

A Bank Divided: The “Separate Entity” Rule Lives

New York’s Court of Appeals issued a decision today in *Motorola Credit Corporation v. Standard Chartered Bank*, resolving, at least for the time being, whether foreign branches of a bank are entities separate from that bank’s US branches for the purpose of serving and enforcing attachment orders. Over a lengthy dissent, the majority of justices on the Court said, “Yes.” The Court’s decision breathes new life into the “separate entity” rule, which treats each branch of a bank as though it were an independent corporation. Under the traditional application of the rule, a creditor must serve attachment orders on each individual branch of a bank in order to restrain assets held at that branch, rather than serving a single attachment order which would be legally effective at all branches. The rule has been criticized as an anachronistic holdover of the pre-computer era in banking, and has long been thought to be teetering on the edge of obsolescence. Indeed, in *Koehler v. Bank of Bermuda*, 12 NY3d 533 (2009), the Court of Appeals appeared to be weakening the doctrine when it permitted a creditor to use an attachment on a New York branch to reach bonds held by a bank branch outside the US. In light of this, today’s Court of Appeals decision has caused some surprise.

The *Motorola* decision arises from a “certified question” by the federal appellate court in New York addressed to New York’s highest court to clarify whether the “separate entity” rule has continued viability in light of the *Koehler* decision. The federal appellate court was trying to determine whether it had the power to reach assets held at Standard Chartered Bank’s (“SCB”) branch in the United Arab Emirates through a restraining order served on SCB’s New York branch and predicated on the court’s jurisdiction over that branch. SCB argued that the restraining order subjected it to different and conflicting legal obligations because compliance with the order would have regulatory and financial repercussions in the UAE and other countries.

In rendering its decision, New York’s high court was forced to consider the complications that would arise if banks that operate in New York could be forced by an order of attachment in this country to violate the laws of another country. Notwithstanding the plaintiffs’ strong arguments that the rule should be abandoned based on longstanding corporate law, technological obsolescence and commercial efficiency, New York’s high court sided with what it viewed as the important policy interest of assuring the smooth running of the banking system. Thus, the court endorsed the continued application of the “separate entity” rule, at least as between US and foreign branches of a bank (the court reserved for another day whether the

“separate entity” rule will continue to apply between domestic branches of a bank). So, for the moment at least, it is not possible to attach assets at a bank branch outside the US, by serving an attachment order on a bank branch in New York, notwithstanding that bank branches are otherwise part of a single corporation.

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