

# ClientAlert

## Commercial Litigation

October 2014

### *Motorola Credit Corporation v. Standard Chartered Bank: The New York Court of Appeals Limits Restraints on Assets Held in Foreign Bank Branches*

In *Motorola Credit Corporation v. Standard Chartered Bank* (“*Motorola*”),<sup>1</sup> the New York Court of Appeals reaffirmed the “separate entity rule,” holding in a 5 – 2 opinion that a judgment creditor’s service of a restraining notice on a foreign bank’s New York branch is ineffective to freeze assets held in the bank’s foreign branches. *Motorola* marks the first time the Court of Appeals—the highest court in the State of New York—has expressly adopted the nearly century-old common law principle that a bank’s branches are to be treated as separate entities for purposes of enforcing asset restraints. Recognizing that banks with branches both in New York and abroad face competing regulatory regimes, the Court held that this and other policy considerations justified the continuation of the separate entity rule.

#### Background

Plaintiff Motorola Credit Corporation is a judgment creditor seeking to satisfy judgments totaling approximately US\$3.1 billion against several members of the Uzan family, arising from the Uzans’ participation in a fraudulent scheme to induce Motorola to loan over US\$2 billion to a Turkish telecommunications company controlled by the family.<sup>2</sup> Standard Chartered Bank (“SCB”) is a foreign bank incorporated and headquartered in the United Kingdom that has no connection to Motorola’s loan to the Uzans or the underlying litigation in which the judgments were rendered.<sup>3</sup>

In light of the Uzans’ efforts to avoid satisfying the judgments against them, the Southern District of New York entered an order restraining the Uzans and anyone with notice of the order from selling, assigning or transferring the Uzans’ property.<sup>4</sup> Motorola served the restraining order on the New York branch of SCB, which later determined that its branches in the United Arab Emirates held Uzan-related assets valued at approximately US\$30 million.<sup>5</sup> SCB froze the assets in accordance with the restraining order, but regulatory authorities in the UAE and Jordan took contrary actions.<sup>6</sup>



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<sup>1</sup> No. 162 (N.Y. Oct. 23, 2014).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 2 – 3.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

SCB then sought relief from the restraining order in the Southern District of New York, arguing, among other things, that under New York's separate entity rule, service of the restraining order on SCB's New York branch was effective only as to assets located in accounts at that branch and could not freeze assets situated in foreign branches.<sup>7</sup> The district court ruled in SCB's favor, but on appeal the Second Circuit certified the following question to the New York Court of Appeals: "[W]hether the separate entity rule precludes a judgment creditor from ordering a garnishee bank operating branches in New York to restrain a debtor's assets held in foreign branches of the bank." The Court of Appeals accepted certification.<sup>8</sup>

### The Ruling

The Court of Appeals held that the separate entity rule prevents a judgment creditor from ordering a garnishee bank operating a branch in New York to restrain a judgment debtor's assets held in foreign branches of the bank.<sup>9</sup> The Court held that the separate entity rule is a firmly established principle of New York common law and that the policy justifications underlying its existence largely still apply today.<sup>10</sup> The Court pointed to, among other things, the importance of international comity, the potential for conflicts between legal and regulatory regimes in different countries, the risks of competing claims and double liability in separate jurisdictions, and practical constraints and costs associated with conducting a worldwide search for a judgment debtor's assets.<sup>11</sup>

The Court also laid to rest the concern held by many in the banking community that the Court's 2009 decision in *Koehler v. Bank of Bermuda Ltd.*<sup>12</sup> had abrogated the separate entity rule. In *Koehler*, the court held that a court sitting in New York could order a bank over which it had personal jurisdiction to deliver stock certificates owned by a judgment debtor (or cash equal to their value) to a judgment creditor, pursuant to CPLR article 52, when those stock certificates were located outside New York.<sup>13</sup> In distinguishing the case, the *Motorola* Court noted

that *Koehler* did not include any discussion of the separate entity rule, nor did it involve bank branches or assets held in bank accounts.<sup>14</sup> The *Motorola* Court further rejected the argument that the separate entity rule is irreconcilable with *Koehler*, holding that "[a]s a longstanding common-law doctrine, the separate entity rule functions as a limiting principle in the context of international banking, particularly in situations involving attempts to restrain assets held in a garnishee bank's foreign branches."<sup>15</sup>

In a vigorous dissent, Judge Abdus-Salaam, joined by Judge Pigott, argued that the separate entity rule is outdated and, among other things, runs contrary to public policy. She observed that the separate entity rule was initially applied by lower courts in the early part of the last century based on the theory that one bank branch had no way to ascertain the status of a debtor's account at another branch, but modern computer technology has since greatly altered the way global banking institutions operate.<sup>16</sup> She further argued that the majority's holding "permits banks doing business in New York to shield customer accounts held in branches outside of this country, thwarts efforts by judgment creditors to collect judgments, and allows even the most egregious and flagrant judgment debtors to make a mockery of our courts' duly entered judgments."<sup>17</sup>

### Implications

*Motorola* clearly reaffirms that the separate entity rule is an essential part of New York law. Banks with branches in New York now have comfort that mere service on such branches will not result in obligations to freeze assets located in foreign branches (or to turn such assets over to judgment creditors). Under *Motorola*, the burden remains on judgment creditors to serve the foreign branches where the assets they seek are held. The precise domestic scope of the separate entity rule, however, has yet to be determined; the Court left open the issue of whether service on a New York branch is sufficient to require the restraint of assets held elsewhere in the United States.

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7 *Id.* at 3 – 4.

8 *Id.* at 4.

9 *Id.* at 1. According to the Court, lower New York courts and federal courts had previously construed the rule as one that "provides that even when a bank garnishee with a New York branch is subject to personal jurisdiction, its other branches are to be treated as separate entities for certain purposes, particularly with respect to CPLR article 62 prejudgment attachments and article 52 postjudgment restraining notices and turnover orders." *Id.* at 5 (citations omitted).

10 *Id.* at 7 – 8, 11.

11 *Id.* at 6 – 7, 11 – 12.

12 12 N.Y.3d 533 (2009).

13 *Motorola* at 8 – 9.

14 *Id.* at 9 – 10.

15 *Id.* at 10.

16 *Motorola* Dissent at 5 – 11.

17 *Id.* at 2.

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