

ALERTS AND UPDATES

New Jersey Case with International Significance: Appellate Court Stays Enforcement of Foreign Country Money-Judgments Recognition Act

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On April 27, 2010, the New Jersey Superior Court, Appellate Division, issued an opinion that addresses the interplay between the state's version of the uniform statutes for enforcement of judgments of American states and those of foreign countries, and the "first-to-file" rule. In *Kitchens International, Inc. v. Evans Cabinet Corp., Ltd.*¹—decided on what the court called "unusual circumstances"—the court provides insight into strategic considerations for international parties engaged in jockeying for position in contract disputes. The case is noteworthy because its analysis appears to balance conflicting policy issues and may leave open the potential for a "race to the courthouse."

Facts

The plaintiff, Kitchens International, Inc. ("Kitchens"), is a Louisiana corporation that sells, distributes and supplies cabinets, and has a satellite office in Quebec, Canada. The defendant, Evans Cabinet Corp., Ltd. ("Evans"), is a Georgia corporation that manufactures cabinets. Kitchens' Montreal office ordered cabinets from Evans. Claiming they were defective, Kitchens sued in Quebec Superior Court in May 2006 and obtained its first default judgment when Evans, admittedly served, did not appear. Eleven months later, the defendant filed an independent action against the plaintiff in federal court in Massachusetts, claiming breach of the same contract, and seeking quantum meruit, on the same projects underlying the Quebec litigation. Almost two months after that filing, Kitchens filed a second lawsuit in Quebec Superior Court for additional damages, and procured its second default judgment against Evans, which was served but again did not appear. Kitchens also moved for dismissal in the Massachusetts federal action, which motion was granted on res judicata grounds in November 2008. Three months after the federal action was dismissed, Kitchens domesticated its two default judgments in New Jersey in accordance with the New Jersey statute for domesticating judgments of other U.S. states. Evans moved to strike those judgments, claiming that:

1. New Jersey's recognition and enforcement statute relating to *foreign country* judgments applied and precluded enforcement because of a lack of personal jurisdiction of the Quebec court;
2. New Jersey should defer to the Massachusetts case out of comity; and
3. New Jersey's rules against foreign corporations' transacting business in the state without being registered should bar the judgments.

The New Jersey trial court denied the motions. Subsequent to that, Kitchens commenced an action in New York to enforce its Canadian judgments, successfully obtaining recognition in that state, which court rejected Evans' objections to lack of personal jurisdiction in Quebec. Finally, in February 2010, the First Circuit Court of Appeals *reversed* the Massachusetts district court, finding issues of fact regarding personal jurisdiction in Quebec.

Result

The New Jersey Appellate Division held that while the trial court should have deferred to the Massachusetts federal court for resolving the personal jurisdictional issue, it was not necessarily wrong in denying the motion to strike. Instead, the Appellate

Division maintained that the trial court should have stayed enforcement of the domesticated New Jersey judgments pending resolution of the jurisdictional question in Massachusetts, upon posting of a bond by the defendant. The court found authority for this approach in New Jersey's version of the Foreign Country Money-Judgments Recognition Act, which permits use of the filing procedure in the act allowing docketing of other U.S. state judgments, if the judgment is "conclusive." Since it was not conclusive in this case, pending determination of the Massachusetts decision, the Appellate Division held that a stay of execution was appropriate.

Potential Ramifications

The case underscores the significance of establishing personal jurisdiction in the original foreign court, but also highlights the risks borne by the defaulting party that chooses not to appear in the foreign court and saves its challenges for U.S. enforcement and recognition actions. The appellate court discussed the "special equities" exception to the "first-to-file" rule that allows a court to disregard the deference given to the first-filed action on a showing of compelling circumstances to favor retention by the second court. Such circumstances may arise, as here, where significant factual questions exist as to personal jurisdiction. While the case may be deemed fact-sensitive, it may also indicate some support for the maxim "It's easier to ask forgiveness than it is to get permission." By filing first, a party would have the advantage of the first-to-file rule, which may well put the onus on the other party to challenge and prove special circumstances, even if there may be questions as to personal jurisdiction.

For Further Information

If you have any questions about this *Alert* or would like more information, please contact [Steven M. Richman](#), any [member](#) of the [Trial Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. *Kitchens International, Inc. v. Evans Cabinet Corp., Ltd.*, 2010 N.J. Super. LEXIS 69 (Apr. 27, 2010).