

Qin Yu v Guoqing Guan
2020 NY Slip Op 33004(U)
September 10, 2020
Supreme Court, New York County
Docket Number: 655186/2019
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 38

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QIN YU,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	Index No. 655186/2019
	:	(Motion Seq. No. 001)
GUOQING GUAN, XIDONG FANG,	:	
SHANGHAI QINGYANG CONSTRUCTION	:	
ENGINEERING (GROUP) CO., LTD.,	:	
JIANQIANG GUAN, JIANYUN GUAN,	:	
JIANFANG GUAN, XYZ, LLCS 1-10,	:	
XYZ CORPS 1-10, and JOHN AND	:	
JANE DOES 1-10,	:	
	:	<u>DECISION AND ORDER</u>
Defendants.	:	
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LOUIS L. NOCK, J.

Plaintiff, Ms. Qin Yu, moves (seq. no. 001), pursuant to CPLR 3215, for a default judgment against defendants, Mr. Guoqing Guan (“Guoqing”) and Ms. Xidong Fang (“Fang”). No defendant has appeared in this action; nor has there been any opposition to this motion.¹

Background²

Plaintiff sues for the alleged breach of payment terms relating to two loans that were the subject of litigation in The People’s Republic of China. The individual parties in this action are all Chinese nationals. Guoqing and Fang are spouses, and the parents of co-defendants Jianqiang Guan, Jianyun Guan, and Jianfang Guan. Guoqing and Fang allegedly own 90% and 10%,

¹ According to a letter dated July 2, 2020, e-filed with the court, plaintiff seeks a default judgment only as against the two referenced defendants and seeking to sever the action as to the other defendants (NYSCEF Doc. No. 11). No explanation is proffered for plaintiff’s election to proceed in this manner, which seeks different treatment for equally non-answering defendants.

² Derived from exhibits to the verified complaint (the “complaint”) and, to the extent not inconsistent therewith, the allegations of the complaint.

respectively, of co-defendant Shanghai Qingyang Construction Engineering (Group) Co., Ltd. (“Shanghai Group”).³

The “Loan Contracts”:

In the verified complaint (the “complaint”), plaintiff alleges that she entered into a loan agreement on May 9, 2014, evidencing her loan to Guoqing in the amount of Renminbi (“RMB”) 10,000,000 yuan (*see*, NYSCEF Doc. No. 1, Exh. 1). It is alleged that such loan was guaranteed by Shanghai Group. Exhibit 1 to the complaint presents as a certified English Language translation of a Chinese Language document titled “Loan Contract” bearing the date May 9, 2014. It lists plaintiff as the lender; Guoqing as the borrower; and Shanghai Group as the guarantor. Fang is not a party or signatory to this contract, at all. This contract states a principal loan amount of RMB 10,000,000 yuan, plus stated interest. The stated loan term is May 10, 2015 to March 9, 2018. The complaint alleges that no payments have been made on this contract.

The complaint further alleges that plaintiff entered into a second loan agreement in December 2014, evidencing her loan to Shanghai Group in the amount of RMB 10,000,000 yuan (*see*, NYSCEF Doc. No. 1, Exh. 2). It is alleged that such loan was guaranteed by Guoqing. Exhibit 2 to the complaint presents as a certified English Language translation of a Chinese Language document titled “Loan Contract” bearing the date December 2014. It lists plaintiff as the lender; Shanghai Group as the borrower; and Guoqing as the guarantor. Fang is not a party or signatory to this contract, either. This contract has a principal loan amount of RMB

³ Guoqing and Fang now reside in Queens County, New York, per the advice of plaintiff’s counsel (*see*, NYSCEF Doc. No. 11).

10,000,000 yuan, plus stated interest. The stated loan term is April 1, 2015 to March 30, 2018.

The complaint alleges that partial payment has been made on this loan contract, leaving a balance of RMB 7,000,000 yuan.

The complaint's third and fourth causes of action allege breach of the above-described loan contracts.

The "Conciliation Statements":

The complaint makes further reference to what it casts as two "conciliation statements" related to the two loan contracts noted hereinabove. The complaint alleges that plaintiff sued Guoqing, Fang, and Shanghai Group in The People's Republic of China in connection with the above-described loan defaults, resulting in the "conciliation statements" which, in turn, are described as follows in the complaint:

The Loan 1 Conciliation Statement and Loan 2 Conciliation Statement are binding documents and the breach thereof is extremely serious and considered a serious affront to the Judges and the Courts. While there is no direct analogous procedure that captures the seriousness and solemnity attributed to a conciliation statement, the most analogous procedure to the conciliation statement in the United States would be a "so ordered" settlement agreement.

(Complaint ¶ 29.) As will be noted further along in this discussion, plaintiff submits no expert affidavit to the court on this default judgment motion which might elaborate on and, perhaps, clarify, what is intended by that allegation, or regarding what a "conciliation statement" truly is in reliable jurisprudential terms.

Exhibit 3 to the complaint presents as a certified English Language translation of a Chinese Language conciliation statement for Loan Contract 1, issued by the "Primary Civil Court" of Jiangxi Province, reciting that Guoqing and Fang "shall return the principal RMB 10,000,000 [yuan] and interest of Plaintiff Qin Yu's loan before October 31, 2018" and that

Shanghai Group “shall take the liability for joint repayment of the above debts of . . . Guoqing Guan’s and Xidong Fang’s.”

