

Swiss Court Rules on Enforcement of English Freezing Orders

On October 31st, 2011, the Swiss Federal Tribunal ruled again that English freezing (formerly *Mareva*) orders may be declared enforceable in Switzerland.

The judgment was delivered in German, but it is usefully presented in English by Matthias Scherer and Simone Nadelhofer (Lalive) at the *Kluwer Arbitration Blog*.

The most interesting contribution of the case is to address the issue of whether obtaining a declaration of enforceability is conditional upon the plaintiff showing that he has a legitimate interest in seeking such declaration. The argument against the existence of such interest was that Swiss banks typically comply with English world wide freezing orders voluntarily. The Federal Court held that this did not prevent plaintiffs from seeking a declaration. According to Scherer and Nadelhofer:

According to the Supreme Court, the Lugano Convention 1988 does not require that a party shows a legitimate interest in obtaining a declaration of enforceability of a freezing order. Furthermore, the (Swiss) bank's voluntary compliance with a foreign freezing order is no obstacle to the claimant's right to have the order declared enforceable. Indeed, once the claimant obtains such a declaration, the foreign freezing order is treated as if it were a Swiss decision. The recognition of a foreign judgment thus results in its equal treatment with domestic judgments. The declaration of enforceability by domestic courts further allows for a facilitated enforcement procedure.