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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SUNG YOON KIM, **Plaintiff,** **v.** **HONG KYUN KIM,** **Defendant.**	**CIVIL CASE NO. 19-0073** **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT "TO RECOGNIZE" THE FOREIGN JUDGMENT RENDERED IN THE REPUBLIC OF KOREA BUT DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT "TO ENFORCE" THE FOREIGN JUDGMENT BECAUSE THERE IS A MATERIAL DISPUTE AS TO HOW MUCH OF THE FOREIGN JUDGMENT HAS ALREADY BEEN PAID**

I. INTRODUCTION

THIS MATTER was last before the Court on August 17, 2021 regarding Plaintiff's Motion for Summary Judgment on which Plaintiff seeks for the Court to recognize and enforce money judgments rendered in the Republic of Korea. Attorney Samuel I. Mok[1] appeared for the Plaintiff Sung Yoon Kim. Attorney Matthew T. Gregory appeared for the Defendant Hong Kyun Kim. Based on a review of the arguments, filings, and relevant law, the Court makes the following order.

II. BACKGROUND

1. On August 16, 2013, the Seoul Central District Court, which is situated in the Republic of Korea ("Korea"), issued its decision in case 2012kahap104606 ("Korean District Case").

[1] On May 3, 2022, Attorney Samuel Mok's request to be relieved as counsel for Plaintiff was granted. A copy of the Order was served on Plaintiff and proof of service was filed.

2. The Korean District Case was between Sung Yoon Kim, as the plaintiff, and Hong Kyun Kim as the defendant.
3. The Seoul Central District Court stated that the grounds for the Korean District Case were as such:
    a. On September 15, 1988, the plaintiff completed title registration under the defendant's name of his share of the relevant properties. On April 4, 1989, the transfer of ownership of the properties to the defendant was registered.
    b. Between 1992 and 2005, the properties became subject of seizures and public sales.
    c. On March 5, 2005, a promissory note with a face value of 130,000,000 KRW was issued binding the defendant to pay the plaintiff 130,000,000 KRW as compensation for the expenses incurred due to the seizure and the public sale of the properties.
4. The Seoul Central District Court stated that, as a result of its findings in the Korean District Case, the defendant has the obligation to pay the plaintiff 130,000,000 KRW and the delay compensation for the period starting from May 22, 2013 and until the payment is complete at 20% per year.
5. Hong Kyun Kim, through an attorney, appealed the Korean District Case to the Seoul High Court. Hong Kyun Kim's appeal resulted in case 2015na10891 ("Korean Appellate Case").
6. The pleadings in the Korean Appellate Case ended on October 20, 2015.
7. The Court takes notice of the following in regards to the judicial system of Korea:[2]
    a. "The Korean judicial system provides substantially the same substantive and procedural due process protections as those afforded by [the United States]," such as "notice, the right to . . . legal counsel, the right to present evidence and witnesses and to examine evidence

[2] NMI R. EVID. 201.

offered against them, and a right to appeal to a higher court." *In re RSM Richter Inc. v. Aguilar (In re Ephedra Prods. Liab. Litig.)*, 349 B.R. 333, 337 (S.D.N.Y. 2006) (citation omitted).

b. Pursuant to the Civil Procedure Act of Korea:[3]

i. "If a defendant pleads as to the merits of a case without putting in a demurrer against any lack of jurisdiction before the court of the first instance, or makes statements during the preparatory date for pleading, the said court shall have the jurisdiction thereof." Article 30; *see also Sung Hwan Co., Ltd. v. Rite Aid Corp.*, 2006 NY Slip Op 4337 ¶ 3 n.2 (stating that pursuant to the Korea Civil Procedure Act "a party may make a special appearance solely for the purpose of contesting jurisdiction").

ii. "A judgment of the first instance may be altered within the extent of dissatisfaction therewith: Provided, that the same shall not apply when the allegation as to an offset has been admitted." Article 415.

iii. "The court of appeals shall revoke a judgment of the first instance, when it deems such judgment to be unjustifiable." Article 416.

iv. "The court of appeals shall revoke a judgment of the first instance, if the procedure for a judgment of the first instance has been in violation of Acts." Article 417.

v. In the Korean Judicial system, "appeal proceedings are similar to trial proceedings, and the party is granted an opportunity to make new allegations and to produce new evidence." *See Civil: Appeal Proceedings*, SUPREME COURT OF KOREA,

[3] *See* Civil Procedure Act, KOREA LEGISLATION RESEARCH INSTITUTE, https://elaw.klri.re.kr/eng_service/lawView.do?hseq=55220&lang=ENG (last visited June 09, 2022).

https://eng.scourt.go.kr/eng/judiciary/proceedings/civil.jsp#t102 (last visited June 09, 2022).

8. In the Korean Appellate Case, Hong Kyun Kim argued:

> "that when the [relevant] agreement was made between [Hong Kyun Kim] and [Sung Yoon Kim], the seizure and the public sale of the Shares caused [Sung Yoon Kim] to spend an amount much smaller than 130,000,000 KRW. However, [Sung Yoon Kim] distorted the facts and exaggerated the amount spent when concluding the agreement with [Hong Kyun Kim]. [Hong Kyun Kim] wishes to revoke his consent to this Commitment as it was based on a false belief."

[**Exhibit B**].

9. However, despite Hong Kyun Kim's arguments, the Seoul High Court stated in the Korean Appellate Case that, based on the contents in the filed exhibits, there was not enough grounds to "admit the facts claimed by [Hong Kyun Kim], thus [Hong Kyun Kim's] claim is rejected." [**Exhibit B**].

10. On August 29, 2016, the Seoul Central District Court issued its decision in case 2016kahwak1636 ("Korean Costs Case"). [**Exhibit C**].

11. The Seoul Central District Court stated in the Korean Costs Case [**Exhibit C**]:

    a. "[A]ccording to this Court's decision regarding the 2012kahap104606 Commitment Free case, the Respondent is required to repay the Petitioner the litigation costs in the amount provided in the attached Statement of Litigation Costs."

    b. "The Respondent must repay the Petitioner 11,033,990 KRW for litigation costs."

12. On February 23, 2019, Sung Yoon Kim ("Plaintiff") filed his Complaint ("Complaint") with the Superior Court for the Commonwealth of the Northern Mariana Islands ("Superior Court" or "the Court").

13. Plaintiff attached copies of the Korean District Case, the Korean Appellate Case, and the Korean Costs Case (collectively "the Korean Judgments") to the Complaint.

14. The Complaint stated that it sought:

    a. The Court to recognize the Korean District Case.

    b. The Court to recognize the Korean Litigation Costs Case.

    c. The Court to enforce the Korean District Case and the Korean Litigation Costs Case and enter a judgment in the amount of $125,341.26 in favor of Plaintiff.

    d. The Court to award applicable prejudgment and post-judgment interest.

    e. The Court to award reasonable costs and expenses.

    f. The Court to award attorney fees to the extent allowed under Korean law and recognized by this Court.

    g. The Court to award and impose such other and further relief as this Court may seem just and proper.

15. The Complaint states that the Court should recognize and enforce the Korean Judgments pursuant to 7 CMC § 4407.

16. On March 21, 2019, Hong Kyun Kim ("Defendant") filed his Motion to Dismiss.

17. On March 31, 2021, the Court published *Sung Yoon Kim vs. Hong Kyun Kim*, Civ. No. 19-0073 (NMI Super. Ct. Mar. 31, 2021) (Order Denying Rule 12(b)(6) Motion to Dismiss as There Is Sufficient Legal Basis to Recognize a Foreign (Republic of Korea) Civil Money Judgment) ("Dismissal Order").

18. In the Dismissal Order, the Court made the following relevant findings:

    a. The enforcement of foreign judgments is controlled by the jurisdiction in which the Court sits. *See Dismissal Order* at 13. *See also Baker v. GMC*, 522 U.S. 222, 235 (1998) ("Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the even-handed control of forum law.").

b. The Commonwealth adopted the Uniform Enforcement of Foreign Judgments Act of 1994 ("UEFJA"). *See Dismissal Order* at 13; *see also* 7 CMC §§ 4403; 4407.

c. UEFJA defines "foreign judgments" as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in the Commonwealth of the Northern Mariana Islands." *See Dismissal Order* at 13; *see also* 7 CMC § 4402.

19. On April 13, 2021, Defendant filed his Answer and Affirmative Defenses ("Answer").

20. The Answer stated that as to paragraphs 8 and 11-14 in the Complaint, which describe the certified copies of the Korean Judgments, "the documents referenced speak for themselves and [Defendant] neither denies or admits the allegations."

21. In the Answer, Defendant raised sixteen (16) affirmative defenses against the Complaint. These defenses are: (1) all or part of Plaintiff's claims are barred or reduced by unclean hands, bad faith or estoppel; (2) Plaintiff fails to state a claim upon which relief can be granted; (3) all or parts of Plaintiff's claims are barred by waiver, consent or ratification; (4) the claim is barred or reduced by the doctrine of accord and satisfaction; (5) the claim should be barred or reduced based on payment; (6) failure of consideration; (7) Plaintiff's claim fails due to the statute of frauds; (8) Plaintiff's claim fails due to the statute of limitations; (9) Plaintiff's claim falls under the doctrine of laches; (10) Duress, fraud, mistake, unconscionability or illegality; (11) the claim would unjustly enrich Plaintiff; (12) the court that rendered the judgement did not have jurisdiction of the subject matter of the action; (13) the Defendant did not receive notice of the proceedings in sufficient time to enable him to defend; (14) the judgment was obtained by fraud; (15) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition

is sought; and (16) Defendant reserves the right to designate additional defenses as they become apparent though discovery, investigation or otherwise.

22. On April 20, 2021, Plaintiff filed his Motion for Summary Judgment ("Summary Judgment Motion").

23. The Summary Judgment Motion seeks for the Court to recognize and enforce the Korean Judgments.

24. In the Summary Judgment Motion, Plaintiff stated that "Defendant admits the existence of [the Korean Judgments] and does not dispute that the certified copies of the courts' orders are what they purport to be." Summary Judgment Motion at 4. Thus, Plaintiff argued, that "as Plaintiff has established the existence of a final, conclusive, and enforceable Korean judgment on his contract claim against Defendant, the Court should recognize the Korean judgment on the matter." Summary Judgment Motion at 5.

25. Plaintiff attached certified copies of the Korean Judgments to the Summary Judgment Motion.

26. On May 21, 2021, Defendant filed his Opposition to Motion for Summary Judgment ("Opposition").

27. Defendant attached two affidavits to the Opposition.

28. The first affidavit was from Defendant ("Defendant's Affidavit"). Defendant's Affidavit made the following allegations:

    a. In 1988, Plaintiff transferred one hundred eighty square meters of property to Defendant in Inchon, Korea.

    b. Defendant held the property in trust for Plaintiff.

    c. Defendant experienced money problems in the 1990s.

    d. Defendant had been living in Saipan since 1998.

e. In 2005, Defendant signed a promissory note with Plaintiff to make him whole for the losses experienced in the 1990s.

f. Defendant resolved to pay the tax liens on the Property to compensate Plaintiff for the loss on the Property.

i. To do this, Defendant paid approximately $10,000 in property tax on the property after the promissory note.

ii. Defendant paid another tax lien in the approximate amount of $13,000.

g. Defendant had no notice of the lawsuit filed in Korean District Case and because of this he was not able to defend his case.

h. In 2013, he went to Korea and found that his personal bank account had been seized pursuant to the Korean District Case, but he did not know the amount.

i. Defendant then hired an attorney in Korea to appeal the case, but the Korean appellate court denied his appeal.

j. Plaintiff obtained $60,000 from Defendant's bank account in Korea in 2018 or 2019.

k. Plaintiff obtained $3,000 from Defendant's bank account in Korea in 2021.

l. Defendant may have made other payments to Plaintiff.

m. Defendant thought that these payments had fully compensated Plaintiff.

n. Defendant needs additional time to locate the paperwork for these payments.

29. The second affidavit was from Sung Joon An – Defendant's son-in-law. Sun Joon An stated in his affidavit that he was asked to look for relevant documents in Korea, including the promissory note, and was tasked with contacting Defendant's Korean attorney – neither of which he was able to accomplish at the time of the affidavit.

III. LEGAL STANDARD

A. Rule 56(a) of the Rules of Civil Procedure

Pursuant to Rule 56(a) of the Rules of Civil Procedure, "the court must grant [a party's] summary judgment [motion] if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NMI R. CIV. P. 56(a). "A fact in contention is considered material only if its determination may affect the outcome of the case." *Triple J Saipan, Inc. v. Agulto*, 2002 MP 11 ¶ 8.

"Unless the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." NMI R. CIV. P. 56(b). The phrase "any time" in Rule 56(b) includes the period before discovery has commenced. *See Brill v. Lante Corp.*, 119 F.3d 1266, 1275 (7th Cir. 1997) (stating that "a party can file a motion for summary judgment at any time, indeed, even before discovery has begun").

