

FTI Consulting LLP v Gem Global Yield LLC SCS

2025 NY Slip Op 32950(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 650258/2025

Judge: Mary V. Rosado

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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. MARY V. ROSADO **PART** **33M**

Justice

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FTI CONSULTING LLP

Plaintiff,

- v -

GEM GLOBAL YIELD LLC SCS,

Defendant.

-----X

INDEX NO. 650258/2025

MOTION DATE 02/18/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of May 28, 2025, Defendant Gem Global Yield LLC SCS' ("Defendant") motion to dismiss Plaintiff FTI Consulting LLP's summons pursuant to Business Corporation Law §§ 1312 and 1314, CPLR 3211(a)(1), (a)(2), (a)(8), and (a)(10), and CPLR 3217(a) is denied.

I. Background

On May 20, 2021, Plaintiff was retained by Defendant to serve an expert in an arbitration at the London Court of International Arbitration (NYSCEF Doc. 4). When Defendant failed to pay Plaintiff for services rendered in the arbitration, Plaintiff sued Defendant in the United Kingdom's King's Bench Division of the Royal Courts of Justice (NYSCEF Doc. 6). On November 8, 2024, Plaintiff obtained a judgment against Defendant in the amount of £ 355,085.38, plus interest and costs (NYSCEF Doc. 5). On January 14, 2025, Plaintiff initiated this proceeding, moving for summary judgment in lieu of complaint, seeking to domesticate the United Kingdom's judgment in New York. The affidavit of service states that summons and accompanying motion were served on an entity named Gem Global Yield Fund LLC SCS (NYSCEF Doc. 10). Defendant argues there

is no entity in Delaware with this name. Defendant admits there is an entity named Gem Global Yield Fund LLC (NYSCEF Doc. 15), but Defendant fails to disclose its relationship to this almost identically named entity. Plaintiff then filed another affidavit of service, this time stating service was effectuated on Gem Global Yield Fund LLC (NYSCEF Doc. 20) and provided proof this entity is general partner and 99.99% owner of Defendant (NYSCEF Doc. 28). Defendant moves to dismiss the proceeding on various grounds, including Business Corporation Law §§ 1312 and 1314, CPLR 3211(a)(1), (a)(2), (a)(8), and (a)(10), and CPLR 3217(a), while Plaintiff opposes. Defendant's motion to dismiss is denied in its entirety.

II. Discussion

A. Business Corporation Law

Defendant's motion to dismiss pursuant to Business Corporation Law §§ 1312 and 1314 is denied. In opposition to Defendant's motion, Plaintiff asserts it is not a foreign corporation but a foreign partnership, and therefore Business Corporation Law §§ 1312 and 1314, which only apply to corporations, does not apply. Pursuant to Business Corporation Law § 103, the Business Corporation Law applies "to every domestic corporation and to every foreign corporation which is authorized or does business in this state." Indeed, Plaintiff's name is "FTI Consulting LLP" indicating it is a limited liability partnership and not a corporation. Defendant argues, in turn, that if Plaintiff is a foreign limited liability partnership, then it is still precluded from bringing this suit pursuant to New York Partnership Law § 121-1502(m). This provision states:

"a foreign limited liability partnership carrying on or conducting or transacting business or activities in this state without having filed a notice pursuant to subdivision (a) of this section may not maintain any action, suit or special proceeding in any court of this state unless and until such foreign limited liability partnership shall have filed such notice and paid all fees that it would have been required to pay had it filed a notice pursuant to subdivision (a) of this section before carrying on or conducting or transacting business or activities as a New York

registered foreign limited liability partnership in this state and shall have filed proof of publication pursuant to subdivision (f) of this section.”

However, Defendant misconstrues New York Partnership Law § 121-1502(m) to the facts of this case. This provision, along with its analogue in Business Corporation Law § 1312, only applies where the foreign limited liability partnership has engaged in “systematic and regular business activities” in New York without authorization (*see, e.g. Palisades Tickets, Inc. v Daffner*, 118 AD3d 619, 620 [1st Dept 2014]; *Digital Centre, S.L. v Apple Industries, Inc.*, 94 AD3d 571, 572 [1st Dept 2012]). Here, Defendant has made no showing that Plaintiff is engaged in systematic and regular business activities. In fact, Defendant argues the opposite and claims this is an inconvenient forum because neither Plaintiff nor Defendant conduct any business in New York. Therefore, the motion to dismiss pursuant to Business Corporation Law §§ 1312 and 1314 and New York Partnership Law § 121-1502(m) is denied.

