UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE SOCIETY OF LLOYD'S, Plaintiff v. PAUL ANTHONY CAMPBELL-WHITE, PETER CLAFLIN PIERCE, and ANN GRACE, Defendants.	)	Civil Action No. 03-10950-RCL

MEMORANDUM AND ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

LINDSAY, DISTRICT JUDGE.

Invoking the Uniform Foreign Money-Judgment Recognition Act ("FMJRA") as enacted in Massachusetts, Mass. Gen. Laws ch. 235 § 23A, The Society of Lloyd's ("Lloyd's" or the "plaintiff") asks the court to enforce judgments entered against the defendants by a court in England. The defendants have moved for summary judgment, claiming that the English court entering the judgments lacked jurisdiction of their persons, that the defendants received insufficient notice of the English proceedings against them, and that the judgments were obtained by fraud.[1] Each of the defenses asserted by the defendants is an affirmative defense to

[1] Two of the defendants, Paul Anthony Campbell-White ("Campbell-White") and Peter Claflin Pierce ("Pierce"), filed a joint motion for summary judgment. *See* Defendants Paul Anthony Campbell White and Peter Claflin Pierce's Motion for Summary Judgment. The third defendant, Ann Grace ("Grace"), filed a separate motion for summary judgment, in which she raises a fraud defense in addition to the personal jurisdiction and notice arguments. *See* Defendant Ann Grace's Memorandum in Support of Motion to Dismiss or for Summary Judgment, or, in the Alternative, for Discovery.

enforcement of the judgment, as provided in the Massachusetts statute. *See* Mass. Gen. Laws ch. 235 § 23A. For the reasons set out below, the defendants' motions are DENIED. In addition, because I believe that there are no material facts in dispute, and that the plaintiff is likely entitled to judgment as a matter of law, I will require the defendants to show cause as to why I should not grant summary judgment in favor of the plaintiff.

I. Background[2]

Unless otherwise stated, the following facts are not in dispute.

Contrary to common belief, Lloyd's is not an insurer. Rather, Lloyd's is an insurance market "somewhat analogous to the New York Stock Exchange." *Roby v. Corporation of Lloyd's*, 996 F.3d 1353, 1357 (2d Cir. 1993). Through a succession of special Acts (the Lloyd's Acts 1871-1982), the Parliament of the United Kingdom has charged Lloyd's with the authority and duty to regulate the London insurance market. To that end, and in accordance with its authority under the Lloyd's Acts, Lloyd's governing body, the Council of Lloyd's, promulgates regulations (known as "Byelaws") which apply to all insurance providers in the Lloyd's market.

To participate in the Lloyd's market, individual insurers (known as "Names" or "Members") are required to enter into certain agreements governing their membership. In one such agreement, the General Undertaking, the Names agree to comply with the provisions of the Lloyd's Acts, as well as any bylaws, provisions, or regulations adopted pursuant to the

[2] The factual background summarized herein has been recounted in more detail by numerous other federal courts. *See, e.g., The Society of Lloyd's v. Turner*, 303 F.3d 325, 326-27 (5th Cir. 2002) (quoting at length *Haynsworth v. The Corporation, a/k/a Lloyd's of London*, 121 F.3d 956, 958-59 (5th Cir. 1997)); *The Society of Lloyd's v. Ashenden*, 233 F.3d 473, 478 (7th Cir. 2000) (Posner, J.); *The Society of Lloyd's v. Mullin*, 255 F. Supp.2d 468, 470 (E.D.Pa. 2003).

legislative authority conferred by the Lloyd's Acts. *See* Declaration of Nicholas Demery, Exhibit 1 ("General Undertaking"), § 1. The Names further agree that any rights or obligations arising out of their membership "shall be governed by and construed in accordance with the laws of England." General Undertaking § 2.1. Finally, the General Undertaking requires Names to submit to the jurisdiction of the courts of England for the resolution of any dispute relating to their participation in the Lloyd's market. *See id.* § 2.2. Each of the individual defendants in this case was a Name of Lloyd's at all times relevant to this lawsuit, and each executed the General Undertaking incident to becoming a Name.[3] *See id.*

