EXHIBIT 4

Orig

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOCIETY OF LLOYD'S,

Plaintiff,

v.

ARTHUR WILLIAM DAVIES; JULIUS PEEK GARLINGTON; GLENN WAYNE MANNING,

Defendants.

APR [illegible]

By: emeD

CIVIL ACTION
NO. 1:02-CV-1602-GET

O R D E R

The above-styled matter is presently before the court on:

1) plaintiff's motion for summary judgment [docket no. 19];

2) defendants Garlington and Manning's motion to amend answers [docket no. 22-1];

3) defendants Garlington and Manning's motion to compel discovery [docket no. 21];

4) defendants Garlington and Manning's motion to extend time for discovery [docket no. 22-2].

Background

In late 1996, plaintiff sued defendants in England to collect an assessment levied against defendants by plaintiff. In 1998, the High Court of Justice, Queen's Bench Division, Commercial Court, London, England entered judgment against the defendants. On June 10, 2002, plaintiff filed the instant action seeking the

recognition and enforcement of the judgments against each of the defendants.

On November 20, 2002, plaintiff filed a motion for summary judgment to enforce the judgment against defendants Garlington and Manning (hereinafter "defendants"). On December 23, 2002, defendants moved to compel discovery. Defendants also filed motions to amend their answers and to extend time for discovery. The pending motions are now ripe for consideration.

Motion to Amend Answers

Defendants have moved for leave to file amended answers. Defendants wish to add the affirmative defense of fraud, specifically that plaintiff obtained the English judgments against defendants through fraudulent misrepresentations to the American courts. Although "leave to amend shall be freely given when justice so requires," Fed. R. Civ. P. 15(a), a motion to amend may be denied on "numerous grounds" such as "undue delay . . . and futility of the amendment." Abramson v. Gonzalez, 949 F.2d 1567, 1581 (11th Cir. 1992). Defendants filed their motion to amend at the close of discovery and after plaintiff filed a motion for summary judgment. Notwithstanding the untimeliness of defendants' motion, the court will address the merits of defendants' motion.

The Georgia Foreign Money Judgments Recognition Act renders a foreign judgment unenforceable if "the judgment was obtained by

fraud." O.C.G.A. § 9-12-114(5). A foreign judgment may be collaterally attacked on this ground only if the purported fraud is "of an extrinsic nature, that is, fraud preventing one from having a real contest of the suit based on conduct or activities outside of the court proceedings themselves." Colodny v. Dominion Mortgage and Realty Trust, 142 Ga. App. 730, 731 (1977). See also Linda Silberman, *Enforcement and Recognition of Foreign Country Judgments in the United States*, 624 P.L.I. Litig. & Admin. Practice 323, 332-333 (2000). Defendants argue that plaintiff allegedly mischaracterized defendants' remedies in England to a Virginia federal court. Defendants contend plaintiff should have revealed that the "pay now, sue later" clause and the "conclusive evidence" clause in Lloyd's Reconstruction and Renewal ("R&R") agreements restricted defendants recourse in the English courts. Defendants contend that plaintiff should have disclosed these provisions before the deadline for accepting plaintiff's settlement offer expired.

The underlying issues in defendants' fraud argument involve contractual rights that were litigated in England and thus, cannot be raised as a basis of collateral attack on a foreign judgment. See Dixie Cash Register Co., Inc. v. S.D. Leasing, Inc., 172 Ga. App. 424, 424-25 (1984). Plaintiff enacted the "pay now, sue later" and "conclusive evidence" provisions in the R&R plan based on the terms of the original contract that defendants signed. Plaintiff's authority to enforce the clauses has been upheld by English courts.

See Society of Lloyd's v. Ashenden, 233 F.3d 473, 479-80 (7th Cir. 2000). Thus, even though defendants may have been unaware of the clauses at issue, defendants authorized Lloyd's to take measures unilaterally - including appointing substitute agents on defendants' behalf - to prevent the English insurance market from failing. See id.