B. CPLR 3211

Defendant’s motion to dismiss pursuant to CPLR 3211 is denied. As a preliminary matter, there is no documentary evidence refuting the validity of the judgment which Plaintiff seeks to domesticate, thus there is no basis for Defendant’s CPLR 3211(a)(1) motion. Although Defendant makes arguments for dismissal under CPLR 3211(a)(7), it did not request this relief in its notice of motion, therefore the Court need not entertain this relief (*see Fifth Partners LLC v Foley*, 227 AD3d 543 [1st Dept 2024]; *Onofre v 243 Riverside Drive Corp.*, 232 AD3d 443, 443-444 [1st Dept 2024]). However, even if this Court were to consider Defendant’s argument, it would be rejected as the summons adequately seeks domestication of a foreign judgment.

Defendant’s argument that this court lacks personal jurisdiction pursuant to CPLR 3211(a)(8) is without merit (*see Abu Dhabi Commercial Bank PJSC v Saad Trading, Contracting and Financial Services Co.*, 117 AD3d 609, 610-612 [1st Dept 2014]). Defendant, in what appears

to be an attempt to obfuscate the merits of Plaintiff's application, failed to disclose that Plaintiff served the registered agent for process on Defendant's general partner, Gem Global Yield Fund LLC. Defendant's argument that Plaintiff is unable to correct the misnomer on its original affidavit of service is without merit pursuant to CPLR 2001 and First Department precedent. There is no absolute rule barring a movant from supplementing papers on a motion for summary judgment in lieu of complaint where a defendant has an opportunity to address the merits of the later submitted documents (*Clower Private Credit Opportunities Origination (Levered) II LP v AlHusseini*, 226 AD3d 472 [1st Dept 2024] citing *Sea Trade Mar. Corp v Coutsofontis*, 111 AD3 483, 486 [1st Dept 2013]).

Defendant quibbles with whether the summons was properly served on it pursuant to CPLR 310 or CPLR 310-a, when Plaintiff served Defendant's general partner who, according to a recent Rule 7.1 corporate disclosure statement filed in the Southern District of New York, is the 99.99% owner of Defendant (NYSCEF Doc. 28). However, there is no dispute as to the validity of the judgment and that Defendant has actual notice of these proceedings (*Abu Dhabi, supra* citing *Lenchyshyn v Pelko Elec.*, 281 AD2d 42, 49 [4th Dept 2001]). Further, Defendant, who appeared in the United Kingdom proceeding which yielded the judgment, the subject of this proceeding, does not challenge that jurisdiction was properly asserted over it in the United Kingdom and is therefore foreclosed from arguing lack of jurisdiction in New York (*Akhmedova v Akhmedov*, 189 AD3d 602 [1st Dept 2020]). Indeed, the Court of Appeals has recognized that "New York has traditionally been a generous forum in which to enforce judgments for money damages rendered by foreign courts" (*CIBC Mellon Trust Co. v Mora Hotel Corp. N.V.*, 100 NY2d 215, 221 [2003]). Therefore, Defendant's arguments regarding lack of personal jurisdiction are without merit.

Defendant has failed to proffer any arguments for dismissal under CPLR 3211(a)(10), therefore this branch of the motion is denied. Moreover, this Court has subject matter jurisdiction pursuant to Article 53 of the CPLR, therefore, the branch of the motion to dismiss under CPLR 3211(a)(2) is without merit.

C. *Forum Non Conveniens* (CPLR 3217[a])

Defendant’s motion to dismiss based on *forum non conveniens* is denied. Plaintiff simply seeks to affirm a foreign judgment decided on the merits in the United Kingdom. Defendant does not challenge the underlying merits of the judgment under any of the enumerated factors provided by CPLR 5304 or 5305, and thus there is nothing to litigate or to defend in this forum, nor are there any witnesses to be inconvenienced (*Abu Dhabi Commercial Bank PJSC v Saad Trading, Contracting and Financial Services Co.*, 117 AD3d 609, 613 [1st Dept 2014]).

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss is denied in its entirety; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>7/30/2025</u> DATE	<u>Mary V Rosado Jsc</u> HON. MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE