IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CIA CPCC, Inc.,

Plaintiff,

v.

MERRILL IRON & STEEL, INC.,

Defendant.

OPINION AND ORDER

10-cv-695-slc

Plaintiff CIA CPCC, Inc. brings this is civil action to enforce a Canadian judgment ordering defendant Merrill Iron & Steel, Inc. to make good on its promise to buy a metallic cutting machine from CIA. Jurisdiction is present under 28 U.S.C. § 1332(a)(2) as this case involves a dispute between citizens of a state and citizens of a foreign state, and the amount in controversy exceeds $75,000.

Before the court is plaintiff's motion for summary judgment. As explained in more detail below, I am granting the motion because enforcing the judgment would not offend public policy. To the extent that factual disputes exist, they bear not on the enforceability of the judgment but on the mechanics by which the parties are to effectuate it, a matter that I leave to the parties to resolve.

For the purposes of deciding the motion, I find the facts below to be undisputed and material. Most of these facts are drawn from the Canadian court's order in *Mométal Structures Inc. v. CIA CPCC Inc., No. 500-17-035753-071.*

FACTS

This case arises from an international business deal gone sour between an intermediary buyer and the intended end-purchaser who backed out of the deal. Plaintiff CIA CPCC, Inc. ("CIA") is a Canadian company that buys and sells industrial equipment. In the summer of 2006, CIA got the go-ahead from defendant Merrill Iron & Steel, Inc., a Wisconsin corporation, to purchase a coper, a piece of equipment used in the steel industry. CIA entered into a purchase agreement with a third party, Mométal Structures, Inc., a Canadian company, to buy the coper for about $210,000 (United States dollars), with the intention of flipping it to Merrill for an agreed-upon price of $245,000. Merrill, however, had a change of heart and refused to pay CIA or take possession of the coper.

In approximately March 2007, Mométal filed a lawsuit in a Canadian Superior Court located in the Province of Quebec against CIA. *Mométal Structures Inc. v. CIA CPCC Inc., No. 500-17-035753-071.* Exhibit A to Amended Complaint, dkt. 1. In the lawsuit, Mométal asked the court to order CIA to pay the contract price and take possession of the coper. CIA, in turn, asserted a third party claim against Merrill, demanding that it compensate CIA for any amount that it might be ordered to pay Mométal and that Merrill be ordered to take possession of the equipment.

Merrill was served with CIA's third-party claim and appeared in the case through its lawyer. Trial was held before Judge Manon Savard on May 3 and 4, 2010, at which Merrill appeared. Merrill contested CIA's claim that the parties had entered into a contract, denying that it had authorized CIA to purchase the coper from Mometal. Merrill also argued that CIA's

third-party claim against it, which CIA had labeled as an "action in warranty," should be dismissed because it was not the proper recourse.

Judge Savard issued a detailed judgment on August 24, 2010. She found that Mométal was entitled to specific performance of the contract it had entered with CIA for the purchase of the coper. She ordered CIA to honor the contract by paying Mométal the agreed-upon purchase price of $251,118 (Canadian dollars) with interest and to take possession of the equipment. As for CIA's third-party claim against Merrill, Judge Savard found that Merrill, through its president, Roger Hinner, had in fact entered into an agreement with CIA for the purchase of the coper and that it had authorized CIA to purchase it from Mométal.[1] Judge Savard rejected Merrill's argument that the third-party claim had to be dismissed, finding that Merrill had raised its objection too late, that the claim was related to Mométal's claim against CIA and that dismissal of the claim on procedural grounds after a full trial on the merits was an elevation of form over substance. She found, however, that because CIA had chosen to proceed with an action in warranty instead of bringing a separate action to recover from Merrill on the sales contract between Merrill and CIA, CIA could recover from Merrill only the amount CIA had agreed to pay Mométal for the coper and not the greater amount that Merrill had to agree to pay CIA upon re-sale, a difference of about $35,000 dollars (U.S. dollars).

Judge Savard ordered Merrill to pay CIA $251,118 (Canadian dollars) with interest at the legal rate and additional indemnity from January 17, 2007. In addition, she ordered Merrill

[1] Apparently, Hinner did so thinking Merrill's board of directors would approve the purchase. It didn't. Canadian Judgment, at ¶¶71-72.

to take possession of the coper, either from Mométal or CIA. Judge Savard did not, however, specify a deadline within which these actions must occur.

