

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

2021 NY Slip Op 31459(U)

April 30, 2021

Supreme Court, New York County

Docket Number: 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** **IAS MOTION 37EFM**

*Justice*

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SHANGHAI YONGRUN INVESTMENT MANAGEMENT  
CO., LTD.,

Plaintiff,

- v -

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

Defendants.

-----X

**INDEX NO.** 156328/2020

**MOTION DATE** 10/30/2020,  
01/06/2021

**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 46, 47, 48, 49, 50, 51, 52 were read on this motion to EXTEND - TIME.

Preamble

On November 11 (Veterans Day in the United States), 1947, Winston Churchill famously opined,

Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time ...

After 30 years in the judicial trenches (12 as a law clerk, 18 as a judge), this Court feels roughly the same about the civil justice system in New York: it is not, by any means, perfect; but, by and large, it strives to, and in most instances (probably the vast majority of instances) it does, produce results that are fair and just.

The great engine, the open secret, of the American legal system is the requirement that all parties receive “due process.” Legal historians trace the origin of that phrase back to Clause 39 of the Magna Carta: “No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.” The actual words “due process” can be traced back to a 1354 “statutory rendition” of Clause 39: “No man of what state or condition he be,

shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law.”

Due process is an abstract and supple concept, which likely explains its utility, longevity, and ubiquity. The humorous but important question that continually arises is, “What process is due?” In its classical formulation, due process consisted of notice of legal proceedings; an opportunity to be heard; and a fair and impartial magistrate. Starting around the middle of the 20<sup>th</sup> century, these three elements came to be called “procedural due process,” to be distinguished from the emerging (and still disputed) concept of “substantive due process,” which insures that whatever procedural protections a person has, he or she also has fundamental rights upon which the government may not intrude, whether or not the Constitution and/or legislation expressly enumerate those rights. New York is a bastion of both forms of due process, and that is what our courts strive to provide to all litigants.

Of course, the judicial branch of government is only one of three; yet it is pivotal. In a September 28, 1798 letter to Attorney General William Randolph, George Washington, America’s first president, supposedly wrote, “The true administration of justice is the firmest pillar of good government” (although contemporary documents indicate that he actually wrote “due” instead of “true”). For almost a century (since 1927), the iconic New York County Courthouse, at 60 Centre Street, New York, NY, the flagship building of the Supreme Court of the State of New York, County of New York, in which this Court sits, has emblazoned that hallowed sentence forth from its pediment.

As human affairs increasingly progress from local, to national, to international, lawyers are increasingly asking state courts to “domesticate” (that is, record and enforce) “sister state” and “foreign country” judgments. The United States Constitution, Article IV, Section 1, requires that all states give “full faith and credit” to the judgments of other states, but it says no such thing about foreign judgments. Here, plaintiff asks this Court to recognize one. However, for the reasons stated hereinbelow, this Court refuses to do so.

### Background

On August 13, 2020, plaintiff, Shanghai Yongrun Investment Management Co., Ltd. (“SYIMC”), commenced this CPLR Article 53 action for the recognition and enforcement of a foreign country money judgment that the Beijing Higher People’s Court of the People’s Republic of China (“PRC”) issued, and entered on May 20, 2019, in SYIMC’s favor and against defendants, Kashi Galaxy Venture Capital (“KGVC”) and Maodong Xu (“Xu”); collectively with KGVC, “Defendants”).

The background facts are as follows. In 2016 the parties entered into an Equity Transfer Agreement wherein SYIMC invested in Kashi Galaxy Internet Group Co., Ltd. (“the Target Company”) by purchasing from KGVC 1.667% of the equity shares at a price of RMB 200,000,000 Yuan. In 2017 the parties entered into another agreement wherein Defendants agreed to purchase SYIMC’s interest in the Target Company for a one-time lump-sum payment to be made in cash no later than September 30, 2017. The agreements were governed by PRC law and had a forum selection clause providing that any disputes could be resolved by suit in a

court of competent jurisdiction in the Haidan District, Beijing, China. Defendants allegedly defaulted under the agreements by tendering only a portion of the total repurchase price to SYIMC.

