

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE SOCIETY OF LLOYD'S,)
)
 Plaintiff,)
)
 v.) Case No. 4:03CV01113 HEA
)
 ROBERT W. FUERST, et al.,)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's Motion for Summary Judgment, [# 98], plaintiff's Motion for Entry of Judgment against Defendant Ilg, [# 155], and certain defendants' Motion for Oral Argument on the Motion for Summary Judgment, [# 146]. The motions have been fully briefed. For the reasons set forth below, the motion for summary judgment is granted; the motion for entry of judgment and the motion for oral argument are denied as moot.

Introduction

Plaintiff filed this action seeking to enforce its foreign money judgments entered against the defendants by the High Court of Justice, Queen's Bench Division in London, England under the Missouri Uniform Foreign Country Money-Judgments Recognition Act, R.S.Mo. § 511.770, *et seq.* Plaintiff seeks summary

judgment against defendants Fuerst, Hardin, Ilg, Klein, McCain, Shillington, Cynthia Todorovich, and Michael Todorovich, arguing that under the statute, the judgments entered against defendants are enforceable in that they were duly entered in England and are entitled to recognition in this Court. Defendants, with the exception of defendant Ilg who did not respond to the motion,¹ oppose summary judgment, arguing that they were fraudulently induced into becoming members of Lloyds. This, according to defendants, entitles them to litigate the issues raised in the English Court in this court under the provisions of the Act.

Facts and Background

The Society of Lloyd's is the regulator of an insurance market located in London. It is not an insurer nor does it insure risks. The United Kingdom Parliament created Lloyd's through a succession of Parliamentary Acts and charged it with the duty and authority to regulate those who conduct insurance business in the Lloyd's market.

The only insurers in the Lloyd's market are underwriters known as "Names." Names are grouped together in "syndicates," which provide the actual insurance in

¹ Defendant Ilg responded to the Complaint herein but has not responded to the Motion for Summary Judgment. Because plaintiff is entitled to summary judgment with respect to all defendants, the Court will include Ilg in its references to the defendants and in its discussion of the merits herein. The Motion for Entry of Judgment is accordingly moot.

the market. Syndicates are controlled by a managing agent who is responsible for attracting capital to insure the underwritten risks and supervising all underwriting activities. Names are passive investors, but incur personal and direct liability with respect to a portion of a syndicate's risk in the Lloyd's market.

Defendants are Names in the Lloyd's market. They were permitted to conduct insurance business in Lloyd's market only after agreeing to Lloyd's regulatory jurisdiction. In particular, defendants entered a General Undertaking that obligated them to comply with the Parliamentary Acts under which Lloyd's was created and to submit any dispute arising out of their membership or underwriting at Lloyd's for resolution by English courts pursuant to English law.

Traditionally, underwriting in the Lloyd's market has been a profitable venture, but Names in the market incurred substantial losses in the late 1980's and early 1990's. Many Names found themselves unable to satisfy their obligations to policyholders and a significant amount of litigation arose in the market.

Lloyd's addressed the loss issues by implementing the Reconstruction and Renewal Plan in 1996. This plan had two parts: (1) It required each Name to purchase reinsurance for underwriting obligations on 1992 and prior underwriting years of account from a newly formed company, Equitas Reinsurance Ltd.; and (2) it made an offer of settlement to each Name with liabilities on 1992 and prior

underwriting years of account to end litigation and assist Names in meeting their obligations. The Names were not required to accept the Settlement Offer, but were required to pay their Equitas premium and other outstanding underwriting obligations.

One provision of the mandatory Equitas agreement precluded Names from bringing actions they might have had against Lloyd's as a set-off or counterclaim to a suit brought by Lloyd's to enforce the Equitas premium. (The pay now, sue later provision). Another provision provided that Lloyd's calculation of the Equitas premium was conclusive in the absence of manifest error. (The conclusive evidence clause.)

Lloyd's calculated the Equitas premium owed by defendants. None of the defendants herein accepted the Settlement Offer. Defendants failed to make the premium payment. Lloyd's brought suit in the High Court of Justice, Queen's Bench Division in London against each of the defendants herein and other Names who had not paid their Equitas Premium in full.

Lloyd's notified each of the defendants of the commencement of the English Action against him or her by serving each defendant through their agent, Additional Underwriting Agencies (No. 9), Ltd. (AUA9), which was appointed by Lloyd's as a substitute agent to execute the reinsurance contract on behalf of the Names. Each of

the defendants, with the exception of Shillington, filed an Acknowledgment of Service of Writ of Summons through their solicitors of record.

The English Court entered judgment in Lloyd's favor against defendants March 11, 1998. The judgments against defendants Shillington and Cynthia Todorovich were default judgments. Neither Shillington nor Cynthia filed any application to set aside these default judgments. The remaining defendants appeared in the action and presented defenses. The defenses were rejected and judgments were entered. Leave to appeal these judgments was denied.

Certain Names filed fraud claims in the English Courts after the affirmance of the "pay now, sue later" clause. These claims have been resolved. See *Society of Lloyd's v. Jaffray* (High Court of Justice 3 Nov. 2000) and *Society of Lloyd's v. Jaffray* (Court of Appeal 26 July 2002).

Lloyd's brought this action against defendants in this Court seeking recognition and enforcement of the English judgments.

Summary Judgment Standard

The standards for summary judgment are well settled. "[C]laims lacking merit may be dealt with through summary judgment under Rule 56." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514. (2002). Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment should be rendered if the pleadings,

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56(c). In determining whether summary judgment should issue, the Court must view the facts and inferences from the facts in the light most favorable to the nonmoving party.