In a motion for summary judgment, the burden of production initially rests with the moving party.[4] *See Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18; *Triple J Saipan, Inc.*, 2002 MP 11 ¶ 8.

If the moving party will bear the ultimate burden of persuasion at trial, then the movant "can only meet its burden on summary judgment by presenting affirmative evidence showing the absence of a genuine issue of material fact — that is, facts that would entitle it to a directed verdict if not controverted at trial." *Parrott v. PNC Bank*, 986 F. Supp. 2d 1263, 1267 (N.D. Ala. 2013). "Where the evidentiary matter in support of the motion is insufficient, summary judgment must be denied *even if no opposing evidentiary matter is presented*." *Id*. (emphasis in original) (quoting *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 159-60 (1970)).

[4] "The burden of production is the responsibility to move forward with the presentation of evidence regarding evidentiary facts." *Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18.

For issues on which the movant does not have the ultimate burden of persuasion at trial, the movant may satisfy its burden by either providing evidence demonstrating that the non-moving party will be unable to prove its case at trial or show that there is an absence of evidence to support the non-movant's case on the particular issue at hand. *Parrott v. PNC Bank*, 986 F. Supp. 2d 1263, 1267-68 (N.D. Ala. 2013). However, a movant may only avail himself of the second option "if there has been sufficient time for discovery." *Sablan*, 2002 MP 23 ¶ 18.

"If, and only if, the moving party meets his initial burden then the burden of production shifts to the nonmoving party, who must produce just enough evidence to create a genuine fact issue," *Sablan*, 2002 MP 23 ¶ 18, or adequately explain why he cannot yet do so, *see* NMI. R. CIV. P. 56(d). Thus, the court must first examine the moving party's submission to determine if it has met its initial burden before analyzing the submissions and arguments of the non-moving party. *Pritchett v. W. Res.*, Inc., 313 F. Supp. 2d 1120, 1124 (D. Kan. 2004); *see also Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 29 ("Until [the moving party] meets that burden, the non-moving party is not required to make any evidentiary showing.").

In regards to the burden of persuasion, it always remains with the party that moves for summary judgment. *See Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18 ("On summary judgment, the burden of persuasion regarding the absence of genuine issues of material fact always remains with the moving party.").[5] "Any doubt as to the existence of a genuine issue must be resolved against the movant." *Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18; *see also Shinji Fujie v. Atalig*, 2014 MP 14 ¶ 7 ("On summary judgment, [the Court] construe[s] the evidence in the light most favorable to the non-moving party."). "Because summary judgment forecloses a trial on the merits, the burden of persuasion cannot be satisfied unless it is clear that a trial is unnecessary."

[5] "The burden of persuasion is the onus to affirmatively convince the trier of fact of the existence or non-existence of required facts." *Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18.

Sablan v. Roberto (In re Roberto), 2002 MP 23, ¶ 18; *see also Castro v. Hotel Nikko Saipan, Inc.*, 4 NMI 268, 272 (1995) ("In essence the inquiry is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." (internal citation omitted)).

In satisfying these burdens, "a party asserting that a fact cannot be […] genuinely disputed must support the assertion by citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." NMI. R. CIV. P. 56(c)(1)(A).

"A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." NMI. R. CIV. P. 56(c)(2). The phrase "cannot be presented" does not mean that a proponent of a summary judgment motion is forbidden from using materials to support their motion that would be inadmissible if used at trial, such as an affidavit. Rather, it means that parties are forbidden from using materials the content of which is unable to be converted into an admissible form of evidence, such as witness testimony. *See Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003) ("At the summary judgment stage, [courts] do not focus on the admissibility of the evidence's form. [Courts] instead focus on the admissibility of its contents.").

"The court need consider only the cited materials, but it may consider other materials in the record." NMI. R. CIV. P. 56(c)(3).

B. Rule 56(d) of the Rules of Civil Procedure

Rule 56(d) of the Commonwealth Rules of Civil Procedure states that if the party that did not move for summary judgment "shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other

appropriate order." NMI R. CIV. P. 56(d). Rule 56(d) is substantively similar to the former Rule 56(f), and, thus, the Court will analyze court cases that interpreted what was formally Rule 56(f). *See* FED. R. CIV. P. 56 Committee Notes on Rules—2010 Amendment ("Subdivision (d) carries forward without substantial change the provisions of former subdivision (f)"); *see also Milne v. Estate of Hillblom*, 1997 MP 11 ¶¶ 18-19.

The purpose of Rule 56(d) "is to provide an additional safeguard against an improvident or premature grant of summary judgment and the rule generally has been applied to achieve that objective." *Estate of Todashev v. United States*, 815 F. App'x 446, 453 (11th Cir. 2020) (quoting 10B Charles Alan Wright et. al, Federal Practice and Procedure § 2740 (4th ed.)). Rule 56(d) "is infused with a spirit of liberality." *Estate of Todashev*, 815 F. App'x at 453 (internal citation omitted). "Courts often remand a denial of additional time for discovery when the motion for summary judgment is filed before the close of discovery[.] *Smith v. OSF Healthcare Sys.*, 933 F.3d 859, 865 (7th Cir. 2019).

However, Rule 56(d) relief is not automatic. A party requesting a discovery continuance pursuant to Rule 56(d) must identify the specific facts that further discovery would reveal and explain why those facts would preclude summary judgment. *Tatum v. City & Cty. of S.F.*, 441 F.3d 1090, 1100 (9th Cir. 2006). "In particular, the requesting party must show that: (1) it has set forth in affidavit form the specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and (3) the sought-after facts are essential to oppose summary judgment." *Stevens v. CoreLogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018) (internal citation omitted). "It is not enough to rely on vague assertions that discovery will produce needed, but unspecified, facts." *Ohno v. Yasuma*, 723 F.3d 984, 1013 n.29 (9th Cir. 2013) (citation omitted). It is also insufficient for such parties to rest upon "conclusory assertions without any supporting facts to justify the proposition that the discovery sought will produce the evidence required." *Robinson v. Wutoh*, 788 F. App'x 738, 738 (D.C. Cir. 2019); *see also Lego A/S v. Best-Lock Constr. Toys, Inc.*, 319 F.R.D. 440, 454 (D. Conn. 2017) ("Courts have

declined to continue discovery pursuant to Rule 56(d) where the affidavits submitted in support insufficiently or conclusorily described forthcoming evidence and how that evidence would demonstrate the existence of a genuine issue of material fact."). This is because Rule 56(d) relief "requires more than a fond hope that more fishing might net some good evidence." *Smith v. OSF Healthcare Sys.*, 933 F.3d 859, 864 (7th Cir. 2019); *see also Stevens v. CoreLogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018) ("But for purposes of a Rule 56(d) request, the evidence sought must be more than the object of pure speculation." (internal citation omitted)). Furthermore, "a court need not delay decision on a summary judgment motion to allow time for discovery on an obviously meritless claim or defense." *Smith v. OSF Healthcare Sys.*, 933 F.3d 859, 864-65 (7th Cir. 2019).

