

**Shanghai Yongrun Inv. Mgt. Co., Ltd. v Kashi Galaxy
Venture Capital Co., Ltd.**

2024 NY Slip Op 32046(U)

June 14, 2024

Supreme Court, New York County

Docket Number: Index No. 156328/2020

Judge: Arthur F. Engoron

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

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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SHANGHAI YONGRUN INVESTMENT MANAGEMENT
CO., LTD.,

Plaintiff,

- v -

KASHI GALAXY VENTURE CAPITAL CO., LTD.,
MAODONG XU,

Defendants.

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INDEX NO. 156328/2020

MOTION DATE 01/08/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85

were read on this motion to DISMISS DEFENSES.

Upon the foregoing documents, and after oral argument held March 27, 2024, and for the reasons stated hereinbelow, plaintiff’s motion, pursuant to CPLR 3211(b), to dismiss defendant’s third and fourth affirmative defenses, is granted.

Background

On December 10, 2018, the Beijing No. 1 Intermediate People’s Court in the People’s Republic of China (“China,” or “PRC”) issued a judgment in favor of plaintiff, Shanghai Yongrun Investment Management Co., Ltd. (“Yongrun”), and against defendants, Kashi Galaxy Venture Capital Co., Ltd. (“Kashi Galaxy”) and Maodong Xu (“Xu”), in the amount of RMB 64,078,417.03 Yuan. NYSCEF Doc. No. 4.

In a judgment dated May 20, 2019 (“the Final Chinese Judgment”), the Beijing Higher People’s Court of the PRC affirmed the lower court judgment, and on November 27, 2019, the Beijing No. 1 Intermediate People’s Court issued an enforcement ruling declaring the judgment valid and outstanding. NYSCEF Doc. Nos. 4, 5.

On August 13, 2020, Yongrun commenced this special proceeding, pursuant to CPLR 5301, seeking recognition and enforcement of the Final Chinese Judgment. NYSCEF Doc. No. 2.

On September 16, 2020, defendants moved, pursuant to CPLR 3211(a)(1) and (7), to dismiss, arguing, inter alia, that the 2018 and 2019 United States State Department Annual Country Reports (“Country Reports”) establish, as a matter of law, that the Chinese justice system “does not provide impartial tribunals or procedures compatible with the requirements of due process of law.” NYSCEF Doc. Nos. 8, 29.

In a Decision and Order dated April 30, 2021, this Court granted defendants' motion, finding that the Country Reports established, as a matter of law, that the Chinese courts rendered their judgments under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law in the United States. NYSCEF Doc. No. 53.

On March 10, 2022, the Appellate Division, First Department, reversed this Court's prior Decision and Order, holding that "the Country Reports do not constitute 'documentary evidence' under CPLR 3211(a)(1) ... [and] do not utterly refute plaintiff's allegation that the civil law system governing this breach of contract business dispute was fair." NYSCEF Doc. No. 58.

On April 22, 2022, defendant Xu answered the complaint with general denials and five affirmative defenses: (1) failure to state a cause of action; (2) mandatory grounds for non-recognition pursuant to CPLR 5304(a)(1) (pre-2021 amendment) ("a court of this state may not recognize a foreign country judgment ... if: the judgment was rendered under a judicial system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law"); (3) discretionary grounds for non-recognition pursuant to CPLR 5304(b)(3) (pre-2021 amendment) ("a court of this state need not recognize a foreign country judgment if ... the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case"); (4) discretionary grounds for non-recognition pursuant to CPLR 5304(b)(4) (pre-2021 amendment) ("a court of this state need not recognize a foreign country judgment if ... the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States"); and (5) recoupment and setoff. NYSCEF Doc. No. 61.

On January 8, 2024, Yongrun made the instant motion to dismiss Xu's third and fourth affirmative defenses. NYSCEF Doc. No. 65. Yongrun argues that this Court should dismiss Xu's third defense because Xu fails to plead that the Final Chinese Judgment was procured by extrinsic fraud, as required under CPLR 5304(b)(3), and instead alleges intrinsic fraud. NYSCEF Doc. No. 66. Further, Yongrun argues this Court should dismiss Xu's fourth affirmative defense because Xu fails to plead that the underlying cause of action in the Chinese litigation was repugnant to public policy, as required under CPLR 5304(b)(4). Id.

On January 29, 2024, Xu cross-moved, pursuant to CPLR 3124, to compel Yongrun to produce documents responsive to an August 9, 2022 notice of Discovery and Inspection ("D&I"). NYSCEF Doc. No. 71.

In opposition to the motion, Xu argues that the Final Chinese Judgment was procured by extrinsic fraud because Yongrun had a relationship with a Chinese Deputy Bureau Chief, a non-party, who allegedly deprived Xu of the opportunity to make a full and fair defense during the Chinese litigation because "the duress and threat imposed by the Deputy Bureau Chief still existed during the pendency of the lawsuit." NYSCEF Doc. No. 79. Xu also argues that he has sufficiently pleaded that recognition of the Final Chinese Judgment would violate the "deeply rooted public policy of our state." Id.

