

## COURTS CLARIFY JUDGMENT FOR OUT-OF-STATE ASSETS (PART 2 OF 2)

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### ***A Significant Case Out of NY Supreme Court***

In a recent case, the Supreme Court, New York County, granted a foreign judgment creditor's motion for summary judgment in lieu of complaint to enter, pursuant to article 53 of the New York Civil Practice Law and Rules ("CPLR"),<sup>1</sup> a foreign judgment rendered by a court in the United Kingdom. *Abu Dhabi Commercial Bank PJSC v. Saad Trading Contracting & Financial Services Co.*, 36 Misc.3d 389, 948 N.Y.S.2d 533 (Sup. Ct. N.Y. Co., May 15, 2012). The judgment creditor was an entity incorporated under the laws of the United Arab Emirates. The judgment debtor was a limited partnership formed under the laws of Saudi Arabia. The dispute had nothing at all to do with New York, nor was it governed by New York law.

### ***The Basis for Entry of Summary Judgment***

The main issue before the Court was whether it had the authority to recognize and enforce a judgment against a party over which it had no personal jurisdiction. Noting that the Court of Appeals of New York had not addressed this issue, and relying on the only appellate court decision that has, the Court held that personal jurisdiction over the judgment debtor is not "essential to the recognition and enforcement of a foreign country money judgment." *Abu Dhabi*, 36 Misc.3d at 392, citing *Lenchysbyn v. Pelko Elec., Inc.* 281 A.D.2d 42, 723 N.Y.S.2d 285 (4th Dep't 2001) (affirming an order granting judgment creditor's motion for summary judgment in lieu of complaint for recognition and enforcement of a Canadian judgment, and holding that personal jurisdiction over the judgment debtor is not a predicate for recognition of a foreign-country money judgment).

### ***The Court Rejected Judgment Debtors' Forum Non-Conveniens Argument***

The Court also rejected defendant/judgment debtor's argument that the foreign money judgment should not be entered in a New York court on *forum non conveniens* grounds, holding that the factors usually considered on a party's challenge to the forum are inapplicable, because "there are no witnesses to be inconvenienced or necessary evidence beyond the court's jurisdiction" and the "court simply is being asked to perform a ministerial function." *Abu Dhabi*, 36 Misc.3d at 393 (internal quotations omitted).

### ***The Effect of the Decision on International Practice***

This decision has significant ramifications on international practice, particularly given the general trend of the New York courts to permit recovery by judgment creditors against the assets of foreign judgment debtors wherever such assets may be located. See *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533 (2009), holding that a court sitting in New York that has personal jurisdiction over a third-party garnishee in possession of the property belonging to a foreign judgment debtor can order the garnishee to turn over such property for the benefit of a judgment creditor.

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<sup>1</sup> Article 53 of the CPLR is entitled "Recognition of Foreign Country Money Judgments."