

**Korea Resolution & Collection Corp. v Hyuk Kee
Yoo**

2017 NY Slip Op 32298(U)

October 30, 2017

Supreme Court, New York County

Docket Number: 156487/2015

Judge: Manuel J. Mendez

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

KOREA RESOLUTION AND COLLECTION CORPORATION,

Plaintiff,

-against-

HYUK KEE YOO & SANG NA YOO,

Defendants.

INDEX NO. 156487/2015
MOTION DATE 10/18/2017
MOTION SEQ. NO. 006
MOTION CAL. NO. _____

The following papers, numbered 1 to 6 were read on this motion to confirm the report of the special referee:

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 4</u>
Answering Affidavits — Exhibits _____	<u>5</u>
Replying Affidavits _____	<u>6</u>

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered that plaintiff’s motion to confirm Referee Report and Recommendation of Judicial Hearing Officer Ira Gammerman filed on the June 29, 2017 (NYSEF Docket No. 128), is granted. Defendants’ motion filed under Motion Sequence 007, seeking an Order pursuant to CPLR §3211[a][7], dismissing this action, is denied.

Korea Resolution and Collection Corporation (hereinafter referred to as “KRCC” or “plaintiff”), is a subsidiary of the Korean Deposit Insurance Corporation (hereinafter referred to as “KDIC”) and the successor-in-interest to Resolution & Finance Corporation (hereinafter referred to as “RFC”), and alleges that the Korean Court granted a judgment plus interest against B.E. Yoo and five other defendants, who were held jointly and severally liable for their failure to repay a loan obtained from Shinsegae Bank. The judgment became final and conclusive as of November 22, 2002. Shinsegae Bank declared bankruptcy prior to the judgment, KDIC acted as trustee of Shinsegae’s bankruptcy estate, and RFC assumed the Shinsegae claim held by KDIC by a Deed of Claim Transfer dated May 17, 2004.

B.E. Yoo died intestate in July of 2014, and by the function of Korea’s intestacy inheritance law all of B.E. Yoo’s assets and liabilities were deemed vested to his statutory heirs. As of the date of B.E. Yoo’s death the judgment remained unsatisfied, and three remaining heirs - Defendants Hyuk Kee Yoo (“H.K. Yoo”) and Sang Na Yoo (“S.N. Yoo”), and non-party Somena Yoo who failed to either renounce or qualify their inheritance within the statutory three month period of B.E. Yoo’s death, are deemed responsible for the debt, as successors to B.E. Yoo under applicable Korean law, for a one-third share of B.E. Yoo’s liabilities.

On January 20, 2015 the Korean Court issued a confirmation that the judgment was enforceable against the defendants, and on April 7, 2015, the Korean Busan District Court issued an “Execution Clause” certification confirming that the judgment could be executed against the Defendants to satisfy one-third of the judgment, making each Defendant liable for \$4,463,497.00 (U.S.) under the exchange rate as of June 29, 2015 (Mot. Exh. D).

Plaintiff under Motion Sequence 002, sought summary judgment in lieu of complaint for recognition of a foreign judgment rendered by the Busan District Court of the Republic of Korea (hereinafter referred to as "the Korean Court") on October 8, 2002 (hereinafter referred to as "the judgment"), and upon recognition of the judgment, to impose liability on the Defendants (residents of New York), enabling Plaintiff to collect \$4,464,497.00 from each of the Defendants, plus interest.

The November 29, 2016 Decision and Order of this Court filed under Motion Sequence 002, granted plaintiff's motion and referred the issue of the amount due from the defendants on the judgment, less any payments received by plaintiff, plus the amount of interest accrued since the last payment was received, to a special referee to hear and report (Mot. Exh. B, NYSCEF Docket No. 120). On June 8, 2017 the parties appeared before the Judicial Hearing Officer Ira Gammerman for the hearing directed under Motion Sequence 002.

Plaintiff's motion seeks to confirm the Referee Report and Recommendation of Judicial Hearing Officer (JHO) Ira Gammerman filed on June 29, 2017 (NYSCEF Docket No. 128).

Defendants produced no witnesses at the hearing and attempted to raise two issues. Defendants argued that plaintiff had recently placed liens on stocks, real estate, advisory fees and wages owed to them, rendering it difficult if not impossible to determine the amount still owed at the hearing (Mot. Exh. A).