In the late 1980s and early 1990s, Lloyd's insurers incurred huge underwriting losses that threatened the very existence of the three hundred-year-old insurance market. To address this predicament, the Council of Lloyd's approved several measures aimed at reinsuring risks underwritten by Names and the syndicates in which they operate. First, the Council issued the "Reconstruction and Renewal Byelaw (No. 22 of 1995)," which contemplated the execution of a contract to provide reinsurance for Lloyd's Members. Then, on September 3, 1996, the Council issued the "Resolution and Directions of the Council of Lloyd's." *See* Declaration of Nicholas Demery, Exhibit 3. Exercising powers previously conferred by the "Substitute Agents Byelaw (No. 20 of 1983)," and the Reconstruction and Renewal Byelaw (No. 22 of 1995), the resolution appointed Additional Underwriting Agencies (No. 9) Limited ("AUA9") as a "Substitute Agent" for all Names who participated in the Lloyd's market during the relevant period. *See id.* The

[3] The copies of the General Undertaking signed by the defendants and provided by Lloyd's give dates of October 6, 1986, January 1, 1987, and January 21, 1988, for Grace, Pierce, and Campbell-White respectively. *See* Declaration of Nicholas Demery, Exhibit 1. The declaration submitted by Lloyd's, however, states that all of the defendants became Members several years earlier. *See id.* ¶ 5.

Council's directive conferred on the Substitute Agent the authority "to execute the Reinsurance Contract for itself and on behalf of the Members in such form as the Council may direct and to undertake all obligations of the Substitute Agent under the Reinsurance Contract . . . and to perform all functions necessary therefor or incidental thereto." *Id.* § 1(iv).

Pursuant to the Council's mandate, AUA9 executed the "Equitas Reinsurance Contract" for itself and, in its capacity as Substitute Agent, on behalf of all Names, including the individual defendants in this case. *See* Declaration of Nicholas Demery, Exhibit 4 ("Reinsurance Contract"). The Reinsurance Contract requires the Names to pay a premium to Equitas in exchange for reinsurance coverage. Under the terms of the Reinsurance Contract, Names cannot avoid paying the premium by opting to forgo the reinsurance coverage. Payment of the premium is mandatory for all Names bound by the contract. Of particular relevance to the instant case, the Reinsurance Contract also contains a provision stating that "[e]ach Name . . . not domiciled in the United Kingdom hereby irrevocably appoints the Substitute Agent [i.e. AUA9] as agent to accept service of any proceedings in the English Courts on his behalf." *Id.* § 25.2.

According to Lloyd's, approximately ninety-five percent of the Names covered by the Reinsurance Contract voluntarily paid the reinsurance premium to Equitas. The remaining five percent, including the defendants in this case, did not pay the premium. To ensure the funding necessary for Equitas to meet its reinsurance commitments under the agreement, Lloyd's assumed the obligation to pay and did pay Equitas the premiums for the non-cooperating Names. In exchange, Equitas assigned to Lloyd's its right to collect the premium amounts from those Names who did not meet their payment obligations under the Reinsurance Contract.

In an effort to recoup the premium payments it had made to Equitas, Lloyd's instituted separate proceedings against the non-cooperating Names, including the defendants, in the High Court of Justice, Queen's Bench Division in London, England. Lloyd's, however, did not serve process directly on the individual defendants. Instead, Lloyd's served writs of summons on AUA9 in its capacity as Substitute Agent for two of the defendants in the instant case, Paul Anthony Campbell-White and Ann Grace. *See* Declaration of Joseph Bradley, Exhibits 1, 2. Similarly, Lloyd's served process on the Member's Agent[4] of Peter Claflin Pierce, the third defendant in this lawsuit. *See* Declaration of Leslie John Taylor, Exhibits 1-3; Declaration of Nicholas Demery, Exhibit 7.

According to the respective agents of the defendants, the agents responded to the writs by notifying each of the defendants of the proceedings initiated against him or her. While Lloyd's has presented letters from the agents addressed to the defendants and purporting to notify the defendants of the impending action,[5] the defendants all assert that they never received the letters. The defendants claim that the letters, if they were sent at all, were sent to incorrect addresses.

