

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

2016 NY Slip Op 32361(U)

November 29, 2016

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-**

**INDEX NO. 156487/2015**  
**MOTION DATE 10/19/2016**  
**MOTION SEQ. NO. 002**  
**MOTION CAL. NO. \_\_\_\_\_**

**HYUK KEE YOO & SANG NA YOO,**  
**Defendants.**

The following papers, numbered 1 to 13 were read on this motion for summary judgment in lieu of complaint.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 4</u>
Answering Affidavits — Exhibits _____	<u>5 - 10</u>
Replying Affidavits _____	<u>11 - 13</u>

**Cross-Motion:**     Yes     No

Upon a reading of the foregoing cited papers, it is Ordered that Plaintiff's motion for Summary Judgment in Lieu of Complaint is granted.

Korea Resolution and Collection Corporation (herein "KRCC" or "Plaintiff") filed this motion for summary judgment in lieu of complaint for recognition of a foreign judgment rendered by the Busan District Court of the Republic of Korea (herein "the Korean Court") on October 8, 2002 (herein "the judgment"), and upon recognition of the judgment, to impose liability on the Defendants (who are residents of New York), enabling Plaintiff to collect \$4,464,497 from each Defendant, plus interest.

KRCC, a subsidiary of the Korean Deposit Insurance Corporation (herein "KDIC") and the successor-in-interest to Resolution & Finance Corporation (herein "RFC"), alleges that the Korean Court granted the judgment in the amount of \$5,985,108 (U.S.) 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. (Mot. Exh. A). The judgment became final and conclusive as of November 22, 2002. (Mot. Exh. J). 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. (Mot. Exh. G).

KRCC contends that B.E. Yoo died intestate in July 2014, and that by the function of Korea's intestacy inheritance law all of B.E. Yoo's assets and liabilities vested to his five statutory heirs, unless the heirs either renounced or qualified the inheritance pursuant to the statutory procedure within the statutorily provided time period. (Mot. Exh. C). That as of the date of B.E. Yoo's death, the judgment remained unsatisfied for a total of approximately \$12,900,000 (U.S.). That two of the heirs, the wife and the eldest son, timely renounced their inheritance (Id.), and that the three remaining heirs- Defendants Hyuk Kee Yoo (herein "H.K. Yooi") and Sang Na Yoo (herein "S.N. Yoo") (collectively herein "Defendants"), and non-party Somena Yoo failed to either renounce or qualify their inheritance within the statutory three month period of B.E. Yoo's death, thereby making each of them responsible as successors under applicable Korean law for a one-third share of B.E. Yoo's liabilities.

KRCC also contends that on January 20, 2015 the Korean Court issued a confirmation that the judgment was enforceable against the defendants, and that on April 7, 2015, the Korean 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 (U.S.) under the exchange rate as of June 29, 2015. (Mot. Exh. A at 11 & Mot. Exh. J). That the "Execution Clause" was validly served on both Defendants in April 2015 (Mot. Exh. L), and that there are no material issues of fact to the judgment being recognized in New York, or as to the liability of the Defendants.

Defendants oppose the motion arguing that the judgment is not a final, conclusive, and enforceable judgment in Korea, and therefore is not recognizable in New York under CPLR §5301.

Defendants argue that the judgment is not enforceable because in 2010 KRCC accepted B.E. Yoo's petition for a debt restructuring agreement, releasing him from the judgment. That KRCC disclosed this debt restructuring and release in a separate action it brought under Index No. 650349/2015 in New York County Supreme Court (Naunton Aff. In Opp. Exh. A), and that KRCC voluntarily withdrew this action in March of 2016, yet failed to disclose in this motion that the judgment had been released as against B.E. Yoo. That Defendants commenced an action on September 25, 2015 in Korea seeking to bar KRCC from enforcing of the judgment, that enforcement of the judgment was stayed on October 8, 2015 pending the determination of this new Korea action, and that on June 22, 2016 the Korean Court found in favor of KRCC. Defendants further contend that they are currently appealing the Korean Court's June 2016 decision, have moved for an extension of the stay pending the result of the appeal, and that Defendants would notify the Court when the Korean Court made a decision on the extension of the stay. (Lee Aff. In Opp. Exh. A & Naunton Supp. Aff. Exh. A).

Defendants also argue that the judgment does not qualify as a foreign country judgment under CPLR 5301(b), and is therefore not recognizable in New York because the interest in the judgment is levied as a penalty, and that if the interest is not a penalty it is nevertheless unenforceable because the 24% per year granted in the judgment is far more than the interest rate of 16% in New York.

