



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 56

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SUNG HWAN CO., LTD.,

Plaintiff,

-against-

RITE AID CORPORATION,

Defendant.

Index No. 112444/01

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**Richard B. Lowe, III, J.:**

Plaintiff Sung Hwan Co., Ltd. moves, pursuant to CPLR 3212 and CPLR Article 53: (1) for an order recognizing and enforcing the February 9, 2001 Korean money judgment entered against defendant Rite Aid Corporation; and (2) for an order entering judgment in this court against defendant for the same amounts, in the United States dollar equivalents, as granted in the Korean judgment.

The factual and legal background for this matter have been set forth in prior orders of this court and of the Appellate Division, First Department, and most recently, in the Court of Appeals decision decided June 6, 2006 (*Sung Hwan Co., Ltd. v Rite Aid Corporation*, 7 NY3d 78 [2006], *revg* 12 AD3d 325 [1st Dept 2004]), and will be repeated here only if pertinent.

Since 2001, plaintiff has sought the enforcement here of the judgment it received in the District Court of Seoul, Republic of Korea (the Korean court), and defendant has consistently opposed that enforcement, alleging, among other things, that the Korean court wrongfully exercised personal jurisdiction over defendant in that suit.

In its decision in *Sung Hwan* (7 NY3d 78, *supra* [the Court of Appeals Decision]), the Court of Appeals reasoned that 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])" (the Court of Appeals Decision, 7 NY3d at 82), and that, historically, New York courts have recognized judgments rendered in foreign countries 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' (*Greschler v Greschler*, 51 NY2d 368, 376 [1980])" (*ibid.*). In accordance with the doctrine of comity, New York enacted CPLR article 53, the Uniform Foreign Country Money-Judgments Recognition Act, "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)" (*ibid.*).

In its discussion on the issue of comity, the Court of Appeals stated that

the inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law. If the above criteria are met, and enforcement of the foreign judgment is not otherwise repugnant to our notion of fairness, the foreign judgment should be enforced in New York under well-settled comity principles without microscopic analysis of the underlying proceeding

(*id.* at 83).

Defendant argues that the Korean court had no personal jurisdiction over it, and cites CPLR 5304 (a) (2) as its reason for why that the judgment should not be enforced here. The bases for personal jurisdiction set forth in article 53 are listed in CPLR 5305 (a). None of the six bases shown in section 5305 (a) is applicable in this matter, but the Court of Appeals indicated that the listing there was not exclusive, noting that section 5305 (b) provides that "[t]he courts of this state may recognize other bases of jurisdiction' (CPLR 5305 [b])" (*ibid.*). The Court then

determined that “[w]hen addressing CPLR article 53, absent a finding of personal jurisdiction under CPLR 5305 (a), our courts have typically looked to the framework of CPLR 302, New York’s long-arm statute, using it as a parallel to assess the propriety of the foreign court’s exercise of jurisdiction over a judgment debtor” (*ibid.*).

Specifically, the Court discussed CPLR 302 (a) (3), which predicates jurisdiction on a tort claim, in the context that the Korean court found that defendant had, in effect, negligently performed its contractual duties in failing to properly test the ice cream for Listeria or other bacterial taint, and based its judgment on that claim. Although New York has no tort of negligent performance of contract, the Court concluded that,

although Korean law appears more expansive than New York law in imposing liability for economic loss under a tort theory, we see no reason to foreclose the use of CPLR 302 (a) (3) as a basis for Korea’s exercise of personal jurisdiction over Rite Aid merely because of this difference in the substantive tort law of the two jurisdictions

(*id.* at 85). The Court of Appeals then reversed the lower courts’ grant of defendant’s motion to dismiss the complaint for lack of personal jurisdiction.

There has been no showing that the Korean judgment was procured by fraud, or that recognition and enforcement of the judgment would do violence to some strong public policy in this state. Moreover, in the Court of Appeals Decision, that Court indicated that the Korean court’s exercise of jurisdiction over defendant comported with “our notions of procedure and due process of law,” and was “not otherwise repugnant to our notion of fairness” (*id.* at 83). Thus, the judgment is entitled to recognition and enforcement under the doctrine of comity.

