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## New York Court of Appeals Gives Global Banks Big Win on “Separate Entity” Issue

By Leo T. Crowley and David Babbott-Klein\*

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*In Motorola Credit Corp. v. Standard Chartered Bank, 2014 N.Y. Slip Op. 07199, 2014 WL 5368774 (Oct. 23, 2014) (“Motorola”), the highest New York state court ended five years of uncertainty and for the first time expressly endorsed the “separate entity” rule, a New York common law doctrine limiting judgment creditors’ ability to reach or restrain assets held by judgment debtors in overseas branches of global banks. A previous Court of Appeals ruling, Koehler v. Bank of Bermuda, 12 N.Y.3d 533 (2009), had sparked doubt about the separate entity rule’s continued viability. Motorola gives banks with New York branches renewed confidence that service made in New York will not affect deposits on the books of foreign branches, and it places the burden squarely back on creditors to attempt to reach overseas assets through local law proceedings.*

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### Facts

The case involved Motorola’s attempts to enforce a \$3.1 billion judgment it had obtained in the U.S. District Court for the Southern District of New York against the Turkish Uzan family related to the family’s fraudulent use of a loan. After lengthy postjudgment proceedings, the court eventually entered an order (under Article 52 of the New York Civil Procedure Law and Rules) restraining the Uzans and anyone with notice of the order from selling, assigning, or transferring their property.

Motorola then sought to collect its judgment via assets, in the form of deposits held by the Uzans in global banks that had New York branches. Motorola served the restraining order on the New York branch of Standard Chartered Bank (“SCB”), which is headquartered in the United Kingdom. After conducting a global search of its branches, SCB determined that it held \$30 million of Uzan family assets in the form of deposits in its United Arab Emirates (“UAE”) branch. SCB froze the Uzan’s deposits, but the UAE Central

Bank intervened, refusing to recognize the New York order and making the Uzans whole by debiting \$30 million from SCB's Central Bank account. SCB then sought to have the New York order limited so as to not reach that account, leading the Court to overturn the restraining order based on the century-old separate entity rule.

The United States Court of Appeals for the Second Circuit found on Motorola's appeal that although lower courts in New York had consistently applied the separate entity rule to stop judgment creditors from reaching foreign branch bank accounts by service on a New York office to satisfy judgments, the New York Court of Appeals had "never unequivocally approved or disapproved of the separate entity rule," and there was "no 'controlling precedent' in New York that governed this case." The Second Circuit, therefore, certified the question for review to the Court of Appeals.

### **New York Court of Appeals Expressly Adopts the Separate Entity Rule for the First Time**

New York's highest court brought important clarification to New York law, concluding in a 5-2 decision that the separate entity rule remains alive and well. The Court explained that the "the underlying reasons that led to the adoption of the separate entity rule still ring true today." Specifically, the "risk of competing claims and the possibility of double liability in separate jurisdictions remain significant concerns, as does the reality that foreign branches are subject to a multitude of legal and regulatory regimes." The Court also expressed the importance of maintaining international comity, and despite technological advances, cited banks' continuing practical considerations and costs associated with global account searches. Judge Sheila Abdus-Salaam's dissented, joined by Judge Eugene Pigott Jr., and criticized the separate entity rule as outmoded. However given the strong majority view it does not seem that the decision is at any risk of future erosion or reversal.

The court distinguished *Koehler*, noting that it dealt not with bank branches or deposits in bank accounts but with stock certificates, that the separate entity rule had not been litigated in that case, and that the creditor had in fact served the bank in Bermuda so the rule would not have been applicable. The Court indicated agreement with warnings advanced by SCB and several amicus briefs that maintaining the status quo was crucial to New York's status as a banking center, stating that "[w]e believe that abolition of the separate entity rule would result in serious consequences in the realm of international banking to the detriment of New York's preeminence in global financial affairs."

The opinion specifically declined to rule on the domestic aspect of the separate entity rule, so it remains unclear whether or not service on a New York branch of a garnishee bank is sufficient to require the restraint of assets held at branches located elsewhere in the United States.

### **Implications**

After *Motorola*, global banks with New York branches can confidently view garnishments and/or attachments made in New York as being inapplicable to their overseas branches or head office. Moreover, although the case involved an overseas bank with a branch in New York, the separate entity doctrine has also been applied in the context of a bank headquartered in New York with an overseas branch or office. The cloud of uncertainty that descended after *Koehler* has been cleared away.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the author below.

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