# New York Court Rules Parties to International Arbitration May Attach New York Assets as Security Even Without Personal Jurisdiction

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In a case of first impression, the New York Appellate Division ruled in March 2011 that parties to an international arbitration may attach assets located in New York as security for a future award in the arbitral proceeding. This is the case even if the New York courts lack personal jurisdiction over the parties and even if the underlying dispute has no connection whatsoever to New York.

In a case of first impression, the Appellate Division, First Department, of the State of New York ruled in March 2011 that parties to a foreign arbitral proceeding may attach assets located in New York as security for a future award in the proceeding—even when there is no connection to New York by way of personal or subject matter jurisdiction. The Appellate Division's decision, which was a ruling of first impression, provides the only judicial affirmation to date of changes that the New York Legislature made to New York's Civil Practice Law and Rules (CPLR) in 2005. In light of the ruling, the New York courts will likely see a proliferation of motions for orders of attachment by foreign parties to international arbitrations.

The case in question, *Sojitz Corp. v. Prithvi Info. Solutions Ltd.*, N.Y. Slip Op. 01741, 2011 WL 814064 (1st Dep't March 10, 2011), concerned a dispute between Sojitz Corporation, a Japanese compay with its principal place of business in Tokyo, and Prithvi Information Solutions, an Indian company with its principal place of business in Hyderabad, India. The parties' dispute arose out of a contract, entered into in Delhi, whereby Sojitz agreed to provide telecommunications equipment manufactured in China to Prithvi in India. As such, the transaction at issue had nothing to do with the United States, much less with New York state. Moreover, neither Sojitz nor Prithvi regularly engaged in business in New York, such that the New York courts would have personal jurisdiction over the companies.

In August 2009, Sojitz made an *ex parte* motion in the Supreme Court of New York for an order of attachment against Prithvi. In this motion, Sojitz stated that it intended to commence an arbitration against Prithvi in Singapore within 30 days of the order of attachment (inasmuch as the parties' contract required Singapore arbitration), and

alleged that, if the requested attachment order was not granted, Prithvi might dissipate its New York assets pending the completion of the Singapore arbitration. The Supreme Court granted Sojitz's motion and issued an order, under CPLR 7502(c), attaching a $18,500 debt owed to Prithvi by a company in New York, which was Prithvi's only asset in New York state. In so doing, the court held that it had the authority to attach the New York assets of a foreign party *solely as security* for a possible future award in an arbitration pending abroad.

On appeal, Prithvi maintained that it does not have any offices in New York, is not licensed to do business in New York and has no bank accounts, real estate or employees in New York. Prithvi also maintained that the transaction in question had nothing to with the the United States. Accordingly, Prithvi argued that because the New York courts do not have personal jurisdiction over it, or subject matter jurisdiction over the parties' dispute, the lower court overstepped its authority in issuing the attachment order.

In rejecting Prithvi's argument and affirming the lower court's order of attachment, the Appellate Division held that there was "nothing fundamentally unfair about an attachment for security pending arbitration in a proper [foreign] forum." In reaching this decision, the court gave a brief summary of the development of the law in New York with respect to interim measures in support of arbitrations. Until relatively recently, this form of interim relief was only available to parties in domestic proceedings. However, in 2005, the New York Legislature amended CPLR 7502, explicitly empowering the courts of New York to issue preliminary injunctions and attachments in aid of all arbitrations, including those involving foreign parties or in which the arbitration is conducted outside of New York. CPLR 7502(c) reads in relevant part as follows:

The supreme court … may entertain an application for an order of attachment or for a preliminary injunction in connection with an arbitration that is pending or that is to be commenced inside or outside this state, whether or not it is subject to the United Nations convention on the recognition and enforcement of foreign arbitral awards, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief.

The *Sojitz* court noted that CPLR 7502(c) "provides several substantive and procedural safeguards intended to permit attachment consistent with due process." Among other

things, the statute requires the movant to demonstrate that any award issued by the arbitrators in the foreign country would be rendered ineffectual if the relief was not granted. In addition, the statute provides that if the foreign arbitration is not commenced within 30 days after the attachment order is granted, the order "shall expire and be null and void."

The decision in *Sojitz* is the first time that a New York court has ever ruled on the legality and due process implications of CPLR 7502(c). As it is often difficult to obtain security attachment orders for international arbitrations, the *Sojitz* decision is likely to make New York an attractive venue for international parties seeking to preserve assets while they arbitrate in a foreign country.

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McDermott Will & Emery's International Arbitration Group is continuing to monitor this matter, and will report on new developments as they arise. For more information, please contact your regular McDermott lawyer or:

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