When a party seeks Rule 56(d) relief, they have the burden to demonstrate why such relief should be granted. *See Summers v. Leis*, 368 F.3d 881, 887 (6th Cir. 2004) ("The burden is on the party seeking additional discovery to demonstrate why such discovery is necessary.").

IV. DISCUSSION

A. THE COURT RECOGNIZES THE KOREAN JUDGMENT

In the Complaint, Plaintiff stated that he is attempting to enforce his foreign judgment pursuant to 7 CMC § 4407 – "the right of a judgment creditor to bring an action to enforce its judgment instead of proceeding under [UEFJ] remains unimpaired." 7 CMC § 4407. Proceeding under 7 CMC § 4407 constitutes a separate "action." *Albia v. Duenas*, 2022 MP 3 ¶ 10. Therefore, the Court must turn to the methods in which a claimant can enforce a foreign money judgment in the United States.

The Federal Government of the United States does not have a law with respect to recognizing judgments made by courts in other countries. Therefore, the issues of whether and how a foreign judgment may be recognized by a court within the United States is left to the States, Territories, Commonwealths, and Districts. The fifty-six (56) jurisdictions generally follow at least one of five

(5) sources of law that allow for the recognition and enforcement of foreign judgments. These five (5) sources are (1) the common law principle known as comity;[6] (2) the 1962 Uniform Foreign Money-Judgments Recognition Act ("1962 Uniform Act");[7] (3) the Restatement (Third) of the Foreign Relations Law of the United States §§ 481-488 (1987); (4) the 2005 Uniform Foreign-Country Money Judgments Recognition Act ("2005 Uniform Act");[8] and (5) the Restatement (Fourth) of the Foreign Relations Law of the United States §§ 481-490 (2019). The Commonwealth of the Northern Mariana Islands ("Commonwealth") has not adopted either the 1962 Uniform Act or the 2005 Uniform Act. Furthermore, the Supreme Court of the Commonwealth of the Northern Mariana Islands ("Supreme Court") has yet to apply either the common law principle of comity or the Restatements to situations such as the one the Court has before it. Therefore, this Court must decide which set of laws controls here.

Because the Commonwealth has not adopted a statute that articulates how a foreign country's judgment may be enforced within the Commonwealth, the Court turns to the Restatements. 7 CMC § 3401. The Court will begin by examining the Restatement (Fourth) of the Foreign Relations Law of the United States ("Fourth Restatement"), which is the most recent articulation of the Restatement of Foreign Relations Law.[9] The Court notes that § 484 of the Fourth Restatement states that the discretionary factors for non-recognition apply "to the extent provided by applicable law." Restatement (Fourth) of the Foreign Relations Law of the U.S. § 484. The Comments to § 484

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[6] *See Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895) ("'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it 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.").

[7] The 1962 Uniform Act is followed in twenty-four (24) jurisdictions. *See Foreign-Country Money Judgments Recognition Act*, UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=5bb348c5-5154-47b5-8170-4262534df984 (last visited June 07, 2022).

[8] The 2005 Uniform Act is followed in thirty (30) jurisdictions. *See Foreign-Country Money Judgments Recognition Act*, UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=ae280c30-094a-4d8f-b722-8dcd614a8f3e (last visited June 07, 2022).

[9] (statute) (even if not Common law) (however, never answered the question of when it starts) (2018 opinion holding) (inherit power of the Courts)

elaborates on this phrase and states that "courts in the United States may rely upon the grounds for nonrecognition set forth in this Section only to the extent that those grounds are incorporated in State law." Restatement (Fourth) of the Foreign Relations Law of the U.S. § 484 cmt. a. As stated above, the Commonwealth has not adopted a statute incorporating § 484's grounds. However, the Commonwealth does have a statute that states that the Restatements' rules "shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary." 7 CMC § 3401. This provides the Court with statutory authority to use the rules of the Fourth Restatement.

However, though the Court has found that it has the statutory authority to rely on the Fourth Restatement, the Court still must find that it should follow the Fourth Restatement as opposed to any of the earlier ones. In the Commonwealth, "when there are multiple restatements available, courts should adopt the newer restatement if the new version represents the current majority common law rule." *Salty Saipan Corp. v. Shakir*, 2018 MP 18 ¶ 12. The court finds that the Restatement (Third) of the Foreign Relations Law of the United States ("Third Restatement") has been adopted by several courts because they provide "sound guidance" in the realm of foreign relations law. *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997); *see also Societe dAmenagement et de Gestion de lAbri Nautique v. Marine Travelift, Inc.*, 324 F. Supp. 3d 1004, 1009 (E.D. Wis. 2018) ("But even in states that have not adopted the Uniform Act, most courts have applied the same principles, which are also set forth in the Restatement [Third, when determining whether a foreign judgment should be recognized]."). The Fourth Restatement has carried forward much of the provisions of the Third Restatement that are relevant here. *Compare* Restatement (Fourth) of the Foreign Relations Law of the U.S. § 484, *with* Restatement (Third) of the Foreign Relations Law of the U.S. § 482. As such, Courts are beginning to cite to the Fourth Restatement. *See KT Corp. v. ABS Holdings, Ltd.*, 2018 U.S. Dist. LEXIS 115268, at *16 (S.D.N.Y. July 10, 2018) (citing to the Third Restatement's factors

and the Fourth Restatement's factors). Even where the Third and Fourth Restatements diverge, the Court finds that, for the sections that are cited here, the Fourth Restatement conforms with the ever-evolving common law. Therefore, the Court will rely on the Fourth Restatement factors in this Order.

