2014 WL 3533447 (N.Y.Sup.), 2014 N.Y. Slip Op. 31861(U) (Trial Order)
Supreme Court, New York.
New York County

Annabelle Sarah BOND, Plaintiff,
v.
Warren LICHTENSTEIN, Defendant.

No. 152960/14.
July 17, 2014.

Trial Order

PRESENT: ***MANUEL J. MENDEZ, Justice***

PART ***13***

MOTION DATE ***06 -04-2014***

MOTION SEQ. NO. ***001***

MOTION CAL. NO. _____

***1** The following papers, numbered 1 to *7* were read on this motion to/for *summary judgment in lieu of a complaint:*

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...	*1 - 4*
Answering Affidavits -- Exhibits _____ cross motion _____	*5 - 7*
Replying Affidavits _____	_____

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is ordered that the plaintiff's motion for summary judgment in lieu of a complaint pursuant to CPLR §3213, at 8% interest per annum (Mot. Exh. 2), which she has converted to $570,110. 05 in U.S. dollars and to obtain attorney fees, costs and expenses, is granted.

Plaintiff and the defendant lived together for approximately one year beginning in April of 2006. Plaintiff is a citizen of the United Kingdom and the defendant is a citizen of the United States. Not long after plaintiff found out she was pregnant, the relationship fell apart, and by April of 2007, they had separated. On XX/XX/2007, their female child ("ILB"), was born in England. Plaintiff currently resides with ILB in Hong Kong. Since 2009, plaintiff has been involved in a relationship with Andrew Cader, a New York resident and non-party to both the Hong Kong proceedings and the action currently pending before this Court.

On November 21, 2008, plaintiff commenced child support and paternity proceedings in England. There was a trial and resulting December 3, 2010 Support Order from Parker, J. of the High Court of England ("Parker's Order"). The parties entered into a consent summons for purposes of obtaining a "mirror order" in Hong Kong reflecting the support obligations obtained by the plaintiff in England and vacating Parker's Order. In November of 2012, the defendant commenced an action and submitted to jurisdiction in Hong Kong for purposes of obtaining the "mirror order" and resolving other related issues.

In May of 2013, the proceeding brought before the High Court of Hong Kong for a direction hearing, resulted in a four day trial concerning child support. The defendant appeared for the trial by video, he submitted evidence and was represented by attorneys. On June 28, 2013, the High Court of Hong Kong, by Deputy High Court Judge, Bebe Pui Ying Chu, rendered an 87 page Opinion.

Defendant filed an appeal of the June 28, 2013 Opinion which will not be heard until October 2014. On November 12, 2013, defendant also sought a stay of execution of the June 28, 2013 Opinion. On November 19, 2013 the defendant signed a Consent Summons adjourning his stay application "sine die." On December 2, 2013, the High Court of Hong Kong permitted plaintiff to enter judgment as directed in the June 28, 2013 Opinion.

***2** This action was commenced by plaintiff on March 28, 2014, by summons and notice of motion for summary judgment in lieu of a complaint pursuant to CPLR §3213. Plaintiff seeks to enforce the December 2, 2013 judgment obtained in Hong Kong for child support arrears from July 2013 through December 2013, in the amount of $4,418,352.90 (Hong Kong) at 8% interest per annum (Mot. Exh. 2), which she has converted to $570,110. 05 in U.S. dollars and to obtain attorney fees costs and expenses.

Plaintiff contends that the June 28, 2013 Opinion and December 2, 2013 judgment of the High Court of **Hong Kong** are valid and enforceable until and unless there is a Decision and Order from the Court of Appeal in **Hong Kong** setting them aside. Plaintiff argues that pursuant to the principles of **comity**, she is entitled to have this Court enter judgment on her behalf; that **Hong Kong** is an adequate forum for purposes of **comity**; and the issues of fraud raised by the defendant were addressed in the **Hong Kong** trial and resulting opinion.

