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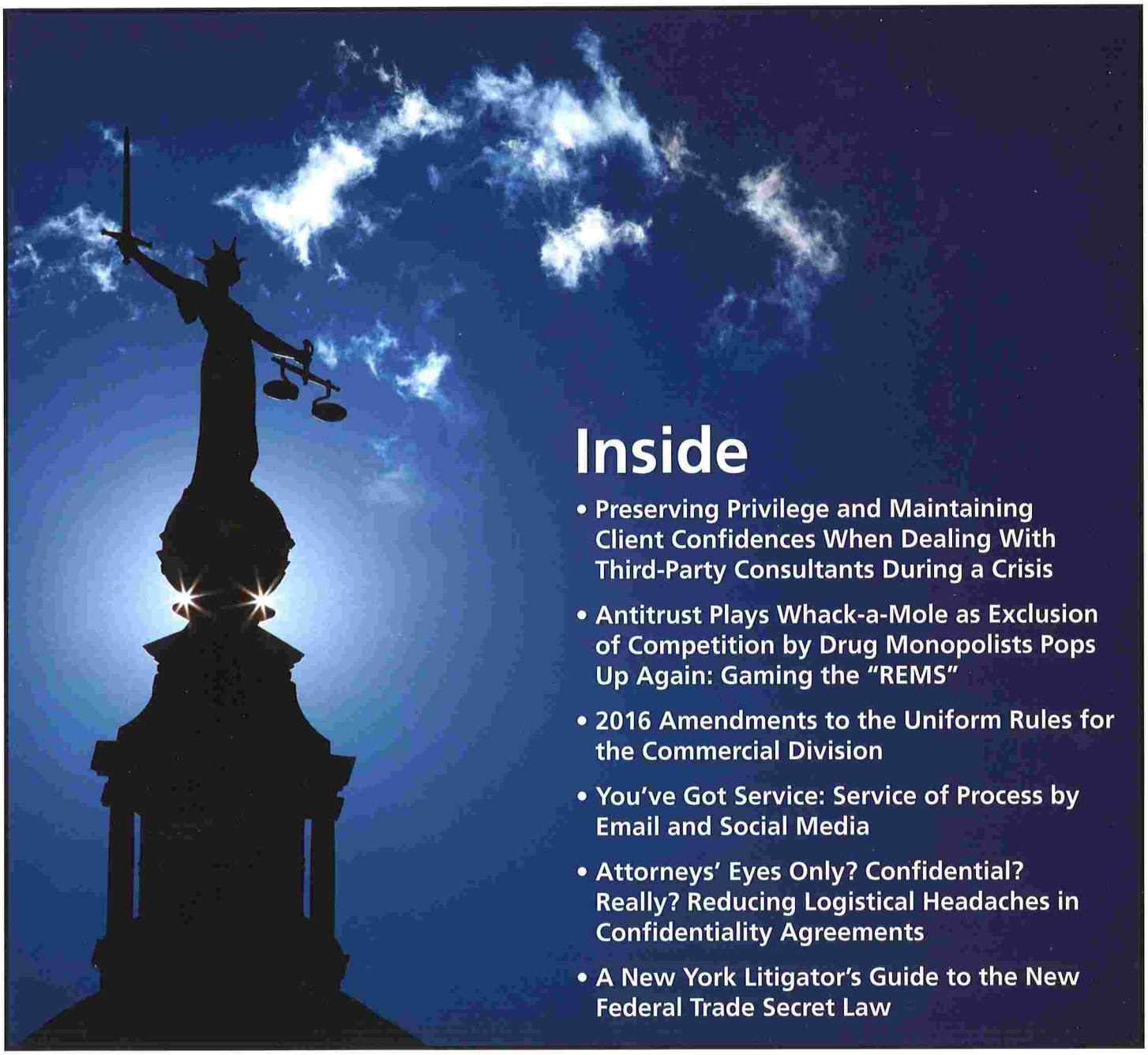

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Enforcement of Foreign Country Judgments: Expanded Use Confronts Increasing Questions

By Steven J. Mandelsberg

"The New York real-estate market is now the premier destination for wealthy foreigners with rubles, yuan, and dollars to hide."[1]

I. Introduction

Long recognized as a major hub of international finance and business, New York City has, in the past decade, experienced a surge of capital from wealthy foreigners who have chosen to park their fortunes in what has been dubbed New York's "bank safe deposit boxes in the sky."[2] The source of this capital infusion, wealthy foreigners and government officials, has led to the increased use of New York law and the accessibility and sophistication of New York courts, to enforce as well as to thwart, the enforcement of foreign country money judgments and decrees.

