



LETTER FROM AMERICA

NY HIGH COURT TO ADDRESS CONTINUING VITALITY OF “SEPARATE ENTITY” RULE FOR INTERNATIONAL BANKS WITH NEW YORK BRANCHES

This September, New York’s highest court will consider an issue of significant interest to international banks with a New York presence – whether a judgment creditor can use New York’s judgment enforcement procedures to restrain a garnishee bank with a branch in New York from releasing a client’s deposit balance in jurisdictions outside the United States, or to obtain an order requiring such an extraterritorial debt to be turned over to the judgment creditor in New York. A ruling to that effect could subject international banks to double liability for deposit balances in some circumstances. The appeal, styled *Motorola Credit Corp. v. Standard Chartered Bank*, is pending in the New York Court of Appeals.¹

New York law provides judgment creditors with several means for enforcing money judgments. One of these provisions permits a creditor to serve a restraining notice on a bank that holds its judgment debtor’s deposits, upon receipt of which the garnishee bank “is forbidden to . . . pay over or otherwise dispose of such debt, to any person other than the sheriff . . .”² Another provision permits a judgment creditor to sue for a court order requiring such a garnishee bank to turn over a judgment debtor’s deposit balance at that bank.³ Disobedience of such a turnover order is punishable as a contempt of court.

These provisions raise special complications for international banks having a branch in New York when the debt is owed to a depositor outside of the United States. For such a bank, payment of a deposit balance to a New York judgment

creditor might not discharge the bank’s obligation to its depositor if the jurisdiction where the deposit was made does not recognize a separate New York law that provides for such a discharge.⁴ In those circumstances, the bank could be subject to double liability for the deposit balance. In addition, in some jurisdictions outside of the United States, payment of the debt to a creditor in New York, or recognizing the effect of a New York restraining notice, might be seen as a violation of local banking laws.

Historically, state and federal courts in New York have treated each branch of a bank as a “separate entity” for purposes of these judgment enforcement provisions. This judicially created rule “provides that even if a bank is subject to personal jurisdiction due to the presence of a New York branch, the other branches of the bank will be treated as separate entities for certain purposes, such as attachments, restraints, and turnover orders.”⁵

In practice, the separate entity rule has limited the extraterritorial reach of New York’s judgment enforcement provisions. However, some reasoning in the New York Court of Appeals decision in *Koehler v. Bank of Bermuda Ltd.* (2009) raised questions about the rule’s continuing vitality.⁶ In *Koehler*, the Court held that a New York court could order a foreign garnishee bank over which it had personal jurisdiction to deliver a judgment debtor’s stock certificates that were held in Bermuda to a judgment creditor in New York. The majority opinion reasoned that personal jurisdiction over the garnishee, rather than

¹ Sealing orders apply in certain of the proceedings discussed. This update is based solely on information from publicly available judicial opinions.

² N.Y. C.P.L.R. § 5222.

³ N.Y. C.P.L.R. § 5225(b).

⁴ N.Y. C.P.L.R. § 5209. Domestically, states other than New York must give effect to this statutory discharge under the Constitution of the United States. See U.S. Const., Art. IV, § 1 (“Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.”).

⁵ *Tire Engineering & Distrib. L.L.C. v. Bank of China Ltd.*, 740 F.3d 108, 111 (2d Cir. 2014).

⁶ *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y. 3d 533, 883 N.Y.S.2d 763 (2009).

in rem jurisdiction over the property, was the “linchpin” of New York’s judgment enforcement regime. Although the separate entity rule was briefed in *Koehler*, the court majority did not address the rule in reaching its holding.

The case now before the New York Court of Appeals is squarely focused on the separate entity rule. Motorola Credit Corporation is seeking recovery of a judgment it obtained against a defaulting borrower and related individuals of \$2.1 billion in compensatory damages and \$1 billion in punitive damages. After the judgment was entered, the judgment debtors “persistently endeavored to evade the lawful jurisdiction” of the district court in efforts to enforce it.⁷

In aid of satisfaction of the large judgment, Motorola Credit served the New York branch of Standard Chartered Bank with a restraining order that had been issued by the district court. After a global search, Standard Chartered identified certain interbank placements at its branches in the United Arab Emirates in which the judgment debtors reportedly had an interest. The UAE government took issue with the application of the restraining order in its jurisdiction, and its central bank debited Standard Chartered’s standing account in the amount of the account balances that had been frozen by the New York order. Standard Chartered then sought relief from the order in the New York district court, which concluded that the separate entity rule barred the extraterritorial application of its restraining order to accounts with Standard Chartered’s UAE branch. A federal appellate court thereafter concluded that New York law was unclear in this area and requested a ruling on the continuing vitality of the separate entity rule from the state’s highest court, the New York Court of Appeals.⁸ The parties’ briefing on this certified question has been completed, and argument is scheduled for September 16th.

Although the certified question in *Motorola Credit* is limited to the continuing applicability of the separate entity rule under New York law, commentators have noted that the U.S. Supreme Court’s recent discussion of the limits of personal jurisdiction in *Daimler AG v. Bauman* also could have an impact on the extraterritorial application of New York’s judgment enforcement regime.⁹ The *Daimler* opinion emphasized the distinction between a court’s “specific” and its “general” jurisdiction over a defendant having limited contacts with the forum state. “Specific” jurisdiction can be exercised when the defendant’s activities in the forum state have a significant nexus to the cause of action. In contrast, “general” jurisdiction permits a court to adjudicate any dispute involving the defendant regardless of where the underlying conduct occurred. *Daimler* makes clear that a more demanding standard applies to a court’s exercise of general jurisdiction, which arises only if the defendant essentially is “at home” in the forum state.¹⁰

Garnishee banks usually are strangers to the underlying disputes in which their customers have been made judgment debtors, and the stricter rules for exercising general jurisdiction therefore might be applicable to judgment enforcement proceedings involving those banks. Consequently, the scope of U.S. courts’ extraterritorial jurisdiction in judgment enforcement proceedings may remain a subject of future litigation regardless of the outcome in the pending *Motorola Credit* appeal.

FOR MORE INFORMATION PLEASE CONTACT



John J. Clarke, Jr.
Partner
New York
T +1 212 335 4920
john.clarke@dlapiper.com

⁷ *Tire Engineering*, 740 F.3d at 113 (quoting *Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 127 (2d Cir. 2009)).

⁸ *Tire Engineering*, 740 F.3d at 117-18.

⁹ Matthew Ingber, *et al.*, *Will Daimler Take the Air Out of Kohler?*, N.Y.L.J., June 2, 2014.

¹⁰ *Daimler AG v. Bauman*, 134 S. Ct. 746, 761 (2014).

If you have finished with this document, please pass it on to other interested parties or recycle it, thank you.

www.dlapiper.com

DLA Piper UK LLP is authorised and regulated by the Solicitors Regulation Authority. DLA Piper SCOTLAND LLP is regulated by the Law Society of Scotland. Both are part of DLA Piper, a global law firm operating through various separate and distinct legal entities.

For further information please refer to www.dlapiper.com.

Copyright © 2014 DLA Piper. All rights reserved. | JUL14 | 2803670