Korean Deposit Ins. Corp. v Jae Sung Jung
2020 NY Slip Op 34002(U)
December 4, 2020
Supreme Court, New York County
Docket Number: 654301/2019
Judge: Gerald Lebovits
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **IAS MOTION 7EFM**

Justice

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KOREAN DEPOSIT INSURANCE CORPORATION,

Plaintiff,

- v -

JAE SUNG JUNG,

Defendant.

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INDEX NO. 654301/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11, 13, 14, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52

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

Law Offices of Jae Y. Kim, LLC, New York, NY (Seung Han Shin of counsel), for plaintiff.
Gibbons, P.C., New York, NY (Paul A. Saso of counsel), for defendant.

Gerald Lebovits, J.:

Plaintiff, Korean Deposit Insurance Corporation, moves for summary judgment in lieu of complaint against defendant, Jae Sung Jang. Plaintiff holds a judgment against defendant issued by the courts of South Korea.[1] Plaintiff now seeks to enforce that judgment in New York State under CPLR 3213 and CPLR 5303—a sum, with interest, of $2,959,942. The motion is denied, and the action dismissed, for lack of personal or in rem jurisdiction over plaintiff's effort to domesticate and enforce the Korean judgment in this court.

DISCUSSION

A plaintiff may move under CPLR 3213 for summary judgment in lieu of complaint to enforce a money judgment. If a money judgment issued in a foreign country is "final, conclusive and enforceable where rendered" (CPLR 5302), it may be enforced by CPLR 3213 motion—unless the judgment is subject to one of the exceptions listed in CPLR 5304. (*See* CPLR 5303.) If a plaintiff has moved to domesticate and enforce a foreign-country judgment, and the defendant/alleged judgment debtor raises a colorable, non-frivolous challenge under CPLR 5304 to recognition of the foreign judgment, the plaintiff must establish that the New York courts have personal or in rem jurisdiction over the defendant or the defendant's property. (*See AlbaniaBEG Ambient Sh.p.k. v Enel S.p.A.,* 160 AD3d 93 109-112 & n 20 [1st Dep't 2018].)

[1] Plaintiff is the Korean bankruptcy trustee of the judgment creditor (a Korean bank).

As an initial matter, this court disagrees with defendant's argument that the court lacks personal jurisdiction over the CPLR 3213 action itself due to improper service. To be sure, plaintiff undisputedly served only defendant's counsel, rather than defendant himself. But as this court previously concluded (*see* NYSCEF No. 28), plaintiff sufficiently demonstrated for CPLR 308 (5) purposes its due diligence in attempting unsuccessfully to serve defendant in New York, and the impracticability of serving defendant in Canada. Service of the motion papers on defendant's counsel was an appropriate means of expedient service.

Defendant also contends that recognition here of the underlying Korean judgment is subject to a CPLR 5304 challenge because he assertedly was never validly served in the Korean proceeding resulting in that judgment. He contends that plaintiff is therefore required to establish that the New York courts have personal jurisdiction over him (or in rem jurisdiction over his property)—and that plaintiff has failed to meet that burden. This court finds these contentions persuasive.

I. Defendant's Challenge to Personal Jurisdiction in the Korean Courts

As discussed above, to implicate plaintiff's obligation to establish personal jurisdiction in New York, defendant need only establish at this stage that he has a colorable CPLR 5304 challenge to recognition of the Korean judgment. This court concludes that defendant has met this burden.

Defendant argues that the Korean judgment is not conclusive for purposes of CPLR 5304 (and thus not enforceable under CPLR 5303) because the Korean court lacked personal jurisdiction over him. Defendant submits a sworn affidavit in which he states that he was never served with process in the Korean proceeding, did not attend or appear in the Korean proceeding (either through counsel or pro se), and indeed had not been living in Korea for over a decade when the proceeding was brought against him. (*See* NYSCEF No. 34 at ¶¶ 5-6; *see also* NYSCEF No. 33 at 5-7 [memorandum of law].) These statements, if credited, would be enough to demonstrate under New York law that personal jurisdiction in the Korean proceeding was absent for CPLR 5304 purposes. (*See USI Systems AG v Gliklad*, 176 AD3d 555, 556-557 [1st Dept 2019]; *cf. Korea Resolution & Collection Corp. v Hyuk Kee Koo*, 170 AD3d 485, 486 [1st Dept 2019] [affirming trial court's holding that "defendants submitted to the jurisdiction of the Busan District Court by appealing the judgment and raising arguments on the merits regarding the validity of the underlying debt"].[2])

Plaintiff's comparatively paltry countervailing showing does not demonstrate clearly that the Korean court that entered the underlying judgment had personal jurisdiction over defendant, as would be required to render frivolous defendant's jurisdictional challenge here.

Plaintiff's opening motion papers include an affidavit from a representative of plaintiff stating, in conclusory terms, that "[a]t all relevant times" personal jurisdiction existed because

[2] In this case, plaintiff itself has represented that neither defendant here nor any of the other defendants in the Korean proceeding took an appeal from the judgment or otherwise challenged the judgment through motion practice. (*See* NYSCEF No. 8 at ¶ 10.)