In addition, the Eleventh Circuit has already upheld contractual provisions binding Lloyd investors to English choice of law provisions. See Lipcon v. Underwriters at Lloyd's, London, 148 F.3d 1285, 1297-99 (11th Cir. 1998). The remedies available to defendants under English law were adequate, just as plaintiff articulated to the Virginia court. See generally id. at 1297; Ashenden, 233 F.3d 473 at 479-80. Defendants complain that their contract with Lloyd precluded them from raising fraud as an affirmative defense in the Lloyd's suit to collect the assessment in England. However, if defendants wished to pursue such a claim, they could have filed a separate suit in England concurrently with the underlying action. See, e.g., Society of Lloyd's v. Jaffray, 2000 WL 1629463 (Q.B. Comm. Ct. 2000). Therefore, defendants were not prevented from having a "real contest" of the suit. See Colodny, 142 Ga. App. at 731; see also Vanderberg v. Donaldson, 259 F.3d 1321, 1326-27 (11th Cir. 2001) (motion to amend may be denied "if the amendment was futile"). Defendants' motion to amend [doc. no. 22-1] is DENIED.

Motion for Summary Judgment

Standard

Courts should grant summary judgment when "there is no genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party must "always bear the initial responsibility of informing the district court of the basis of its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any' which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). That burden is "discharged by 'showing' - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case." Id. at 325; see also U.S. v. Four Parcels of Real Property, 941 F.2d 1428, 1437 (11th Cir. 1991).

Once the movant has met this burden, the opposing party must then present evidence establishing that there is a genuine issue of material fact. Celotex, 477 U.S. at 325. The nonmoving party must go beyond the pleadings and submit evidence such as affidavits, depositions and admissions that are sufficient to demonstrate that if allowed to proceed to trial, a jury might return a verdict in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257 (1986). If he does so, there is a genuine issue of fact that requires a trial. In making a determination of whether there is a material

issue of fact, the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor. Id. at 255; Rollins v. TechSouth, Inc., 833 F.2d 1525, 1529 (11th Cir. 1987). However, an issue is not genuine if it is unsupported by evidence or if it is created by evidence that is "merely colorable" or is "not significantly probative." Anderson, 477 U.S. at 249-50. Similarly, a fact is not material unless it is identified by the controlling substantive law as an essential element of the nonmoving party's case. Id. at 248. Thus, to create a genuine issue of material fact for trial, the party opposing the summary judgment must come forward with specific evidence of every element essential to his case with respect to which (1) he has the burden of proof, and (2) the summary judgment movant has made a plausible showing of the absence of evidence of the necessary element. Celotex, 477 U.S. at 323.

Facts

In light of the foregoing standard, the court finds the following facts for the purpose of resolving this motion for summary judgment only. Pursuant to the Lloyd's Acts, 1871-1982 (Eng.), plaintiff oversees and regulates the insurance market in England. Plaintiff itself is not an insurer; rather, the actual insurance policies are written by syndicates of outside investors called "Names". Unlike a limited partnership, a Name's liability on his investment is unlimited.

Each of the defendants was a Name and a member of one or more syndicates. To become a Name, defendants executed an agreement known as the "General Undertaking." This agreement included choice of law and choice of forum provisions requiring that all litigation between plaintiff and defendants be conducted in the courts of England and be governed by English law. In addition, defendants agreed to comply with the provisions of the Lloyd's Acts, as well as any subsequent bylaws or regulations pertaining to their membership in Lloyd's.

In the late 1980's and early 1990's, the Lloyd's syndicates incurred large underwriting losses. In 1996, to prevent the English insurance market from becoming bankrupt, plaintiff implemented a Reconstruction and Renewal ("R&R") plan. Under the R&R plan, plaintiff required all Names to reinsure any outstanding obligations prior to 1993 with a newly formed company, Equitas. To finance the new company, plaintiff levied a mandatory assessment against all Names. In addition, the R&R Plan provided an optional settlement offer; if a Name accepted the settlement, Lloyd's discounted a Name's assessment. If a Name refused the settlement, the Name was required to pay the full amount of his outstanding underwriting obligations, including the Equitas assessment, without discount.

Defendants did not accept the settlement. However, in accordance with its authority under the Lloyd's Acts, plaintiff appointed a substitute agent to execute the Equitas reinsurance

agreement on behalf of the defendants. Subsequently, in 1996, plaintiff sued defendants in England to collect the full assessment. Defendants retained counsel and contested the action. Defendants opposed Lloyd's suits on several basis, including the enforceability of certain provisions in the Equitas agreement. The first clause, the "pay now sue later" provision, forbids Names, in suits by Lloyd's to collect the assessment, to raise the defense that the contract had been induced by fraud. The second clause, the "conclusive evidence" clause, makes Lloyd's determination of the amount of the assessment conclusive in the absence of manifest error.