The rules and regulations governing the enforcement of foreign money judgments are set forth in New York's Uniform Foreign Money-Judgments Recognition Act ("UFMJRA" or "the Act"), codified in Article 53 of New York's Civil Practice Law and Rules ("CPLR"). This article provides an overview of New York's version of the UFMJRA; evaluates common jurisdictional challenges to New York's statutory scheme; discusses the lack of judicial guidance concerning what conduct in a foreign forum constitutes a jurisdictional waiver; and the dilemma litigants are confronted with when deciding whether to default or defend in a foreign forum.

II. Overview of New York's UFMJRA

Traditionally, New York has provided a liberal forum to enforce money judgments obtained in foreign countries.[3] Following a history of recognizing foreign money judgments under general principles of comity (absent evidence of fraud or if enforcement would violate strong public policy of the state), New York enacted the UFMJRA in 1970 upon the recommendation of the Judicial Conference of the State of New York to achieve two objectives: (1) to facilitate more favorable reciprocal treatment of New York judgments in foreign countries; and (2) to codify and clarify existing case law applicable to the recognition of foreign money judgments.[4]

The UFMJRA applies only to foreign country money judgments that are "final, conclusive and enforceable where rendered even though an appeal is pending or possible."[5] Once applicable, the statute dichotomizes the circumstances warranting mandatory and discretionary recognition. A foreign money judgment is conclusive "to the extent that it grants or denies recovery of a sum of money," unless (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law; or (2) the foreign court did not have personal jurisdiction over the defendant.[6] A foreign money judgment is conclusive—that is, a court may refuse to recognize it—upon eight discretionary grounds, including lack of subject matter jurisdiction, failure to receive notice of the proceedings in the foreign forum in a sufficient time to allow for defenses, or if, in the case of jurisdiction based upon personal service, the foreign court was a seriously inconvenient forum.[7]

Under CPLR 5305(a), the foreign money judgment shall not be refused recognition for lack of personal jurisdiction, if, among other things, the defendant was served personally in the foreign state or voluntarily appeared in the foreign court proceedings other than for the purpose of contesting jurisdiction, or if, prior to the commencement of the proceedings, the defendant agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.[8] Because the bases of jurisdiction set forth in CPLR 5305(a) are not exhaustive, the court may recognize grounds upon which to enforce the foreign judgment.[9] To streamline enforcement, the UFMJRA provides for three procedural methods by which to enforce the foreign judgment: an action on the judgment, a motion for summary judgment in lieu of complaint, or by counterclaim, cross-claim or affirmative defense in a pending action.[10]

Expressly excluded from the UFMJRA are judgments for taxes, fines, or penalties, or judgments related to matrimonial or family matters.[11] Although inapplicable to foreign judgments related to matrimonial or family matters or non-monetary foreign judgments, the UFMJRA does not preclude their recognition under general principles of comity.[12] Also excluded are foreign arbitral awards, whose enforcement is instead governed by federal law.[13] Once the foreign arbitral award is confirmed and converted into a foreign judgment, however, New York's UFMJRA applies.[14] Similarly, foreign arbitral orders and decrees that are the functional equivalent of a foreign judgment are enforceable under the UFMJRA.[15]

III. Challenges to Recognition

A. The *Harvardsky* Case

Among the most common challenges to New York's recognition of foreign money judgments is that the foreign forum lacked personal jurisdiction over the defendant.[16] A challenge on such grounds is currently being litigated

in *Harvardsky Prumyslovy Holding, A.S.,-V Likvidaci v. Kozeny*,[17] pending in New York County Supreme Court. In this case, defendant Viktor Kozeny has contested New York's enforcement of a Czech Republic judgment on the basis that the Czech court lacked personal jurisdiction over him when the judgment was rendered.