Defendant’s arguments that the Korean court had no personal jurisdiction over it are unavailing and come far too late, and in the wrong court. Defendant was properly served in

the Korean action, and had every opportunity to contest the jurisdictional issue there. It did not do so. Nor is there any evidence before this court that defendant attempted to vacate the Korean judgment in that court. Having failed to avail itself of the usual procedural opportunities and remedies, defendant cannot now be heard that the action and judgment were all a mistake. In light of New York's long tradition of generously enforcing foreign judgments under the doctrine of comity, and the Court of Appeals' determination that the Korean court had a proper basis for its exercise of jurisdiction over defendant, this court would be remiss if it did not follow the Court of Appeals' determination and honor the judgment of the Korean court.

In addition, failure to enforce the judgment on the basis of defendant's tardy assertion of lack of personal jurisdiction could encourage other U.S. corporate defendants in foreign countries to simply default there, and then contest the personal jurisdictional issue here, in effect, undermining the entire concept of comity because any judgment of a foreign court could then be called into question, checking the "streamlined enforcement here" that CPLR article 53 was enacted to provide (*see* the Court of Appeals Decision, 7 NY3d at 82). Such a policy would also be patently unfair to foreign plaintiffs who, like Sung Hwan here, would be forced to litigate the same case both in the foreign court and here, needlessly exposing them to additional expense and the delay of any enforcement of their judgments here. It is difficult to conceive of any justification for such a radical change in this state's strong, well-established policy of generously affording enforcement of foreign money judgments under the doctrine of comity.

The argument that defendant propounds here, that the Court of Appeals only decided that the Korean court had *a basis for the exercise of jurisdiction* over defendant, not that

the Korean court actually *had* jurisdiction over defendant, is a distinction without a difference.

Plaintiff asks that the Korean judgment be entered here for the same amounts, in US dollars, as the Korean Won set forth in the Korean judgment. “[A] money judgment by an American court must be in American currency’ (*Shaw, Savill, Albion & Co., Ltd. v The Fredericksburg*, 189 F2d 952, 954 [2d Cir 1951])” (*La Societe de Diffusion Vinicole, S.A. v Peartree Imports*, 1984 US Dist LEXIS 17891, \*13 [SD NY, April 5, 1984]). The judgment in Korean Won must be converted into US dollars at the rate of exchange at the time that the New York judgment is entered (*see id.* at 12 [“It is well settled that where an obligation is stated in terms of a foreign currency, the obligee assumes the risk of currency fluctuation”], citing *Die Deutsche Bank Filiale Nurnberg v Humphrey*, 272 US 517, 519 [1926]).

Defendant correctly maintains that the post-judgment interest to be applied to the Korean judgment must be the statutory rate set forth in CPLR 5004 (*see Wells Fargo & Co. v Davis*, 105 NY 670 [1887]; *Whitman v Citizens’ Bank of Reading*, 110 F 503 [2d Cir 1901], citing *Wells Fargo*; *De Nunez v Bartels*, 264 AD2d 565 [1st Dept 1999], citing *Wells Fargo*). This rate of interest must be applied as of the date of the Korean judgment. Plaintiff has cited no authority for its proposal that New York’s statutory rate of post-judgment interest should not be applied until after the Korean judgment becomes a New York judgment.

Accordingly, it is

ORDERED that plaintiff’s motion is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of the United States dollar equivalent of 5,500,000,000 Korean Won, to be calculated at the exchange rate set on the date of the judgment entered herein, together with interest at the rate of 9% from the date

of February 9, 2001, until the date of entry of judgment, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: May 1, 2007

ENTER:



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J.S.C.  
HON. RICHARD D. LOWE, III

**FILED**  
MAY 12 2007  
NEW YORK  
COUNTY CLERK'S OFFICE