In reply, Yongrun argues that Xu's defense is "an allegation of duress, not fraud" and that non-recognition on public policy grounds fails as a matter of law because the cause of action of the

Chinese litigation is a garden-variety breach of contract. NYSCEF Doc. No. 80. Yongrun further argues that the Court should deny the cross-motion to compel because, inter alia, it is untimely and the requests at issue are only relevant to defendant's third and fourth affirmative defenses. Id.

Discussion

In a motion to dismiss an affirmative defense pursuant to CPLR 3211(b):

the plaintiff bears the heavy burden of showing that the defense is without merit as a matter of law. The allegations set forth in the answer must be viewed in the light most favorable to the defendant, and the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed. Further, the court should not dismiss a defense where there remain questions of fact requiring a trial.

Granite State Ins. Co. v Transatlantic Reins. Co., 132 AD3d 479, 481 (1st Dept 2015) (internal citations and quotations omitted).

New York Courts “need not recognize a foreign country’s judgment” if “the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.” CPLR 5304(b)(3) (pre-2021 amendment). However, the fraud must “relate to matters other than issues that could have been litigated and must be a fraud on the court.” Fairchild, Arabatziz & Smith, Inc. v Prometco (Produce & Metals) Co., 470 F Supp 610, 615 (SD NY 1979). In New York, “‘fraud upon the court’ is a term used to describe the perversion of the judicial process as a result of misconduct by a party or counsel.” CDR Creances S.A. v Cohen, 104 AD3d 17, 24 (1st Dept 2012) (emphasis added).

New York Courts also “need not recognize a foreign country’s judgment” if “the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States.” CPLR 5304(b)(4) (pre-2021 amendment). However, the public policy exception rarely results in a refusal to enforce a foreign judgment unless it is “inherently vicious, wicked or immoral, and shocking to the prevailing moral sense.” Sung Hwan Co., Ltd. v Rite Aid Corp., 7 NY3d 78 (2006). Further, the public policy exception focuses on the underlying “cause of action on which the judgment is based” rather than on any effect enforcement of the judgment may have. Ameropa AG v Havi Ocean Co. LLC, 2011 WL 570130, *3, 2011 US Dist LEXIS 15803, *8 (SD NY Feb. 16, 2011, No. 10CIV.3240 TPG).

Xu argues that this Court should maintain his CPLR 5304(b)(3) affirmative defense because the Chinese court rendered the Final Chinese Judgment based on fraud, and Xu was unable to raise the fact that he was allegedly forced into the underlying agreement in the Chinese litigation because “the duress and threat imposed by the Deputy Bureau Chief still existed during the pendency of the lawsuit.” NYCSEF Doc. No. 61 at ¶¶ 52, 77. However, Xu fails to assert that the “fraud” in question is a “fraud upon the court” because the “Deputy Bureau Chief” is neither a party nor a counsel in the Chinese litigation; Xu’s assertions of fraud, that he signed the

agreement under duress and threat, are irrelevant under CPLR 5304(b)(3). Therefore, the Court must dismiss Xu’s third affirmative defense.

Xu also argues that this Court should maintain his CPLR 5304(b)(4) affirmative defense because the Final Chinese Judgment was based on a cause of action arising from an allegedly forced agreement, which is “repugnant to the public policy of this state.” NYCSEF Doc. No. 61 at ¶¶ 78-79. However, the cause of action in the Chinese litigation was a breach of contract, which is not a cause of action repugnant to the public policy of this state. See Regional Municipality of York v LeBlanc, 207 AD3d 1033, 1035-1036 (4th Dept 2022) (finding that Plaintiff’s foreign action against Defendant for breach of contract and fraud is not “inherently vicious, wicked or immoral, [or] shocking to the prevailing moral sense”); CIBC Mellon Trust Co. v Mora Hotel Corp. N.V., 296 AD2d 81, 101 (1st Dept 2002), aff’d, 100 NY2d 215 (2003) (finding Plaintiffs’ cause of action for recognition and enforcement of English judgment to recover losses from Defendants arising from an investment fraud claim is not, in any way, repugnant to New York public policy). Therefore, the Court must dismiss Xu’s fourth affirmative defense.

CPLR 3101(a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.” “The words ‘material and necessary’ as used in CPLR 3101(a) are to be interpreted liberally to require disclosure ... of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” Allen v Crowell-Collier Pub. Co., 21 NY2d 403, 406 (1968).

Here, the disclosure Xu seeks from Yongrun in his D&I is not material or necessary to Xu’s remaining affirmative defenses and, therefore, this Court must deny the cross-motion, pursuant to CPLR 3124, to compel.

This Court has considered Xu’s other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, the instant motion of plaintiff, Shanghai Yongrun Investment Management Co., Ltd., to dismiss the third and fourth affirmative defenses of defendant Maodong Xu, is hereby granted, the cross-motion to compel is hereby denied.

HON. ARTHUR F. ENGORON


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| <u>6/14/2024</u> DATE | | | | | <u>ARTHUR F. ENGORON, J.S.C.</u> |
| 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 checked="" type="checkbox"/> OTHER |
| 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"/> REFERENCE |