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986);

Employers Mut. Cas. Co. v. Wendland & Utz, Ltd., 351 F.3d 890 (8th Cir. 2003);

Enter. Bank v. Magna Bank 92 F.3d 743, 747 (8th Cir. 1996). The moving party

has the burden to establish both the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S.

317, 322 (1986); *Enter. Bank*, 92 F.3d at 747. Once the moving party has met this

burden, the nonmoving party may not rest on the allegations in his pleadings but by affidavit or other evidence must set forth specific facts showing that a genuine issue

of material fact exists. Fed.R.Civ.P. 56(e); *Anderson* 477 U.S. at 256; *Krenik v. Le*

Sueur, 47 F.3d 953, 957 (8th Cir. 1995). To survive a motion for summary

judgment, the “nonmoving party must ‘substantiate his allegations with sufficient

probative evidence [that] would permit a finding in [his] favor based on more than

mere speculation, conjecture, or fantasy.’ *Wilson v. Int’l Bus. Machs. Corp.*, 62

F.3d 237, 241 (8th Cir. 1995)(quotation omitted).” *Putman v. Unity Health System*, 348 F.3d 732, 733-34 (8th Cir. 2003). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex*, 477 U.S. at 323. see also *Landon v. Northwest Airlines, Inc.*, 72 F.3d 620, 624 (8th Cir.1995) (finding that in employment discrimination cases, "the plaintiff's evidence must go beyond the establishment of a prima facie case to support a reasonable inference regarding the alleged illicit reason for the defendant's action."). The Court will review the facts in this case with the stated standards in mind.

Discussion

Defendant Shillington argues that he was not received notice of the English action within sufficient time to defend. This argument fails because, pursuant to the agreements, his agent received notice and sent that notice on to him. The notice sent by the agent advised him that a default may be taken against him if he did not respond within the specified time. Furthermore, even assuming the truth of his argument that he did not learn of the English judgment until the default had been entered, he took no action whatsoever to have the default set aside.

Defendants argue that the judgments against them should not be enforced because they violate the principles of due process and the public policy of Missouri,

and therefore under the Act are not entitled to recognition and enforcement. Section 511.780 2.(3) of the Act provides that this Court need not recognize the judgments if “the claim for relief on which the judgment is based is repugnant to the public policy of this state.” This argument essentially rests on defendants’ allegations that Lloyd’s made material misrepresentations in its inducement of defendants to become Names in the Lloyd’s market by failing to disclose information about potential asbestos claims. Defendants contend that Lloyd’s fraudulent inducement would allow them under Missouri law to rescind their membership in Lloyd’s and therefore compel a Missouri Court to refuse to recognize the foreign judgment arising out of their memberships.

Even assuming that there was fraud in the inducement to become members, this Court concludes that summary judgment in favor of Lloyd’s is appropriate.² The relevant question is not whether Lloyd’s would obtain the same result in a court in Missouri as it did in England, rather, whether the “cause of action or claim for relief on which the judgment is based is repugnant to the public policy of” Missouri. Because a cause of action for breach of contract is not repugnant to the public policy of Missouri, defendants’ argument for non-recognition of the English

² As Lloyd’s pleadings establish, every other court addressing this issue has enforced the judgments against the Names. See Plaintiff’s briefs in support of its Motion for Summary Judgment.

judgment fails. See *Society of Lloyd's v. Turner*, 303 F.3d 325, 331-33 (5th Cir. 2002) (affirming district court's grant of summary judgment recognizing English judgment against Names' argument that recognition would contravene public policy).

Defendants contend that they have never been given the opportunity to tell their "compelling fraud story." Like their public policy argument, their due process argument ignores the language of the Act. Under Section 511.780.1, "a foreign country 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." Due process, under the Act, refers to the workings of the foreign judicial system as a whole and not to the process accorded in the context of particular judgments. See *Lloyd's v. Ashenden*, 233 F.3d 473, 475-78 (7th Cir. 2000) (emphasizing that under the Illinois Uniform Foreign Money-Judgment Act, which uses the same language as the Missouri Recognition Act, the due process inquiry must be conducted across the system as a whole and not in the context of specific judgments.). Thus, defendants can only succeed under this argument by establishing that the English legal system as a whole fails to provide due process rights. In that our judicial system is based upon and modeled after that of the English system, the Court is unpersuaded that the English system as a whole

can be said to fail to provide due process rights.

Conclusion

In the General Undertaking's provisions, the parties agreed to be bound by English law in courts of England. The Equitas reinsurance transaction related to each of the defendant's membership in and underwriting at Lloyd's under the General Undertakings. Nothing has been presented to establish that the choice of law and forum selection should not be given effect and therefore the resulting judgments fall within the provisions of the Missouri Uniform Foreign Country Money-Judgments Recognition Act, R.S.Mo. § 511.770, *et seq.* Accordingly, Lloyd's is entitled to summary judgment on its claims against all defendants.

IT IS HEREBY ORDERED that the Motion for Summary Judgment, [# 98], is granted. Summary Judgment is granted in favor of plaintiff and against all defendants.

IT IS FURTHER ORDERED that the Motion for Entry of Judgment against Defendant Ilg, [# 155], is denied as moot as summary judgment has been entered against him.

IT IS FURTHER ORDERED that the Motion for Oral Argument on the Motion for Summary Judgment, [# 146] is denied as moot.

A separate judgment in accordance with this Memorandum and Order is

entered this same date.

Dated this 12th day of July, 2004.

A handwritten signature in cursive script, reading "Henry Edward Autrey". The signature is written in black ink and features a long, sweeping horizontal line extending to the right from the end of the name.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE