| 2016 NY Slip Op 31212(U)                                                                                                                                                                                                                                             |
| June 23, 2016                                                                                                                                                                                                                                                        |
| Supreme Court, New York County                                                                                                                                                                                                                                       |
| Docket Number: 650843/2016                                                                                                                                                                                                                                           |
| Judge: Eileen Bransten                                                                                                                                                                                                                                               |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART THREE

-----X  
THE REALLY USEFUL GROUP LIMITED,

Plaintiff,

-against-

OPTION CLAUSE ENTERTAINMENT LLC,

Defendants,

-----X

Index No. 650843/2016  
Motion Date: 6/10/2016  
Motion Seq. No. 1

**BRANSTEN, J.**

This is an unopposed action by Plaintiff, The Really Useful Group Limited (“RUG”), to enforce an English final judgment against Defendant, Option Clause Entertainment LLC (“OCE”). Plaintiff brings this motion pursuant to CPLR § 3213 and Article 53 for summary judgment in lieu of complaint, seeking recognition and enforcement of a judgment and order entered by the Queen’s Bench Division of the High Court of Justice of England and Wales (the “English High Court”). For the reasons that follow, RUG’s motion for summary judgment in lieu of complaint is granted.

**I. Background**

This dispute originates from an agreement the parties entered into in 2014 to put on a North American arena tour of the musical production *Jesus Christ Superstar* (the “Tour”). The parties entered into a promoter agreement whereby RUG agreed to produce and OCE agreed to promote the Tour (the “Agreement”). (See Affidavit of Keith Michael Ashby (“Ashby Aff.”), Ex. E.)

The Agreement provides, in relevant part:

The validity, interpretation, construction and enforcement of this Agreement shall be governed and controlled by the laws of England, **and the parties submit to the exclusive jurisdiction of the courts of England and Wales.** (emphasis added)

*Id.* at ¶ 14.5. Pursuant to the Agreement, RUG and OCE were to split profits from the Tour, and OCE would advance payments to RUG and reimburse RUG for its production costs. (See Ashby Aff. ¶ 4.) Ten days before the Tour was scheduled to open, after RUG had already incurred significant production costs, OCE cancelled the tour. (See Ashby Aff. ¶ 5.)

In July 2014, following the cancellation, RUG brought an action against OCE in the English High Court for monetary damages for breaching the Agreement (the “English Proceedings”). (See Ashby Aff. ¶ 6.) OCE did not contest jurisdiction, but, rather, accepted service of process and appeared in the English Proceedings. (See Ashby Aff. ¶ 7.) During the litigation, OCE raised defenses, participated in discovery, and submitted witness statements for trial. (See Ashby Aff. ¶ 9.)

OCE was represented by counsel throughout the proceedings, until November 25, 2015, when OCE served a Notice of Change of Solicitor with the English High Court. (See Ashby Aff. ¶ 10.) Though OCE initially indicated that it would appear *pro se* for the trial, set to begin on December 9, 2015, OCE recanted, and notified the Court that it would not be appearing at all. (See Ashby Aff. ¶¶ 10-11.)

Thereafter, the English High Court held the trial without OCE present, made detailed findings, and entered judgment in favor of RUG. (See Ashby Aff. ¶¶ 12-14; Ex.

D (the “Judgment”).) In the Judgment, OCE was ordered to pay RUG: \$1,919,527 in money damages, fees and costs by December 23, 2015; \$100,000 for the indemnification of unsettled claims brought by third parties against RUG based on OCE’s cancellation of the tour; and £175,000 in costs, £75,000 in “additional costs,” and £200 under the Late Payment of Commercial Debts Act 1998. (See Ashby Aff. Ex. D.)

## **II. Discussion**

Here, RUG seeks recognition and enforcement of the Judgment under CPLR Article 53, which provides for the recognition of foreign judgments. Pursuant to CPLR § 5304, a foreign judgment is enforceable by a motion for summary judgment in lieu of complaint.

### **A. Standard for Summary Judgment in Lieu of Complaint**

“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.” CPLR § 3213. The purpose of the rule is “to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless.” *Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarra*, 25 N.Y.3d 485, 491-91 (2015) (citing *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 443 (1996)).

