No Power to Issue Anti-Enforcement Injunctions in New York

On 26 January 2012, the U.S. Court of Appeals for the Second Circuit has issued its long-awaited opinion in the *Chevron* case on the power to issue anti-enforcement injunctions.

The judgment offers an interesting analysis of the power of U.S. Courts to issue such novel and radical injunctions. The Court finds that the issue is controlled by its (New York) *Uniform Foreign Country Money-Judgments Recognition Act*, and not by its precedents on anti-suit injunctions. The Court also discusses briefly comity, and declines Chevron's invitation to be "*a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs*".

Recognition Act

> *Whatever the merits of Chevron's complaints about the Ecuadorian courts, however, the procedural device it has chosen to present those claims is simply unavailable: The Recognition Act nowhere authorizes a court to declare a foreign judgment unenforceable on the preemptive suit of a putative judgment-debtor. The structure of the Act is clear. The sections on which Chevron relies provide exceptions from the circumstances in which a holder of a foreign judgment can obtain enforcement of that judgment in New York; they do not create an affirmative cause of action to declare foreign judgments void and enjoin their enforcement. (…)*
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> *These procedural requirements exist for good reason. The Recognition Act and the common-law principles it encapsulates are motivated by an interest to provide for the enforcement of foreign judgments, not to prevent them. The Act "was designed to promote the efficient enforcement of New York judgments abroad by assuring foreign jurisdictions that their judgments would receive streamlined enforcement" in New York. The exceptions to that rule – such as the mandatory nonrecognition of judgments procured without due process or personal jurisdiction – serve the same purpose: to facilitate trust among nations*

and their judicial systems by preventing one jurisdiction from using the trappings of sovereignty to engage in a sort of seignorage by which easy judgments are minted and sold to any plaintiff willing to pay for them. Accordingly, a jurisdiction such as New York that requires foreign judgments to comport with certain basic requirements of fairness and legitimacy instills trust in the overall enforcement-facilitation framework.

Chevron would turn that framework on its head and render a law designed to facilitate "generous" judgment enforcement into a regime by which such enforcement could be preemptively avoided.

Comity

Considerations of international comity provide additional reasons to conclude that the Recognition Act cannot support the broad injunctive remedy granted by the district court. As noted above, the New York legislature, in enacting the Recognition Act, sought to provide a ready means for foreign judgment-creditors to secure routine enforcement of their rights in the New York courts, while reserving New York's right to decline to participate in the enforcement of fraudulent "judgments" obtained in corrupt legal systems whose courts failed to provide the basic rudiments of fair adjudication. In doing so, New York undertook to act as a responsible participant in an international system of justice – not to set up its courts as a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs. The exceptions to New York's general policy of enforcing foreign judgments are exactly that: exceptions that permit New York courts, under specified
circumstances, to decline efforts to take advantage of New York's policy of liberally enforcing such judgments. Nothing in the language, history, or purposes of the Act suggests that it creates causes of action by which disappointed litigants in foreign cases can ask a New York court to restrain efforts to enforce those foreign judgments against them, or to preempt the courts of other countries from making their own decisions about the enforceability of such judgments. (…)

We need not address here whether and how international comity concerns would affect a hypothetical effort by a state to vest its courts with the authority

to issue so radical an injunction. There is no such statutory authorization, for New York has authorized no such relief. To resolve the dispute before us, we need only address whether the statutory scheme announced by New York's Recognition Act allows the district court to declare the Ecuadorian judgment non-recognizable, or to enjoin plaintiffs from seeking to enforce that judgment. Because we find that it does not, the injunction collapses before we reach issues of international comity.