Defendants further argue that the judgment is unenforceable because it is only enforceable against them via the "Execution Clause" granted in the Korean Court, which was issued ex parte and does not afford them due process, and that New York does not recognize the enforceability of money judgments against a deceased judgment debtor's heirs based solely on them being an heir, without alleging that the heir has inherited property from which the debt may be collected. Defendants further contend that the "Execution Clause" was obtained by Plaintiff without notifying the Korean Court of the earlier restructuring and release of the judgment, that Plaintiff is only now contending that the restructuring and release of the judgment is invalid because B.E. Yoo failed to disclose certain assets when negotiating for the restructuring and release, and that the appeal currently pending in the Korean Court will be reviewed de novo.

KRCC argues that an appeal of the judgment is not a basis to deny the motion according to CPLR §5302, that the penalty interest in the judgment merely constitutes the default interest due on the underlying loan and is not the "penalty" contemplated in the Statute that would bar recovery, and that the judgment does not violate New York public policy because New York Courts recognize and enforce judgments even though the legal basis for liability exists only in the foreign jurisdiction where the foreign judgment was rendered and not under New York law.

KRCC also argues that although the Korean Court rendered a decision granting the stays in October 2015, and July 2016, the stays are not valid because there is no evidence that the Defendants posted the bond required under the Korean Court's Orders, or that the Defendants provided a copy of the Stay to the execution agency in order for the stay to take effect. (Reply Aff. Exhs A & B). Therefore, the judgment is final.

CPLR §3213 provides in relevant part that an action based upon an instrument for the payment of money only or upon any judgment, may be served by the Plaintiff as a motion for summary judgment in lieu of a complaint.

CPLR §5302 states that "[t]his article applies to any foreign country judgment which is final, conclusive, and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal." "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 nonrecognition 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 [1<sup>st</sup> Dept.

2014], citing *Galliano v. Stallion, Inc.*, 15 N.Y.3d 75, 904 N.Y.S.2d 683, 930 N.E.2d 756 [2010]).

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact. (*Klein V. City of New York*, 89 NY2d 833; *Ayotte V. Gervasio*, 81 NY2d 1062, *Alvarez v. Prospect Hospital*, 68 NY2d 320). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (*Kaufman V. Silver*, 90 NY2d 204; *Amatulli V. Delhi Constr. Corp.*, 77 NY2d 525; *Iselin & Co. V. Mann Judd Landau*, 71 NY2d 420). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party (*SSBS Realty Corp. V. Public Service Mut. Ins. Co.*, 253 AD2d 583; *Martin V. Briggs*, 235 192).

It is axiomatic that summary judgment is a drastic remedy and should not be granted where triable issues of fact are raised and cannot be resolved on conflicting affidavits (*Millerton Agway Cooperative v. Briarcliff Farms, Inc.*, 17 N.Y. 2d 57, 268 N.Y.S. 2d 18, 215 N.E. 2d 341[1966]; *Sillman v. 20<sup>th</sup> Century-Fox Film Corp.*, 3 N.Y. 2d 395, 165 N.Y.S. 2d 498, 144 N.E. 2d 387[1957]; *Epstein v. Scally*, 99 A.D. 2d 713, 472 N.Y.S. 2d 318[1984]. Summary Judgment is “issue finding” not “issue determination” (*Sillman, supra*; *Epstein, supra*). It is improper for the motion court to resolve material issues of fact. These should be left to the trial court to resolve (*Brunetti, v. Musallam*, 11 A.D. 3d 280, 783 N.Y.S. 2d 347[1st Dept. 2004]).

KRCC attaches certified translated copies of the judgment and the “Execution Clause” confirming that the judgment can be enforced against the Defendants. Although there appears to be an Order from the Korea Court granting a stay of the enforcement of the judgment, Defendants provide no proof that a bond was obtained as required for the stay to take effect.

Accordingly, it is hereby ORDERED that the motion for summary judgment in lieu of complaint is granted, and it is further,

ORDERED, that an inquest on 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, is Ordered, and it is further,

ORDERED, that this matter is referred to a Special Referee to hear and report on the amount owed on the judgment, and it is further,

ORDERED, that within thirty (30) days from the date of this Order Plaintiff shall serve a copy of this Order with Notice of Entry upon the Defendants, on the New York County Clerk’s Office pursuant to e-filing protocol, and a separate copy of this Order with Notice of Entry shall be served pursuant to e-filing protocol on the Trial Support

Clerk in the General Clerk's Office at, [genclerk-ords-non-mot@nycourts.gov](mailto:genclerk-ords-non-mot@nycourts.gov), and upon the Special Referee Clerk (Room 119M), who is directed to place this matter on the inquest calendar of the Special Referee's Part for the earliest possible date.

ENTER:

Dated: November 29, 2016

  
\_\_\_\_\_  
MANUEL J. MENDEZ

J.S.C.

MANUEL J. MENDEZ  
J.S.C.

Check one:  FINAL DISPOSITION    X NON-FINAL DISPOSITION

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