At the hearing plaintiff provided the testimony of Mr. Yunmin Park, an assistant manager and appointed investigator, he testified through a translator (Mot. Exh. A, pgs. 10 -11 of 22). Mr. Park testified that it was his understanding that defendants had no remaining assets to be sold in Korea, and the amount of debt was correct as of now (Mot. Exh. A, pg. 20 of 22 lines 10-25, 21 lines 1-19).

Defendants also argued that the interest rate of 24% sought by the plaintiffs was excessive and a penalty with the required post-judgment rate of interest being 9% from the date of entry of the judgment in Korea. Although raised in the November 29, 2016 Decision and Order of this Court (NYSCEF Docket No. 120), defendants' argument was rejected by JHO Gammerman as not being included in the Order of Reference and referred that issue back to this Court (Mot. Exh. A, pgs. 5 of 22 lines 4-6, 7 of 22 lines 9-19).

JHO Gammerman determined that defendants should have produced testimony to challenge what they allege is the proper amount owed. He further determined that the failure of the defendants to refute plaintiff's evidence and Mr. Park's testimony, results in a determination that the amount owed by each defendant is \$4,733,674.73 (Mot. Exh. A, pgs. 15 of 22 lines 16-23, 18 of 22 lines 4-25, 19 of 22 lines 1-3). JHO Gammerman recommended a judgment for the amount owed as of June 8, 2017 of \$4,733,674.73 for each defendant, which included the 24% interest from the date the judgment was entered in Korea (Mot. Exh. A, pg. 21 of 22, lines 23 -25).

A referee's function, on submitted questions of fact, is to render a determination on the issues presented, "resolve conflicting testimony and matters of credibility" (Herman v. Gill, 61 A.D. 3d 433, 876 N.Y.S. 2d 55 [1st Dept., 2009]). A referee is "considered to be in the best position to determine the issues presented." (Plaza Funding Corp. v. J.C. Development Corp., 155 A.D. 2d 298, 547 N.Y.S. 2d 62 [1st Dept., 1989]). The Courts will generally confirm the referee's report if it is supported by the record and does not exceed the bounds of the Order of reference (Freedman v. Freedman, 211 A.D. 2d 580, 621 N.Y.S. 2d 610 [1st Dept., 1995] and Barr v. Barr, 232 A.D. 2d 316, 648 N.Y.S. 2d 917 [1st Dept. 1996]).

JHO Gammerman was in the best position to render a determination on the testimony presented for the amount due. Defendants provided no evidence to refute

Mr. Park's testimony and only sought to further delay a final determination. Defendants in opposition have not shown that a decision on this motion should be stayed pending a decision on Motion Sequence 007, which was argued simultaneously with this motion. They are correct that the rate of post-judgment interest was not clarified in the November 29, 2016 Decision and Order of this Court (NYCEF Docket No. 120).

The entry of a judgment results in CPLR §5004 applying regardless of whether a foreign judgment is involved, and the statutory interest rate of 9% is applied (Sung Huan Co., Ltd. v. Rite Aid Corp., 46 A.D. 3d 288, 847 N.Y.S. 2d 78 [1st Dept. 2007]). An exception is made, and a higher rate of interest is applied when the agreement between the parties states a "clear, unambiguous and unequivocal expression that interest will be paid at a higher rate than the statutory rate until the judgment is satisfied" (See IRB-Brazil Resseguros, S.A. v. Inepar Investments, S.A. 83 A.D. 3d 573, 922 N.Y.S. 2d 308 [1st Dept. 2011] and Marine Management, Inc. v. Seco Management, Inc., 176 A.D. 2d 252, 574 N.Y.S. 2d 207 [2nd Dept., 1991] aff'd 80 N.Y. 2d 886, 600 N.E. 2d 627, 597 N.Y.S. 2d 900 [1992]).

The post-judgment interest rate of 24% was part of the "penalty language" taken from terms in the loan agreements and guaranties entered into by the parties, which included B.E. Yoo. The Korean Busan District Court refers to explicit language in the agreements that states the "penalty interest," which varies for specific time periods and loan amounts, and should be calculated at 24% from February 13, 2000 to the date of complete payment (Mot. Exh. D, pgs. 7). This language was incorporated into the final "Order" of the Korean Busan District Court (Mot. Exh. D, pg. 3, para. 1). The specific language of the initial agreements specifically stated that the 24% interest rate would apply from "February 13, 2000 to the date of complete payment," warranting application of the 24% interest rate until entry of judgment in New York.

