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**Attaching Property in New
York in Support of Cross-
Border Litigation**

Attaching Property in Support of Foreign Proceedings

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- Attachments of property in New York are typically effected through the use of a motion for attachment via temporary restraining order.
 - Action is typically brought together with a complaint to enforce a foreign money judgment or a complaint seeking to preserve the status quo in connection with a foreign proceeding.
- Neither New York nor any US jurisdiction will grant the equivalent of a Mareva injunction. Courts will only grant injunctive relief over property within the jurisdiction of the relevant court or over the person if the person is subject to the exercise of personal jurisdiction by the court.

Jurisdiction Requirements: *In Personam* Jurisdiction

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- Generally speaking, courts in the United States must have jurisdiction over a defendant in order to adjudicate a case involving that person.
 - This is known as *in personam* jurisdiction
 - Defendant must have certain minimum contacts with the forum state that relate to the cause of action such that it is fair to require that party to defend the cause of action in that forum
 - If the injunctive relief sought seeks to bind the defendant, the court must have personal jurisdiction over the defendant

Jurisdictional Requirements: *In Rem* Jurisdiction

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- If the Injunctive relief sought seeks to enforce a right against a specific piece of property, the court must have jurisdiction over the property—known as *in rem* jurisdiction.
 - For all intents and purposes, this can be simplified to mean that the property at issue is located within the jurisdiction of the court.
- For cases in which assets are bring frozen in support of foreign proceedings, this will be the most common form of injunctive relief sought.

Pre-Judgment Attachments In Support of Foreign Litigation

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- If the sole purpose of the attachment is to preserve an asset as security for an action being litigated abroad against its owner, the New York court need only have jurisdiction over the property provided that:
 - The forum in which the litigation or arbitration is proceeding against the owner has personal jurisdiction over that party.

Prejudgment Attachment in New York - Litigation

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- Section 6212(a) of New York’s Civil Practice Law Rules (“CPLR”) provides that on a motion for attachment, a plaintiff must first show, by affidavit or other written evidence:
 1. That there is a cause of action;
 2. That it is probable that the plaintiff will succeed on the merits;
 3. That one or more of the grounds for an attachment under Section 6201 of the CPLR exists; and
 4. That the amount demanded from the defendant exceeds all counterclaims known to the plaintiff.

Prejudgment Attachment in New York - Arbitration

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- In addition to the factors set forth in CPLR § 6212(a), for an order of attachment in aid of arbitration to issue, the plaintiff must also establish that the award to which the plaintiff may be entitled would be rendered ineffectual without the provisional relief sought by the motion for attachment. See CPLR § 7502(c)
- The arbitration does not need to have been commenced but rather can be one that “is to be commenced inside or outside the state.”

Grounds for Attachment Relating to Foreign Actions

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- CPLR § 6201 provides that an order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded, and would be entitled, in whole or in part, or in the alternative, to a money judgment against one or more defendants, when:
 - The defendant is a nondomiciliary residing without the state, or is a foreign corporation not qualified to do business in the state (CPLR § 6201(1)); or
 - The defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts (CPLR § 6201(3)); or
 - The cause of action is based on a judgment which qualifies for recognition as a foreign money judgment under Article 53 of the CPLR (CPLR § 6201(5)).

Applicable Standard

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- When considering the first two requirements for granting an order of attachment under CPLR § 6212(a) (that there is a cause of action and that it is probable that the plaintiff will succeed on the merits) the court must give the plaintiff the benefit of all legitimate inferences and deductions that can be made from the facts stated.

Orders of Attachment May Be Sought *Ex Parte*

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- An order of attachment may be sought without notice to the defendant whose property is being attached and prior to the service of a summons, however:
 - The applicant must provide a detailed explanation of the jurisdictional nexus to New York
 - The moving papers should contain either a certificate as to the foreign and unqualified status of any corporate defendant, or provide an affirmation of consultation with NY Secretary of State (or Banking Department) that defendant is neither a New York corporation nor qualified to do business here
 - For individual defendants, moving papers must provide the source of knowledge that the defendant is a non-domiciliary residing without the state

Ex Parte Orders – Additional Requirements

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- Where an *ex parte* order is granted, plaintiff must provide an undertaking in an amount fixed by the court.
- An *ex parte* order, except for those issued under CPLR § 6201(1), must provide that the applicant, within five days after levy on the property, shall move to confirm the attachment.
- Where the order is based on CPLR § 6201(1), a garnishee's statement must be served and the plaintiff must move within ten days after levy to confirm the order.