Subsequently, on or about April 30, 2018, SYIMC sued Defendants and Xu's wife in the Beijing No. 1 Intermediate People's Court. A trial was conducted wherein Defendants were represented by counsel. On December 10, 2018, the court granted judgment in SYIMC's favor and against Defendants. On February 19, 2019, KGVC appealed the judgment to the Beijing Higher People's Court. On May 20, 2019, that court affirmed the lower court's findings and rulings, although slightly altering the calculations for certain fees awarded to SYIMC. SYIMC then tried to enforce its judgment in China by bringing an enforcement action in the trial court. However, that court ruled that, as no assets were available for execution within the court's jurisdiction, the court had to terminate the proceeding. SYIMC alleges that Xu has been evading efforts to enforce the judgment in China by using intermediary entities to channel assets and by relocating to the United States.

SYIMC now seeks to have the PRC judgment recognized and enforced here in New York, pursuant to CPLR Article 53. In support, SYIMC argues that the PRC judgment is final, conclusive, and grants SYIMC the recovery of a sum of money within the meaning of CPLR 5303. SYIMC alleges, inter alia, that the Chinese courts had personal jurisdiction over Defendants and that the civil laws of the PRC are administered by a fair system with impartial tribunals and procedures; thus, PRC courts are compatible with the requirements of due process of law in the United States. Essentially, SYIMC alleges that there are no grounds for non-recognition pursuant to CPLR 5304. To support that contention SYIMC cites to Liu v Guan, Index No. 71374/2019, 2020 WL 1066677 (NY Sup Ct 2020), a Queens County Supreme Court case, wherein the Hon. Justice Denis J. Butler recognized a PRC judgment under CPLR Article 53, finding, inter alia, that the United States Department of State 2018 Country Report on Human Rights Practices is not binding on the court, and that "the Chinese legal system comports with the due process requirements and the public policy of New York."

Xu now moves, pursuant to CPLR 3211(a)(1) and (7), to dismiss the complaint. The basis for the motion is that the PRC judgment "was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law," as CPLR 5304(a)(1) requires. In support of the motion Xu argues that documentary evidence in the form of the United States State Department Annual Country Reports for 2018 and 2019 conclusively establish, as a matter of law, that the PRC judgment should not be recognized because "the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law." Xu cites to Second Circuit Court of Appeals case law to support his position.

Xu also argues that the holding in Liu, supra, is inapposite, non-final (as the defendants in that case are currently perfecting their appeal), and not binding authority. Xu also contends that SYIMC failed to state a cause of action pursuant to CPLR 5304(a)(1), as the complaint does not allege that the mandatory grounds for non-recognition are absent. Essentially, Xu argues that the only allegation to support the finding that the PRC judgment was rendered under a system that provides impartial tribunals or procedures compatible with the requirements of due process is a

legal conclusion based on the non-final holding in Liu supra. Lastly, Xu points out that the PRC judgment, which has been translated into English, fails to include a translator affidavit, as CPLR 2101(b) requires.

SYIMC opposes the motion, arguing that the PRC civil justice system is in fact compatible with the requirements of due process in the United States, citing to, inter alia, PRC's Civil Procedure Laws. SYIMC also cites to case law from the Ninth Circuit and the United State District Courts for the Northern District of Illinois and the Central District of California, wherein money judgments issued by the PRC were recognized pursuant to the Uniform Foreign Money-Judgments Recognition Act. SYIMC also argues that the United States State Department Annual Country Reports are not relevant to this case, as they focus on political prisoners and criminal prosecution of human rights activists, etc., as opposed to focusing on civil litigation. Moreover, SYIMC argues that the United States State Department Annual Country Reports do not qualify as documentary evidence, as they are merely records, which contain information in a summary form. Lastly, SYIMC argues that it did not need to plead that there are no mandatory grounds for non-recognition, as non-recognition is a defense.

## Discussion

### CPLR Article 53

CPLR Article 53 codifies the Uniform Foreign Country Money-Judgments Recognition Act. According to CPLR 5302, Article 53 applies to any foreign country judgment, which is final, conclusive, and enforceable where rendered. CPLR 5303 provides, “[e]xcept as provided in section 5304, a foreign country judgment meeting the requirements of section 5302 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money . . . .” CPLR 5304 enumerates the mandatory and discretionary grounds for non-recognition of a foreign country money judgment. More specifically, CPLR 5304(a) states, “[a] foreign country judgment is not conclusive if: 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 . . . .”