## **B. Recognition of Foreign Judgments Under Article 53**

Under CPLR § 5303, foreign judgment that is “final, conclusive and enforceable where rendered” (as is required by CPLR § 5202<sup>1</sup>) is “enforceable by an action on the judgment, a motion for *summary judgment in lieu of complaint*, or in a pending action by counterclaim, cross-claim or affirmative defense.” CPLR § 5303 (emphasis added). Thus, a motion for summary judgment in lieu of complaint is an appropriate procedure for domesticating a foreign judgment in the state of New York. *Id.*

### *i. Final and Conclusive Judgment*

“Except as provided in § 5304, a foreign country judgment meeting the requirements of § 5302 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money...” CPLR § 5303; *see also Biel v. Boehm*, 94 Misc.2d 946 (N.Y. Sup. Ct. 1978) (explaining that New York courts will recognize such judgments). Here, the decision of the English High Court should be deemed a final and conclusive judgment because it orders OCE to pay a sum of money to RUG at the conclusion of the English Proceedings. (*See Ashby Aff.* ¶ 17.) After the English High Court entered the Judgment, OCE did not appeal the decision, and the time for appeal has now expired, rendering the Judgment final. *Id.*

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<sup>1</sup> Section 5302 provides: “This article 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.

ii. *Due Process and Personal Jurisdiction*

In New York, a foreign judgment will not be considered conclusive if: 1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law; or 2) the foreign court did not have personal jurisdiction over the subject matter. CPLR § 5304(a)(1)–(2). As a general rule, if a foreign judgment was rendered in a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law, courts are precluded from recognizing the foreign judgment as a matter of law. *See, e.g., S.C. Chimexim S.A. v. Velco Enterprises Ltd.*, 36 F.Supp.2d 206 (S.D.N.Y 1999) (recognizing the judgment of an impartial foreign tribunal).

In this case, Plaintiff RUG maintains that OCE was afforded due process in the English Proceedings. RUG notes that OCE was represented by competent counsel, who assisted OCE in all the proceedings leading up to trial. (*See Ashby Aff.* ¶ 10.) Thereafter, Justice Singh of the English High Court asked OCE to confirm its decision not to appear at the trial, and OCE confirmed. (*See Ashby Aff.* ¶¶ 10–11.) Although OCE did not appear, the English High Court allowed the case to proceed pursuant to the English Civil Procedure Rules Practice Direction 39A ¶ 2.2, which allows a court to proceed with a trial where only one party is present. (*See Ashby Aff.* ¶ 12.)

In OCE's absence, RUG was allowed to prove its claim at trial and obtain judgment on its claim and for costs. (*See Ashby Aff.* ¶ 12.) After considering the merits of the case and examining the arguments raised by RUG, the English High Court entered

judgment along with a full explanation of its decision in RUG's favor. (*See Ashby Aff.* ¶ 12; Ex. D.) In light of these facts, it is clear that the English High Court afforded OCE due process throughout the proceedings.

In addition to lack of due process, New York courts may also refuse recognition of a foreign judgment where the foreign court lacked personal jurisdiction over the defendant. CPLR § 5304(a)(2). RUG argues that the English High Court had jurisdiction over OCE, relying on CPLR § 5305(a)(2), which provides that New York courts will not refuse to recognize a foreign judgment for lack of personal jurisdiction where the defendant voluntarily appeared for the proceedings. CPLR § 5305(a)(2). RUG's argument is based on the following facts.

First, when the two parties entered into the Tour agreement, they agreed that English law would govern the Agreement and that the parties would settle any claims in the courts of England and Wales. (*See Ashby Aff.* Ex. F at 1.) Second, over the course of the English Proceedings, OCE never objected to the English High Court's exercise of jurisdiction. Further, until OCE notified the Court it would not attend the trial, OCE through its attorneys, contested the case on its merits. (*See Ashby Aff.* ¶¶ 6–9.) Accordingly, the English High Court's exercise of personal jurisdiction over OCE was proper.

Finally, after examining the additional, discretionary bases for non-recognition of a foreign judgment, found in CPLR § 5304(b)(1)–(8), this Court concludes that none

apply. Thus, summary judgment is properly granted, and the Judgement of the English High Court is hereby recognized and enforceable in the State of New York under CPLR § 5303.

### **III. Conclusion**

For the foregoing reasons, it is

ORDERED that Plaintiff's unopposed motion for summary judgment in lieu of complaint is granted and the Clerk is directed to enter judgment accordingly.

Dated: New York, New York

June 23, 2016

**ENTER**

  
Hon. Eileen Bransten, J.S.C.