The facts of *Harvardsky* illustrate how New York can become a central forum for the adjudication of a global foreign decree recognition dispute: Kozeny solicited Czech investors to invest money in certain investment privatization funds ("IPFs") in the Czech Republic. These IPFs would purchase and manage a portfolio of shares on the investors' behalf. Kozeny allegedly looted the IPFs and diverted funds to shell companies in Cyprus. He then relocated to the Bahamas, where the Bahamian government refused extradition. Kozeny was prosecuted in the Czech Republic in abstentia and found guilty of gross fraud, sentenced to ten years imprisonment, and ordered to pay approximately $410,000,000.[18] Harvardsky Prumyslovy Holding, A.S.,-V Likvidaci ("Harvardsky"), one of the looted investment funds, commenced suit in New York under the UFMJRA to enforce the Czech judgment. Seeking dismissal of Harvardky's complaint on multiple grounds, including the Czech court's lack of personal jurisdiction, Kozeny argued that he was not properly served with notice of the Czech proceedings or the indictment and that an impartial tribunal did not decide the Czech judgment.

Although Kozeny's motion has not yet been decided, *Harvardsky* raises provocative and unresolved issues through which to examine relevant New York case law.

1. Personal Jurisdiction in New York

A New York court need not have personal jurisdiction to enforce a foreign money judgment against a defendant under the UFMJRA.[19] The courts in New York have reasoned that no such requirement is found in either CPLR Article 53 or inherently in the U.S. Constitution Due Process Clause.[20] As explained in *Lenchyshyn v. Pelko Electric Inc.*, in seeking enforcement of a foreign money judgment, a creditor is not requesting new relief, but merely asking the court to perform a ministerial function: "In proceeding under article 53, the judgment creditor does not seek any new relief against the judgment debtor, but instead merely asks the court to perform its ministerial function of recognizing the foreign country money judgment and converting it into a New York judgment."[21] A defendant's due process rights are further protected by CPLR 5304, which precludes recognition of foreign judgments where the foreign forum lacked personal jurisdiction over the defendant. For these reasons, a defendant is not entitled to added protection in a New York judgment enforcement action.[22]

Courts are split as to the extent to which due process requires a creditor to establish that the court has a jurisdictional basis to enforce a foreign money judgment. Although New York does not so require, the District of Columbia might. In *Ahmad Hamad Al Gosaibi & Bros. Co. v. Standard Chartered Bank*, the District of Columbia Court of Appeals refused recognition of a Bahranian judgment that had been registered in New York under New York's UFMJRA.[23] The court, while not determining whether the judgment would be entitled to recognition under the District of Columbia's UFMJRA, noted that the foreign judgment was not entitled to Full Faith and Credit under the U.S. Constitution[24] because New York did not have personal jurisdiction over the defendant. The court noted that New York's UFMJRA provided fewer grounds to withhold recognition than were available to courts in the District of Columbia.

2. Personal Jurisdiction in Foreign Forum

Under CPLR 5304(a)(2), a New York court is precluded from recognizing a foreign money judgment if the foreign court did not have personal jurisdiction over the defendant. CPLR 5305 enumerates six jurisdictional bases upon which a New York court can rely to enforce a foreign judgment. But this list is not exhaustive; courts can look to any other jurisdictional bases New York recognizes.[25]

The legislative history of New York's UFMJRA makes clear that judicial inquiry into the foreign forum's jurisdiction was explicitly intended.[26] It also suggests that a defendant who had an insufficient connection to the foreign forum may have a basis to challenge the enforcement of the judgment based upon the concept of forum non-conveniens.[27] Although doing so would appear to require the New York court to exceed its mere ministerial function and peer behind the judgment to the foreign forum's underlying proceedings, the New York Court of Appeals has held that a "microscopic analysis" is not required.[28] Instead,

> [t]he inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law. If the above criteria are met, and enforcement of foreign judgment is not otherwise repugnant to our notion of fairness, the foreign judgment should be enforced in New York under well-settled comity principles.[29]

Consistent with the United States Supreme Court's pronouncement in *International Shoe Co. v. Washington*, New York's concept of personal jurisdiction and due process of law requires that a defendant not present in the forum have "certain minimum contacts" with it such that the forum's exercise of personal jurisdiction over him does not offend "traditional notions of fair play and substantial justice."[30] Cases decided prior to the

enactment of the UFMJRA involving the enforcement of foreign judgments embraced this concept of personal jurisdiction, requiring a showing that a defendant had minimum contacts with the foreign forum for due process to be satisfied.[31] Following the enactment of the UFMJRA, New York courts will continue to employ a minimum contacts analysis in cases involving foreign default judgments if no other bases of jurisdiction under CPLR 5305 or New York law exist.[32] In such a case, New York courts have refused to enforce a foreign money judgment against defendants who had no contacts with the foreign forum.[33]