"the defendant resided in Korea at the time[] and defendant submitted to jurisdiction in Korea." (NYSCEF No. 8 at ¶ 9.) The affidavit does not, however, explain the basis for these statements, or provide supporting documentation.

On reply, plaintiff submits what appears to be the court docket in the underlying proceeding, in both Korean and an English-language translation. (*See* NYSCEF No. 40.) That docket contains an entry stating, "Duplicate copy of complaint and litigation guide served on Defendant 2 Jae Seong Jung." (*Id.* at 5.) No further details about the nature of that service (*e.g.*, who service was made on, where service was made, how service was made), or its validity, appear on the docket.[3] And the docket itself cautions that "[t]he service results have no legal effect, and are provided for reference purpose only." (*Id.* at 4.) This court concludes that this brief docket entry does not alone demonstrate that sufficient service was made on defendant—any more than a NYSCEF entry reflecting the filing of an affidavit of service would demonstrate that valid service had been made in an action before this court. At a minimum, this docket entry does not, as plaintiff suggests, establish that "the South Korean court clearly had jurisdiction over defendant Jung," and that defendant's contrary arguments are "non-colorable" and "easily rejected." (NYSCEF No. 36 at 5 [capitalization omitted].)

II. Defendant's Challenge to Personal Jurisdiction in the New York Courts

Because defendant has raised a colorable challenge to enforceability of the Korean judgment, this court must go on to consider whether plaintiff has shown that the New York courts have personal or in rem jurisdiction over defendant. This court concludes that plaintiff has not made that showing.

It is undisputed that defendant moved to Canada months prior to commencement of this action. (*See* NYSCEF No. 34 at ¶ 7 [defendant's affidavit]; *see also id.* at 3 [stamp reflecting notarization in Coquitlam, British Columbia].) Defendant also represents that he now holds no title to any property or assets located in New York State. (*Id.* at ¶ 11.) Plaintiff does not seriously dispute that representation either.[4] Instead, plaintiff contends that defendant *previously* owned a Manhattan apartment, and that defendant's relinquishment of that property (a transfer of title to defendant's now ex-wife as part of their divorce agreement) was merely a fraudulent conveyance. (*See* NYSCEF No. 36 at 2-3.) Plaintiff contends that defendant's supposed retention of control over fraudulently conveyed property in New York, and the assertedly tortious transfer

[3] Plaintiff's reply affirmation of counsel emphasizes that the docket (supposedly) reflects successful service on defendant at a particular residential address in the city of Seoul in Korea, and that this address matches the known address for defendant at the time appearing in government records. (*See* NYSCEF No. 36 at 6.) But as far as this court can tell, the particular address referenced by plaintiff does not appear at all in the English-language version of the court docket. (*See* NYSCEF No. 40 at 2-7.) The basis for plaintiff's assertion that service was made on defendant at that address is thus unclear.

[4] At most, an affidavit submitted with plaintiff's opening motion papers states that "[o]n information and belief, Defendant owns real property located in New York Count, New York." (NYSCEF No. 8 at ¶ 12.)

of the property itself, establishes personal jurisdiction over defendant in New York. (*See id.*) This court is not persuaded.

Plaintiff has not established that the transfer of the Manhattan apartment was fraudulent—much less that the underlying *divorce action* in which that transfer occurred was a sham, as plaintiff contends. (*See* NYSCEF No. 36 at 2.) Indeed, a fraudulent-conveyance action brought by plaintiff regarding the Manhattan apartment was previously dismissed by Justice W. Franc Perry of this court.[5] (*See Korean Deposit Ins. Corp. v Jae Sung Jung*, Index No. 157470/2019, NYSCEF Nos. 28, 31.)

On this record, this court declines to look through defendant's divorce-related transfer of his New York apartment and deem the apartment to be still held by defendant for personal jurisdiction purposes. Nor has plaintiff sufficiently established that the transfer was a tortious fraudulent conveyance that would give this court long-arm personal jurisdiction over defendant under CPLR 302 (a) (2).

Absent personal or in rem jurisdiction, plaintiff cannot maintain an action in this court under CPLR 3213 and CPLR 5303 to enforce the Korean judgment against defendant.

Accordingly, it is hereby

ORDERED that plaintiff's motion under CPLR 3213 for summary judgment in lieu of complaint is denied, and the action is dismissed.

12/4/2020
DATE

HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

[5] This court notes that at a hearing in that action, Justice Perry expressed great skepticism about the adequacy of plaintiff's evidentiary showing that either the divorce of defendant and his ex-wife, or the accompanying disposition of real and personal property between them, were fraudulent. (*See* NYSCEF No. 48 at 5-6, 7-9, 11, 13-14 [transcript of Dec. 19, 2019, hearing in Index No. 157470/2019].)