A party can convert a money judgment obtained in a foreign jurisdiction by seeking summary judgment pursuant to CPLR §3213, under the doctrine of comity. Foreign judgements are intended to be upheld under the doctrine of comity, absent a showing that the judgment was obtained by fraud, or that recognition of the judgment would, violate some strong public policy of this State. In order for a foreign court decree to have recognition in New York State in personam jurisdiction is required in the foreign action or proceeding (Greschler v. Greschler, 51 N.Y. 2d 368, 414 N.E. 2d 694, 434 N.Y.S. 2d 694 [1980]).

The doctrine of **comity** applies to this action. Defendant does not deny that he brought the action in **Hong Kong**, appeared albeit by video, he was represented by attorneys and presented evidence during the trial.

Defendant opposes the motion contending that the relief sought by plaintiff should be denied because **comity** does not extend to foreign judgments that are obtained by fraud. He argues that money provided by Andrew Cader to plaintiff was clearly a "gift" and not a "loan." Defendant contends that by referring to the funds as a "loan," plaintiff and Mr. Cader committed fraud on the **Hong Kong** Courts.

Departure from comity principles is rarely justified, an evidentiary basis is required to support the claim of fraud or offensive public policies. The party asserting fraud has the burden of proof and must establish that it is derived from, "overreaching, the concealment of facts, misrepresentation or some other form of deception" (Stawski v. Stawski, 43 A.D. 3d 776, 843 N.Y.S. 2d 544 [N.Y.A.D. 1st Dept., 2007]). A foreign judgment cannot be attacked on the ground that it was obtained by

false testimony related to the "issue in controversy" that type of "Intrinsic fraud," is not a defense to entry of judgment (Altman v. Altman, 150 A.D. 2d 304, 542 N.Y.S. 2d 7 [N.Y.A.D. 1st Dept.,1989]). For comity purposes, the party opposing entry of judgment must establish "extrinsic fraud" was practiced by the party that obtained a judgment, preventing full and fair litigation of the matter because of a promise or agreement (Augustin v. Augustin, 79 A.D. 3d 651, 913 N.Y.S. 2d 207 [N.Y.A.D. 1st Dept., 2010]).

***3** Defendant's assertions of fraud are not sufficient to prevent enforcement of the **Hong Kong** Judgment under the doctrine of **comity**. He has not established that the fraud alleged was "extrinsic fraud," or that the issue of fraud was not addressed by the High Court of **Hong Kong**. The June 28, 2013 Opinion refers to defendant's assertion of fraud related to whether funds provided by Mr. Cader to plaintiff were "loans" or "gifts," as raised during the trial. A determination was made that the funds regardless of whether they are "loans" or "gifts," did not circumvent defendant's obligation to provide reasonable maintenance to ILB. Deputy High Court Judge Bebe Pui Ying Chu identified the disputed funds as "soft loans," separately belonging to the plaintiff, and to be applied as she saw fit (Mot. Exh. 1, pgs. 50-54).

Defendant opposes the motion contending that the relief sought by plaintiff should be denied because comity does not extend to foreign judgments that are repugnant to New York public policy. Defendant argues that pursuant to the Child Support Standards Act ("CSSA") found in Domestic Relations Law §240, the judgment is repugnant to public policy because plaintiff is forcing the defendant to provide the sole support to ILB, when both parents should be required to provide support.

A party is required to show gross inequity to establish the judgment would, "do violence to some strong public policy of this State" (Altman v. Altman, 150 A.D. 2d 304, 542 N.Y.S. 2d 7 [N.Y.A.D. 1st Dept., 1989]. A judgment obtained against an individual that was represented by an attorney, is not, "facially irregular nor unconscionable" (McFarland v. McFarland, 70 N.Y. 2d 916, 519 N.E. 2d 303, 524 N.Y.S. 2d 393 [1987]).

