

DOCTOR’S ASSOCIATES, INC.,
a Florida corporation,

_____Plaintiff,

v.

TROY WINDHAM,

Defendant.

C.A. No: K14C-05-011 (RBY)

***Upon Consideration of Defendant's
Motion to Dismiss
DENIED***

Young, J.

SUMMARY

Troy Windham (“Defendant”) moves for an order dismissing Doctor’s Associates, Inc.’s (“Plaintiff”) Complaint in an action against Defendant, seeking enforcement of a foreign judgment under Chapter 47 of Title 10. In the Motion to Dismiss, Defendant contends that the foreign judgment has never been properly filed in accordance with 10 *Del. Code* § 4783, which provides that a foreign judgment cannot be enforced until twenty days after the judgment has been filed. However, Plaintiff’s Complaint does not seek enforcement immediately. Rather, Plaintiff’s Complaint merely requests the Court to allow recognition of the judgment, so that it may later be enforced under the statute.

Several legal principles demonstrate that the judgment can be domesticated, and eventually enforced against Defendant, in Delaware. Therefore, the judgment is entitled to full faith and credit, such that it may be domesticated in Delaware. Once Plaintiff properly files the judgment, Plaintiff will have the chance to comply with the notice requirements of 10 *Del. Code* § 4783. Defendant’s Motion to Dismiss is **DENIED**.

FACTS AND PROCEDURE

Plaintiff is a Florida corporation that holds all franchise rights for all Subway restaurants in the United States. Defendant is a Delaware resident with a home in Dover, Delaware. On January 25, 2005, Plaintiff and Defendant executed a Franchise Agreement for a Subway restaurant in Dover, Delaware. Thereafter, Defendant allegedly breached several provisions of the Franchise Agreement, specifically Defendant’s obligation to operate the franchise in accordance with the

Subway Operations Manual. Consequently, Plaintiff submitted Defendant to arbitration.

In connection with the arbitration, Defendant entered into an Arbitration Interim Order on September 2, 2009 (the “Interim Order”). In the Interim Order, Defendant admitted that he breached the Franchise Agreement. To this date, Defendant has yet to cure the breaches, remaining in default of the Interim Order. The instant action is part of the enforcement of the Interim Order, for which Subway is entitled to attorney’s fees.

On January 3, 2012, an arbitrator ruled in Plaintiff’s favor. The arbitrator also terminated the Franchise Agreement, and awarded Plaintiff certain monetary awards based on Defendant’s breach. On January 3, 2012, the Superior Court of Connecticut in the Judicial District of Ansonia-Milford confirmed Plaintiff’s arbitration award against Defendant (“the Judgment”).¹ Afterward, Defendant appealed the Judgment. On November 26, 2013, the Appellate Court of Connecticut affirmed the Judgment confirming the underlying arbitration award.²

Count I of the Complaint alleges that the Judgment is a final judgment confirming Plaintiff’s arbitration award against Defendant; therefore, the Judgment is entitled to full faith and credit in the State of Delaware. The Complaint alleges that nothing in 10 *Del. Code* § 4780, et. seq requires that a judgment to be domesticated in Delaware must first be a monetary judgment, and

¹ See *Windham v. Doctor's Associates, Inc.*, Dkt. No. AAN-CV-10-60044271 (Conn. Super. Ct. Jan. 3, 2012); Exhibit C.

² See *Doctor's Associates, Inc. v. Windham*, 81 A.3d 230 (Conn. App. 2013).

that the Judgment is capable of being liquidated to a monetary value. Plaintiff alleges that it is entitled to register or domesticate the Judgment with the Prothonotary of this Court, and is also entitled to enforce or execute on that Judgment in Delaware. Finally, in the Complaint, Plaintiff requests that, if the Court orders such registration, that it be entitled to hold an inquisition hearing to liquidate the Judgment to monetary value.

On June 27, 2014, Defendant filed the instant Motion to Dismiss. On July 17, 2014, Plaintiff filed a Response to Defendant's Motion to Dismiss.

