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Motions, Pleadings and Filings

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United States District Court,
N.D. Texas, Dallas Division.
THE **SOCIETY** OF **LLOYD'S,** Plaintiff,
v.
Carl Evans ABRAMSON, Defendant.
No. 303MC001-P.

March 29, 2004.

Andrew M Edison, Bracewell & Patterson, C Thomas Kruse, Baker & Hostetler, Houston, TX, for Plaintiff.

Jack O Norman, Law Office of Jack O Norman, Carl E Abramson, Law Office of Carl E Abramson, Dallas, TX, for Defendant.

ORDER

SOLIS, J.

***1** Now before the Court are Defendant Carl Evan Abramson's Motion for Summary Judgment Denying Recognition of Foreign Judgment, filed February 5, 2003, and Plaintiff The Society of Lloyd's Cross Motion for Summary Judgment Seeking Recognition of Foreign Judgment, filed March 25, 2003. After a thorough review of the evidence, the parties' pleadings, and the applicable law, for the reasons set forth below, the Court DENIES Defendant's Motion for Summary Judgment Denying Recognition of Foreign Judgment and GRANTS Plaintiff's Cross Motion for Summary Judgment Seeking Recognition of Foreign Judgment. The judgment awarded The Society of Lloyd's, being equivalent to $370,899.22, is accordingly due upon issuance of this Order.

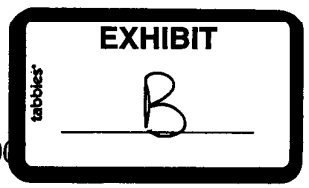
DISCUSSION

I. Background

Plaintiff Lloyd's and Defendant Abramson's summary judgment motions request this Court to respectively grant or deny recognition of a foreign judgment obtained by Lloyd's against Abramson in the High Court, Queen's Bench Division, Commercial Court ("the English judgment") on March 11, 1998. The parties' motions and supporting briefs clearly demonstrate that the ultimate disposition of these motions turns on whether Lloyd's obtained the foreign judgment fraudulently by concealing documents that were crucial to Abramson's defense throughout the English proceedings. (Def.'s Br. in Supp. of Mot. for Summ. J. at 1; Pl.'s Br. in Supp. of Cross Mot. for Summ. J. at 1.) If the judgment was so obtained, as asserted by Abramson, this Court may refuse to recognize it pursuant to section 36.005(b)(2) of the Texas Uniform Foreign Country Money-Judgment Recognition Act ("the Texas Recognition Act"). Tex. Civ. Prac. & Rem.Code Ann. § 36.005(b)(2) (Vernon 2000) ("[A] foreign country judgment need not be recognized if ... the judgment was obtained by fraud."). Alternatively, if the judgment was not obtained by fraud, as asserted by Lloyd's, this Court is obligated to recognize the judgment, pursuant to section 36.004 of the Texas Recognition Act, as it would a judgment of a sister state that is entitled to full faith and credit. *Id.* at § 36.004.

Because the disposition of both motions turns on the resolution of the same issue, the underlying recital of facts is tailored specifically to address the question of whether Lloyd's obtained the foreign judgment by fraud, leaving a more thorough discussion of the nature and structure of Lloyd's to the multitude of past cases resolving related disputes. *See, e.g., Soc'y of Lloyd's v. Turner,* 303 F.3d 325, 326-28 (5th Cir.2002); *Haynsworth v. The Corporation,* 121 F.3d 956, 958-60 (5th Cir.1997); *Soc'y of Lloyd's v. Ashenden,* 233 F.3d 473, 478 (7th Cir.2000).

Abramson's relationship with Lloyd's, as an underwriting member, or "Name," in Lloyd's venerable insurance market, was the impetus for the English judgment at issue. Abramson became a



Name of Lloyd's in 1985 after being solicited by the Members' Agency, London Wall Members Agency ("LWMA"). (Abramson Aff. at 1.) Roughly seven years after Abramson joined Lloyd's, LWMA went into liquidation and closed its doors in 1992. *Id.* After LWMA ceased operations, the Council of Lloyd's appointed an in-house Members' Agency, Lloyd's Members' Agency Services Ltd. ("LMASL"), to administer the accounts that LWMA had previously handled. *Id.* While Abramson resigned from Lloyd's in 1992, i.e. prior to LMASL's succession over LWMA, he remained bound by Lloyd's bylaws in regard to all outstanding insurance policies that he underwrote during his tenancy at Lloyd's--policies that were then being administered by LMASL. *Id.*

