

Nonrecognition of Foreign Defamation Judgments

In recent years, there has been much debate in Congress and in the several states concerning what effect foreign judgments should be given by United States courts that do not comport with the First Amendment to the United States Constitution. In such cases of “libel tourism,” a plaintiff chooses to sue for defamation in a foreign state that has lower standards of proof for defamation. Even though such a defamation claim would not be successful if pled in a United States court due to the First Amendment, the libel tourist seeks to enforce the judgment rendered abroad in the United States. Put another way, the libel tourist seeks to sneak around the First Amendment by bringing the case as an enforcement proceeding. Such actions are governed in many states by the Uniform Foreign-Country Money Judgments Recognition Act. California’s version of the Uniform Foreign-Country Money Judgments Recognition Act (Cal. Code Civil Proc. 1716-1717) was amended last year to provide as follows:

1716. ... (c) A court of this state is not required to recognize a foreign-country judgment if ... (9) The judgment includes recovery for a claim of defamation unless the court determines that the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions....

1717.... (c) If a judgment was rendered in an action for defamation in a foreign country against a person who is a resident of California or a person or entity amenable to jurisdiction in California, and declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable in California under Section 1716 is sought, a court has jurisdiction to determine the declaratory relief action as well as personal jurisdiction over the person or entity who obtained the foreign-country judgment if both of the following apply:

(1) The publication at issue was published in California.

(2) The person who is a resident, or the person or entity who is amenable to jurisdiction in California, either (A) has assets in California that might be

subject to an enforcement proceeding to satisfy the foreign-country defamation judgment, or (B) may have to take actions in California to comply with the foreign-country defamation judgment....

As an empirical matter, I wonder what impact this will have on California cases. As a jurisdictional matter, it is interesting to see that California has presumably expanded its view of personal jurisdiction to cover these cases in the declaratory judgment context. In any event, it shows that there still remains conflict of laws activity in state legislatures.