Merrill did not appeal the Canadian judgment and the time for doing so has passed. CIA has been making monthly payments of $25,000 to Mométal pursuant to the Canadian judgment, and has to date paid $175,000 of the amount due. Mométal currently has possession of the coper and is prepared to release it as soon as it has been paid the balance owed to it by CIA. Meanwhile, CIA has been attempting to get Merrill to pay *it* for the coper. Merrill has not accepted the coper and has not made any payments either to CIA or Mométal to perpetuate its transfer. According to Merrill, it already owns a coper and is unable to use a second coper in its operations. Therefore, if it is forced to take possession of the coper, it will have to re-sell it, which will require it to pay between $42,000 and $84,000 in brokerage commissions.

OPINION

Whether a federal district court sitting in diversity will enforce a foreign judgment is governed by the law of the state where the federal court is located. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938); *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941). In Wisconsin, whether to recognize and enforce a judgment of a court in a foreign country is determined based on principles of comity. *In re Steffke's Estate*, 65 Wis. 2d 199, 203, 222 N.W. 2d 628 (Wis. 1974). In *Hilton v. Guyot*, 159 U.S. 113 (1895), the United States Supreme Court explained that comity is "neither a matter of absolute obligation . . . nor of mere courtesy and good will," *id*., at 164-65, but rather "is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international

duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." *Id*. at 165; *see also Hughes v. Fetter*, 257 Wis. 35, 39, 42 N.W. 2d 452, 454 (1950).

The mere assertion that the original court made an error of fact or law is not enough to deny effect to a foreign judgment. *Hilton*, 159 U.S. at 202; *see also Restatement (Second) of Conflict of Laws* § 106 (1969) ("A judgment will be recognized and enforced in other states even though an error of fact or of law was made in the proceedings before judgment . . ."); *id*., § 106, Comment a ("Th[is] rule is . . . applicable to judgments rendered in foreign nations . . . ."). Wisconsin courts will enforce a foreign court's judgment unless it is against public policy, that is, when there is "something inherently bad about the [foreign act], something shocking to one's sense of what is right as measured by moral standards, in the judgment of the courts, something pernicious and injurious to the public welfare." *Internat'l Harvester Co. of America v. McAdam*, 142 Wis. 114, 124 N.W. 1042, 1044 (1910).

Merrill does not dispute that the Canadian judgment is a final, binding judgment issued by a court that had both subject matter and personal jurisdiction, nor does it dispute that it was afforded due process in the Canadian proceeding. Indeed, Merrill appeared in the Canadian action, opposed CIA's claim and presented the testimony of its president, Hinner, at trial. Nonetheless, it contends that this court should not enforce the judgment against it because it was an order for specific performance. According to Merrill, this fact is significant because: 1) foreign awards of injunctive relief are generally not entitled to enforcement; 2) unlike Canada's civil law system, the United States' common law system views specific performance as an exceptional remedy available only when damages are inadequate; and 3) in Wisconsin, which

follows the Uniform Commercial Code, specific performance is not a remedy that is available to a seller of goods, as CIA was in the transaction at hand.

I have read all of Merrill's arguments, dkt. 30, at 7-14, but do not find any of them persuasive. Although it may be true that a Wisconsin court would not have ordered specific performance if the case had been before it in the first instance, that is not the dispositive question. "It is the long-recognized general rule that, when a judgment binds or is respected as a matter of comity, a 'let's see if we agree' approach is out of order." *Medellin v. Dretke*, 544 U.S. 660, 670-671(2005) (citing *Hilton*, 159 U.S. at 202-203) (Ginsburg, J., concurring). As made clear by the authorities cited above, the question is not whether the Canadian court might have erred, but whether it would be morally repugnant to grant effect to its judgment. The mere fact that a United States court likely would not have ordered specific performance as a remedy for Merrill's breach of contract does not mean that enforcing the Canadian judgment would contravene public policy. 1 Restatement (Third) of Foreign Relations Law of the United States § 482, Comment f (1987) ("[T]he fact that a particular cause of action does not exist or has been abolished in the state where recognition or enforcement is sought–for instance, a suit for breach of promise to marry–does not necessarily make enforcement of a judgment based on such an action contrary to the public policy of the recognizing State or of the United States.").