***2** The English judgment obtained by Lloyd's accounts for past due reinsurance premiums owed by Abramson to Lloyd's pursuant to the Reconstruction and Renewal plan ("the R & R plan"), a bylaw enacted by the Council of Lloyd's in 1996. In response to a potentially debilitating crisis in the insurance market in the late 1980s and early 1990s, the Council of Lloyd's adopted the R & R plan to ensure that Lloyd's survived the insurance crisis and that its policyholders were paid. *Turner,* 303 F.3d at 327. The R & R plan obtained reinsurance, through Equitas Reinsurance Ltd., for all of the Names' pre-1993 outstanding policies and allocated the liability for the policy's premiums among the individual Names, in relation to the value of their outstanding liabilities. *Id.* In the instant case, Lloyd's assessed Abramson's portion of the reinsurance premiums at <<PoundsSterling>>218,720.00. (Def.'s Ex. 4 at 29-30.) After Abramson failed to pay the premiums, Lloyd's filed suit in 1996 and obtained the English judgment that Lloyd's now seeks to have recognized by this Court.

In response to Lloyd's suit for recognition of the English judgment, Abramson asserts that the judgment was obtained by fraud and thus should not be recognized by this Court. Specifically, Abramson asserts that Lloyd's obtained the English judgment by concealing a <<PoundsSterling>>181,709.00 claim that he had against his former Members' Agent, LWMA. (Def.'s Mot. for Summ. J. at 2.) The documents which purportedly support his assertion are contained in Defendant's Exhibits 5-8. Defendant's Exhibits 5, 6 and 7 consist of three letters written to Abramson by Lloyd's in 1997 and 1998, informing him that LMASL had discovered a <<PoundsSterling>>250.00 accounting error in Abramson's LWMA account after it took control over LWMA's books and records. Alternatively, Defendant's Exhibit 8 contains two letters written to Abramson in 2001 and 2002 from Ernst & Young and Arthur Anderson, the joint liquidators of LWMA, informing him of a <<PoundsSterling>>181,709.00 claim that he may have against LWMA for negligent accounting practices. Taken together, Abramson asserts that these five letters prove that "Lloyd's knew the account sued on was false and concealed that fact [from him and the English Court]." (Def.'s Br. in Supp. of Mot. for Summ. J. at 2.) Due to the alleged concealment, Abramson argues that the English judgment should not be recognized because he was unable to make a full and fair defense in the English proceeding. *Id.* at 3-4.

In short, Lloyd's disputes Abramson's assertions by claiming that there is no evidence that Lloyd's either knew about the errors in his account with LWMA or that the errors were concealed in order to obtain the English judgment by fraud. (Pl.'s Cross-Mot. for Summ. J. at 9.) Lloyd's also asserts that the English judicial system provided Abramson with a fair and impartial forum in which to make a full and fair defense to Lloyd's claims. *Id.* at 8. Numerous documents are provided by Lloyd's to support these assertions. (Pl.'s Ex. A, B, & C.)

***3** In the remainder of this opinion, the Court considers the merits of the parties' arguments in light of the legal standard that governs motions for summary judgment. Because the legal issues underlying the parties' motions are intimately intertwined, the Court consolidates its discussion on the respective motions seeking and denying recognition of the English judgment. Furthermore, following this discussion, the Court considers and rules on Abramson's alternative argument that the English judgment should be converted at a **rate** of 1.51 U.S. dollars to 1 English pound as opposed to the **rate** proffered by Lloyd's in its original petition seeking recognition of the English judgment.

II. Summary Judgment Standard

Lloyd's and Abramson both move this Court for summary judgment pursuant to Federal Rule of Civil Procedure 56(c). Rule 56(c) provides for summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party bears the burden of informing the district court of the basis for its belief that there is an absence of a genuine issue for trial, and of identifying those portions of the record that demonstrate such an absence. *Id.* at 323. However, all evidence and the reasonable inferences to be drawn therefrom must be viewed in the light most favorable to the party opposing the motion. *United States v. Diebold, Inc.,* 369 U.S. 654, 655, 82 S.Ct. 993, 8 L.Ed.2d 176 (1962).

