

**Dead Sea Works Ltd. v Abener-Ghenova Ingenieria,  
S.L. Union Temporal de Empresas, Ley 18/1982**

2022 NY Slip Op 34369(U)

December 19, 2022

Supreme Court, New York County

Docket Number: Index No. 656757/2021

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK PART 38M

*Justice*

-----X

DEAD SEA WORKS LTD.,

Plaintiff,

- v -

ABENER-GHENOVA INGENIERIA, S.L. UNION  
TEMPORAL DE EMPRESAS, LEY 18/1982; and  
ABENGOA, S.A.,

Defendants.

-----X

INDEX NO. 656757/2021

MOTION DATE 11/30/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 18, 27, 30, and 31

were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT .

LOUIS L. NOCK, J.

Upon the foregoing documents, it is ORDERED that the motion is resolved as set forth below. Plaintiff is the judgment creditor of defendants Abener-Ghenova Ingenieria, S.L. Union Temporal de Empresas, Ley 18/1982 (“Abener-Ghenova”)<sup>1</sup> and Abengoa, S.A. (collectively, “defendants”), pursuant to a judgment of the Beer Sheva District Court in the State of Israel dated July 20, 2021, in the amount of €36,880,876.71<sup>2</sup> (the “Israeli Judgment,” NYSCEF Doc. No. 5).

Plaintiff commenced the instant action on November 30, 2021, by notice of motion for summary judgment in lieu of complaint pursuant to CPLR 3213 (notice of motion, NYSCEF Doc. No. 2), asking the court to recognize the Israeli Judgment as a judgment of this court for purposes of enforcement. Two *ex parte* orders extending the time to serve defendants were

<sup>1</sup> For clarity, there are two defendants in this action. The full name of the first defendant begins with “Abener-Ghenova” and ends with “Ley 18/1982.”

<sup>2</sup> Stated in Euros.

issued while plaintiff attempted to serve defendants in Spain pursuant to the Hague Convention on the Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters (20 UST 361, TIAS No. 6638 [1965]) (NYSCEF Doc. Nos. 18, 27). An affirmation of service, regular on its face, indicates that service under the Hague Convention was completed as of November 18, 2022 (NYSCEF Doc. No. 30 [Bernat affirmation], Exhibit 1). The second amended notice of motion indicates that the motion was returnable on December 16, 2022, requiring defendants' opposition, if any, to be filed ten days beforehand on December 6, 2022 (CPLR 3213).

On December 9, 2022, the court and plaintiff received a brief entitled "Defendants' Reply to Plaintiff's Motion for Summary Judgment Pursuant to CPLR 3213 in Lieu of Complaint and Defendants' Motion to Dismiss" and dated December 2, 2022. This late-served brief was not filed on the electronic docket of this action, nor did any attorney appear on NYSCEF representing defendants. The court notes, however, that the brief bears the signatures of Mr. Guillermo Ramos González, legal representative of Ernst & Young Abogados S.L.P. ("Ernst & Young"), insolvency administrator of defendant Abengoa S.A.; and Mr. Sergio Cerezo Moreno, legal counsel for defendant Abener-Ghenova. Thus, while no local counsel has been retained in this jurisdiction, defendants are acting through counsel as required by CPLR 321(a) and have made a good faith effort to respond to the motion rather than ignoring it. Further, plaintiff received the brief and was able to submit a reply in opposition to it on both procedural and substantive grounds, and the court perceives no prejudice to plaintiff from its consideration of the brief (CPLR 2001).

In sum, defendants state that on February 26, 2021, the Commercial Court of Seville, Spain, declared that Abengoa, S.A., was insolvent pursuant to Spain's "Insolvency Act"

(defendants' brief, ¶ 2). A month later, the Commercial Court of Seville, Spain, appointed Ernst & Young as insolvency administrator, and on July 1 of this year declared that Abengoa, S.A., should be dissolved (*id.*, ¶¶ 3-5). On October 28, 2022, the constituent entities of Abener-Ghenova also filed for insolvency protection (*id.*, ¶ 6). Shortly thereafter, the Commercial Court of Seville, Spain, appointed Ernst & Young as those entities' insolvency administrator (*id.*, ¶ 7).

As a result of the ongoing proceedings before the Commercial Court in Seville, defendants argue that recognition is improper as it will conflict with the insolvency decrees of the Spanish Court (CPLR 5304[b][4]). Further, the court is asserted to lack jurisdiction over defendants as they have no connection to the State of New York that would support jurisdiction under its long-arm statute (CPLR 302). When an objection to recognition of a foreign judgment is raised here, it is necessary for there to be grounds for personal jurisdiction of this court over the defendant-judgment-debtors (*AlbaniaBEG Ambient Sh.p.k. v Enel S.p.A.*, 160 AD3d 93, 108 [1st Dept 2018]).

Plaintiff argues that there is no merit to defendants' claim that recognition would interfere with the ongoing proceedings and, therefore, personal jurisdiction is not necessary. On this record, though, the court has several questions with regard to the issue. Were such a proceeding to be commenced by defendants in the United States, an automatic stay of all litigation and collection activities would require that this action be stayed (11 USC 362), and it is unclear whether recognition of the Israeli Judgment by this court would contravene a similar stay under Spanish law. The details of the Insolvency Act with respect to foreign judgments are also unclear, which may answer the question whether plaintiff should more properly be attempting to enforce the Israeli Judgment before the Spanish court. In recognition of defendants' good faith effort to oppose this motion, and in accordance with our well-established preference for deciding

matters on the merits (*e.g.*, *Naber Electric v Triton Structural Concrete, Inc.*, 160 AD3d 507, 508 [1st Dept 2018]), the court will allow defendants an opportunity to answer these questions in the form of a supplemental brief, filed by local counsel in this jurisdiction who appear on their behalf. Plaintiff, in turn, shall be permitted to file a reply thereto and establish, if necessary, the basis for jurisdiction over the defendants.

AND IT IS FURTHER

ORDERED that plaintiff is directed to serve a copy of this order with notice of entry upon Messrs. González and Moreno by priority international mail, return receipt requested, at the physical addresses listed in defendants' brief, as well as to each of the email addresses listed therein, within ten days of entry of this order; and it is further

ORDERED that upon receipt of a copy of this order with notice of entry, defendants shall have thirty days therefrom to appear in this matter by local counsel admitted to practice in the State of New York; and it is further

ORDERED that defendants shall submit a supplemental brief on the matters set forth in this order within thirty days of counsel's appearance on the docket by electronic filing on NYSCEF; and it is further

ORDERED that plaintiffs shall have thirty days from receipt of defendants' supplemental brief to submit a reply by electronic filing on NYSCEF; and it is further

ORDERED that so much of defendants' brief as purports to cross-move to dismiss the action is denied for failure to cross-move by notice of motion (CPLR 2214).

This constitutes the decision and order of the court.



<u>12/19/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
<b>DATE</b>				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE