

Cross Border Business Law Blog

Chinese and U.S. Courts Support Cross-Pacific Enforcement of Commercial Judgments

By Robert Spitzer on 1.26.18 | Posted in China, Commercial Judgements, International

Businesses and entrepreneurs on both sides of the Pacific should be aware and celebrate that just as cross-border commerce is increasing, so, too, is international judicial recognition of commercial judgments, as evidenced by recent Chinese and Washington State court rulings.

In 2017, a Chinese court, perhaps for the first time, enforced a U.S. commercial judgment. An article by Dr. Jie (Jeanne) Huang published by University of New South Wales' China International Business and Economic Law initiative [1] reported on the 2017 decision, which recognized and enforced a monetary judgment from the Los Angeles County Superior Court. The case is *Liu Li v. Tao Li and Tong Wu* [2] decided by the Intermediate People's Court of Wuhan City, China.

The decision arose from a commercial dispute between the parties related to the sale of stock in a California company. After the stock sale price was paid, the sellers disappeared and the purchaser then sued to recover his \$125,000 investment. A default judgment was rendered in favor of the plaintiff, after service on the defendants by publication. Liu brought the L.A. Superior Court judgment to the Intermediate People's Court of Wuhan City, where the defendants owed property. Liu asked the court to recognize and enforce the U.S. judgment against Tao and Tong.

The Wuhan City Court found that the defendants lived and had property in Wuhan, so that it had jurisdiction over Tao and Tong. It further found that the U.S. judgment was authentic and properly translated into Chinese, and therefore met the formality requirements for judgment recognition and enforcement ("JRE"). However because there is no formal agreement between the U.S. and China for judgment enforcement, it looked to the doctrine of reciprocity, and determined that there has been reciprocity in the enforcement of foreign judgments. Liu provided evidence of such reciprocity in the case of *Hubei Gezhouba Sanlian Industrial Co., Ltd et. al. v. Robinson Helicopter Co., Inc.*, [3] in which the U.S. District Court for the Central District of California court recognized and enforced a Chinese judgment. Therefore, the Court held that reciprocity has been established between the two countries. Finally the Court held that enforcement of the U.S. judgment regarding the share transfer dispute does not harm the fundamental legal principles, sovereignty, security, and social public interest in China. As a

result, the U.S. judgment was recognized and enforced according to Article 282 of the Chinese Civil Procedure Law.

Across the Pacific, the Washington State Supreme Court recently confirmed that Hong Kong judgments against Chinese borrowers will be enforced in Washington State, even when the choice of Hong Kong law may conflict with Washington community property principles.

In Shanghai Commercial Bank Ltd., v. Kung Da Chang, 189 Wn.2d 474, 404 P.3d 62 (2017), the Court addressed whether a Hong Kong judgment is enforceable against marital community property in Washington State. In the Chinese loan documents there was a provision that Chinese law would govern interpretation of the loan documents. As Chinese law did not distinguish between community and separate property, all the property of the borrower-husband was viewed by the Hong Kong court as being subject to the judgment.

When the loan wasn't repaid, the Bank obtained a judgment against the borrower in a Hong Kong court. At that time, the borrower lived in Bellevue, Washington with his wife. The Bank sought JRE in Washington state to collect the judgment against all of the property of the Borrower, including any property that would be viewed as community property of the non-signing spouse under Washington law.

In determining whether to enforce the "choice of law" provision in the Hong Kong contract, the court applied the "most significant relationship" test for determining conflict of law issues and, ultimately, whether Hong Kong law should be applied to reach the community assets in Washington to satisfy a valid and enforceable foreign judgment. Because the transaction was negotiated and carried out in Hong Kong, Hong Kong law should apply. Therefore, the Court determined that the borrower's community property may be reached to satisfy the Hong Kong judgment.

These two cases are emblematic of a growing judicial connection between China and the United States, corresponding to expanding commercial ties. Those of us working to promote trade and closer economic connections between our nations should appreciate the increasing respect and harmony represented by these recent judicial acts.

[1] <https://www.cibel.unsw.edu.au/blog/chinese-court-unprecedentedly-recognized-and-enforced-us-commercial-monetary-judgment>

[2] Liu Li v. Tao Li and Tong Wu, (2015) Yue Wuhan Zhong Min Shang Wai Chu Zi No. 00026, the Intermediate People's Court of Wuhan City, Hubei Province, 30 June 2017.

[3] Hubei Gezhouba Sanlian Industrial Co., Ltd et. al. v. Robinson Helicopter Co., Inc., U.S.

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District Court Central District of California, Case 2:06-cv-01798-FMC-SS, judgment issued in 2009.

Tags: Chinese Civil Procedure Law, Chinese court rulings, commercial ties, Community Property, foreign judgements, Hong Kong, Intermediate People's Court of Wuhan City, judgment recognition and enforcement, L.A. Superior Court, Los Angeles County Superior Court, stock sale price, U.S. commercial judgement, University of New South Wales' China International Business and Economic Law initiative, Washington state court rulings, Washington Supreme Court