SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

HUIZHI LIU,

Plaintiff,

-against -

GUOQING GUAN and XIDONG FANG,

Defendants.

NOTICE OF ENTRY

Index No. 713741/2019

PLEASE TAKE NOTICE that the within is a true copy of the Memorandum/Order by Judge Denis J. Butler, which was duly entered in the Office of the Clerk of New York County on January 7, 2020 in this matter.

Dated: New York, New York
January 17, 2020

Goldberger & Dubin, P.C.

Renee M. Wong, Esq.
Of Counsel
401 Broadway, Suite 306
New York, New York 10013

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ORIGINAL

MEMORANDUM

FILED
JAN - 7 2020
COUNTY CLERK
QUEENS COUNTY

SUPREME COURT : QUEENS COUNTY
IAS PART 12

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HUIZHI LIU,

Plaintiff(s),

-against-

GUOQING GUAN and XIDONG FANG,

Defendant(s).

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Index Number: 713741/2019

Motion Date: November 12, 2019

Motion Seq. No.: 001

The following papers were read on this motion by plaintiff for an order directing the entry of judgment for plaintiff and against defendants in the amount of $2,486,372, plus interest on the amount of $2,464,000 from November 9, 2017 to August 5, 2019 at the rate of 2% per month, and at a rate of 4% per month thereafter; and cross-motion by defendants for an order, pursuant to CPLR 3212, granting summary judgment dismissing plaintiff's motion.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits	E2-7
Notice of Cross-Motion, Affirmation, Affidavit	E12-28
Affirmation In Opposition, Exhibits, Memorandum of Law	E34-44
Memorandum In Reply	E45

Upon the foregoing papers, it is ordered that this motion and cross-motion are determined as follows:

Plaintiff seeks enforcement of a foreign money judgment under CPLR article 53 in the amount of RMB 17.6 million, exclusive of interest and legal fees, that was obtained in the People's Republic of China.

On or about May 14, 2018, plaintiff commenced an action sounding in breach of contract and unjust enrichment against defendants in Supreme Court, Queens County. The action was assigned to the Commercial Division, and by order dated January 4, 2019, the Honorable Leonard Livote granted a conditional dismissal upon the

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ground of forum non conveniens, only if defendants consent to the jurisdiction of the People's Republic of China and accept service of process of a new action brought on the same causes of action.

The parties subsequently executed a stipulation dated January 31, 2019, wherein defendants consented to the jurisdiction of the People's Republic of China as the forum designated by plaintiff.

On or about July 24, 2019, the People's Court of Zhuhai City, Xiangzhou District, People's Republic of China, granted judgment on default in favor of plaintiff and against defendants, in the amount of RMB 17.6 million, with interest from November 9, 2017 to the date of payment at a monthly interest rate of 2% (the Chinese Judgment). The Chinese Judgment also provided that, if not satisfied within 10 days of service upon defendants, any interest owed will be doubled, and that defendants shall pay RMB 159,800 in legal fees to plaintiff.

"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.*, 100 NY2d 215, 221 [2003]). Indeed, "[h]istorically, New York courts have accorded 'recognition to the judgments "rendered in a foreign country under the doctrine of comity . . . [a]bsent some showing of fraud in the procurement of the foreign country judgment or that recognition of the judgment would do violence to some strong public policy of this State'" (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 82 [2006], quoting *Greschler v Greschler*, 51 NY2d 368, 376 [1980]).

CPLR article 53, the Uniform Foreign Country Money-Judgments Recognition Act, was enacted in 1970 (*see John Galliano, S.A. v Stallion, Inc.*, 15 NY3d 75, 79 [2010], which was intended to codify and clarify existing case law applicable to the recognition of foreign country money judgments based on principles of international comity "and, more importantly, to promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive streamlined enforcement here" (*CIBC Mellon Trust Co.*, 100 NY2d at 221).

Pursuant to CPLR 5303, a foreign country money judgment which is final and conclusive may be enforced in New York by a motion for summary judgment in lieu of complaint. 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 non-recognition under CPLR 5304 is applicable (*see John Galliano, S.A.*, 15 NY3d at 80). CPLR 5304 (a) provides that "[a] foreign country judgment is not conclusive if . . . the judgment

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was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law" or "the foreign court did not have personal jurisdiction over the defendant." Moreover, CPLR 5304 (b) permits discretionary non-recognition on eight other enumerated grounds.

