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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 03-80247-CJV-MIDDLEBROOKS/JOHNSON

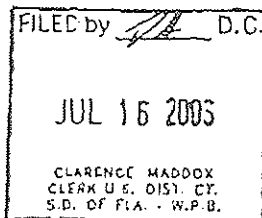
TIMOTHY I. MCCARTHY,

Plaintiff,

v.

THE SOCIETY OF LLOYD'S,

Defendant



ORDER ON MOTION FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court upon Defendant's Motion for Summary Judgment (DE 9), filed May 22, 2003. This motion has been fully briefed and is ripe for resolution. The Court has reviewed the record and is otherwise advised in the premises.

This action is brought pursuant to the Florida Uniform Foreign Money-Judgment Recognition Act, FLA. STAT. ch. 55.601-607 (2003) ("The Act"). Plaintiff has filed his claim seeking a judgment determining that a default money judgment entered against him may not be recognized in Florida. The present motion is one by Defendant for summary judgment against Plaintiff on all claims. The familiar standard which the Court applies is that granting a motion for summary judgment is appropriate only when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party bears the burden of meeting this exacting standard. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). In applying this standard, the evidence, and all reasonable factual inferences drawn therefrom, must be viewed in the light most favorable to the non-moving party. *See Arrington v. Cobb County*, 139 F.3d 865, 871 (11th

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Cir. 1998); *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

Before considering the issues raised in the present motion, the Court first provides some background information on the relationship of the two parties. Neither the present case nor the facts underlying this dispute are unique. Many cases, both within the Eleventh Circuit and in other circuits, have been filed either by The Society of Lloyd's ("Lloyd's") or by other individuals concerning substantially the same circumstances.

Lloyd's is not an insurer, but rather is the regulator of a large insurance market in which hundreds of Underwriting Agencies compete for insurance business. Pursuant to the British Lloyd's Acts of 1871 and 1982, Lloyd's oversees and regulates the competition in this market. The Underwriting Agencies are controlled by an agent who is responsible for the financial status of that agency. It is the responsibility of that agent to obtain both underwriting business and capital with which to fund that business. In order to provide that capital, agents recruit "Names." A Name enters into a series of agreements with Lloyd's and becomes a member of the Society of Lloyd's. One of the agreements a Name must sign is called the "General Undertaking." By entering into these agreements, a Name obtains the right to participate in Lloyd's Underwriting Agencies. The plaintiff in this case, Timothy McCarthy ("McCarthy"), is a Name, and McCarthy signed a General Undertaking.

As pertains to this case, the General Undertaking signed by McCarthy contained the following provisions:

- 2.1 The rights and obligations of the parties arising out of or relating to the Member's membership of, and/or underwriting of insurance business at, Lloyd's and any other matter referred to in this Undertaking shall be governed by and construed in accordance with the laws of

England.

- 2.2 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 of insurance business at, Lloyd's and that accordingly any suit, action or proceeding (together in this Clause 2 referred to as "Proceedings") 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 as is referred to in this Clause 2 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.
- 2.3 The choice of law and jurisdiction referred to in Clause 2 shall continue in full force and effect in respect to any dispute and/or controversy of whatsoever nature arising out of or relating to any of the matters referred to in this Undertaking notwithstanding that the Member ceases, for any reason, to be a Member of, or to underwrite business at, Lloyd's.

(Def.'s Ex. 2).

During the late 1980's and early 1990's, the Lloyd's market suffered losses that exceeded \$12 billion. As a result, many Names defaulted on their obligations when payments to policyholders came due. In order to avoid a collapse of the market, Lloyd's began entering into settlements with existing Names. McCarthy entered into such a settlement on September 9, 1996. (Def.'s Ex. 3 and Ex. 4). Pursuant to that settlement McCarthy was obligated to pay a sum of £114,885.18 with interest accruing from October 1, 1996. McCarthy failed to pay. As a

result, Lloyd's sought a legal judgment against McCarthy in English court on January 28, 2000. (Def.'s Ex. 5). A default judgment was entered against McCarthy on June 5, 2000.¹ (Pl.'s Am. Compl. (DE 12) Ex. A). In order to prevent Lloyd's from registering that judgment in Florida, McCarthy brought the present suit objecting to registration under the Act.

The Act provides a number of bases for nonrecognition of foreign judgments. Chapter 55.605 provides as follows:

- (1) A foreign judgment is not conclusive if:
 - (a) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
 - (b) The foreign court did not have personal jurisdiction over the defendant.
 - (c) The foreign court did not have jurisdiction over the subject matter.
- (2) A foreign judgment need not be recognized if:
 - (a) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend.
 - (b) The judgment was obtained by fraud.
 - (c) The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state.
 - (d) The judgment conflicts with another final and conclusive order.
 - (e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.
 - (f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
 - (g) The foreign judgment where judgment was rendered would not give recognition to a similar judgment rendered in this state.