Pursuant to Restatement (Fourth) of the Foreign Relations Law, barring certain exceptions, "a final, conclusive, and enforceable judgment of a court of a foreign state granting or denying recovery of a sum of money, or determining a legal controversy, is entitled to recognition by courts in the United States." Restatement (Fourth) of the Foreign Relations Law of the U.S. § 481. Pursuant to the Fourth Restatement, a Commonwealth *shall* not recognize a foreign judgment if "the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with fundamental principles of fairness" and "the court that rendered the judgment did not have personal or subject matter jurisdiction." Restatement (Fourth) of the Foreign Relations Law of the U.S. § 483. A Commonwealth Court *may* decline to recognize a foreign country's judgment if:

> (a) the party resisting recognition did not receive adequate notice of the proceeding in the foreign court in sufficient time to enable it to defend;
> (b) the judgment was obtained by fraud that deprived the party resisting recognition of an adequate opportunity to present its case;
> (c) the judgment or the claim on which the judgment is based is repugnant to the public policy of the State in which recognition is sought or of the United States;
> (d) the judgment conflicts with another final and conclusive judgment;
> (e) the proceeding in the foreign court was contrary to an agreement between the parties to commit resolution of the dispute in question exclusively to another forum;
> (f) in cases in which the foreign court's jurisdiction rested only on personal service, the foreign court was a seriously inconvenient forum for resolution of the dispute;
> (g) the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment;
> (h) the specific proceeding in the foreign court leading to the judgment was not compatible with fundamental principles of fairness; or
> (i) the courts of the state of origin would not recognize a comparable U.S. judgment.

Restatement (Fourth) of the Foreign Relations Law of the U.S. § 484.

At trial, "a party seeking recognition of a foreign judgment has the burden of proving that the foreign judgment is final, conclusive, and enforceable under the law of the country in which it was rendered[,]" and a party resisting such recognition judgment has the burden to prove that one or more of the non-recognition grounds stated in §§ 483 and 484 exist. Restatement (Fourth) of the Foreign Relations Law of the U.S. § 485.

In Plaintiff's Summary Judgment Motion, Plaintiff presented to the Court certified copies of the Korean Judgments which alleges to show that Plaintiff has established the existence of a final, conclusive, and enforceable Korean judgment on his contract claim against Defendant. Defendant did not deny the validity of these copies. *See Answer*. Therefore, the Court finds that Plaintiff satisfied his initial burden of production with regards to the recognition issue. *See Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18; Restatement (Fourth) of the Foreign Relations Law of the U.S. § 485. Thus, the burden of production now shifts so the Defendant has the burden to produce enough material to show "that one or more of the non-recognition grounds stated in §§ 483 and 484 exist," Restatement (Fourth) of the Foreign Relations Law of the U.S. § 485, or that the Motion for Summary Judgment should be denied to allow for discovery pursuant to Rule 56(d), NMI R. CIV. P. 56(d).

1. Rule 56(d) and Defendant's list of Sixteen (16) Affirmative Defenses

As stated above, Defendant stated in his Answer that Plaintiff's request to have the Korean Judgment recognized and enforced by this Court should be denied in part due to the alleged existence of sixteen (16) Affirmative Defenses. Defendant repeated this list in the Opposition. The Opposition further stated that Defendant cannot locate a copy of the promissory note that formed the basis for the Korean Judgments "as well as details about the underlying property transaction from the 1980s that will be helpful in fully analyzing this case." Opposition at 5.

Of the sixteen (16) Affirmative Defenses raised by Defendant, only lack of subject matter jurisdiction,[10] lack of notice,[11] judgment obtained by fraud,[12] and judgment is repugnant to the public policy of the Commonwealth,[13] are relevant to the issue of whether to recognize the Korean Judgments. This is because the rest of the sixteen (16) affirmative defenses are not defenses to the recognition of a foreign judgment. *See* Restatement (Fourth) of the Foreign Relations Law of the U.S. §§ 483-84. Furthermore, Defendant's arguments that the Korean courts lack subject matter jurisdiction and reached their judgment by fraud were insufficiently developed. Defendant merely listed these defenses, with the caveat that the list provided is not an exhaustive list, without further analysis. Opposition at 4. This failed to carry Defendant's burden, as the party who made the Rule 56(d) argument, to demonstrate how an order granting time to conduct discovery pursuant to Rule 56(d) would show that the evidence being sought would demonstrate the existence of a dispute of a material fact. *See Lego A/S v. Best-Lock Constr. Toys, Inc.*, 319 F.R.D. 440, 454 (D. Conn. 2017). Simply providing a list of potential affirmative defenses without more is insufficient to oppose a motion for summary judgment to have a foreign money judgment recognized once the movant has fulfilled their obligations under Restatement 485. *See Smith v. OSF Healthcare Sys.*, 933 F.3d 859, 864 (7th Cir. 2019) (stating Rule 56(d) relief "requires more than a fond hope that more fishing might net some good evidence").[14]

[10] Restatement (Fourth) of the Foreign Relations Law of the U.S. § 483(b).
[11] Restatement (Fourth) of the Foreign Relations Law of the U.S. § 484(a).
[12] Restatement (Fourth) of the Foreign Relations Law of the U.S. § 484(b).
[13] Restatement (Fourth) of the Foreign Relations Law of the U.S. § 484(c).
[14] *See also Commonwealth v. Guiao*, 2016 MP 15 ¶ 13 ("An issue is insufficiently developed if it is raised in a conclusory manner or when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." (internal citation omitted)).

In regards to Defendant's affirmative defenses that the Korean Judgments are repugnant to Commonwealth public policy and that Defendant lacked notice of the actions in Korea, the Court will analyze Defendant's arguments further below.

2. Restatement (Fourth) of the Foreign Relations Law of the U.S. § 483(b)

In the Opposition, Defendant argued that Defendant's Affidavit clearly lays out a basis for nonrecognition of the Korean Judgment because the Korean courts lacked personal jurisdiction over him. The Court analyzes this argument below.

As stated above, "a court in the United States will not recognize a judgment of a court of a foreign state if the court that rendered the judgment did not have personal or subject matter jurisdiction." Restatement (Fourth) of the Foreign Relations Law of the U.S. § 483(b); *see also* Restatement (Third) of the Foreign Relations Law of the U.S. § 482(1)(b) ("A court in the United States may not recognize a judgment of the court of a foreign state if the court that rendered the judgment did not have jurisdiction over the defendant in accordance with the law of the rendering state and with the rules [of personal jurisdiction]."). Pursuant to Section 483(b),

> courts in the United States will not recognize a foreign judgment if the court rendering the judgment would have lacked personal jurisdiction under the minimum requirements of due process imposed by the Constitution. If the foreign court founded its judgment on an impermissible basis of jurisdiction, but another basis of jurisdiction meeting these requirements would have supported the action, a court in the United States will not deny recognition to the foreign judgment for lack of personal jurisdiction.

Restatement (Fourth) of the Foreign Relations Law of the U.S. § 483 cmt (e). The minimum contacts test is satisfied

> where the defendant deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by the benefits and protections of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985); *see also Waibel v. Farber*, 2006 MP 15 ¶ 15 (stating that "due process requirements are satisfied when in personam jurisdiction is asserted over the non-resident defendant who possesses minimum contacts with the forum such that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice" (citation omitted)). One way in which the minimum contacts test may be satisfied is if the defendant submits himself to the Court and argues the merits of the action. *See Rayphand v. Tenorio*, 2003 MP 12 ¶ 87 ("One may submit oneself to the jurisdiction of the court by appearing in court and defending the case." (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982) ("Jurisdiction attaches if a defendant makes a voluntary general appearance, as by filing an answer through an attorney."))); *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 703 (1982) (stating that "an individual may submit to the jurisdiction of the court by appearance"); *Gen. Contracting & Trading Co. v. Interpole, Inc.*, 940 F.2d 20, 22 (1st Cir. 1991) ("A defendant may manifest consent to a court's in personam jurisdiction in any number of ways, from failure seasonably to interpose a jurisdictional defense, to express acquiescence in the prosecution of a cause in a given forum, to submission implied from conduct.").

Here, it is not disputed that Defendant appealed the Korean District Case through an attorney and argued the Korean Appellate Case on the merits but still lost. *See* Defendant's Affidavit. Had Defendant not appealed the Korean District Case, this Order would require a different analysis. However, because Defendant voluntarily submitted himself to the Korean judiciary system and argued his case on the merits, and arguing a case on the merits satisfies the minimum contacts test for personal jurisdiction purposes, the Court finds that Korea had personal jurisdiction over Defendant pursuant to the minimum requirements of due process imposed by the Constitution. *See Rayphand v.*

Tenorio, 2003 MP 12 ¶ 87.[15] Therefore, because Defendant's arguments concerning the personal jurisdiction issue are meritless, there is no need to deny the Motion for Summary Judgment to allow for discovery to explore this issue. *See Smith v. OSF Healthcare Sys.*, 933 F.3d 859, 864-65 (7th Cir. 2019).

3. Notice: Restatement (Fourth) of the Foreign Relations Law of the U.S. 484(a)

In the Opposition, Defendant argues that Defendant's Affidavit lays out the fact that Defendant did not receive notice of the claim in Korea in sufficient time to enable him to defend his case. The Court analyzes this argument below.

As stated above, "to the extent provided by applicable law, a court in the United States need not recognize a judgment of a court of a foreign state if the party resisting recognition did not receive adequate notice of the proceeding in the foreign court in sufficient time to enable it to defend." Restatement (Fourth) of the Foreign Relations Law of the U.S. 484(a).

> A court may have a sufficient basis to exercise personal jurisdiction over a party, based on that party's contacts with the forum, but still fail to give adequate notice of the existence of the proceeding. In the United States, such notice normally comes in the form of service of process. When a foreign court's failure to give adequate notice prejudices a party by denying that party enough time to prepare its defense, a court in the United States will refuse to recognize the resulting judgment. A court assesses the adequacy of the notice based on a general standard of reasonableness. The question does not turn on technical compliance with foreign rules governing service of process.

Restat 4th of the Foreign Relations Law of the U.S. 484 cmt. c.

In determining whether service was reasonably adequate, courts will find that an otherwise defective notice will not be found to be inadequate if it can be shown that the intended recipient of the notification was actually notified of the action against them in time for them to adequately

[15] *See also* Restatement (Third) of the Foreign Relations Law of the U.S. § 421(2)(g) ("In general, a state's exercise of jurisdiction to adjudicate with respect to a person or thing is reasonable if, at the time jurisdiction is asserted the person, whether natural or juridical, has consented to the exercise of jurisdiction."); Restatement (Third) of the Foreign Relations Law of the U.S. § 421 cmt. (g) ("In most legal systems, appearance in a proceeding, whether as plaintiff, defendant, or intervenor, is deemed to waive the defense of lack of jurisdiction, unless the appearance has as its purpose (or one of its purposes) a challenge to the court's jurisdiction.").

respond. *See e.g., Baker v. Latham Sparrowbush Assocs.*, 72 F.3d 246, 254 (2d Cir. 1995) ("If a party receives actual notice that apprises it of the pendency of the action and affords an opportunity to respond, the due process clause is not offended."). Furthermore, even if a court finds that there are clear grounds for nonrecognition pursuant to Section 484(a), the court will not deny a request for recognition if "it finds that the problem should have been corrected in the foreign proceeding." Restatement (Fourth) of the Foreign Relations Law of the U.S. 484 cmt. b.

Here, Defendant stated in Defendant's Affidavit that he received inadequate notice of the Korean District Case. *See* Defendant's Affidavit. Whether Defendant received adequate notice of the actions in Korea is material to the issue of whether the Korean Judgments should be recognized by this court. Thus, if Defendant can show through submitted materials that there is a material dispute as to whether Defendant was properly notified of the actions in Korea,[16] or show how the evidence that is being sought would demonstrate the existence of a dispute of this material fact, then the Motion for Summary Judgment must be denied. *See* NMI. R. Civ. P. 56(a); Restatement (Fourth) of the Foreign Relations Law of the U.S. § 485; *Lego A/S v. Best-Lock Constr. Toys, Inc.*, 319 F.R.D. 440, 454 (D. Conn. 2017).

After examining the materials that the Court has before it and the arguments of counsel, the Court finds that there is no material dispute as to the sufficiency of the notice Defendant receive in regards to the Korean Judgments. Even assuming that there is a genuine dispute as to whether Defendant received proper notice in the Korean District Case, that issue is not material here because that case was ultimately appealed.

[16] Defendant bears this burden because, as stated above, Plaintiff, the movant, has already satisfied his burden of production to show the existence of a valid foreign judgment. Thus, the burden has now shifted to Defendant. *See* Restatement (Fourth) of the Foreign Relations Law of the U.S. § 485; *Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18.

