

CLIENT ALERT

New York Courts Compel Third-Party Garnishee to Bring Debtor's Out-of-State Assets to New York to Satisfy Judgment Debt

Jun.22.2009

In a recent 4-3 decision, the New York State Court of Appeals (New York's highest court) issued an opinion that has the potential to significantly change the enforcement of judgments. In *Koehler v. Bank of Bermuda Ltd.*,¹ the Court held that a New York court may order a foreign bank to deliver extraterritorial assets pledged by foreign judgment debtor as collateral for a loan, on the basis that the court has personal jurisdiction over the bank by virtue of the bank's New York branch.

Underlying Litigation

The plaintiff in *Koehler*, obtained a \$2 million default judgment in the United States District Court for the District of Maryland in the early 1990s against his former business partner, A. David Dodwell. Koehler registered the Maryland judgment in the Southern District of New York, and filed a petition against the Bank of Bermuda Limited ("BBL"), a bank located in Bermuda with a branch in New York City. The petition against BBL sought delivery of stock in a Bermuda corporation owned by Dodwell, and pledged by him to the Bank of Bermuda Limited ("BBL") as security for a loan.²

In the enforcement action, BBL argued that service upon its New York branch did not subject it to the personal jurisdiction of the District Court in New York. These issues were litigated for years and in 2003, BBL consented to personal jurisdiction with retroactive application.

The Southern District dismissed the petition on the ground that a settlement between Koehler, Dodwell and other parties extinguished Koehler's right to seek collection of amounts beyond those paid as part of the settlement. The Second Circuit reversed, as the settlement agreement specifically excluded garnishment proceedings against Dodwell's assets held by BBL.

However, because New York courts had not definitively decided whether a court had the authority to order a financial mediator, over which it has personal jurisdiction, to deliver out-of-state stock certificates owned by a judgment debtor to a judgment creditor, the Second Circuit certified the question to the Court of Appeals.

Court of Appeals Ruling

In finding that a bank may be required to turn over out-of-state assets owned by a judgment debtor, the Court of Appeals interpreted Article 52 of the C.P.L.R., which governs the enforcement of money judgments. As distinguished from Article 62, which deals with pre-judgment attachment and operates only against the property, Article 52 requires personal jurisdiction over the defendant and orders that a defendant turn over property or pay money to a judgment creditor.

The parties agreed that where the court has personal jurisdiction over the judgment debtor, C.P.L.R. § 5225 can require the debtor to bring extraterritorial property into the State, but BBL argued that where the judgment debtor himself is outside of the court's jurisdiction, the court's authority over the debtor's property must be based on *in rem* jurisdiction, meaning that the property must be located within New York.

Over a vigorous dissent - noting that neither the judgment creditor, judgment debtor, nor property in question were within New York and arguing that the holding likely violates the U.S. Constitution - the Court of Appeals rejected an *in rem* requirement under CPLR § 5225 and broadly interpreted the statute to require a defendant to turn over out-of-state assets regardless of whether the defendant was the judgment debtor or a mere garnishee, like BBL.

Under the decision, judgment creditors may seek recovery of assets outside the jurisdiction of New York through post-judgment remedies against custodians and garnishees with a New York nexus.

¹ 2009 NY Slip Op 04297 (June 4, 2009).

² Koehler v. Bank of Bermuda Ltd., 544 F.3d 78 (2d Cir. September 23, 2008).

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