3. Proper Service

While CPLR 5304(b)(2) makes lack of proper notice of the foreign proceedings a discretionary ground for non-recognition of a foreign money judgment, New York courts hold that insufficient notice is in fact a mandatory basis for non-recognition.[34] In so holding, courts have determined that notice and an opportunity to be heard is a fundamental requirement of due process.[35] Enforcement of a foreign judgment against a defendant who received no meaningful notice of the foreign proceedings would be a violation of due process and contrary to our notion of fairness.[36] A plaintiff seeking to enforce a foreign money judgment need not establish strict compliance with the service rules of the foreign forum.[37] Instead, the inquiry turns on whether notice was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[38]

As long as the defendant is afforded proper notice, under CPLR 5305(a)(3) a foreign money judgment may be enforced in New York against a defendant who agreed to submit to the jurisdiction of the foreign court with respect to the underlying subject matter even if the foreign forum lacked personal jurisdiction over the defendant.[39] A foreign selection clause and/or consent to jurisdiction provision may therefore provide an exception to the requirement that the foreign forum have a basis of personal jurisdiction if meaningful notice was provided.[40] As stated by the Court of Appeals, enforcement of a foreign judgment in that instance would not violate due process because:

> [E]nforcement of a foreign judgment is not repugnant to our notion of fairness if defendant was a party to a contract in which the parties agreed that disputes would be resolved in the courts of a foreign jurisdiction and defendant was aware of the ongoing litigation in that jurisdiction but neglected to appear and defend .... [S]o long as the exercise of jurisdiction by the foreign court does not offend due process, the judgment should be enforced without "microscopic analysis" of the underlying proceedings.[41]

Even if proper notice was not provided, under CPLR 5305(a)(2), a defendant who voluntarily appeared in the foreign court proceedings, other than for the purpose of contesting jurisdiction, may waive the right to challenge the foreign forum's jurisdiction in an enforcement proceeding in New York.[42]

B. Lack of Judicial Guidance: Waiver of Jurisdiction

Pursuant to CPLR 5305(a)(2), a New York court may not refuse recognition of a foreign money judgment for lack of personal jurisdiction if the defendant voluntarily appeared in the foreign court proceedings, other than for the purpose of contesting jurisdiction. As will be discussed below, the case law and legislative history would seem to confirm that a defendant who argues the merits in the foreign forum would waive the right to raise lack of jurisdiction in a New York judgment enforcement proceeding. But what if the defendant raises an issue as to venue or choice of law in the foreign forum? Or what if a procedural challenge to the foreign forum's jurisdiction necessarily requires the defendant to argue some or all of the merits of the action? Would a defendant who engages in this type of conduct waive his or her right to later contest the foreign court's jurisdiction? Given the dearth of case law on this issue, guidance is critical for a litigant faced with the decision of whether to default in the foreign forum (and lose the opportunity to present a defense on the merits) or defend (and risk waiving the right to challenge the foreign court's jurisdiction in the New York courts).

The legislative history of the UFMJRA suggests that CPLR 5305(a)(2) was intended to embody the well-settled U.S. rule that a defendant who makes a special appearance for the sole purpose of contesting jurisdiction does not waive the right to challenge the court's jurisdiction in a later proceeding. While New York no longer recognizes a distinction between a general and special appearance, the New York Court of Appeals has held that such distinction remains in the statute and is applicable to judgment enforcement proceedings.[43] The Restatement (Second) of the Conflict of Laws defines a special appearance as one made solely for the purpose of objecting to the jurisdiction of the court.[44] In contrast, "a general appearance is one where the defendant either enters an appearance in an action without limiting the purposes for which he appears or where he asks for relief which the court may give only if it has jurisdiction over him."[45] Such conduct is deemed a general appearance even if the defendant simultaneously challenges the court's jurisdiction.[46] A defendant who "makes a motion raising a question as to the merits of the plaintiff's claim even though the defendant shows that he does not intend thereby to submit himself to the jurisdiction of the court" will waive the right to later challenge the court's jurisdiction.