Though it is not clear as to precisely how and when Defendant became aware of the Korean Appellate Case, Defendant admitted in Defendant's Affidavit that "in 2013 [he] went to Korea and found that [his] personal bank account had been seized pursuant to [the Korean District Case]…" and "then hired an attorney to appeal [the Korean District Case] but the appellate court denied [his] appeal." [Defendant's Affidavit]. Defendant never claimed that he did not receive sufficient notice of the Korean Appellate Case. As stated above, Rule 56(d) places the burden of production on Defendant, as the party resisting the Motion for Summary Judgment, to show why discovery should be allowed,[17] and the burden of production in Plaintiff's Motion for Summary Judgment has shifted to Defendant to rebut Plaintiff's claim that Korean Judgments should be recognized. Therefore, Defendant's failure to argue that he did not receive proper notice of the Korean Appellate Case, coupled with the undisputed assertions that the Seoul High Court heard pleadings until October 20, 2015, almost two years after the Korean District Case, and examined the substance of Defendant's arguments,[18] leads the Court to find that Defendant failed in his burden to show that the Motion to Summary Judgment should be denied either to allow Defendant to pursue discovery on the notice issue or because there is a dispute of a material fact exists as to whether Defendant was adequately notified of the Korean Judgment. Restatement (Fourth) of the Foreign Relations Law of the U.S. § 485.

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[17] *See Summers v. Leis*, 368 F.3d 881, 887 (6th Cir. 2004) ("The burden is on the party seeking additional discovery to demonstrate why such discovery is necessary.").

[18] In the Korean Judicial system, "appeal proceedings are similar to trial proceedings, and the party is granted an opportunity to make new allegations and to produce new evidence." *See Civil: Appeal Proceedings*, SUPREME COURT OF KOREA, https://eng.scourt.go.kr/eng/judiciary/proceedings/civil.jsp#t102 (last visited June 09, 2022). *See* Civil Procedure Act of Korea Article 416 ("The court of appeals shall revoke a judgment of the first instance, when it deems such judgment to be unjustifiable.").

4. Unjust Enrichment

Defendant claims that enforcing the Korean Judgment would result in the Plaintiff being unjustly enriched.[19] Defendant makes this assertion because, allegedly, Defendant has already paid some of his obligations to Plaintiff. In particular, Defendant alleges that he paid $10,000 in property tax on the property after the promissory note and paid another tax lien in the amount of $13,000. [Defendant's Affidavit]. Furthermore, Defendant also claims that Plaintiff allegedly obtained at least $63,000 from Defendant's bank account in Korea from 2018-2021.

However, despite Defendant's arguments, Defendant's unjust enrichment claim is not material to his attempt to stop the recognition of the Korean Judgment because Unjust enrichment is not a ground for non-recognition pursuant to the Fourth Restatement. *See* Restatement (Fourth) of the Foreign Relations Law of the U.S. §§ 483, 484. Therefore, because the issue of whether Plaintiff has received partial payment in the foreign forum is not relevant to whether the Korean Judgment should be recognized, Defendant has not satisfied his burden under Rule 56(d) to show that the Summary Judgment Motion should be denied.

5. Penal law

Finally, Defendant argues that at least parts of Korean Judgments appear to be related to taxes and fines. Thus, Defendant argues that those parts of the Korean Judgments should not be recognized pursuant to the Penal Law Rule and that he needs more time to discover what parts of the judgment relate to such matters.

"Courts in the United States do not recognize or enforce judgments rendered by the courts of foreign states to the extent such judgments are for taxes, fines, or other penalties, unless authorized

[19] "To prove a claim for unjust enrichment, a claimant must show: (1) the defendant was enriched; (2) the enrichment came at the plaintiff's expense; and (3) equity and good conscience militate against permitting the defendant to retain what the plaintiff seeks to recover." *Syed v. Mobil Oil Mariana Islands, Inc.*, 2012 MP 20 ¶ 41; *see also* Restatement (Third) of Restitution and Unjust Enrichment § 1 (2011) ("A person who is unjustly enriched at the expense of another is subject to liability in restitution.").

by a statute or an international agreement." Restatement (Fourth) of the Foreign Relations Law of the U.S. § 489; *see also Do Sik Kim v. Kyung Duk Park and Globuil Holdings,* Civ. No. 15-0131 (NMI Super. Ct. Sept. 27, 2019) (Order Denying Motion for Summary Judgment Because Recognition of a Foreign Criminal Judgment Violates The "Penal Law Rule," As Defined By § 489 Of the Restatement (Fourth) Of the Foreign Relations Law, And Plaintiff's Criminal conviction by A Korean Appellate Court Following Plaintiff's Acquittal by A Korean Trial Court Is Not Compatible with Fundamental Principles of Fairness as It Violates the Protection Against Double Jeopardy Pursuant to NMI Const. Art. I, § 4(E) And U.S. Const. Amend. V). "For the purposes of this Section, a penal judgment is one whose 'purpose is to punish an offence against the public justice of the State' rather than 'to afford a private remedy to a person injured by the wrongful act.'" Restatement (Fourth) of the Foreign Relations Law of the U.S. § 489 cmt. b (quoting *Huntington v. Attrill*, 146 U.S. 657, 673-674 (1892)). "Judgments for fines, penalties, and forfeitures are within this Section." Restatement (Fourth) of the Foreign Relations Law of the U.S. § 489 cmt. b. "The test for whether a judgment is a fine or penalty is determined by whether its purpose is remedial in nature, with its benefits accruing to private individuals, or it is penal in nature, punishing an offense against public justice." *Hyundai Sec. Co., Ltd. v. Lee*, 232 Cal. App. 4th 1379, 1388 (2015); *see also* Restatement (Fourth) of the Foreign Relations Law of the U.S. § 489 cmt. b ("So long as the purpose of the judgment is to afford a private remedy, enforcement is not barred even if the law creating liability is a criminal statute or the judgment is rendered during the course of a criminal proceeding."). "For the purposes of this Section, a tax judgment is a judgment in favor of a foreign state or one of its subdivisions based on a claim for an assessment of a tax, whether imposed in respect of income, property, transfer of wealth, or any other transaction." Restatement (Fourth) of the Foreign Relations Law of the U.S. 489 cmt. c.

Here, the Court is not persuaded by Defendant's arguments because it is clear that none of the matters are related to taxes or fines. It is clear from the submitted evidence that the Korean Judgments

are not "in favor of a foreign state or one of its subdivisions," but rather between two private parties. Restatement (Fourth) of the Foreign Relations Law of the U.S. 489 cmt. c. Furthermore, the face of the Korean Judgment makes clear that its purpose is to make Plaintiff whole for losses he experienced in Korea – not to punish Defendant. *See Hyundai Sec. Co., Ltd.*, 232 Cal. App. 4th at 1388; *see also* Restatement (Fourth) of the Foreign Relations Law of the U.S. § 489 cmt. b. Therefore, none of the Korean Judgment is a judgment for a tax or fine.