Merrill argues that enforcing the judgment would violate public policy because, if forced to take possession of the coper, Merrill will have to incur shipping, supervision and re-sale costs that exceed any corresponding benefit to CIA. That compliance with the judgment might be expensive and inconvenient for Merrill, however, does not offend public policy. The Canadian court merely ordered Merrill to do what it had agreed to do: purchase a coper from CIA. The

shipping and supervision costs that Merrill will incur are no more than it would have incurred if it had honored its contract in the first place. As for the costs of re-sale, the Canadian court did not order Merrill to re-sell the coper. Those anticipated costs are the result of Merrill apparently making a mistake about whether it needed a second coper. One can only imagine the havoc it would wreak on international commerce if buyer's remorse were enough to allow a party to escape the effect of a foreign court's judgment.

Merrill's remaining arguments are equally unpersuasive. It argues that because Merrill will have to send employees to supervise the dismantling and loading of the coper, the contract is at least partly for services, and as such, is unenforceable. However, the only case it cites in support of this contention, *North American Financial Group, Ltd. v. S.M.R. Enterprises, Inc.*, 583 F. Supp. 691 (D.C. Ill. 1984), is not on point. That case involved a franchise contract that would have required the defendants to "provide personal, specialized services to [plaintiff] for an unspecified time," *id*. at 699. Requiring specific performance would have placed the court "in the untenable situation of a long-term supervisor." *Id*. By contrast, the minimal services involved in this case are ancillary to the transaction and would require no long-term oversight by the court.

Merrill also contends that the Canadian court's order contains ministerial errors and omits certain contract terms, making it too uncertain to perform. As CIA points out, however, the proper forum in which to have made these arguments was the court of Quebec. On its face, the judgment is clear: Merrill is to pay CIA the sum of $251,118 in Canadian dollars and take possession of the coper. Although the court appears to have committed a typographical error in describing the serial number of the coper, the number is presumably referenced on the

documents exchanged between the parties and discussed at the trial. Merrill's suggestion that it is unclear which piece of equipment it must purchase is not well-taken.

Finally, Merrill argues that it should not have to pay CIA until CIA fulfills its payment obligations to Mométal and obtains title or possession of the coper. The Canadian judgment did not condition Merrill's obligations to CIA upon CIA's satisfaction of its obligations to Mométal, and I see no basis to add such a condition. Although I understand Merrill's concern, I am satisfied that the parties and their lawyers are sophisticated enough to handle the mechanics of payment and transfer. Merrill could, for example, pay Mométal the balance remaining on the coper (and reimburse CIA for the amounts it has already paid) and take title of the coper directly from Mométal. Indeed, given the size of the equipment and the costs of moving it, it would make little sense to force CIA to take possession of the coper first, only to transfer it to Merrill.

To allay Merrill's concerns and to allow the parties time to work out the terms of payment and transfer of the coper, I will defer entry of judgment in this case for one month. During that time, Merrill can inspect the coper, if it wishes, and obtain from Mométal proof of the amount CIA has already paid towards it. I also leave it to the parties to resolve any disagreements concerning the amount of interest owed by Merrill under the terms of the Canadian judgment, and to agree on a date by which the judgment must be satisfied. If the parties are unable to agree on these terms within by June 20, 2011, then they may seek further relief from the court.

ORDER

IT IS ORDERED THAT:

1. Plaintiff CIA CPCC, Inc.'s motion for summary judgment is GRANTED. The Judgment of the Superior Court, Canada, Province of Quebec, District of Montreal, in case No. 500-17-035753-071 in favor of CIA CPCC, Inc. and against Merrill Iron & Steel, Inc., shall be enforced.

2. Defendant Merrill Iron & Steel, Inc.'s counterclaim for declaratory judgment is DISMISSED as moot.

3. Entry of judgment shall be deferred until June 20, 2011 to allow the parties time to work out the mechanics of payment and transfer of the coper.

Entered this 19th day of May, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge