S523-A HOYLMAN Same as A 4580-A Lavine
ON FILE: 05/19/21 Civil Practice Law and Rules
TITLE....Revises and clarifies the uniform foreign country money judgments recognition act
01/06/21 REFERRED TO JUDICIARY
02/23/21 1ST REPORT CAL.406
02/24/21 2ND REPORT CAL.
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03/03/21 DELIVERED TO ASSEMBLY
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05/19/21 RECALLED FROM ASSEMBLY
05/19/21 returned to senate
05/19/21 VOTE RECONSIDERED - RESTORED TO THIRD READING
05/19/21 AMENDED ON THIRD READING 523A
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05/24/21 RETURNED TO ASSEMBLY
05/24/21 referred to codes

HOYLMAN
Amd Art 53 Art Head, §§5301, 5302, 5303, 5304, 5305, 5306, 5307 & 5309, CPLR
Revises and clarifies the uniform foreign country money judgments recognition act.

STATE OF NEW YORK

523--A

Cal. No. 406

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules, in relation to revising and clarifying the uniform foreign country money-judgments recognition act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The article heading of article 53 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

RECOGNITION OF FOREIGN COUNTRY MONEY JUDGMENTS

[~~SUMMARY OF ARTICLE~~]

§ 2. Section 5301 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, subdivision (a) as amended by chapter 119 of the laws of 1979, is amended to read as follows:

§ 5301. Definitions. As used in this article the following definitions shall be applicable.

(a) Foreign [~~state~~] country. "Foreign [~~state~~] country" [~~in this article~~] means [~~any governmental unit~~] a government other than:

1. the United States[~~, or any~~];

2. a state, district, commonwealth, territory[~~,~~] or insular possession [~~thereof, or the Panama Canal Zone or the Trust Territory of the Pacific Islands~~] of the United States; or

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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3. any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) Foreign country judgment. "Foreign country judgment" [~~in this article~~] means [~~any~~] a judgment of a court of a foreign [~~state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters~~] country.

§ 3. Section 5302 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

§ 5302. Applicability. [~~This article applies to any foreign country judgment which is final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.~~] (a) Except as otherwise provided in subdivision (b) of this section, the provisions of this article apply to a foreign country judgment to the extent that such judgment:

1. grants or denies recovery of a sum of money; and

2. under the law of the foreign country where rendered, is final, conclusive and enforceable even though an appeal therefrom is pending or it is subject to appeal.

(b) This article does not apply to a foreign country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent the judgment is:

1. a judgment for taxes;

2. a fine or penalty; or

3. a judgment for divorce, support or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign country judgment has the burden of establishing that this article applies to the foreign country judgment.

§ 4. Section 5303 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

§ 5303. Recognition [~~and~~] enforcement, and proceedings. (a) Except as is otherwise provided in section [~~5304~~] fifty-three hundred four of this article or any controlling law of the United States, a court of this state shall recognize a foreign country judgment [~~meeting the requirements of section 5302 is~~] to which this article applies as conclusive between the parties to the extent that it grants or denies recovery of a sum of money. [~~Such a foreign judgment is enforceable by an action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense.~~]

(b) If recognition of a foreign country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action on the judgment or a motion for summary judgment in lieu of complaint seeking recognition of the foreign country judgment.

(c) If recognition of a foreign country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

(d) An action to recognize a foreign country judgment must be commenced within the earlier of the time during which the foreign country judgment is effective in the foreign country or twenty years from the date that the foreign country judgment became effective in the foreign country.

§ 5. Section 5304 of the civil practice law and rules, as amended by chapter 66 of the laws of 2008, is amended to read as follows:

§ 5304. Grounds for non-recognition. (a) [~~No recognition.~~] A court of this state may not recognize a foreign country judgment [~~is not conclusive~~] if:

1. the judgment was rendered under a judicial system [~~which~~] that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

2. the foreign court did not have personal jurisdiction over the defendant; or

3. the foreign court did not have jurisdiction over the subject matter.

(b) [~~Other grounds for non-recognition.~~] A [~~foreign country judgment~~] court of this state need not [~~be recognized~~] recognize a foreign country judgment if:

1. [~~the foreign court did not have jurisdiction over the subject matter;~~

~~2.~~] the defendant in the [~~proceedings~~] proceeding in the foreign court did not receive notice of the [~~proceedings~~] proceeding in sufficient time to enable [~~him~~] the defendant to defend;

[~~3.~~] 2. the judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

[~~4.~~] 3. the judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;

[~~5.~~] 4. the judgment conflicts with another final and conclusive judgment;

[~~6.~~] 5. the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be [~~settled~~] determined otherwise than by [~~proceedings~~] a proceeding in that court;

[~~7.~~] 6. in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action; [~~or~~]

7. the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering courts with respect to the judgment;

8. the specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law; or

9. the cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless the court before which the matter is brought sitting in this state first determines that the defamation law applied in the foreign court's adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by both the United States and New York constitutions.

(c) A party resisting recognition of a foreign country judgment has the burden of establishing that a ground for non-recognition stated in subdivision (a) or (b) of this section exists; provided that the party seeking recognition shall bear the burden of establishing the adequate protections for freedom of speech and press required as a condition to recognition under paragraph nine of subdivision (b) of this section if the party resisting recognition establishes that the judgment is for defamation.

§ 6. Section 5305 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

§ 5305. Personal jurisdiction. (a) [~~Bases of jurisdiction. The~~] A foreign country judgment [~~shall~~] may not be refused recognition for lack of personal jurisdiction if:

1. the defendant was served with process personally in the foreign [~~state~~] country;

2. the defendant voluntarily appeared in the [~~proceedings~~] proceeding, other than for the purpose of protecting property seized or threatened with seizure in the [~~proceedings~~] proceeding or of contesting the jurisdiction of the court over [~~him~~] the defendant;

3. the defendant prior to the commencement of the [~~proceedings~~] proceeding had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

4. the defendant was domiciled in the foreign [~~state~~] country when the [~~proceedings were~~] proceeding was instituted[~~,~~] or[~~, being a body corporate~~] was a corporation or other form of business organization that had its principal place of business[~~, was incorporated,~~] in, or was organized under the laws of, or had otherwise acquired corporate status, in the foreign [~~state~~] country;

5. the defendant had a business office in the foreign [~~state~~] country and the [~~proceedings~~] proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign [~~state~~] country; or

6. the defendant operated a motor vehicle or airplane in the foreign [~~state~~] country and the [~~proceedings~~] proceeding involved a cause of action arising out of such operation.

(b) [~~Other bases of jurisdiction.~~] The courts of this state may recognize [~~other~~] bases of personal jurisdiction other than those listed in subdivision (a) of this section as sufficient to support a foreign country judgment.

§ 7. Section 5306 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

§ 5306. Stay [~~in case~~] of a proceeding pending appeal of a foreign country judgment. If [~~the defendant satisfies the court either~~] a party establishes that an appeal from a foreign country judgment is pending or [~~that he is entitled and intends to appeal from the foreign country judgment~~] will be taken, the court may stay [~~the proceedings~~] any proceeding with regard to the foreign country judgment until the appeal [~~has been determined or until the expiration of a period of time~~] is concluded, the time for appeal expires, or the appellant has had sufficient [~~to enable the defendant~~] time to prosecute the appeal and has failed to do so.

§ 8. Section 5307 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

§ 5307. [~~Recognition in other situations.~~] Effect of recognition. (a) If the court, in a proceeding under section fifty-three hundred five of this article finds that the judgment is entitled to recognition under this article, then, to the extent that the foreign country judgment grants or denies recovery of a sum of money, the foreign country judgment is:

1. conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

2. enforceable in the same manner and to the same extent as a judgment rendered in this state.

(b) This article does not prevent the recognition of a foreign country judgment in situations not covered by this article.

§ 9. Section 5309 of the civil practice law and rules, as added by chapter 981 of the laws of 1970, is amended to read as follows:

§ [~~5309.~~] 5300. Citation. This article may be cited as the "Uniform Foreign Country [~~Money-Judgments Recognition~~] Money Judgments Act."