In 1998, an English court entered judgment against defendant Garlington in the amount of £203,279.2 and against defendant Manning in the amount of £72,140.16. Post-judgment interest is accruing at the annual rate of eight percent.

Discussion

The Georgia Foreign Money Judgments Recognition Act ("Act") provides that a foreign judgment is "enforceable in the same manner as the judgment of a sister state" where the judgment is "final, conclusive, and enforceable where rendered even though an appeal therefrom is pending or subject to appeal." O.C.G.A. §§ 9-12-112, 113. The evidence indicates that the English judgments were entered after extensive litigation where defendants were represented by

English solicitors. The judgments are final and conclusive, all appeals have been exhausted, and the judgments are fully enforceable within the judicial system of England.

The Court must next determine if pursuant to the Act, any grounds for non-recognition of the foreign judgment apply. Under the Act, a foreign judgment shall not be recognized 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 O.C.G.A. § 9-12-114(1) (emphasis added). Defendants argue that the English judgments denied them due process of law, and therefore the judgments are unenforceable. However, "the laws and judicial system [of England] are not only not inconsistent with, but in harmony with, those fundamental concepts of justice under the law to which we in this country are accustomed." Coulborn v. Joseph, 195 Ga. 723, 733 (1943). See Lipcon, 148 F.3d at 1298 (11th Cir. 1998) (concluding that English law is "not fundamentally unfair"); Ashenden, 233 F.3d at 476 (7th Cir. 2000) (finding any suggestion that the English system of courts does not provide due process of law bordering "on the risible").

Defendants also argue that enforcing the judgments would be contrary to Georgia public policy. Courts should only void judgments on public policy grounds "in cases free from doubt." Colonial Props. Realty Ltd. P'ship v. Lowder Constr. Co., 256 Ga. App. 106, 111 (2002). A court may refuse to recognize a foreign

judgment if "*the cause of action* on which the judgment is based is repugnant to the public policy of this state." O.C.G.A. § 9-12-114(6) (emphasis added). Here, the cause of action underlying the English judgment, the collection of a contractually-obligated assessment, does not offend Georgia public policy. See Duncan v. Integon Gen. Ins. Corp., 267 Ga. 646, 650 (1997) ("Georgia has historically afforded great protection to contract with another person."). See, e.g., Southwest Livestock and Trucking Co., Inc., 169 F.3d 317, 321 (5th Cir. 1999) (interpreting Texas statute similar to Georgia law).

Defendants also oppose summary judgment by asserting that plaintiff procured the underlying judgments through fraud. As discussed above, this argument does not prevent the court from enforcing the money judgments. Accordingly, plaintiff's motion for summary judgment [docket no. 19] is GRANTED.

Motion to Compel Discovery and Extend Discovery

Defendants move this court to compel plaintiff to respond to certain interrogatories and requests for documents. Defendants also seek attorney's fees in conjunction with this request. As discussed above, the scope of this lawsuit is very narrow as it only involves plaintiff's request for this court to enforce a foreign money judgment. Since defendants' request discovery on issues that will

not impact the case, defendants' motion to compel discovery [docket no. 21] is DENIED.

Defendants' motion to extend time for discovery relates to its affirmative defense of fraud. As discussed above, the court has denied defendants' motion to amend its answer because such a defense would be futile in this action. Therefore, defendants' motion to extend discovery [docket no 22-2] is DENIED.

Summary

1) plaintiff's motion for summary judgment [docket no. 19] is **GRANTED;**

2) defendants Garlington and Manning's motion to amend answers [docket no. 22-1] is **DENIED;**

3) defendants Garlington and Manning's motion to compel discovery [docket no. 21] is **DENIED;**

4) defendants Garlington and Manning's motion to extend time for discovery [docket no. 22-2] is **DENIED.**

SO ORDERED, this 23 day of April, 2003.

ENTERED ON DOCKET

APR 24 2003

L.D.T., CLERK

BY DEPUTY CLERK

G. ERNEST TIDWELL, JUDGE
UNITED STATES DISTRICT COURT