The Order of reference properly relied on a 24% interest rate until the entry of a judgment in New York and the un rebutted testimony that the amount owed by each of the defendants is \$4,733,674.73. Therefore the Referee Report and Recommendation of Judicial Hearing Officer Ira Gammerman filed on June 29, 2017 is confirmed.

Defendants motion filed under Motion Sequence 007 seeks an Order pursuant to CPLR §3211[a][7] dismissing this action.

Dismissal pursuant to CPLR §3211[a][7] requires a reading of the pleadings to determine whether a legally recognizable cause of action can be identified and it is properly pled. A cause of action does not have to be skillfully prepared but has to present facts so that it can be identified and establish a potentially meritorious claim (Leon v. Martinez, 84 N.Y. 2d 83, 638 N.E. 2d 511, 614 N.Y.S. 2d 972 [1994]).

Defendants argue that the Korean Busan District Court never had personal jurisdiction over them when the Execution Clause was entered into on January of 2015, and this Court cannot recognize it, warranting dismissal. Defendants further argue that the requirements of CPLR § 5304[a][2] which governs the recognition of foreign money judgment based on international comity have not been satisfied.

Defendants initially opposed Motion Sequence 002, seeking summary judgment in lieu of complaint, arguing that the foreign judgment was unenforceable pursuant to CPLR §5301 and §5302 because they did not have due process, and the judgment was obtained without consideration of a restructuring agreement entered into with B.E. Yoo, that was subsequently deemed void for failure to divulge all of his assets. This Court granted summary judgment to plaintiff stating that:

“Generally, a foreign country judgment is ‘conclusive between the parties to the extent that it grants or denies recovery of a sum of money’ (CPLR 5303), unless a ground for non-recognition under CPLR §5304 is applicable.” (Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting and Financial Services Co., 117 A.D.3d 609, 986 N.Y.S.2d 454 [1st Dept. 2014], citing Galliano v. Stallion, Inc., 15 N.Y.3d 75, 904 N.Y.S.2d 683, 930 N.E.2d 756 [2010]).

Defendants in opposing summary judgment had previously raised due process concerns that were rejected in granting plaintiff summary judgment. Defendants failed to state any arguments pursuant to CPLR §5304, and plaintiff had made a prima facie showing that jurisdiction was obtained over the defendants. Defendants did not seek to renew or reargue the November 29, 2016 Decision and Order of this Court filed under Motion Sequence 002 (NYSCEF Docket Nos. 120 and 128).

This motion for the first time raises arguments pursuant to CPLR §5304[a][2], and does not state a basis to dismiss pursuant to CPLR §3211[a][7]. CPLR §5304[a][2] does not permit denial of a foreign judgment for lack of personal jurisdiction if the defendant voluntarily appeared in the proceedings other than for the purpose of contesting the jurisdiction (CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V., 100 N.Y. 2d 215, 792 N.E. 2d 155, 762 N.Y.S. 2d 5 [2003]). Defendants had actual notice of the enforcement action in Korea and the judgment entered against their father. They submitted to the jurisdiction of the Korean Busan District Court by commencing their own action to set aside the judgment, setting forth a defense on the merits, and at that time did not contest jurisdiction of the Korean Courts. Jurisdiction was obtained in the foreign proceeding sufficient to warrant denial of the relief sought on this motion.

Accordingly, it is ORDERED, that plaintiffs’ motion to confirm Referee Report and Recommendation of Judicial Hearing Officer Ira Gammeman filed on the June 29, 2017 (NYSEF Docket No. 128) is granted and it is further,

ORDERED that the Clerk of the Court enter judgment in favor of plaintiff, KOREA RESOLUTION AND COLLECTION CORPORATION, and against defendant, HYUK KEE YOO individually in the sum of \$4,733,674.73 and SANG NA YOU, individually, in the sum of \$4,733,674.73, totaling \$9,467,349.46, together with interest as computed by the Clerk at the statutory rate from the date of entry of judgment in the sum of \$ _____, for a total judgment in the sum of \$ _____, and it is further,

ORDERED that the Clerk of the Court is directed to enter judgment accordingly, and it is further,

ORDERED that the defendants’ motion filed under Motion Sequence 007, for an Order pursuant to CPLR 3211[a][7] dismissing this action, is denied.

ENTER: **MANUEL J. MENDEZ**
J.S.C.



MANUEL J. MENDEZ
J.S.C.

Dated: October 30, 2017

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE