



LENDING AND RESTRUCTURING ALERT

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Warning to Banks: High Court Decision Turns New York Into the Ultimate Collection Forum for Judgment Creditors

A recent ruling by New York State's highest court, in a case with only the slightest nexus to New York, is likely to encourage judgment creditors from around the world to register their judgments in the state and then bring turnover proceedings there against innocent bystander third parties—especially banks—as garnishees. In this case, two Pennsylvania entities litigated in a Maryland court, and the resulting judgment entangled a Bermuda bank that held the judgment debtor's stock certificates in a Bermuda corporation.

New York's Court of Appeals held that judgment creditors from outside New York can require a bank from virtually anywhere to bring into the state a non-New York judgment debtors' property to satisfy a judgment entered outside New York. The only necessary New York nexus is that the garnishee be subject to the personal jurisdiction of a New York court, which applies to many banks by virtue of their having at least one New York branch.

The ruling gives out-of-state judgment creditors virtually unbridled opportunity to enter judgments in New York, and creates potentially costly obligations for banks as garnishees.

The Case, And The Dissent

The litigation began in a Maryland federal court, where a Pennsylvania creditor obtained a \$2 million default judgment against a former business partner, who was also a Pennsylvania resident. The judgment debtor owned stock in a Bermuda corporation, and the certificates were held by a bank in Bermuda. To enforce the default judgment, the creditor brought a turnover proceeding against the Bermuda bank in a New York federal district court. Although the bank ultimately conceded personal jurisdiction in New York, the federal district court denied the turnover petition because it did not have jurisdiction over the stock certificates located in Bermuda.

The creditor appealed to the Second Circuit Court of Appeals, which found that New York law was unclear on whether the Bermuda bank could be compelled to bring the judgment debtor's stock from Bermuda into New York and turn it over to the creditor. The Second Circuit certified the question to the New York Court of Appeals for an advisory answer.

By a 4-3 vote, the state Court of Appeals ruled that a New York court can force a bank that is subject to jurisdiction in the state to turn over to a judgment creditor property owned by a judgment debtor. The majority ruled that this was the law regardless of whether the property is located in New York or whether the court has jurisdiction over the judgment debtor.



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The dissenters highlighted the potential implications of this ruling, warning that it will encourage forum-shopping by judgment creditors and place significant administrative burdens on banks that have either a branch in New York or a subsidiary that does business in New York, subjecting the parent to personal jurisdiction. They also questioned the constitutionality of compelling garnishee banks to turn over out-of-state property when the connection between the garnishee and New York is so slight.

What This Means To Judgment Creditors And Garnishees

This decision gives judgment creditors—even those with no ties to New York—a powerful weapon to use the state’s courts to enforce judgments obtained virtually anywhere. Judgment creditors should take advantage of this opportunity to enter out-of-state judgments in New York as they seek to garner assets of judgment debtors that previously may have seemed out of reach.

Banks want to avoid devoting their time, money, and resources to responding to turnover proceedings that this decision invites. The banking community may consider lobbying the New York State Legislature to pass legislation that would effectively overrule the Court of Appeals’ decision. Banks that are based outside New York but have minimal presences in the state—especially foreign banks—may be concerned that existing or potential customers may hesitate to do business with them because, by doing so, they may be exposing their assets to collection in New York turnover proceedings. Though it may seem counterintuitive, such banks may rethink the wisdom of maintaining a minimal presence in New York if that presence might deter prospective judgment debtors from doing business with them.

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