

Client Alert

Business Litigation Practice Group

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New York Court Recognizes Foreign Criminal Judgment in Case of First Impression

On April 1, 2014, a New York state appellate court held that a judgment rendered by a foreign criminal court that required the defendant to make a payment of money to victims of his fraud was capable of domestication under Uniform Foreign Money Judgments Act (set forth at Article 53 of the N.Y. Civil Practice Law and Rules (“CPLR”)), and ordered the attachment of New York-based assets under Article 62 in aid of that judgment. *Harvardsky Prumyslovy Holding, A.S.,-V Likvidaci v. Kozeny*¹ involved a dispute arising out of the privatization of formerly state-owned companies in the Czech Republic in the early 1990’s. During this transition, many Czech citizens purchased shares in designated companies or relied upon investment privatization funds (“IPFs”) to manage their investments. A group of Czech investors alleged that one such IPF, Harvard Capital and Consulting (“Harvard”), was used by Viktor Kozeny to solicit investments, which were later diverted by Kozeny to a series of shell companies in Cyprus. Kozeny relocated to the Bahamas and was prosecuted *in absentia* after the Bahamian government refused extradition. A judgment of the Municipal Court in Prague rendered a judgment on July 9, 2010 finding Kozeny guilty of gross fraud and sentencing him to a term of 10 years. One of the Harvard investment funds involved in the scheme, Harvardsky Prumyslovy Holding, A.S , -V Likvidaci (“Harvardsky”), as well as approximately 250,000 shareholders, joined in the action as injured parties, and Kozeny was directed to pay compensation in the sum of CZK 8,289,933,074.05 (approximately \$410 million) to Harvardsky as “compensation for damage to the victim” under section 228(1) of the Czech Code of Criminal Procedure.

Harvardsky brought an action in the Supreme Court of the State of New York, New York County, seeking to recognize the Czech judgment pursuant to Article 53 of the CPLR and to attach certain funds belonging to defendant Landlocked Shipping Company (“Landlocked”), a company that Harvardsky alleged Kozeny secretly controlled.² The trial court denied the attachment, expressing doubt as to the likelihood of success on Harvardsky’s application to recognize the Czech judgment, as the judgment was penal in nature, and further due to a lack of evidence that Kozeny was properly served with the summons and complaint. The trial court also dismissed the complaint as against Landlocked and vacated a prior temporary restraining order that had been entered against Landlocked.

On appeal, the Appellate Division granted a temporary stay of the trial court’s order and ultimately reversed. The Court first noted that the issue of “whether the courts of this state must recognize a foreign country judgment

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issued by a criminal court awarding a sum of money as compensation for damages sustained by the victim of a fraudulent scheme” was a matter of first impression. The Court proceeded to analyze whether the Czech judgment could be considered a “foreign country judgment” under CPLR 5301(b), which defines a “foreign country judgment” as “any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.” Noting that the Czech judgment directed Kozeny to pay a specific sum as “compensation for damages to the victim” of his scheme to defraud, the Court of Appeals found that, although the judgment was “not one for taxes or support obligations” or a fine, the question remained as to whether a judgment providing compensation to a crime victim (here, a victim of criminal fraud) should be regarded as a “penalty” and denied enforcement. The Court rejected Landlocked’s argument that a judgment awarding damages for fraud, although construed as compensatory when rendered by a civil court, must be regarded an unenforceable penalty when issued by a criminal tribunal, noting that “there are any number of civil proceedings in which the compensation recoverable by the victim may constitute a penalty.” Moreover, the Court explained, “the statutory basis for denying enforcement [under CPLR Article 53] is predicated on the classification and purpose of the judgment, not the court that issued it, making no differentiation between foreign civil and foreign criminal judgments.” Finally, the Court affirmed that “[t]he purpose of CPLR article 53 ... adopting the Uniform Foreign Country Money-Judgments Recognition Act (CPLR 5309), is to promote reciprocal treatment for New York judgments in foreign courts by providing a statutory basis to reflect New York’s liberal treatment of foreign judgments,” and remarked that “the salutary purpose of the statute is not promoted by the refusal to recognize a foreign judgment based on some contrived criterion, which may then prompt foreign courts to deny enforcement to similar New York judgments.” The Court accordingly reversed the trial court’s order granting Landlocked’s motion to dismiss the complaint insofar as asserted against it, and denying Harvardsky’s motion for an order of attachment against Landlocked’s bank account funds, reinstated the complaint as against Landlocked, and granted the motion for attachment.

The Appellate Division’s decision takes an expansive view of the class of foreign judgments that may be recognized under Article 53 and further affirms New York’s international status as a key enforcement jurisdiction.

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¹ --- N.Y.S.2d ---, 2014 WL 1281527, 2014 N.Y. Slip Op. 02250 (1st Dep’t Apr. 1, 2014).

² See *Harvardsky Prumyslovy Holding, As.-V v. Kozeny*, 2013 WL 2951448, 2013 N.Y. Slip Op. 31225(U), No. 651826/2012 (Trial Order) (Sup. Ct. N.Y. Co. Jun. 07, 2013).