### CPLR 3211(a)(7)

Dismissal pursuant to CPLR 3211(a)(7) is warranted where, after accepting the facts alleged as true and according plaintiff the benefit of every possible favorable inference, the court determines that the allegations do not fit within any cognizable legal theory. Leon v Martinez, 84 NY2d 83, 87-88 (1994); see also EBC I, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 (2005) (“[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus” in determining a motion to dismiss for failure to state a cause of action). A complaint survives a motion to dismiss for failure to state a cause of action if it gives the court and the parties “notice” of what is intended to be proved and the material elements of a cause of action. CPLR 3013.

As stated above, Xu argues that the complaint fails to state a cause of action because the complaint contains only a bare legal conclusion that the PRC judgment was rendered under a system that provides impartial tribunals or procedures compatible with the requirements of due process.

However, as SYIMC correctly points out, and according to the First Department, it is SYIMC's prima facie burden to allege only that the PRC judgment was conclusive, as opposed to pleading the absence of each ground for non-recognition of the judgment that might be available as a defense under CPLR 5304. See Standard Chartered Bank v Ahmad Hamad Al Gosaibi & Bros. Co., 110 AD3d 578, 578-79 (1<sup>st</sup> Dept. 2013) (“Plaintiff alleged that the judgment was ‘conclusive.’ It thus alleged, implicitly, that none of the CPLR 5304 factors were present. Under the rule requiring that pleadings be afforded a liberal construction, this is sufficient.”).

Here, the complaint alleges that the PRC judgment was final and conclusive. Thus, SYIMC has stated a cause of action.

#### CPLR 3211(a)(1)

Dismissal pursuant to CPLR 3211(a)(1) is warranted where the documentary evidence submitted conclusively establishes a defense as a matter of law to the asserted claims. Leon, supra, 84 NY2d at 88; Warberg Opportunistic Trading Fund, LP v GeoResources, Inc., 112 AD3d 78, 82-83 (1<sup>st</sup> Dept. 2013) (“[d]ismissal under CPLR 3211(a)(1) is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law”).

“A paper will qualify as ‘documentary evidence’ only if it satisfies the following criteria: (1) it is ‘unambiguous’; (2) it is of ‘undisputed authenticity’; and (3) its contents are ‘essentially undeniable.’” VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC, 171 AD3d 189, 193 (1<sup>st</sup> Dept. 2019) (citations omitted).

Xu argues that the United States State Department Annual Country Reports for 2018 and 2019 conclusively establish that this Court should not recognize the PRC judgment because it “was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.” SYIMC disagrees, arguing that the United States State Department Annual Country Reports are irrelevant and do not qualify as documentary evidence.

As to whether the reports can be considered documentary evidence, this Court finds that they can, and should, be considered as such. See Bridgeway Corp. v Citibank, 201 F3d 134 (2<sup>nd</sup> Cir 2000) (relying on Country Report prepared by United States State Department in declining to recognize foreign money judgment from Supreme Court of Liberia on ground that judgment was rendered by system that did not provide impartial tribunals or procedures compatible with requirements of due process). This Court does not agree with SYIMC's argument that the reports are merely summaries of information and are not “essentially undeniable.” It is clear that the reports are unambiguous, are of undisputed authenticity, and SYIMC has failed to controvert the contents of the reports. Chinese justice looks good on paper, but in practice leaves much to be desired. See Jalloh v Gonzales, 238 FApp'x 695, 697 (2<sup>nd</sup> Cir 2007) (“in the absence of contradictory evidence, we afford State Department country condition reports deference”) (citations omitted).

SYIMC argues that the reports are irrelevant to the instant case and do not conclusively establish a defense as a matter of law as “the report[s] [are] focused on political prisoners and *criminal* prosecution of human rights activists .... Nothing in the report[s] stat[e] or even sugges[t] that

civil litigants in an ordinary commercial dispute case will not be afforded due process of law by the PRC judicial system.” (NYSCEF Doc. No. 32, at 13). This Court disagrees and finds that the reports go further than discussing the human rights of political prisoners or criminal defendants. The executive summary section of the 2018 report states, “[t]he [Chinese Communist Party] continued to dominate the judiciary and controlled the appointment of all judges and in certain cases directly dictated the court’s ruling ....” (NYSCEF Doc. No. 12, at 2). Likewise, the executive summary section of the 2019 report states, “[s]ignificant human rights issues included: ... substantial problems with the independence of the judiciary ....” (NYSCEF Doc. No. 11, at 1).

