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New York’s Highest Court Holds that Banks Doing Business in New York May Be Ordered to Turn Over Assets of Judgment Debtors Located Anywhere in the World

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On June 4, 2009, in a 4-3 decision, New York State’s highest court, the Court of Appeals, issued a decision that, unless reversed by the United States Supreme Court, will have a significant impact on non-U.S. banks and their clients. In *Koehler v. Bank of Bermuda*, 2009 NY Slip Op 4297 (June 4, 2009), the New York Court of Appeals held that “a court sitting in New York may order a bank over which it has personal jurisdiction to deliver stock certificates owned by a judgment debtor (or cash equivalent to their value) to a judgment creditor, pursuant to CPLR article 52, when those stock certificates are located outside of New York.”

The Court of Appeals held that the requirement of jurisdiction over the subject property (*in rem* jurisdiction) for pre-judgment attachments under Article 62 of the New York Civil Practice Law and Rules (“CPLR”) is not dispositive of whether *in rem* jurisdiction is also required for post-judgment garnishment under article 52 of the CPLR. According to the court, pre-judgment attachment is directed at specific property and therefore requires jurisdiction by the court over that property. By contrast, enforcement of a judgment is directed at a specific person or entity – either the judgment debtor or a garnishee that holds the debtor’s assets – and seeks an order compelling that person or entity to turn over the assets of the judgment debtor. Thus, according to the Court of Appeals, only personal (*in personam*) jurisdiction over the judgment debtor or the garnishee is required under an Article 52 proceeding. The Court of Appeals further reasoned that “CPLR article 52 contains no express territorial limitation” that would prohibit an order requiring a garnishee to “transfer money or property into New York from another state or country.”

Both parties to the underlying dispute in *Koehler* were shareholders in a Bermuda corporation. Defendant, a resident of Bermuda, had deposited the certificates representing his shares with the Bank of Bermuda in Bermuda as collateral for a loan. Plaintiff Koehler, a resident of Pennsylvania, obtained a default judgment against his former business partner in the United States District Court for the District of Maryland. Koehler registered this default judgment in New York and then brought a special proceeding, under New York CPLR § 5225(b), against the Bank of Bermuda in the United States District Court for the

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Southern District of New York. Though hotly contested for many years, the Bank of Bermuda eventually conceded that the New York courts had personal jurisdiction over the bank. The District Court initially dismissed plaintiff's petition in part on the grounds that it had no *in rem* jurisdiction over the certificates. On appeal, the Second Circuit Court of Appeals noted that New York law is unclear on whether a defendant other than the judgment debtor can be compelled to deliver assets into New York where the court has personal jurisdiction over the holder of those assets, but the assets themselves are located outside of New York. In the absence of applicable precedent, the Second Circuit certified this question to the New York Court of Appeals for guidance.

A particularly troubling aspect of the *Koehler* decision is that, in addition to the subject assets being located outside of New York, neither the judgment debtor nor the judgment creditor had any contacts with the State of New York. Indeed, the underlying dispute involved a business transaction in Bermuda. Even the default judgment against his former business partner was obtained by plaintiff in *Maryland*, not in New York. Thus, other than the fact that the judgment debtor's non-U.S. bank was subject to personal jurisdiction in New York, there are no connections between this dispute and the State of New York. Nevertheless, the Court of Appeals ruled that *in rem* jurisdiction over the shares was not required, and that a New York court can order a bank over which it has *in personam* jurisdiction to deliver property over which the court has no *in rem* jurisdiction, regardless of what other contacts the dispute may or may not have with the State of New York.

The three-judge dissent raised several substantial concerns with the majority's very expansive interpretation of New York's garnishment remedy, including a potential violation of the due process clause of the United States Constitution. Most significantly, the dissent suggested that this decision will permit judgment creditors to register judgments in New York and, based on the courts' personal jurisdiction over the garnishee, reach assets located outside of New York "even though the judgment creditor, the judgment debtor and the property that the judgment creditor is trying to seize are all elsewhere." The dissent further noted that the decision "opens a forum shopping opportunity for any judgment creditor trying to reach an asset of any judgment debtor held by a bank (or other garnishee) anywhere in the world."

The decision may be the subject of further review on remand to the Second Circuit, or in an appeal to the United States Supreme Court. However, as long as this decision from New York's highest state court remains the final word on New York's garnishment law, banks that are subject to personal jurisdiction in New York may be compelled to bring to New York and turn over assets from anywhere in the world belonging to any of their depositors who become judgment debtors—even where the depositor-judgment debtor, the judgment creditor, the underlying dispute, or the garnished assets have no connection whatsoever to the State of New York. This represents a potential risk for any non-U.S. depositors of a bank doing business in New York.

To see the full decision, click [here](#).