Once the party has made an initial showing, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The party defending the motion for summary judgment cannot defeat the motion unless he provides specific facts that show the case presents a genuine issue of material fact, such that a reasonable jury might return a verdict in his favor. *Anderson v. Liberty Lobby,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Mere assertions of a factual dispute unsupported by probative evidence will not prevent a summary judgment. *Id.* at 248-50; *Abbot v. Equity Group, Inc.,* 2 F.3d 613, 619 (5th Cir.1993). In other words, conclusory statements, speculation and unsubstantiated assertions will not suffice to defeat a motion for summary judgment. *Douglass v. United Servs. Auto. Ass'n,* 79 F.3d 1415, 1429 (5th Cir.1996) (en banc).

If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to his case, and on which he bears the burden of proof at trial, summary judgment is mandatory. *Celotex,* 477 U.S. at 322- 24; *Washington v. Armstrong World Industries, Inc.,* 839 F.2d 1121, 1122 (5th Cir.1988). A motion for summary judgment cannot be granted simply because there is no opposition, even if the failure to oppose it violates a local rule. *Hibernia Nat'l Bank v. Adminstracion Central Sociedad Anonima,* 776 F.3d 1277, 1279 (5th Cir.1985). However, when the nonmovant fails to provide a response identifying the disputed issues of fact, the Court is entitled to accept the movant's description of the undisputed facts as *prima facie* evidence of its entitlement to judgment. *Eversly v. Mbank Dallas,* 843 F.2d 172, 173- 174 (5th Cir.1999).

***4** Finally, the Court has no duty to search the record for triable issues. *Ragas v. Tennessee Gas Pipeline Co.,* 136 F.3d 455, 458 (5th Cir.1998). "The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise matter in which the evidence supports his or her claim." *Id.* A party may not rely upon "unsubstantiated assertions" as competent summary judgment evidence. *Id.*

III. Discussion

As discussed, both parties acknowledge that the Texas Recognition Act governs the disposition of their respective motions. In support of its Motion for Summary Judgment, Lloyd's relies on section 36.004 of the Texas Recognition Act. (Pl.'s Br. in Supp. of Cross Mot. for Summ. J. at 7.) Pursuant to section 36.004, a foreign country judgment that is final, conclusive and enforceable where rendered, is enforceable in Texas in the same manner as the judgment of a sister state that is entitled to full faith and credit. § 36.004. Alternatively, Abramson relies on section 36.005(b)(2) of the Texas Recognition Act to support his Motion for Summary Judgment. (Def.'s Mot. for Summ. J. at 1.) Pursuant to section 36.005(b)(2), it is within a court's discretion to recognize foreign judgments that were "obtained by fraud." *Id.* at § 36.005(b)(2).

The Texas Recognition Act essentially codifies the leading Supreme Court decision regarding recognition and enforcement of foreign judgments. *See Hilton v. Guyot,* 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895). In *Hilton,* the Supreme Court held that the judgment of a foreign country constituted *prima facie* evidence of the matters that had already been adjudicated in the foreign court. *Id.* at 123. Following from this language, it has been noted that

the conditions enumerated in section 36.005(b) are "phrased as affirmative defenses." *Hennessy v. Marshall,* 682 S.W.2d 340, 344 (Tex.App.--Dallas 1984, writ ref'd n.r.e.). Thus, because Abramson relies on section 36.005(b)(2) to defeat Lloyd's petition for recognition of the English judgment, he has the burden of proving "beyond peradventure" all of the essential elements of that defense to warrant summary judgment in his favor. *Chaplin v. NationsCredit Corp.,* 307 F.3d 368, 372 (5th Cir.2002) ("To obtain summary judgment, 'if the movant bears the burden of proof on an issue ... because ... as a defendant he is asserting an affirmative defense, he must establish beyond peradventure *all* of the essential elements of the ... defense to warrant judgment in his favor.' "); *see also Banque Libanaise Pour Le Commerce v. Khreich,* 915 F.2d 1000, 1005 (5th Cir.1990) (stating that a party seeking to avoid recognition of a foreign judgment pursuant to section 36.005(b) of the Texas Recognition Act, has the burden of proving grounds for non-recognition). [FN1]

> FN1. At this stage in the analysis, the Court feels compelled to note that both the success of Abramson's motion *and* the demise of Lloyd's motion (and *vice versa*) are concomitantly conditioned on Abramson's ability to prove "beyond peradventure" that Lloyd's obtained the English judgment by fraud. In the event that he fails to do so, the Court must recognize the English judgment as it would a judgment from a sister state that is entitled to full faith and credit. This supposition follows from the parties' respective burdens at the summary judgment stage. To wit, because the parties do not dispute that the English judgment satisfies the conditions articulated in section 36.004 of the Texas Recognition Act, Abramson's burden of rebutting Lloyd's motion for summary judgment is one in the same with his burden of establishing his affirmative defense that Lloyd's obtained the English judgment by fraud.