1. 2000 AT ch. 55.605 (2003). In his Amended Complaint, McCarthy raises the following as

¹ The judgment was in the amount of £150,382.23 which equaled approximately \$227,003.50.

objections to the judgment at issue²: (1)(a), (1)(b), (1)(c), (2)(a), (2)(b), (2)(c), (2)(d), and (2)(f). (Pl.'s Am. Compl. at ¶ 5). In his response to the present motion, however, Plaintiff has withdrawn objections under (2)(b) and (2)(d). (Pl.'s Resp. at 4).

McCarthy maintains a number of objections to registration of the judgment, however at their core, these objections are based on his claim that legal service was not effected upon him and thus, that the Court did not have personal jurisdiction over him. In fact, McCarthy's response to the present motion addresses only this point. Still, the Court addresses all of McCarthy's remaining objections.

It is unsurprising that McCarthy does not pursue his other objections independent of the personal jurisdiction issue, as this Court observes that the remaining objections are without merit. Several courts have held, and this Court agrees, that one cannot seriously question whether the English legal system provides procedures compatible with the requirements of due process of law. As the Seventh Circuit stated, the question whether England has a civilized legal system is "not open to doubt," and the English legal system cannot be compared to that of Cuba, North Korea, Iran, (former) Iraq, or Congo. *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000); see also *Society of Lloyd's v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002). Likewise, it would border upon the absurd to claim the cause of action on which the judgment is based is repugnant to the public policy of this state. See *Turner*, 303 F.3d at 332-33 (holding that the exact cause of action premised upon the same facts as the present case could not be considered contrary to the public policy of Texas). This Court agrees and finds that a breach of contract

² For ease of reference, the Court refers to the objections by the numbering used in the statute.

action, or more specifically, one to enforce a settlement agreement, cannot be considered repugnant to the public policy of Florida.

Two of McCarthy's objections are quickly resolved by reference to the General Undertaking which McCarthy signed. There is no alternative but to read the provisions quoted above as choice of law and choice of forum provisions. It is uncontested that McCarthy agreed to submit to the jurisdiction of the English court system for disputes such as the one underlying the judgment in question. The Eleventh Circuit has specifically upheld and declared enforceable the choice provisions in the precise agreement signed by McCarthy. See *Lipcon v. Underwriters at Lloyd's, London*, 148 F.3d 1285, 1295 (11th Cir. 1998). This Court finds no basis to distinguish the present case from *Lipcon*. McCarthy specifically agreed that he was barred from setting forth "any claim that any such Proceedings have been brought in an inconvenient forum." (Def. Ex. 2 at ¶ 2.2). Accordingly, the Court rejects McCarthy's claims that the English courts did not have jurisdiction over the subject matter and that the forum was seriously inconvenient.

McCarthy is left with the claim that service was not effected upon him and that as a result, the English courts did not have personal jurisdiction over him. McCarthy expends substantial energy arguing that he had rescinded the authority of his designated agent to accept service on his behalf and that therefore, the fact that Lloyd's effected service upon that agent should not constitute service upon him.³ McCarthy does not, however, address the question whether he can maintain an objection based upon lack of personal jurisdiction under the circumstances of this case. Chapter 55.606(3) of the Act states in pertinent part that "The foreign

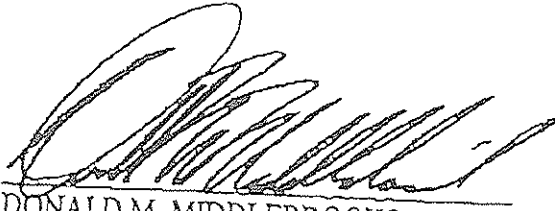
³ The Court, upon reviewing the arguments, agrees with Lloyd's (as well as the English courts), that service upon the agent was proper and sufficient. McCarthy has not created even a legitimate question as to whether service upon his agent was permissible.

judgment shall not be refused recognition for lack of personal jurisdiction if: (3) 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." McCarthy did just that in the General Undertaking. McCarthy cannot now under the Act object to the English court system's jurisdiction over him. See, e.g., *Chabers v. Bacquiz*, 694 So.2d 805, 811-12 (Fla. 4th Dist. Ct. App. 1997); *Dynamic Cassette Intern. Ltd. v. Mike Lopez & Assoc., Inc.*, 923 F.Supp. 8, 10-11 (E.D.N.Y. 1996).

Accordingly and for the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that the Motion for Summary Judgment (DE 9) is GRANTED.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 15 day of July, 2003.


DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to counsel of record