The commentary to CPLR 5305(a)(2) provides some useful instruction by explaining that the proper inquiry to determine whether a waiver has occurred is whether the

defendant did "more than they had to do to preserve a jurisdictional objection."[47] If so, the defendant will have voluntarily submitted to the court's jurisdiction and forfeited the right to claim an exception. For example, in *CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, the Court of Appeals found that the defendant, upon its application to the High Court of England to set aside an English default judgment, raised an issue as to the merits of the underlying case and thus waived its right to contest the English court's personal jurisdiction in the subsequent judgment enforcement action in New York.

So far, a lack of judicial guidance leaves open a definitive answer to the question of whether raising improper venue or choice-of-law issues in the foreign forum will be deemed a waiver to challenge the foreign court's jurisdiction in a judgment enforcement proceeding in New York. Venue and choice of law do not necessarily require an inquiry into the merits of the action. Since questions as to venue and choice-of-law are jurisdictionally related, a defendant who raises these issues could reasonably contend that it is not doing anything more than it has to to preserve a jurisdictional objection. Under such reasoning, a New York court may not deem as waived an objection to the foreign court's jurisdiction in the case of a defendant who raises improper venue or choice-of-law in the foreign forum.[48]

Courts have also recognized the possibility that a defense on the merits might be required to preserve a jurisdictional objection and not constitute a waiver of jurisdiction. In *Nippon Emo-Trans Co. v. Emo-Trans, Inc.*, the court noted in dicta that in a case where a foreign court refused to hear a jurisdictional appeal unless a defendant presented a defense on the merits, the defendant "had not done 'any more than he had to do' by arguing the merits." On the other hand, the court in *Hamilton Bank, N.A. v. Kookmin Bank* found that a defendant faced with possibility of waiving the right to challenge the foreign court's jurisdiction would not be without recourse; the court suggested that the defendant in that particular circumstance avoid the risk by defaulting and contesting jurisdiction in the subsequent enforcement proceeding.

IV. Guidance for the Practitioners

Given the attendant risks associated with either defaulting or defending in a foreign court proceeding, a defendant with substantial assets in New York would be well-advised to establish a forward-thinking litigation strategy that carefully considers the potential for a subsequent judgment enforcement proceeding in New York courts. Provided proper notice was given, practitioners faced with a forum selection or consent to jurisdiction clause may choose to defend in the foreign forum in light of the inability to challenge the foreign court's jurisdiction in New York. Alternatively, absent such a clause and provided that no grounds of jurisdiction under CPLR 5305(a) exist, a defendant with minimal or no contacts with the foreign forum may be better off defaulting and challenging the foreign court's jurisdiction in the subsequent enforcement proceeding in New York. Until definitive judicial guidance is provided, a defendant who appears in the foreign court solely for the purpose of raising improper venue or choice-of-law issues will have good grounds to stand upon if a creditor seeking enforcement of the judgment in New York asserts that such conduct amounts to a waiver of jurisdiction.