Most striking, under the heading “Denial of Fair Public Trial,” the 2018 and 2019 reports state,

Although the law states the courts shall exercise judicial power independently, without interference from administrative organs, social organizations, and individuals, the judiciary did not exercise judicial power independently. Judges regularly received political guidance on pending cases, including instructions on how to rule, from both the government and the [Chinese Communist Party], particularly in politically sensitive cases. The [Chinese Communist Party] Central Political and Legal Affairs Commission has the authority to review and direct court operations at all levels of the judiciary. All judicial and procuratorate appointments require approval by the [Chinese Communist Party] Organization Department.

Corruption often influenced court decisions, since safeguards against judicial corruption were vague and poorly enforced. Local governments appointed and paid local court judges and, as a result, often exerted influence over the rulings of those judges.

A [Chinese Communist Party]-controlled committee decided most major cases, and the duty of trial and appellate court judges was to craft a legal justification for the committee’s decision.

(NYSCEF Doc. No. 11, at 14-15; NYSCEF Doc. No. 12, at 11-12). As to civil judicial procedures and remedies specifically, the 2018 and 2019 reports state, “[c]ourts deciding civil matters faced the same limitations on judicial independence as criminal courts.” (NYSCEF Doc. No. 11, at 21; NYSCEF Doc. No. 12, at 17). Furthermore, both reports, in Section 4, “Corruption and Lack of Transparency in Government,” state that “[c]orruption remained rampant, and many cases of corruption involved areas heavily regulated by the government, such as land-usage rights, real estate, mining, and infrastructure development, which were susceptible to fraud, bribery, and kickbacks.” (NYSCEF Doc. No. 11, at 61; NYSCEF Doc. No. 12, at 46). As stated in Xu’s memorandum of law in reply to SYIMC, “the underlying business transaction is not ‘an ordinary commercial dispute case’ but involve[s the] public offering of a target company in the Chinese stock market subject to heavy regulations of the Chinese government.” (NYSCEF Doc. No. 41, at 17). Thus, this Court finds that the reports are in fact relevant to the case at hand and conclusively establish as a matter of law that the PRC judgment was rendered



under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law in the United States.

The fact that Defendants participated in the underlying litigation, were represented by an attorney, and appealed the trial court judgment, which in many situations would constitute a waiver, is of no consequence here, as CPLR 5304(a)(1) addresses the entire system, not just the underlying litigation.

SYIMC's reliance on Liu, supra, is misplaced, as the facts are distinguishable. In that case the plaintiff first commenced a breach of contract action in Supreme Court, Queens County. The Hon. Leonard Livote granted defendants' motion to dismiss for forum non conveniens on the condition that the defendants consent to the jurisdiction of the PRC. The defendants did consent to jurisdiction and executed an authorization designating an attorney in Beijing, China to accept service. The conditional dismissal for forum non conveniens played a critical role in Justice Butler's decision to recognize a PRC judgment. Additionally, the holding is currently being appealed and, although persuasive, does not bind upon this Court.

Additionally, it appears that SYIMC has failed to provide this Court with an adequate translator affidavit, as CPLR 2101(b) requires.

The Court has considered SYIMC's other arguments in opposition to the instant motion to dismiss and finds them to be unavailing and/or non-dispositive.

As Xu's documentary evidence conclusively establishes a defense as a matter of law to the asserted claim, SYIMC's motion (motion sequence 2), pursuant to CPLR 306-b, for an extension of time to serve KGVC, is hereby denied solely as moot, and KGVC's cross-motion to motion sequence 2, pursuant to CPLR 306-b, to dismiss is hereby denied solely as moot.

As today's decision demonstrates, New York judges do not rubber stamp foreign judgments; rather, we carefully scrutinize the judicial system of the source thereof, and then we decide what the law requires.

Conclusion

Thus, for the reasons set forth herein, defendant Maodong Xu's motion to dismiss is hereby granted, and all other requests for relief are hereby denied as moot. The Clerk is hereby directed to enter judgment dismissing the instant action in its entirety.

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4/30/2021  
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>