The plaintiff judgment-creditor bears the prima facie burden of establishing that the mandatory grounds for non-recognition, due process and personal jurisdiction (*see* CPLR 5304 [a]), do not exist, and the defendant judgment-debtor opposing enforcement bears the burden of showing a discretionary ground for non-recognition (*see* CPLR 5304 [b]) does exist and should be applied (*Attorney Gen. of Canada v Gorman*, 2 Misc 3d 693, 697 [Civ Ct, Queens County 2003]).

In the instant matter, defendants do not oppose enforcement of the Chinese Judgment upon personal jurisdiction grounds (*see* CPLR 5304 [a] [2]), in light of the stipulation dated January 31, 2019. Rather, defendants argue that enforcement is precluded, as a matter of law, under CPLR 5304 (a) (1), which provides that "[a] foreign judgment is not conclusive if . . . the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law" (*see Bridgeway Corp. v Citibank*, 45 F Supp 2d 276, 286 [SD NY 1999], *affd* 201 F3d 134 [2d Cir 2000]).

"CPLR 5104 (a) (1) does not demand that the foreign tribunal's procedures exactly match those of New York" (*CIBC Mellon Trust Co.*, 100 NY2d at 222). "[M]ere divergence from American procedure does not render a foreign judgment unenforceable" (*Canadian Imperial Bank of Commerce v Saxony Carpet Co.*, 899 F Supp 1248, 1252 [SD NY 1995), *affd* 104 F3d 352 [2d Cir 1996]; *see Pariente v Scott Meredith Literary Agency, Inc.*, 771 F Supp. 609, 616 [SD NY 1991]).

Plaintiff's submissions demonstrate that the Chinese legal system comports with the due process requirements and the public policy of New York (*Lenchyshyn v Pelko Elec., Inc.*, 281 AD2d 42, 46 [4th Dept 2001]). Due process of law is not restricted to our laws. It presupposes an objective system of rules with no unfair surprises, where a prospective litigant has notice of the applicable law and its consequences (*see Kim v Co-op. Centrale Raiffeisen-Boerenleebank B.A.*, 364 F Supp 2d 346, 351-352 [SD NY 2005]).

Defendants, in the action before the Honorable Leonard Livote, argued that the interest of substantial justice would be best served by adjudication of the matter in the People's Republic of China, and they may not now cry foul. Defendants were given ample

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notice and opportunity to be heard in the People's Republic of China (*see CIBC Mellon Trust Co.*, 100 NY2d at 222), yet made the tactical decision to sit on their hands and allow a default judgment to be entered, even after the parties executed a stipulation consenting to the jurisdiction of the People's Republic of China. Additionally, courts in this State will not grant a forum non conveniens dismissal, such as in the action before Justice Livote, where the alternative forum's judicial system is grossly inadequate or given to extreme levels of partiality.

In *Bridgeway Corp. v Citibank* (45 F Supp 2d at 287), cited by defendants, unlike here, the court noted Liberia was "embroiled in a civil war," and "[t]he country was in a state of chaos, as the various factions fought." The court further noted "the [Liberian] courts that did exist were barely functioning." As such, the Liberian judicial system "did not comport with the requirements of due process *during the period of civil war*" (*id.* at 287 [emphasis added]). Furthermore, the 2018 Country Report on Human Rights Practices prepared by the United States Department of State is not binding on this court.

Pursuant to CPLR 5304 (b) (2), "[a] foreign country judgment need not be recognized if . . . the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend." Defendants' argument that non-recognition of the Chinese Judgment is warranted under this discretionary ground is also unavailing. The evidence demonstrates that the Civil Procedure Law of the People's Republic of China was satisfied and that defendants were or should have been aware of the pending litigation in China.

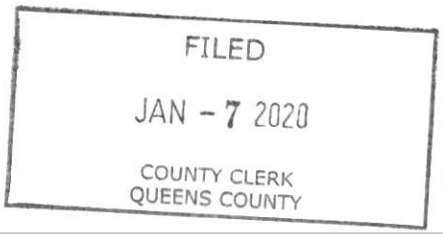
Accordingly, plaintiff's motion is granted and defendants' cross-motion is denied.

In determining the rate of exchange, the Clerk shall use the rate set forth in the *Wall Street Journal* or other such publication on the date of entry of judgment.

Settle Judgment.

Dated: January 6, 2020

Denis J. Butler, J.S.C.



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