
ENFORCEMENT OF FOREIGN COUNTRY JUDGMENTS IN ARIZONA

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Introduction

GENERAL PRINCIPLES:

- Presumption is that foreign countries' judgments will be recognized and enforced by the courts of the United States absent a compelling reason for refusal.
- Compelling reasons for refusal include: lack of jurisdiction, lack of due process, fraud, and repugnancy to public policy.
- Enforcement generally requires conversion of foreign currency to U.S. dollars.

I. Sources of Authority for Recognition

The Common Law

1. U.S. Common Law – *Hilton v. Guyot*, 159 U.S. 113 (1895).
 - Established the presumption of recognition as a matter of international comity.
 - Also required reciprocity.
2. Arizona Common Law –
 - *Feuchter v. Bazarro*, 22 Ariz. App. 427 (1974)
 - Dealt with recognition, not enforcement.
 - *Ryckman v. Alberta Securities Commission*, 200 Ariz. 540 (Ct. App. 2001).
 - Adopted criteria for recognition of *Restatement (3d) of Foreign Relations Law*, §§ 481-482.

Sources of Authority for Recognition (cont'd.)

3. Restatement (Third) of Foreign Relations Law

- § 481 – Absent specific grounds for refusal, final judgments of the courts of foreign countries are entitled to recognition and enforcement in the U.S.
 - Applies to all forms of Judgments dealing with money, personal status, and property rights.
 - Does not apply to Judgments for the collection of taxes, fines or penalties -- they are covered under § 483.
- § 482 – Defines grounds for refusal of recognition, some of which are mandatory, and some of which are discretionary with the receiving court.

Sources of Authority for Recognition (cont'd.)

Uniform Acts (Not Adopted in Arizona.)

- Uniform Foreign Money-Judgments Recognition Act of 1962.
 - Adopted in 31 States, D.C. and the U.S. V.I.
 - Only applies to final judgments that grant or deny a monetary award, except taxes, fines or penalties.
 - Does not apply to rulings on personal status or property rights.
 - Allows for enforcement per the procedures of the “Sister States” Judgment Act.
 - Specifically defines bases for personal jurisdiction.
 - Adopts the same defenses to recognition set forth in § 482, Rest. (3d) Foreign Relations Law.

Authority for Recognition (cont'd.) - Acts

- Uniform Foreign-Country Money Judgments Recognition Act of 2005.
 - Designed to supersede the 1962 Act.
 - Adopted in 20 states and D.C.; pending in New Jersey and Massachusetts.
 - Changes from 1962 Act:
 - ❖ Requires the filing of a lawsuit for enforcement, rather than a registration process.
 - ❖ Specifies the parties' respective burdens of proof.
 - ❖ Clarifies definition of a "foreign country" judgment.
 - ❖ Imposes 15 year statute of limitations.

Sources of Authority for Recognition (cont'd.)

United States Treaties.

- State Department says that the U.S. has no treaties that provide for the enforcement of foreign country judgments in the U.S.
- In fact there are two:
 - Greece: *Vagenas v. Continental Gin Corp.*, 988 F.2d 104 (11th Cir. 1993).
 - South Korea: *Choi v. Kim*, 50 F.3d 244 (3d Cir. 1995).
- Based on the “national treatment” provisions in those treaties.
 - Both opinions have been affirmed by later decisions in those Circuits.
 - Both have been rejected by other Circuits.

II. Defenses to Recognition

Mandatory Grounds for Refusal.

- Lack of Personal Jurisdiction.
 - Only arises in default situations because of US law regarding waiver of jurisdiction.
 - *Baldwin v. Iowa State Traveling Men's Association*, 283 U.S. 522 (1931) – if defendant challenges jurisdiction and loses, bound by that ruling.
 - *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982) – applies the *Baldwin* doctrine to foreign country judgments.
 - *Restatement (Third) of Foreign Relations Law*, § 421, adopts the *Baldwin* doctrine.

Defenses to Recognition (cont'd.)

- Lack of Due Process.
 - The judgment was rendered by a judicial system that does not provide impartial tribunals or procedures compatible with due process of law.
 - *Bridgeway Corp. v. Citibank*, 201 F.3d 134 (2nd Cir. 2000) - Liberian judicial system in such chaos that a fair trial was impossible.
 - Appearance at and participation in trial does not waive the objection.
 - *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406 (9th Cir. 1995) – Shah's sister precluded from meaningful participation by pending death sentence.

Recognition Defenses (cont'd.) – Due Process

- *Bird v. Glacier Electric Coop.*, 255 F.3d 1136 (9th Cir. 2001) - tribal judgment against construction company tainted by racial prejudice.
- *Avesta v. Petroutsas*, 580 F.3d 1000 (9th Cir. 2009) – Greek court's child custody decree based on such egregious disregard of the Hague Convention on Int'l. Child Abduction to constitute a denial of due process.
- *Handel v. Artukovic*, 601 F. Supp. 1421 (C.D.Cal. 1985) – Claim under Yugoslavian law for WWII war crimes constituted unenforceable *ex post facto* law because enacted after the crimes were committed.

Defenses to Recognition (cont'd.)

Discretionary Grounds for Refusal:

- Lack of Subject Matter Jurisdiction.
 - *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997) – Tribal judgment not entitled to recognition because tribe didn't have jurisdiction of accident that occurred on federal highway that crossed tribal land.
 - *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. ENC Corp.*, 467 F.3d 1205 (9th Cir. 2006) – Republic of the Philippines could not enter valid in rem judgment against assets located in New York.
 - May arise where receiving state claims exclusive jurisdiction of the subject matter.
 - Mandatory ground for refusal of jurisdiction under the Uniform Acts.

Defenses to Recognition (cont'd.)

- Lack of Adequate Notice.
 - *Choi v. Kim*, 50 F.3d 244 (3d Cir. 1995) – Defendant not given notice of application for confession of judgment.
 - *Rotary Club of Tucson v. Chaprales Ramos de Pena*, 160 Ariz. 362 (Ct. App. 1989) – No valid service ever made, and no evidence that defendant knew of the Mexican lawsuit.
 - However, the fact that the Summon is in a foreign language is irrelevant.
- Judgment Obtained by Fraud.
 - *Feuchter v. Bazarro*, 22 Ariz. App. 427 (1974) – Must be admissible evidence to support Arizona's definition of fraud.
 - *Beltran v. Harrah's Arizona Corp.*, 220 Ariz. 29 (Ct. App. 2008) – Requires a showing of **extrinsic** fraud – counsel's unfulfilled promises to provide evidence does not amount to extrinsic fraud.

Defenses to Recognition (cont'd.)

- Judgment is Repugnant to an Express Public Policy of the U.S. or of the Receiving State.
 - A judgment may be refused enforcement if it is repugnant to an **express** public policy of the United States or of the individual state in which enforcement is sought.
 - *Ackerman v. Laveen*, 788 F2d 830 (2nd Cir. 1986) – the judgment must be contrary to a fundamental public policy of the receiving state; a mere difference in legal systems or substantive law is not sufficient.
 - *Spann v. Compania Mexicana Radiofusora Fronteriza, S.A.*, 131 F2d 609 (5th Cir. 1942) – the fact that a remedy would not be available under U.S. law does not make it repugnant.
 - *Yahoo v. La Ligue Contre le Racisme et L'Antisemitisme*, 433 F. 3d 1199 (9th Cir. 2006) – French order to remove anti-Semitic content from website constitutes violation of 1st Amendment rights.

Defenses to Recognition (cont'd.)

- The Judgment Conflicts with another Final Judgment that is Entitled to Recognition.
 - *Byblos Bank Europe, S.A. v. Syrketi*, 819 N.Y. Supp. 2d 412 (2007) – even if prior in time, the conflicting judgment must itself be entitled to recognition.
- The Judgment is Contrary to an Agreement to Submit the Controversy to Another Forum.
 - Forum Selection Provisions.
 - Arbitration Provisions.
 - *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 92 S. Ct. 1907, 32 L.Ed.2d 513 (1972) – strong policy in favor of forum selection provisions.
- Lack of Reciprocity – no longer an issue. *Banco Nacional de Cuba v. Sabbatino* 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964).

III. Enforcement - Currency Conversion

Once Recognition Granted:

- Enforcement proceeds pursuant to applicable State law.
- This will generally require conversion of the foreign country judgment into U.S. Dollars.

Competing Rules for Currency Conversion:

- Breach Day Rule.
 - The traditional, old-fashioned rule of currency conversion.
 - Amount of the debt is deemed fixed on the date of the breach, and conversion to U.S. Dollars is calculated using exchange rate in effect on that day.

Currency Conversion (cont'd.)

- Judgment Day Rule.
 - The conversion is made using the exchange rate in effect on the day that the new U.S. Judgment is entered.
- Payment Date Rule.
 - The conversion rate is based on the exchange rate in effect on the date the Judgment is paid.
 - Requires entry of judgment in the foreign currency.
 - Approach advocated by the Uniform Law Commission.

Currency Conversion (cont'd.)

Uniform Foreign Money Claims Act of 1989.

- Adopted by 20 states, D.C., and the U.S.V.I.
- Adopts the Payment Date Rule.
 - Allows judgments to be entered by U.S. Courts in foreign currency.
 - Gives debtor the option to pay in either U.S. or foreign currency.
- Also provides procedures for determining in what currency the debt should be paid.

Currency Conversion (cont'd.)

Restatement (3d) of Foreign Relations Law, § 823.

- Adopts a “creditor’s choice” rule.
- Allows creditor to use either the Breach Date or Judgment Date, whichever is most favorable.
 - If foreign currency has declined in value since the date of the breach, the exchange rate in effect on the date of breach will be used.
 - If the foreign currency has increased in value since the date of breach, the exchange rate in effect on the judgment day will be used.
- Court may depart from these rules when equity requires it.