Abramson asserts that Lloyd's obtained the English judgment by fraud by concealing, from him and the English Court, significant accounting errors in his account with LWMA. His argument is accordingly premised on three separate assertions: (1) that the errors in his account with LWMA were probative evidence in the English proceedings, i.e. that they inflated the amount of his liability for the Equitas reinsurance premiums; (2) that LMASL and Lloyd's became aware of the errors prior to or during the English proceedings; and (3) that Lloyd's, after learning of the errors, concealed them from Abramson and the English Court in order to obtain the judgment against him. Because the first assertion implicates the merits of the underlying suit and is thus *prima facie* evidence in Lloyd's favor that has not been, even minimally, refuted by Abramson's arguments and exhibits, the remainder of the Court's analysis need only address whether Lloyd's knowingly concealed the errors in Abramson's LWMA account in order to obtain the English judgment by fraud.

***5** To prove fraud under Texas law, a party must show that: (1) a material misrepresentation was made; (2) the representation was false; (3) the speaker made the representation knowing it was false or made it recklessly without any knowledge of its truth; (4) the speaker made the representation with the intention that it should be relied upon by the party; (5) the party acted in reliance upon the misrepresentation; and (6) the party thereby suffered injury. *Norman v. Apache Corp.,* 19 F.3d 1017, 1022 (5th Cir.1994). Failure to disclose a material fact may also constitute fraud if the offending party had a duty to disclose the fact. *Union Pac. Res. Group, Inc. v. Rhone-Poulene, Inc.,* 247 F.3d 574, 586 (5th Cir.2001). A duty may arise for these purposes if, *inter alia,* a confidential or fiduciary relationship exists between the parties or if one party voluntarily discloses a portion of the material facts "so that he must disclose the whole truth ... lest his partial disclosure convey a false impression." *Id.*

After thoroughly reviewing the parties' motions, briefs and exhibits, the Court finds that Abramson has failed to establish that Lloyd's either knew about or fraudulently concealed LWMA's negligent underwriting activities in order to obtain the English judgment. Abramson relies on Defendant's Exhibits 5-8 to show that Lloyd's knowingly concealed LWMA's negligent underwriting activities in order to obtain the English judgment. (Def.'s Br. at 4.)

The documents contained in Defendant's Exhibits 5, 6 and 7 are three letters written by Lloyd's in 1997 and 1998, informing Abramson that it had discovered a <<PoundsSterling>>250.00 error in Abramson's account with LWMA and offering to reimburse him for the amount in exchange for an assignment of Abramson's right to claim it from the liquidator of LWMA. While Abramson alleges that these letters show that Lloyd's knew about the more significant, <<PoundsSterling>>181,709.00, error in Defendant's account, this Court can not see how these letters provide any evidence that Lloyd's either knew about or purposely concealed LWMA's negligent underwriting activities. Indeed, if anything, they show Lloyd's good faith effort to inform Abramson of a negligible error in his account and to facilitate Abramson's compensation for the amount in arrears. The Court similarly finds that the documents contained in Defendant's Exhibit 8 are unavailing to Abramson. Defendant's Exhibit 8 contains two letters from Ernst & Young and Arthur Anderson, the joint liquidators of LWMA, informing Abramson of his <<PoundsSterling>>181,709.00 claim against LWMA. While these letters provide evidence that Abramson has a claim against LWMA for negligent underwriting, they do not provide evidence that Lloyd's either knew about, discussed, or concealed his claim in order to obtain the English judgment against him. Taken together, the Court finds that these five letters, which constitute the entirety of Abramson's evidence, are insufficient to satisfy his burden of establishing, "beyond peradventure," that Lloyd's obtained the English judgment by fraud. [FN2]

> FN2. The Court also finds that Abramson's argument, regarding his inability to make full and fair defense in the English action, is without merit in the absence of any evidence of fraud. (Def.'s Br. in Supp. of Mot. for Summ. J. at 3-4.) This finding follows directly from the precedent cited in Abramson's supporting brief. *See Harrison v. Triplex Gold Mines,* 33 F.2d 667, 671 (1st Cir.1929) ("In any case to justify setting aside a decree for fraud, it must appear that *the fraud* practiced ... prevents him from making a full and fair defense ...").

