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## **RECOGNITION AND ENFORCEMENT OF FOREIGN COUNTRY JUDGMENTS**

The purpose of this article is to set forth how a foreign country judgment would be recognized and enforced in New York, and once the foreign country judgment has been converted into a New York judgment, what steps could be taken to satisfy that judgment.

### **I. Recognition and Enforcement**

By way of background, New York State has adopted the Uniform Foreign Country Money-Judgments Recognition Act (the "Act"). The Act allows for recognition and enforcement of a foreign country judgment without the need for a full-blown enforcement proceeding.

- a. The requirements for recognition and enforcement are few:
  1. A foreign judgment which is final, conclusive, and enforceable where rendered even though an appeal is pending or it is subject to appeal; and
  2. A foreign judgment meeting the foregoing requirements is deemed conclusive between the parties to the extent that it grants or denies recovery of a sum of money.
- b. If these requirements are met, a foreign country judgment will be recognized and enforced in New York, unless one of the limited bases for non-recognition exist.
- c. The bases for non-recognition of a foreign country judgment are broken down into two groups.
  1. Mandatory - defenses in the first group require mandatory non-recognition and include a situation where the foreign country judgment was issued under a legal system that did not provide for impartial tribunals or procedures compatible with the requirements of due process of law, or the foreign court lacked personal jurisdiction over the defendant.
  2. Discretionary - defenses in the second group are discretionary with the court and include the foreign court lacked subject matter jurisdiction, the defendant in the foreign proceeding did not have notice of the proceeding and sufficient time to defend the claim, the judgment was obtained by fraud, the cause of action on which the foreign country judgment was based is repugnant to the public policy of

New York, the judgment conflicts with another final and conclusive judgment, and the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute was to be resolved other than by a proceeding in that court (e.g., arbitration).

- d. The Act further defines the several bases for which personal jurisdiction will be deemed to exist in the foreign court and it does not prevent recognition and enforcement of a foreign country judgment in situations not covered by it.
- e. With the basics in mind, one of the fundamental issues that flows from an attempt to recognize and enforce a foreign judgment under the Act is whether the court in New York must have personal jurisdiction over the judgment debtor (*i.e.*, the defendant) in order to enforce the foreign country judgment.
- f. The only appellate court in New York that has ruled on the issue has found that a New York court does not need personal jurisdiction over the judgment debtor in order to recognize and enforce a foreign judgment under the Act.
  - 1. In *Lenchyshyn v. Pelko Electric, Inc.*, 281 A.D.2d 42, 47 (App. Div., 4<sup>th</sup> Dept. 2001) the New York appellate court held that personal jurisdiction over the judgment debtor was not required in order to recognize and enforce a foreign country judgment. The foreign country judgment in the *Lenchyshyn* case was issued by a Canadian court.
  - 2. At least two other courts outside of New York have followed the *Lenchyshyn* holding that personal jurisdiction over the judgment debtor is not necessary in order to recognize and enforce a foreign country judgment under the Act. *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476 (Ct. App., 14<sup>th</sup> Dist. 2008) (applying Texas law); *Pure Fishing, Inc. v. Silver Star Co., Ltd.*, 202 F. Supp 2d 905 (N.D. Ia. 2002) (applying Iowa law).
  - 3. New York, Texas, and Iowa have essentially adopted the same Act in regard to recognizing and enforcing foreign country judgments. In fact, at least 30 other states in the United States have adopted the same Act.
- g. In sum, the process to recognize and enforce a foreign country judgment in New York as well as a majority of other states in the United States is rather streamlined and straightforward, with only limited defenses available.

## **II. Satisfaction of the Judgment**

Once the foreign country judgment has been converted into a New York judgment, the next issue is what steps could be taken to satisfy that judgment.

- a. New York state law provides for execution on the “property” and “debts” of the judgment debtor in order to satisfy a judgment. The terms “property” and “debts” are given wide definitions by New York courts and include both tangible and intangible property.
  - 1. Examples of tangible property include vessels, bunkers, containers, and the like.

2. Examples of intangible property includes bank accounts, debts, contract rights, and the like.
- b. In those situations where a garnishee holds the intangible property, such as a bank account or debt owed by a third-party to the judgment debtor, the situs of the property or debt is where the garnishee is located. If the garnishee is located in New York, the intangible property or debt can be executed on by serving a restraining notice on the garnishee.
  - c. In 2009, the New York Court of Appeals issued a decision that shows just how far a restraining notice can reach under New York state law. In *Koehler v. The Bank of Bermuda Ltd.*, 12 N.Y. 2d 533 (2009), the judgment debtor owned stock certificates held in a bank located in Bermuda. The judgment creditor sought to reach those stock certificates by commencing a special proceeding against the Bermuda bank and serving a restraining notice on its New York branch office. The Bermuda bank objected to the restraining notice on the ground that the property sought to be restrained was located outside of New York and therefore, outside the reach of the New York court.
  - d. The Court of Appeals rejected that argument and found that under New York state law turn over procedures, the restraining notice served on the New York branch office (a subsidiary and agent) of the Bermuda bank was sufficient to reach the stock certificates held by the Bermuda bank. The Court of Appeals reasoned that since the court had jurisdiction over the Bermuda bank, it could order the Bermuda bank to turn over the stock certificates that it held for the judgment debtor.
  - e. For judgment creditors, the implications of the holding in *Koehler* are potentially enormous. With the *Koehler* decision, the framework is in place for a judgment creditor to take its foreign country judgment to New York for purposes of recognition and enforcement, convert it into a New York judgment, and then obtain a turn over order that directs a New York branch of a bank to claw funds out of a judgment debtor's account in a foreign branch office of the same bank.
  - f. The turn over procedures used in the *Koehler* case apply equally to judgments issued in maritime and non-maritime cases.
  - g. Given its relative newness, however, it remains to be seen how effective the *Koehler* decision will be in the long run in actually clawing funds from a foreign bank account into New York in order to satisfy a judgment.

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