Endnotes

1. Andrew Rice, *Stash Pad*, New York Magazine, Jun. 29, 2014, http://nymag.com/news/features/foreigners-hiding-money-new-york-real-estate-2014-6/.
2. Julie Creswell, *Stratospheric Views, and Prices*, The New York Times, Nov. 3, 2013, http://www.nytimes.com/2013/11/04/business/stratospheric-views-and-prices.html.
3. *See CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 762 N.Y.S.2d 5 (2003); *Sung Hwan Co. v. Rite Aid Corp.*, 7 N.Y.3d 78, 817 N.Y.S.2d 600 (2006); *see also Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895) ("Comity, in the legal sense, is [not] a matter of absolute obligation ... [I]t is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.").
4. *Greschler v. Greschler*, 51 N.Y.2d 368, 434 N.Y.S.2d 194 (1980); *Intercontinental Hotels Corp. v. Golden*, 15 N.Y.2d 9, 254 N.Y.S.2d 527 (1964) (To violate public policy judgments must be "inherently vicious, wicked or immoral, and shocking to the prevailing moral sense."); Judicial Conference Mem. in Support, Bill Jacket, L1970, at 4-5.
5. N.Y. Civil Practice Law and Rules 5302 (CPLR).
6. CPLR 5303; CPLR 5304.
7. CPLR 5304(b); CPLR (b)(1); CPLR (b)(2); CPLR (b)(7).
8. CPLR 5305(a)(1); CPLR (a)(2); CPLR (a)(3).
9. CPLR 5305(b).
10. CPLR 5303.
11. CPLR 5301.
12. *See* CPLR 5307; *Downs v. Yuen*, 297 A.D.2d 251, 746 N.Y.S.2d 389 (1st Dep't 2002); *Chevron Corp. v. Salazar*, 807 F. Supp. 2d 189 (S.D.N.Y. 2011).
13. *See* 9 U.S.C.S. §§201–208 (Convention on the Recognition and Enforcement of Foreign Arbitral Awards).
14. *Fotochrome, Inc. v. Copal., Co.* 517 F.2d 512 (2d Cir. 1975); *Shipcraft A/S v. Arms Corp. of the Philippines, Inc.*, 150651/2012 (Sup. Ct., N.Y. Co. Feb. 19, 2013).
15. *See Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala*, 29 F.3d 79 (2d Cir. 1994); *V. Corp. v. Redi Corp. (USA)*, 04 Civ. 1683 (MBM), (S.D.N.Y. Oct. 7, 2004).
16. Kulzer, *Recognition of Foreign Country Judgments in New York: The Uniform Foreign Money-Judgments Recognition Act*, 18 Buff. L. Rev. 1., 25 (1968-1969) ("The foreign court's lack of personal jurisdiction over the defendant is probably the most frequent defense alleged when a judgment is offered as conclusive in another state.").
17. Index No. 651826/2012 (Sup. Ct., N.Y. Co.).
18. 117 A.D.3d 77, 983 N.Y.S.2d 240 (4th Dep't 2014).
19. *Lenchyshyn v. Pelko Elec., Inc.*, 281 A.D.2d 42, 723 N.Y.S.2d 285 (4th Dep't 2001).
20. *Id.*; *Abu Dhabi Commercial Bank PJSC v. Saad Trading*, 117 A.D.3d 609, 986 N.Y.S.2d 454 (1st Dep't 2014).
21. 281 A.D.2d at 49.

22. *Abu Dhabi Commercial Bank*, 117 A.D.3d 609.

23. 98 A.D.3d 998 (2014); *but see Standard Chartered Bank v. Ahmad Hamad Al Gosaibi*, 99 A.3d 936, 2014 PA Super 179 (Super. Ct. PA 2014) (different result reached between same parties), *appeal denied*, 108 A.3d 36 (Pa. 2015).

24. U.S. Const. art. IV, § 1; *Johnson v. Muelberger*, 340 U.S. 581, 584 (1951) (explaining that the purpose of the Full Faith and Credit Clause is to "help weld the independent states into a nation by giving judgments within the jurisdiction of the rendering state the same faith and credit in sister states as they have in the state of the original forum").

25. *Sung Hwan Co. v. Rite Aid Corp.*, 7 N.Y.3d 78, 817 N.Y.S.2d 600 (2006) (use of New York's long-arm statute).

26. Kulzer, *supra* note 16, at 16, n. 112 (1968-1969) (noting that in the case of a foreign default judgments, the jurisdiction of the foreign court is subject to close scrutiny).

27. *Id.* at 37 ("[I]f neither the cause of action nor the defendant had any connection with France, a good case for nonrecognition on the ground of forum non conveniens is presented.").

28. *Sung Hwan Co.*, 7 N.Y.3d at 83.

29. *Id.*; *see also CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 296 A.D.2d 81, 96, 743 N.Y.S.2d 408, 420 (1st Dep't 2002), *aff'd* 100 N.Y.2d 215 (2003) (explaining that the question posed "is not whether the foreign court properly exercised jurisdiction under its own laws. The use of the term 'personal jurisdiction' in CPLR 5305 necessarily contemplates the definition of that term as understood in our jurisprudence.").

30. *International Shoe Co. v. Washington*, 326 U.S. 31 (1945); *George Reiner & Co. v. Schwartz*, 41 N.Y.2d 648, 394 N.Y.S.2d 844 (1977) ("When tracing the modern notion of due process as it relates to in personam jurisdiction, it is necessary to go back no further than *International Shoe Co. v Washington.*") (internal citation omitted).