Exhibit 4 to the complaint presents as a certified English Language translation of a Chinese Language conciliation statement for Loan Contract 2, issued by the same Chinese court, reciting that Shanghai Group “shall return the . . . principal RMB 7,000,000 [yuan] and interest of Plaintiff Qin Yu’s loan before August 1, 2018” and that Guoqing and Fang “shall take the liability for joint repayment of the above debts of” Shanghai Group.

No explanation is furnished as to why Fang, who is not a party or signatory to either of the underlying loan contracts, is, for some unexplained reason, included within the conciliation statements’ recitals of liability. For that matter, nothing in any of the exhibited documents forming the evidentiary predicate of this action makes any mention of the three defendants herein who are alleged to be the children of Guoqing and Fang. Further puzzling matters, the instant motion for a default judgment does not include Shanghai Group, which, unlike Fang, *is* a party and signatory to the underlying loan contracts.

The complaint’s first and second causes of action allege breach of the above-described “conciliation statements.” The complaint adds causes of action sounding in fraud in respect of the subject matter of the loan contracts and conciliation statements (the fifth, sixth, seventh, and eighth causes of action); but those fraud causes of action all acknowledge the existence of the loan contracts and conciliation statements (*see, e.g., Manas v VMS Assocs.*, 53 AD3d 451 [1st Dept 2008] [a fraud cause of action cannot lie if the breach of duty would be covered by a contract governing the subject matter]). The complaint’s ninth and tenth causes of action assert fraudulent-conveyance-type causes of action which allegedly implicate the defendants herein who are alleged to be the three children of Guoqing and Fang, although no affidavit of service of

process on the children is found in the record except with regard to Jianqiang Guan. Nor is there any with regard to Shanghai Group.

Discussion

“CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]).

With that principle in mind, this court finds that plaintiff has not met her threshold burden on this motion for a default judgment. Insufficient evidence has been proffered to adequately explain to the court the precise legal nature of the “conciliation statements” forming the bedrock predicates of this action, or to elaborate on the foreign-country legal proceedings in The People’s Republic of China that gave rise to them. Fundamentally, plaintiff has done nothing to convince this court that the so-called conciliation statements, which present as judicial endorsements from The People’s Republic of China, are entitled to recognition by this New York State Court under long-standing principles of comity:

Laws of foreign governments have extraterritorial effect only by comity. The principle which determines whether we shall give effect to foreign orders or decrees is public policy and, where there is a conflict between our public policy and application of comity, our own sense of justice and equity must prevail.

(*Oppenheimer v Dresdner Bank A.G.*, 50 AD2d 434, 441 [2d Dept 1975], *affd* 41 NY2d 949 [1977].)

Even were we to understand the conciliation statements to be actual *judgments* of the Chinese courts from which they issued (which the complaint seemingly falls short of doing), CPLR 5304 (titled “Grounds for non-recognition”) takes care to express that “[a] foreign country judgment is not conclusive if” certain jurisprudential principles essential to our own notions of

justice and fair play were not adhered to, such as: (i) the lack of impartial tribunals or procedures compatible with the requirements of due process of law; (ii) the lack of personal or subject matter jurisdiction; (iii) the lack of sufficient notice to the defendant; or other deficiencies identified in the statute.

The conciliation statements upon which so much of this case is based are shrouded in complete mystery. This court is left to wonder about Fang's supposed liability under the conciliation statements when she was never a party or signatory to the underlying loan transactions. We are also left to wonder about what procedural protections the Chinese courts that issued the conciliation statements might have afforded any of the parties who are supposedly bound by them.⁴

The meager attempt by the verified complaint to describe the general nature of Chinese conciliation statements (*see*, complaint ¶ 29), while, at the same time, openly conceding that it cannot identify any "direct analogous procedure" to New York civil procedure, simply does not come close to satisfying the plaintiff's burden on this motion. At a bare minimum, this court would require an expert affidavit from one competent to testify regarding the substantive and judiciary laws of The People's Republic of China relevant to the claims underlying this lawsuit and the proceedings which gave rise to the conciliation statements. Such an affidavit would need to include a clear explanation to this court of the legal nature of such statements, grounded in essential expertise in such matters, as well as a description of the civil procedure applied in the underlying Chinese court proceedings (*see, e.g., Oppenheimer, supra* [relying on expert affidavit

⁴ These mysteries are not made any easier by the curious circumstances of: (i) why plaintiff has elected to pursue only some of the defendants on this motion for a default judgment, but not others, or all, of them; (ii) why affidavits of service of process on all defendants are not found in the record; or (iii) why this action has been venued here when Guoqing and Fang reside in Queens County.

testimony discussing relevant foreign-country law)). Only after submission and consideration of such affidavit evidence – credible as it must be – could this court possibly begin to assess whether the conciliation statements sued upon in this action are worthy of recognition under principles of comity or, if applicable, under CPLR 5303, which recognizes foreign country judgments “[e]xcept as provided in section 5304.”

Because plaintiff’s motion is unsupported by sufficient evidence at this time, her instant motion for a default judgment cannot be granted. It is, therefore, denied.

Accordingly, it is

ORDERED that plaintiff’s motion for a default judgment is DENIED, without prejudice to re-file upon the submission of necessary evidence and clarifications consistent with the within decision of this court.

This shall constitute the decision and order of the court.

Dated: New York, New York
September 10, 2020

ENTER:

A handwritten signature in blue ink that reads "Louis L. Nock". The signature is written in a cursive, flowing style.

Hon. Louis L. Nock, J.S.C.