§ 10. This act shall take effect immediately and shall apply to all actions commenced on or after the effective date of this act.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S523A

SPONSOR: HOYLMAN

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to revising and clarifying the uniform foreign country money-judgments recognition act

PURPOSE OR GENERAL IDEA OF BILL:

To update New York's foreign country money judgements recognition act consistent with the national uniform act proposed by the Uniform Law Commission ("ULC")in 2005.

SUMMARY OF SPECIFIC PROVISIONS:

This bill effectively updates the 1962 uniform act for the recognition of foreign country money judgements (adopted originally by New York in 1970), in accordance with the revisions set forth in the ULC's 2005 version of the uniform law on the same topic. These changes would bring New York into full conformity with the 2005 model act, which was updated to reflect the evolution of the global judiciary, to ameliorate defects in the language of the original model act, and to clear up inconsistencies in judicial applications. Primarily, this bill enacts the provisions of the 2005 uniform law as follows:

1. Clarifies the definitions to make it clear that the "uniform foreign country money judgments recognition act" applies to foreign countries (not foreign states) and that a judgment entitled to full faith and credit under the U.S. Constitution (i.e. sister states) is not enforceable under this Act.

2. Expressly provides that a party seeking recognition of a foreign judgment has the burden to prove that the judgment is subject to the Act. This issue is not clearly addressed under existing law.

3. At the same time, this Act imposes the burden of proof for establishing a specific ground for non-recognition upon the party raising it, another issue not addressed under existing law.

4. Clarifies explicitly that when recognition is sought as an original matter, the party seeking recognition must file an action in the court to obtain recognition. However, if recognition is sought in a pending action, it may be filed as a counter-claim, cross-claim or affirmative defense in the pending action. Current law does not clearly distinguish between the two procedures.

5. Clarifies and expands grounds for non-recognition of a foreign judgment. Currently, there are specific grounds where a court may not recognize a foreign judgment and other specific grounds where a court need not recognize a foreign judgment. First, this bill moves cases where the

foreign court did not have subject matter jurisdiction from the discretionary criteria to the mandatory standard. Second, the bill adds two new criteria for the court do consider in determining whether, in its discretion, it should grant recognition. •The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering courts with respect to the judgment; and •The specific

proceeding in the foreign court leading to the judgment was not compatible with the requirement of due process of law.

6. Establishes a statute of limitations on enforcement of a foreign-country judgment. If the judgment cannot be enforced any longer in the country of origin, it may not be enforced in a court of the State. However, if there is no limitation on enforcement in the country of origin, the judgment becomes unenforceable in the State after 20 years from the time the judgment is effective in the country of origin.

JUSTIFICATION:

The Uniform Foreign Country Money Judgments Recognition Act of 2005 is a revision of the Uniform Foreign Country Money Judgments Recognition Act of 1962 adopted by New York in 1970 (CPLR Art.53). The revisions included in this legislation correct and clarify gaps in the 1962 uniform law revealed over the last 50+ years. These include addressing the burden of proof for the first time, providing that a petitioner for recognition has the burden of proving a judgment is entitled to recognition under the standards of the Act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. It revises the grounds for denying recognition of foreign country money judgements to better reflect the even more varied forms of judicial process on the modern global stage.

Furthermore, it establishes a statute of limitations for recognition acts, and provides necessary clarity that a judgment entitled to full faith and credit under the U.S. Constitution is not enforceable under this act providing a clear line of delineation between the Uniform Foreign Country Money Judgments Recognition Act (foreign countries) and the Enforcement of Foreign Judgments Act which relates to enforcement of a sister state judgment. This bill, if enacted, would update the law in a way that would provide consistency and clarity in the substance and process relating to recognition of foreign country money judgments - a true necessity a flattened world where technology has linked trade and economic interdependence in ways that could not have been foreseen in 1962.

LEGISLATIVE HISTORY:

None, new bill.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE:
This act shall take effect immediately and shall apply to all actions commenced on or after the effective date of this act.