31. *Johnston v. Compagnie Generale Transatlantique*, 242 N.Y. 381, 384 (1926) (A foreign judgment "can be impeached only by proof that the court in which it was rendered had no jurisdiction of the subject matter of the action or of the person of the defendant, or that was procured by means of fraud."); *Martens v. Martens*, 284 N.Y. 363, 365-66 (1940) (" In order to pass upon the question as to whether a judgment of a court of a foreign country is to be recognized, there must be a disclosure of the jurisdiction of the foreign court of the subject-matter and of the parties. The acts of the parties to the foreign litigation in invoking the jurisdiction must also sometimes be scrutinized."); *Falcon Mfg. (Scarborough), Ltd. v. Ames*, 53 Misc. 2d 332, 335, 278 N.Y.S.2d 684, 687 (Civ. Ct., N.Y. Co. 1967) ("[A] court would not be able to determine on a motion for summary judgment whether the foreign judgment sued upon offended traditional notions of fair play and substantial justice or our own sense of justice and equity as embodied in our public policy, or whether it served to deprive the defendant of due process of law in violation of the Fourteenth Amendment.") (internal quotations and citations omitted).

32. *Siedler v. Jacobson*, 86 Misc. 2d 1010, 1011, 383 N.Y.S.2d 833, 834 (1st Dep't 1976) (finding that "the nature of defendant's solitary act in this case was so casual and incidental to the foreign forum that it could not possibly serve as a jurisdictional predicate sufficient to grant conclusive effect to the default judgment sued upon"); *Ackermann v. Levine*, 788 F.2d 830 (2d Cir. 1986) (applying New York law).

33. *Siedler*, 86 Misc. 2d 1010; *Ackermann*, 788 F.2d 830.

34. *Baker & Mckenzie Zurich v. Anna Frisone*, 47 Misc. 3d 1227(A), 18 N.Y.S.3d 577 (Sup. Ct., N.Y. Co. 2015) ("[I]f the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend it is fundamental to due process and nonrecognition is mandatory."); *Gondre v. Silberstein*, 744 F. Supp. 429 (E.D.N.Y. 1990) (citing Siegel, McKinney Practice Commentaries, C5304:1 (1978)).

35. *Baker & Mckenzie Zurich*, 47 Misc. 3d 1227(A).

36. *Galliano, S.A. v. Stallion, Inc.*, 15 N.Y.3d 75, 904 N.Y.S.2d 683 (2010).

37. *Id.*

38. *Gondre*, 744 F. Supp. at 431 (citing *Mullane v. Central Hanover Tr. Co.*, 330 U.S. 306, 314 (1950)).

39. *Galliano, S.A.*, 15 N.Y.3d at 80 ("CPLR 5304's grounds for nonrecognition of foreign money judgments must be read together with CPLR 5305, however, which provides that a 'foreign country judgment shall not be refused recognition for lack of personal jurisdiction if ... the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved.'").

40. *See id.*; *see also Landauer Ltd. v. Joe Monani Fish Co.*, 22 N.Y.3d 1129, 985 N.Y.S.2d 463 (2014); *Baker & Mckenzie Zurich v. Anna Frisone*, 47 Misc. 3d 1227(A), 18 N.Y.S.3d 577 (Sup. Ct., N.Y. Co. 2015).

41. *Landauer Ltd*, 22 N.Y.3d 1129.

42. CPLR 5305(a)(2); *Gemstar Can., Inc. v. George A. Fuller Co.*, 127 A.D.3d 689, 6 N.Y.S.3d 552 (2d Dep't 2015).

43. *CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 762 N.Y.S.2d 5 (2003).

44. Restatement [Second] of Conflict of Laws, § 81, Comment b.

45. *Id.* at § 33, Comment d.

46. *Id.*

47. Siegel, McKinney Practice Commentaries, C5304:1 (1978); N.Y. Civ. Prac. Law & R. § 5305 (McKinney's 1978) at 496-97. (The jurisdictional exception applies] where the appearance was solely to protest jurisdiction . . . . If the judgment debtor did *any more than he had to do*, however, to preserve his jurisdictional objection in the foreign court, he would thereby have submitted voluntarily to its jurisdiction and forfeited the right to claim an exception [under this section.").

48. *See, e.g. In re. Avon Dairies, Inc.*, 280 A.D. 116, 111 N.Y.S.2d 272 (4th Dep't 1952) (noting the distinction between venue and jurisdiction); *Fla. Dep't of Children & Families v. Sun-Sentinel, Inc.* 865 So. 2d 1278 (Fla. 2004) (holding that a motion to transfer venue made simultaneously with an objection to personal jurisdiction does not waive the jurisdictional objection); *State v. Omega Painting Inc.*, 463 N.E.2d 287 (Ind. Ct. App. 1984) (same).

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