SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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ABBAZIA DI NOVACELLA, a Religious Institution,

Index No. 652222/2015

Plaintiff,

-against-

DECISION/ORDER

VIAS IMPORTS LTD a/k/a V.I.A.S. IMPORTS, LTD.,

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affidavits in Opposition.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff commenced the instant action pursuant to Civil Practice Law and Rules ("CPLR") § 3213 with a summons and notice of motion for summary judgment in lieu of complaint to domesticate and enforce in New York a judgment plaintiff obtained against defendant in the Republic of Italy. For the reasons set forth below, plaintiff's motion is granted.

The relevant facts are as follows. Plaintiff Abbazia Di Novacella ("Abbazia") is a religious institution based in Bolzano, Italy, which supports itself by selling agricultural products and wine made from grapes grown in its vineyard. Defendant VIAS Imports LTD a/k/a V.I.A.S. Imports Ltd. ("VIAS") is a corporation organized and existing under the laws of the State of New York.

VIAS acted as a distributor of Abbazia's products in the United States. Although the

distribution arrangement between VIAS and Abbazia began in the 1980s, it was memorialized in an agreement dated February 18, 2004 (the "Agreement"). The term of the Agreement was one year, expiring on December 31 of each year, but was automatically renewed unless terminated by either party by giving written notice by registered mail at least six months prior to the annual expiration date.

On July 17, 2010, Abbazia sent VIAS written notice by registered mail stating that it was not going to renew the Agreement, which would therefore be terminated on December 31, 2010. Apparently, after giving the required notice of its intention not to renew the Agreement, Abbazia offered to enter into a new agreement with VIAS. However no new agreement was reached, and the parties' distribution relationship ended on December 31, 2010.

Before the Agreement terminated, VIAS had placed orders for which it agreed to pick up by February 28, 2011. Although Abbazia delivered the wine to the location VIAS designated, VIAS never paid for the wine. Based on this non-payment, on July 14, 2012, Abbazia commenced a proceeding against VIAS in the Court of Bolzano—Bressanone Division—of the Republic of Italy seeking an injunction compelling VIAS to pay €146,356.96 plus interest through July 25, 2012 and expenses. On August 7, 2012, Abbazia's application was granted by a single judge of the Court's Bressanone Division and VIAS was ordered to pay €162,491.03 plus additional interest until payment is made, and expenses (the "Judgment").

Under Italian law, VIAS had a right to file a writ of summons challenging the payment order and it did so in December 2012 (the "Challenge"). VIAS filed the Challenge to dispute the Bolzano Court's exercise of personal jurisdiction over it, as it was a New York entity, entirely domiciled in the City of New York, United States. However, as evidenced by a translation of VIAS's court filings, in its Challenge, VIAS also filed a counterclaim against

Abbazia for breach of the Agreement. In a ruling dated November 25, 2014, the Court of Bolzano rejected VIAS's Challenge in its entirety and confirmed the injunction that had been granted in favor of Abbazia in 2012. The Court of Bolzano also found that VIAS's counterclaims against Abbazia for breach of the Agreement lacked merit. Plaintiff now brings the instant action for summary judgment in lieu of complaint to domesticate and enforce the Judgment in New York.

Pursuant to CPLR Article 53, "a judgment issued by the court of a foreign country is recognized and enforceable in New York State if it is 'final, conclusive and enforceable where rendered.'" *Daguerre, S.A.R.I. v. Rabizadeh*, 112 A.D.3d 876, 877 (2nd Dept 2013) (quoting CPLR § 5302). A judgment "is conclusive between the parties to the extent that it grants or denies recovery of a sum of money," CPLR § 5303, and is enforceable by a motion for summary judgment in lieu of complaint, unless "1. the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;" or "2. the foreign court did not have personal jurisdiction over the defendant," CPLR § 5304(a)(1) and (2).

In the present case, plaintiff's motion for summary judgment in lieu of complaint is granted as plaintiff has made a *prima facie* showing establishing that the Judgment is conclusive and defendants have failed to demonstrate that either of the above exceptions apply to render the Judgment unenforceable. As an initial matter, VIAC does not contest that the Judgment is conclusive. Indeed, on its face it is conclusive as it grants plaintiff the recovery of money.

Further, the Italian courts had personal jurisdiction over VIAC. Section § 5305(a)(2) provides, in relevant part, that a foreign judgment shall not be denied recognition for lack of personal jurisdiction if "the defendant voluntarily appeared in the proceedings, other than for the

purpose of . . . contesting the jurisdiction of the court over him." CPLR § 5305(a)(2). Courts have interpreted this provision "to foreclose a defendant from contesting a foreign judgment for lack of personal jurisdiction once the defendant had done anything more than it had to do to preserve its jurisdiction objection." *CIBC Mellon Trust Co. v. Mora Hotel Corp.*, 100 N.Y.2d 215, 223 (2003) (citing *S.C. Chimexim S.A. v. Velco Enters. Ltd.*, 36 F. Supp. 2d 206, 215 (S.D.N.Y. 1999) and *Nippon Emo-Trans Co., Ltd. v. Emo-Trans, Inc.*, 744 F. Supp. 1215, 1222-12226 (E.D.N.Y 1990)). Here, when VIAC asserted a counterclaim against Abbazia for breach of contract in its Challenge, it did more than it had to preserve a jurisdiction objection. Thus, VIAC voluntarily appeared in the foreign proceeding and is foreclosed from contesting the Judgment for lack of personal jurisdiction at this time. To the extent VIAC contends that its arguments raised in the Challenge concerning the contract itself were only raised in the context of contesting jurisdiction, such contention is without merit as it is directly contradicted by the Italian pleadings. As VIAC's own pleading in the Challenge makes clear, VIAS's counterclaim had nothing to do with its jurisdictional challenge. Rather, VIAC's writ of summons opposing the injunction, explicitly states "with submission of a counterclaim." Further, VIAC explicitly states in the submission that if its jurisdiction objection is denied, it should be granted affirmative relief on its counterclaim.

Additionally, the Italian system as a whole is not incompatible with our notions of due process. VIAC contends that enforcing the Judgment would be unfair as the Italian Court never considered the merits of its counterclaim and the Judgment was entered on the papers without affording VIAC a trial. This contention is misplaced as the relevant inquiry under CPLR 5304(a)(1) is the "overall fairness" of the foreign country's legal system, not the legal process employed in a particular litigation, and VIAC cannot in good faith dispute the overall fairness of

Italy's legal system.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment in lieu of a complaint against defendant is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of €162,491.03, plus interest from July 25, 2012, and legal expenses of €11,000.00, a 15% lump sum reimbursement of €1,650.00, and a 4% attorneys' social security contribution of €506.00, all as converted into dollars on the date of judgment, plus post-judgment interest thereon at the statutory rate, together with costs and disbursements. This constitutes the decision and order of the court.

Dated: 9/18/15

Enter: _____
J.S.C.
CYNTHIA S. KERN
J.S.C.