6. Restatement (Fourth) of the Foreign Relations Law of the U.S. 484(c)

Defendant argues that enforcement of the Korean Judgment should be denied because the Korean Judgments impose an unconscionable interest rate. As stated above, the Korean Judgments imposes a 20% post-judgment interest rate. *See also* Samyang Food Co. v. Pneumatic Scale Corp., No. 5:05-CV-636, 2005 U.S. Dist. LEXIS 25374, at *4 n.1 (N.D. Ohio Oct. 21, 2005) ("Korea uses a high post-judgment interest rate to encourage payment of judgments."). This interest right is higher than the Commonwealth's post-judgment interest rate of 9%. 7 CMC § 4101.[20] Therefore, because there is a large discrepancy between the interest rate imposed by the Korean Judgments and the maximum post-judgment interest rate allowed by the Commonwealth code, Defendant argues that the Korean Judgments are unconscionable and thus should not be recognized because doing so would violate Commonwealth public policy. Restatement (Fourth) of the Foreign Relations Law of the U.S. 484(c).

"To the extent provided by applicable law, a court in the United States need not recognize a judgment of a court of a foreign state if the judgment or the claim on which the judgment is based is

[20] *See also* 4 CMC § 5301 ("No action shall be maintained in any court of the Commonwealth to recover a higher rate of interest than two percent per month on the balance due upon any contract made in the Commonwealth on or after February 15, 1965, involving a principal sum of $300 or less, nor to recover a higher rate of interest than one percent per month on the balance due on any such contract involving a principal sum of over $300.").

repugnant to the public policy of the State in which recognition is sought or of the United States." Restatement (Fourth) of the Foreign Relations Law of the U.S. 484(c).

> The test for public policy is therefore a stringent one. A difference in law, even a substantial one, is not sufficient. A foreign judgment violates local public policy only if its recognition would tend clearly to injure public health, public morals, or public confidence in the administration of law, or would undermine settled expectations concerning individual rights, whether of personal liberty or private property.

Restatement (Fourth) of the Foreign Relations Law of the U.S. 484 cmt. e.

Though the Court recognizes that a 20% post-judgment interest rate is a steep rate, even compared to the Commonwealth's 9%, the Court does not find that "its recognition would tend clearly to injure public health, public morals, or public confidence in the administration of law." Restatement (Fourth) of the Foreign Relations Law of the U.S. 484 cmt. e. Recognition of the Korean Judgment here would also not "undermine settled expectations concerning individual rights, whether of personal liberty or private property." *Id*. Thus, the Court finds that recognizing and enforcing the Korean Judgment would not violate Commonwealth public policy.

B. The Court Will Not Enforce the Korean Judgment at This Time

Plaintiff also requested that the Court enforce the Korean Judgments in his Motion for Summary Judgment. The Court denies this request for the reasons stated below.

Once a Court finds that the foreign judgment is entitled to recognition, the foreign judgment "is enforceable in the same manner and to the same extent as a judgment rendered in the" Commonwealth. Restatement (Fourth) of the Foreign Relations Law of the U.S. § 486. In the Commonwealth, a judgment holder is deemed to have filed a new and independent cause of action if the judgment holder attempts to recover damages awarded in a previous judgment by commencing an action on the judgment by filing a complaint in the Superior Court that names the judgment debtor as the defendant. *Albia v. Duenas*, 2022 MP 3 ¶ 19. One defense that a

defendant may raise to be relieved from a final judgment is if they can show by a motion that "the judgment has been satisfied, released, or discharged." NMI R. CIV. P. 60(b)(4);[21] *see also* NMI R. CIV. P. 62(b)(4).

Here, because Plaintiff filed a new complaint to enforce the Korean Judgments, it shall be treated as an action on a judgment. *See Albia*, 2022 MP 3 ¶ 19. As the party that moved for summary judgment, Plaintiff bears the initial burden of production. *See Sablan*, 2002 MP 23 ¶ 18. Because Plaintiff will bear the ultimate burden of persuasion at trial, Plaintiff "can only meet its burden on summary judgment by presenting affirmative evidence showing the absence of a genuine issue of material fact — that is, facts that would entitle it to a directed verdict if not controverted at trial." *Parrott*, 986 F. Supp. 2d at 1267. Plaintiff satisfied his burden by submitting copies of the Korean Judgments. **[Exhibits A, B, and C]**. Thus, the burden of production shifts to Defendant. *See Sablan*, 2002 MP 23 ¶ 18.

Defendant can satisfy his burden of production by producing just enough evidence to create a genuine fact issue, *see Sablan*, 2002 MP 23 ¶ 18, or show "by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition," NMI R. CIV. P. 56(d). Here, Defendant satisfied his burden of production by submitting Defendant's Affidavit in which he stated that he already paid at least $63,000 towards satisfying the Korean Judgments. Although not admissible at trial in its present form as an affidavit, Defendant's statement that he at least partially satisfied the Korean Judgments against him can be converted into admissible forms of evidence, such as witness testimony and business records. *See* NMI. R. CIV. P. 56(c)(2); *Fraser*, 342 F.3d at 1036. Defendant's statement that he at least partially satisfied the Korean Judgments against him is material here because the Court will not Order

[21] *See also* FED. R. CIV. P. 60(b)(5).

Defendant to pay damages that he has already paid. If Defendant has in fact partially satisfied the Korean Judgments, an Order by this Court that the Korean Judgments be enforced against Defendant would result in Plaintiff receiving a windfall to which he is not entitled. Thus, Defendant has shown that a material fact is in dispute between the parties.

Therefore, because Plaintiff, as the moving party, has the burden of persuasion regarding the absence of genuine issues of material fact," *Sablan v. Roberto (In re Roberto)*, 2002 MP 23 ¶ 18, and "any doubt as to the existence of a genuine issue must be resolved against the movant," *Sablan*, 2002 MP 23 ¶ 18, the Court finds that Plaintiff did not carry his burden to persuade the Court that summary judgment should be granted pursuant to Rule 56 of the Commonwealth Rules of Civil Procedure in regards to the enforcement of the Korean Judgments.

V. CONCLUSION

Plaintiff Sung Yoon Kim's Motion for Summary Judgment ***to recognize*** the Foreign Judgment rendered in the Republic of Korea is **GRANTED**. Plaintiff Sung Yoon Kim's Motion for Summary Judgment ***to enforce*** the Foreign Judgment is **DENIED** because there is a material dispute as to how much of the Foreign Judgment has already been paid.

IT IS SO ORDERED this 23rd day of June, 2022.

/s/
JOSEPH N. CAMACHO, Associate Judge