***6** Furthermore, even if Abramson is able to establish that Lloyd's knew about and failed to disclose the negligent underwriting claim against LWMA, the Court fails to see how those actions would have impacted the amount of the English judgment. To wit, under the General Undertaking signed by Abramson on August 22, 1986, Abramson agreed to comply with the provisions of the Lloyd's Acts of 1871-1982. (Pl.'s Ex. 1.) These Acts conferred power on the Council of Lloyd's to enact and enforce byelaws for the purposes therein provided. *Id.* As the R & R plan was enacted as a byelaw by the Council of Lloyd's in 1996, Abramson was accordingly bound by its terms which included, *inter alia,* conformity with the Equitas reinsurance contract. (Pl.'s Ex. 4 at 54.) As stated above, the Names' respective liabilities for the Equitas premiums were derived pursuant to a formula contained in the Equitas reinsurance contract and, by virtue of clause 5.5 of the contract, these premiums were payable in full and not subject to any set offs in respect to claims against third parties. *Id.* at 66. As a result, the Court finds that Abramson's claim against LWMA is simply that, a claim against LWMA--it having no bearing whatsoever on Abramson's obligation to pay the amount in Equitas premiums that Lloyd's obtained by means of the English judgment.

For the reasons stated, the Court finds that Abramson has failed to satisfy the burden of establishing his affirmative defense that Lloyd's obtained the English judgment by fraud. Furthermore, the Court also finds that Abramson has failed to satisfy the burden of rebutting Lloyd's Cross Motion for Summary Judgment. As a result, the Court DENIES Abramson's Motion for Summary Judgment Denying Recognition of the Foreign Judgment and GRANTS Lloyd's Cross Motion for Summary Judgment Seeking Recognition of Foreign Judgment pursuant to Federal Rule of Civil Procedure 56.

IV. Conversion of the English Judgment

After determining that the English judgment will be recognized, the Court must now consider the **rate** at which the judgment will be converted from British pounds to U.S. dollars. The parties' Motions reveal that they are in disagreement over this issue. Lloyd's asserts that the judgment should be converted at a

rate of 1.6467 U.S. dollars to British pounds, the exchange **rate** on the date of the final English judgment. (Pl.'s Br. in Supp. of Cross-Mot. for Summ. J. at 12-13.) Alternatively, Abramson claims that the judgment should be converted at a **rate** of 1.51 U.S. dollars to British pounds, the **rate** provided in the Equitas reinsurance contract. (Def.'s Mot. for Summ. J. at 3.)

In support of its argument, Lloyd's relies on the principle, articulated in *El Universal, Compania Periodistica Nacional S.A. de C.V. v. Phoenician Imports, Inc.,* 802 S.W.2d 799, 803-04 (Tex.App.--Corpus Christi 1990, writ denied), that Texas courts are given the discretion to convert foreign judgments to U.S. dollars based on the **rate** of exchange applicable on either the date of the initial breach or the date of the final judgment. (Pl.'s Br. in Supp. of Cross Mot. for Summ. J. at 12). Unlike the precedents cited by Lloyd's, however, the parties in the instant case had contractually agreed upon an exchange **rate** in the Equitas reinsurance contract. *See* (Pl.'s Ex. 4 at 83) ("Where any amount payable by a Name hereunder in respect of his Name's Premium is an amount denominated in U.S. Dollars ... the name shall instead pay an amount in sterling being one pound sterling for each US$1.51.") Thus, in an effort to capture the true intent of the parties, the Court finds that the **rate** at which the English judgment should be converted is the **rate** articulated in the Equitas reinsurance contract, 1.51 U.S. dollars to British pounds. [FN3]

> FN3. In this regard, the Court fails to see the significance of Lloyd's argument that the Equitas reinsurance contract does not contemplate a reciprocal exchange **rate**. (Pl.'s Br. in Supp. of Cross-Mot. for Summ. J. at 12-13.)

***7** The Court accordingly GRANTS the portion of Abramson's Summary Judgment Motion which alleged error in the conversion of the English judgment from British pounds to U.S. dollars and holds that the English judgment of <<PoundsSterling>> 245,628.62, which includes the principal amount of <<PoundsSterling>>218,714.73 and <<PoundsSterling>>26,913.89 in interest, will be performed at a **rate** of 1.51 U.S. dollars to British pounds. The judgment awarded Lloyd's by the English Court, being equivalent to $370,899.22, is due upon issuance of this Order.

It is so ordered.

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