The CSSA provides guidelines for support obligations, there is no requirement that the calculation of child support fully adopt one party's claims over the other. Determinations as to credibility are left to the party conducting the hearing. The CSSA requires that an opportunity for modification of the support award be provided (Matter of Maddox v. Doty, 186 A.D.2d 135, 587 N.Y.S. 2d 948 [N.Y.A.D. 2nd Dept., 1992] and Fanter v. Alfano, 201 A.D. 2d 406, 607 N.Y.S. 2d 658 [N.Y.A.D. 1st Dept., 1994]).

Defendant has not established that the June 28, 2013 Opinion or resulting December 2, 2013 judgment, were repugnant to a public policy of the State of New York. He was represented and provided the opportunity to fully present his case. The June 28, 2013 Opinion found that the plaintiff was unemployed and had no steady source of income but that she was still required to support herself. Defendant has failed to establish that CSSA guidelines were violated, his finances and plaintiff's finances were both taken into consideration. The plaintiff was also found responsible for supporting ILB, with her limited resources. The June 28, 2013 Opinion provides for a future downward modification upon plaintiff's obtaining employment or any other change in financial circumstances as ILB got older (Mot. Exh. 1, pages 63-68).

***4** Pursuant to Domestic Relations Law ("DRL") §237[c] and §238 plaintiff also seeks attorney fees, alleging that defendant is willfully attempting to avoid support obligations in seeking to prevent enforcement of the December 2, 2013 Hong Kong Judgment.

DRL §237[c], permits the award of attorney fees where there is a willful failure to obey an order compelling payment of support. It is in the Court's discretion to determine whether there should be an award of attorneys fees based on facts and circumstances of the case (Markhoff v. Markhoff. 225 A.D. 2d 1000, 639 N.Y.S. 2d 565 [N.Y.A.D. 3rd Dept., 1996]). The Court in its discretion determines whether the relief sought pursuant to DRL §238, is warranted in an enforcement proceeding including those related to foreign judgment (Stots v. Daniels, 48 A.D. 3d 248, 849 N.Y.S. 2d 777 [N.Y.A.D. 1st Dept., 2008] and Tortomas v. Andrade, 43 A.D. 3d 406, 840 N.Y.S. 2d 148 [N.Y.A.D. 2nd Dept., 2007).

This Court finds that plaintiff is entitled to attorney fees related to this motion seeking enforcement of the December 2, 2013 judgment obtained in Hong Kong. Defendant has not established fraud or that enforcement of the judgment is repugnant to public policy. He has willfully refused to pay the December 2, 2013 judgment in an attempt to prolong litigation.

Defendant has not objected to the figure obtained by plaintiff's conversion of the amount due pursuant to the December 2,

2013 Judgment for child support arrears, in the amount of $4,418,352.90 (Hong Kong) to $570,110. 05 in U.S. dollars, at 8% interest per annum.

Accordingly, it is ORDERED that the plaintiff's motion for summary judgment in lieu of a complaint pursuant to CPLR §3213, attorney fees, costs and expenses, is granted, and it is further,

ORDERED, that the clerk is directed to enter judgment in favor of Annabelle Sarah Bond and against Warren Lichtenstein in the amount of $570,110.05, together with interest at the rate of 8% per year commencing from December 2, 2013, and it is further,

ORDERED, that plaintiff is to serve a copy of this Order with Notice of Entry with proof of service upon the defendants, the General Clerk's Office (Room 119) and upon the Special Referee Clerk (Room 119), within twenty (20) days from entry of this Order, for assignment to a Special Referee to hear and report on attorney fees and expenses and costs, if any, due to plaintiff for enforcement of the December 2, 2013 Hong Kong Judgment, and it is further,

ORDERED that the Special Referee is to hear and report pursuant to the accompanying Order of Reference, a final determination on this motion shall be rendered upon receipt of a report from the special referee.

***5** Dated: July 15, 2014

ENTER:

MANUEL J. MENDEZ,

J.S.C.