

Rushing to Court or Rushing to Judgment?

Should *lis pendens* also result in denying recognition to judgments issued by foreign courts seized second?

No, ruled the French Supreme court for civil and criminal matters (*Cour de cassation*) in a case involving a French court and an American court. A Franco-American couple was breaking up. The French husband initiated divorce proceedings in Toulouse, France, on October 28, 2005. A month later, on November 21, 2005, the American wife also sought divorce before a Massachusetts Court. The American court was seized second, but it caught up and delivered a divorce judgment much before the French court, on August 16, 2006. The woman sought recognition of the American judgment in France. In May 2008, the Toulouse court held that the foreign judgment was entitled to be recognized in France, and thus terminated the French proceedings.

Under the French common law of jurisdiction, the rule of *lis pendens* applies to proceedings initiated first in a foreign country. When this happens, French courts may decline jurisdiction if an eventual judgment of the foreign court would be recognized in France.

Here of course, the situation is different, as the French court was seized first. The question is therefore whether *lis pendens* could produce an indirect effect. One of the requirements for the recognition of foreign judgments is that the foreign court have jurisdiction from the perspective of the French legal order. Could a foreign court seized second lack such jurisdiction because it ignored French proceedings initiated first? Until 2006, there was no real need to answer this question, since the mere fact that the party who would resist recognition was French was enough. However, article 15 of the Civil Code is no bar anymore to the recognition of foreign judgments in France.

In a judgment of 30 September 2009, the *Cour de cassation* confirmed the judgment of the Toulouse court. It merely applied the traditional requirements of the French common law of judgments and found that the American judgment deserved recognition. With respect to the *lis pendens* situation, it held that it was

irrelevant.

Conclusion: what really matters when you might be, or even have been, sued before a French court is not to rush to court, but to rush to judgment.