STANDARD OF REVIEW

"A motion to dismiss under [Superior Court Civil] Rule 12(b)(6) presents the question of 'whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof' under the complaint."³ "When considering a motion to dismiss, the Court must read the complaint generously, accept all well-[pled] allegations as true, and construe them in a light most favorable to the plaintiff."⁴ "A complaint is 'well-plead' if it puts the opposing party on notice of the claim being brought against it."⁵ "Dismissal is warranted only when 'under no reasonable interpretation of the facts alleged could the

³ *Precision Air, Inc. v. Standard Chlorine of Del., Inc.*, 654 A.2d 403, 406 (Del. 1995), citing *Kofron v. Amoco Chems. Corp.*, 441 A.2d 226, 227 (Del. Super. 1982).

⁴ *Klein v. Sunbeam Corp.*, 94 A.2d 385, 391 (Del. 1952).

⁵ *Boyce Thompson Inst v. MedImmune, Inc.*, 2009 WL 1482237 (Del. Super. 2009), citing *Precision Air v. Standard Chlorine of Del.*, 654 A.2d 403, 406 (Del. 1995).

complaint state a claim for which relief might be granted.”⁶

DISCUSSION

_____ Defendant argues that Plaintiff has not complied with Delaware’s Uniform Enforcement of Foreign Judgments Act (“the Act”), 10 *Del. Code* § 4783, because notice, as required under that section, has not been sent. 10 *Del. Code* § 4783 provides that a foreign judgment cannot be enforced until twenty days after the judgment has been filed. Defendant contends that the Judgment has never been properly filed, and Plaintiff attempts to enforce it now. Defendant asserts that Plaintiff’s alleged failure to comply with the statutory requirements of the Act precludes Plaintiff from registering and enforcing the Judgment, as defined in the Complaint.

In Plaintiff’s Response, Plaintiff contends that Defendant’s sole argument for dismissal is premised upon Plaintiff’s alleged failure to do the exact act that Plaintiff requests it be permitted to do in the Complaint. Plaintiff asserts that Defendant’s Motion misses the fundamental point of Plaintiff’s Complaint: that Plaintiff requests that the Court allow *recognition* of the Judgment. It is now Plaintiff’s position that the Judgment is entitled to “full faith and credit”, and should be allowed to be domesticated in Delaware. Once domesticated, Plaintiff should be entitled to enforce the Judgment in Delaware. Plaintiff does not attempt to enforce the Judgment, unless this Court determines that the Judgment is entitled to full faith and credit, and can then be domesticated in Delaware.

⁶ *Id.*, citing *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del.Super.).

Several legal principles demonstrate that the Judgment can be domesticated, and eventually enforced against Defendant, in Delaware. Under the principles of comity, Delaware courts give a foreign judgment “such binding effect as would be accorded to it by courts of the jurisdiction rendering judgment.”⁷ Furthermore, in Connecticut, the confirmation of an arbitration award is given equal force and effect as a judgment rendered in a typical civil case.⁸ Plaintiff asserts that it would not be inappropriate for this Court to recognize, and allow an order confirming, an arbitration award, when the very jurisdiction in which the order is issued recognizes it as a full judgment.

It is well settled law in Delaware that the doctrines of res judicata and collateral estoppel require that a foreign judgment rendered upon adequate jurisdiction shall be given the same effect that the foreign court itself would accord such a judgment.⁹ Therefore, the Judgment is entitled to full faith and credit, such that it may be domesticated in Delaware. Once Plaintiff properly files the Judgment, Plaintiff will have the chance to comply with the notice requirements of 10 *Del. Code* § 4783.

CONCLUSION

For the foregoing reasons, Defendant’s Motion to Dismiss is **DENIED**.

⁷ *Bata v. Bata*, 163 A.2d 493, 504 (Del. 1960).

⁸ See Conn. Gen. Stat. Section 52-421 (b).

⁹ *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1217 (Del. January 8, 1991).

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August 18, 2014

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc

oc: Prothonotary

cc: Counsel

Opinion Distribution

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