None of the defendants appeared in any of the proceedings against them and, as a result, the High Court of Justice entered separate default judgments against all three.[6] *See* Complaint, Exhibit 1. Because the defendants live in Massachusetts, and not in the United Kingdom,

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[4] Names are required to retain a Member's Agent in order to participate in the Lloyd's market. *See Turner*, 303 F.3d at 327. Member's Agents may accept service of process on behalf of the Members they represent, pursuant to Lloyd's Membership Byelaw (No. 17 of 1993). *See* Declaration of Leslie John Taylor ¶ 7, Exhibit 1.

[5] *See* Declaration of Joseph Bradley, Exhibits 1, 2; Declaration of Leslie John Taylor, Exhibit 3.

[6] The respective judgments against Grace, Campbell-White, and Pierce were entered on June 24, 1997, June 27, 1997, and July 20, 1998. *See* Complaint, Exhibit 1.

however, the judgments could not be enforced by the court that entered them. Lloyd's therefore commenced the present action.

II. Standard of Review

Under Federal Rules of Civil Procedure 56(c), summary judgment is appropriate 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). The Supreme Court has stated that Rule 56(c) "*mandates* the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (emphasis added). If the requirements of Rule 56(c) are met, the court may not only enter summary judgment in favor of the moving party, but may also enter summary judgment *sua sponte* against the moving party. *See National Expositions, Inc. v. Crowley Maritime Corp.*, 824 F.2d 131, 133 (1st Cir. 1987) (recognizing "that a district court has the legal power to render summary judgment . . . in favor of the party opposing summary judgment even though he has made no formal cross-motion under rule 56") (internal quotations omitted).

III. Discussion

As codified in Massachusetts,[7] the FMJRA begins with the presumption that, "[e]xcept as hereinafter provided, any foreign judgment that is final and conclusive and enforceable when

[7] Because the plaintiff seeks recognition of the foreign judgments under state law, there is no federal question implicated in this case. I have subject matter jurisdiction over this action solely because the parties are diverse and the amount in controversy exceeds $75,000.

rendered . . . shall be conclusive between the parties . . . ." Mass. Gen. Laws ch. 235 § 23A. The FMJRA then sets forth specific exceptions to the general rule that foreign judgments are conclusive and enforceable under Massachusetts law. *See id.* In their respective motions for summary judgment, the defendants identify three such exceptions, which they claim prohibit recognition of the foreign judgments at issue in this case. First, they claim that the judgments are unenforceable because "the foreign court did not have personal jurisdiction over the defendant[s] . . . ." *Id.* Second, they assert that the judgments cannot be recognized because the defendants "did not receive notice of the proceedings [in the foreign court] in sufficient time to enable [them] to defend." *Id.* Finally, one of the defendants argues that the foreign judgments are unenforceable under the FMJRA because they were "obtained by fraud." *Id.* I will address each of these arguments separately.

i. Personal Jurisdiction under the FMJRA

The defendants claim that the High Court of Justice did not have personal jurisdiction over them at the time the judgments were entered. While it is true that, under the FMJRA, a foreign judgment is not conclusive if the issuing court did not have personal jurisdiction over the defendant, the FMJRA also expressly states that "[a] foreign judgment shall not be refused for lack of personal jurisdiction if . . . the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved." Mass. Gen. Laws ch. 235 § 23A.

Here, prior to the commencement of the proceedings at issue, each of the defendants agreed to the General Undertaking, which gives jurisdiction to the courts of England over any disputes arising thereunder:

Each party hereto irrevocably agrees that the courts of England shall have

> exclusive jurisdiction to settle any dispute and/or controversy of whatsoever nature arising out of or relating to the Member's membership of, and/or underwriting business at, Lloyd's and that accordingly any suit, action or proceeding . . . arising out of or relating to such matters shall be brought in such courts and, to this end, each party hereto irrevocably agrees to submit to the jurisdiction of the courts of England and irrevocably waives any objection which it may have now or hereafter to (a) any Proceedings being brought in any such court . . . and (b) any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the English courts shall be conclusive and binding upon each party and may be enforced in the courts of any other jurisdiction.

General Undertaking § 2.2.

This unequivocal submission by the defendants to the jurisdiction of the courts of England leaves no doubt that, under the express terms of the FMJRA, the defendants may not challenge recognition of the present judgments based on a claimed lack of personal jurisdiction.

ii. Notice under the FMJRA

A more difficult challenge to the enforcement of the judgments is the defendants' claim that they "did not receive notice of the proceedings [in the High Court of Justice] in sufficient time to enable [them] to defend . . . ." Mass. Gen. Laws ch. 235 § 23A. The defendants specifically assert that letters intended to notify them of the proceedings commenced in the High Court of Justice were sent to incorrect addresses, if they were sent at all. The plaintiff responds that, regardless of whether the defendants were personally notified of the proceedings, the plaintiff served writs of summons on agents of the defendants authorized to accept service of process on their behalf. Such service, the plaintiff argues, provides sufficient notice to the defendants.

The defendants have cited no case, and I have found none, which holds that service of process is insufficient if a duly-appointed agent is properly served, but fails to notify his

principal of the proceeding to which the process pertains. The most obvious remedy for the principal in a situation in which his agent for service of process fails to notify him of court proceedings is a claim by the principal against the agent; the remedy is not absolution of the principal in the underlying proceedings. Indeed under procedure applicable in the Massachusetts Superior Court Department and certain other of the Commonwealth's trial court departments, service of process on an individual in Massachusetts is sufficient if it is made on an "agent authorized by appointment." Mass. R. Civ. P. 4(d)(1). In that sense, the procedure for service of process under § 25.2 of the Reinsurance Contract is analogous to Massachusetts procedure.

While implicitly acknowledging that service on a duly appointed agent authorized to accept service of process would satisfy the notice requirement of the FMJRA, the defendants challenge whether the agents who accepted service of process on their behalf were duly appointed. The defendants claim that they never entered into an agency relationship with AUA9, the Substitute Agent of the defendants, pursuant to the Reinsurance Contract. The defendants claim further that they did not authorize anyone to accept service of process on their behalf.[8] The plaintiff responds that, by signing the General Undertaking, the defendants agreed to comply with bylaws and other regulations adopted by the Council of Lloyd's. Because AUA9 was appointed and empowered through such bylaws, the plaintiff contends that the Substitute Agent was authorized by the defendants to execute the Reinsurance Contract, including the provision that allowed it to accept service of process on the defendants' behalf.

[8] Only two of the defendants, Campbell-White and Grace, were served through AUA9. Pierce, by contrast, was served through a Member's Agent that he personally appointed. *See* Declaration of Leslie John Taylor, Exhibit 1; Declaration of Nicholas Demery, Exhibit 7. Because Lloyd's Membership Byelaw (No. 17 of 1993) allows for service of process through a Name's chosen Member's Agent, Pierce's contention that he did not authorize his Member's Agent to accept service on his behalf is untenable.

The question, therefore, is whether the defendants' execution of the General Undertaking enabled the plaintiff to adopt the measures that ultimately led to the provision in the Reinsurance Contract allowing AUA9 to accept service of process for the defendants. This inquiry requires an interpretation of the General Undertaking, which in turn raises the preliminary question of what law should govern the agreement. The General Undertaking includes choice of law and forum selection clauses providing that English law will govern in the event that any disputes arise in connection with a Name's participation in the Lloyd's market, and that English courts will be the forum for resolution of those disputes. Thus, assuming that the choice clauses are enforceable, I must interpret the General Undertaking according to English law.

"Choice of law and forum selection provisions are routinely enforced in the Commonwealth, if enforcement is fair and reasonable." *Stagecoach Transp., Inc. v. Shuttle, Inc.*, 50 Mass. App. Ct. 812, 817-18 (2001) (citing *Morris v. Watsco, Inc.*, 385 Mass. 672, 674-75 (1982) for the enforceability of choice of law provisions, and *Jacobsen v. Mailboxes Etc. U.S.A., Inc.*, 419 Mass. 572, 575 (1995) for the enforceability of forum selection clauses). While Massachusetts courts have not had the opportunity to evaluate the specific choice clauses included in the General Undertaking, every circuit that has examined the choice of law and forum selection provisions in the General Undertaking has upheld them. *See Lipcon v. Underwriters at Lloyd's, London*, 148 F.3d 1285 (11th Cir. 1998); *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998); *Haynsworth v. The Corporation, a/k/a Lloyd's of London*, 121 F.3d 956 (5th Cir. 1997); *Allen v. Lloyd's of London*, 94 F.3d 923 (4th Cir. 1996); *Shell v. R.W. Sturge, Ltd.*, 55 F.3d 1227 (6th Cir. 1995); *Bonny v. Society of Lloyd's*, 3 F.3d 156 (7th Cir. 1993), *cert. denied*, 510 U.S. 1113 (1994); *Roby v. Corporation of Lloyd's*, 996 F.2d 1353 (2d Cir. 1993), *cert. denied*, 510 U.S. 945 (1993); *Riley v. Kingsley Underwriting Agencies,*

Ltd., 969 F.2d 953 (10th

Cir. 1992), *cert. denied*, 506 U.S. 1021 (1992). I am persuaded by the unanimous view of the circuit courts, and like those courts, I interpret the General Undertaking according to English law.

Interpreting a contract according to the law of a foreign sovereign is sometimes a difficult task, because it requires a judge to try to anticipate what a court, operating under a different legal system, would do if confronted with the precise facts faced by the judge called upon to interpret the contract. Fortunately, in this case, the task is not so onerous. The English courts have already litigated the issues raised by the defendants and ruled in favor of the plaintiff. First, in the *Leighs*[9] case, Lord Justice Saville of the English Court of Appeal held that Lloyd's had acted within the statutory authority granted to it under the Lloyd's Acts and, therefore, that the Reinsurance Contract was fully effective and obligated the Names to pay the Equitas premium.[10] More recently, in the *Tropp*[11] case, Mr. Justice Gross of the Commercial Court, Queen's Bench Division specifically held that AUA9 was authorized to accept service on behalf of Names for whom it had been appointed Substitute Agent.

The decisions in the English courts establish definitively that, as interpreted under English law, the General Undertaking gave the plaintiff the right to appoint the Substitute Agent and to allow that agent to accept service of process on behalf of the defendants. AUA9 was therefore the defendants' duly appointed agent and was authorized to accept service of process. Because the plaintiff has shown that AUA9 accepted the writs of summons on behalf of the

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[9] *Society of Lloyd's v. Leighs, Lyon and Wilkinson* (Court of Appeal 31 July 1997).

[10] The Judicial Committee of the House of Lords refused the petition for leave to appeal from the decision of the Court of Appeal. *See* Declaration of Nicholas Demery ¶ 17.

[11] *Society of Lloyd's v. Richard Tropp* (Q.B., January 20, 2004).

defendants, the defendants' claim that they did not receive notice of the proceedings is unavailing. *See* Mass. R. Civ. P. 4(d)(1).

iii. Fraud under the FMJRA

Grace is the only defendant who contends that the foreign judgment against her is unenforceable because it was "obtained by fraud." Mass. Gen. Laws ch. 235 § 23A. She bases her fraud argument on the allegation that Lloyd's deliberately misrepresented to the English courts that the Names had been properly served when the pleadings had actually been served on a purported agent who lacked authority to accept service on behalf of the Names. As discussed above, however, the plaintiff has established to the satisfaction of the English courts that AUA9 was the defendant's duly appointed agent with authority to accept service of process. Grace's fraud defense is therefore founded on a flawed premise and is rejected.

IV. Conclusion

I conclude that the affirmative defenses offered by the defendants in support of their motions for summary judgment are without merit. I therefore DENY the defendants' motions. However, because I believe that no material facts remain in dispute over the enforceability of the judgments, I am inclined to grant summary judgment to the plaintiff as a matter of law. Out of an abundance of caution, however, and in the event that there lurks in this case some issue unknown to me that precludes summary judgment in favor of the plaintiff, I direct the defendants to show cause, if they can do so, why summary judgment should not be granted to plaintiff. To show cause requires that the defendants file such papers as are appropriate, with citation to authority, not later than thirty days from the date of this order. If the defendants file such papers,

the plaintiff may respond not later than fourteen days from the date of the filing of the defendants' papers.

SO ORDERED.

/s/ Reginald C. Lindsay

United States District Judge

DATED: August 23, 2004