

The enforcement of Chinese money judgments in common law courts

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In the recent decision of *Hebei Huaneng Industrial Development Co Ltd v Shi*,^[1] the High Court of New Zealand was faced with an argument that a money judgment of the Higher People's Court of Hebei should not be enforced because the courts of China are not independent of the political arms of government and therefore do not qualify as "courts" for the purpose of New Zealand's rules on the enforcement of foreign judgments.

The High Court rejected that argument: complaints of political interference may be relevant if a judgment debtor can demonstrate a failure to accord natural justice in the individual case, or another recognized defence to enforcement, but there was no basis for concluding that Chinese courts were not courts at all.

As the court noted, complaints about the independence or impartiality of foreign courts might arise in two circumstances. Where the court was deciding whether to decline jurisdiction in favour of a foreign court, it would treat allegations that justice could not be obtained in the foreign jurisdiction with great wariness and caution.^[2] Where the issue arose on an application to enforce a foreign judgment, the enforcement court has the benefit of seeing what actually happened in the foreign proceeding, and can assess whether the standards of natural justice in particular were met. Simply refusing to recognize an entire foreign court system would give rise to serious practical problems,^[3] as well as risk violating Cardozo J's famous dictum that courts "are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home."^[4]

The judge found that Chinese courts were distinct from the legislative and administrative bodies of the state, and that although there was evidence to suggest that Chinese judges sometimes felt the need to meet the expectations of the local people's congress or branch of the Communist Party, this did not justify

refusing to recognize the court system as a whole. In a commercial case resolved according to recognizably judicial processes, where there was no suggestion of actual political interference, the judgment could be recognized.

[1] *Hebei Huaneng Industrial Development Co Ltd v Shi* [2020] NZHC 2992. The decision arose on an application to stay or dismiss the enforcement proceeding at the jurisdictional stage.

[2] *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804.

[3] The judge noted that the House of Lords had rejected the argument that it should not recognize the courts of the German Democratic Republic (*Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1967] 1 AC 853), and the Second Circuit Court of Appeals was not persuaded that justice could not be done in Venezuela (*Blanco v Banco Industrial de Venezuela* 997 F 2d 974 (2nd Cir 1993)). By contrast, a Liberian judgment was refused recognition in *Bridgeway Corp v Citibank* 45 F Supp 2d 276 (SDNY 1999), 201 F 3d 134 (2nd Cir 2000) where there was effectively no functioning court system.

[4] *Loucks v Standard Oil Co* 224 NY 99 (1918).