The Reciprocity Principle in Refusal to Recognize or Enforcement of Foreign Judgments

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Abstract: The recognition and enforcement of foreign court judgments is the ultimate destination of international civil litigation. The recognition and enforcement system of foreign court judgments can be built in two ways: international legal system and domestic legal system. The former includes the Hague Convention on the Choice of Courts, while the latter mainly includes the PRC Civil Procedure Law and the Opinions of the Supreme People’s Court on Several Issues Concerning the Application of the PRC Civil Procedure Law, the reciprocity principle too. This article combines two cases of refusal to recognize and enforce foreign court judgments in recent years and analyzes the reasons why the courts dismiss the applications with some reflections on the system in China.

Keywords: Foreign Court Judgments, Recognition and enforcement, Principle of reciprocity.

1. The Principle of Reciprocity as the Legal Basis for Refusal to Enforce or Recognize Foreign Court Judgments

The principle of reciprocity is usually distinguished by reciprocity in fact and reciprocity in law. Reciprocity in fact generally refers to the recognition and enforcement of a foreign court judgment in a PRC court, provided that the foreign court has a precedent of recognition and enforcement of a PRC court judgment in the country where the foreign court is located, otherwise the recognition and enforcement of such judgment will be refused. On the other hand, reciprocity in law refers to the comparison of the conditions for the recognition and enforcement of a PRC court judgment by a foreign court with that for a PRC court, if under the same conditions, the conditions imposed on the recognition and enforcement of the PRC court judgment are consistent with or more lenient than those under PRC law, the PRC court will recognize and enforce the judgment[1].

China has not acceded to any convention on the recognition and enforcement of foreign judgments in civil and commercial matters. Up to now, Chinese courts only recognize and enforce foreign judgments based on two ways: through the bilateral judicial assistance treaties between China and other countries and on the principle of reciprocity. In practice, Chinese courts apply a relatively strict standard to the principle of reciprocity (Chinese courts generally apply a standard of “reciprocity in fact”, i.e., they will only consider a request for recognition and enforcement of relevant judgments in the PRC if the relevant court in the requesting country has once recognized and enforced the PRC court judgment), only few foreign judgments can be recognized and enforced in accordance with this principle.

2. Analyzing the Reasons why Chinese Court Rejects Foreign Applicant’s Application for Recognition and Enforcement of A Foreign Judgment

2.1 A Case Involving Application by Wuxi Luoshe Printing and Dyeing Co., Ltd. and Huang Chih-taek for Recognition and Enforcement of A Court Judgment or Arbitral Award to Li Anshan and TAHome Ltd[2].

This case, involving the recognition and enforcement of a civil judgment rendered by a US Court, was concluded in November 2020, and shall be reviewed in accordance with Articles 281 and 282 of the Civil Procedure Law of the People’s Republic of China.

Article 281 of the Civil Procedure Law of the People’s Republic of China provides: “If a legally effective judgment or ruling made by a foreign court requires recognition and execution by the People’s Court of the People’s Republic of China, the party concerned may directly apply for recognition and execution to the Intermediate People’s Court with jurisdiction of the People’s Republic of China. The foreign court may also, pursuant to the provisions of the international treaties concluded between or acceded to by the foreign state and the People’s Republic of China, or in accordance with the principle of reciprocity, request the People’s Court to recognize and execute the judgment or ruling.” In accordance with this Article, an application to a people’s court for recognition and enforcement of a judgment rendered by a foreign court shall have come into force, which means the judgment rendered by the foreign court shall be final, definite and enforceable. Accordingly, a judgment rendered by a foreign court must be final and affirmative in addition to being effective and enforceable in accordance with the laws of the country of origin, i.e. the state in which the judgment was made. A judgment pending appeal or which is subject to an appeal process is not a final or definite judgment.

Although the civil Judgment rendered by the US Courts in question has come into force and is being enforced in accordance with the laws of the State of California, the Judgment is being appealed by the Respondents and other parties. While the case was heard by the Wuxi Intermediate People’s Court, it is still being reviewed by the United States Court of Appeals for the State of California, and thus is not yet qualified as final and definitive. The Applicant, on the other hand, has the obligation to submit evidence proving that the Judgment rendered by the US Courts in question is final and definitive, and thus the civil Judgment rendered by the US Courts in question did not constitute a “legally effective judgment” under Article 281 of the Civil Procedure Law of
the People’s Republic of China.

In the final ruling, the court did not respond to the Respondents’ other defenses, such as concurrence of litigation, that the U.S. Judgment violated the basic principles of PRC law, and that there is no treaty or reciprocal relationship between China and the United States for mutual recognition of the arbitral awards and judgments in this case. The court did not respond to the other defenses raised by the Respondents, such as concurrence of litigation, that the U.S. Judgment violated the basic principles of PRC law, and that there is no treaty or reciprocal relationship between China and the United States for mutual recognition of the arbitral awards and judgments in this case.

In addition, based on the evidence submitted by both parties, the Tribunal made a very clear and complete elaboration and characterization of the facts of this case, and also used words with a tendentious nature, such as “fraudulent”, to describe the Respondents’ actions involved in this case. In the meantime, although the Applicant’s application for recognition and enforcement of the Judgment was rejected, the Tribunal expressly indicated in the ruling that, if the US Courts’ Judgment involved in this case can be finally appealed from the courts of the State of California, the United States, the Judgment is final and definitive, the Applicant can petition the people’s court with jurisdiction again for recognition and enforcement of the Judgment.

Both the Applicant and the Respondent, taking into account both substantive and procedural issues under domestic laws, and also arguing from the international judicial perspective of both China and the United States, which are reasonable and well-founded. Secondly, although the recognition and enforcement of the foreign court’s judgment in this case was refused due to procedural issues, such refusal was not a reckless refusal, but a kind of positive anticipation and exhortation, and did not “condone” the Respondents’ attempt to escape the judgment result of a foreign court by making use of procedural issues.

2.2 Jason Charles Dean; Chen Juan’s Petition for Recognition and Enforcement of A Civil Judgment Rendered by a Foreign Court[3]

The trial of this case was concluded in November 2019. Shenzhen Intermediate People’s Court held that, according to Article 281 of the Civil Procedure Law of the People’s Republic of China, China and New Zealand have not concluded or acceded to any international treaty regarding the recognition and enforcement of judgments. Mutual recognition of Chinese and New Zealand judgments may be based on the principle of reciprocity. However, the principle of reciprocity is different from an international treaty, which provides a clear standard of review for the refusal of recognition and enforcement of a judgment rendered by a foreign court, whereas the principle of reciprocity applies to a judgment rendered by a court on a case-by-case basis.

Before the acceptance of this Case, on 3 November 2016, the Applicant had filed a lawsuit against the same Respondent in another court, and the Respondent also filed a counter-claim to the same court. By comparing the two lawsuits filed by the Applicant with the High Court of New Zealand and the Court of Qianhai respectively, both against the Respondent’s obtaining the Applicant’s capital by taking advantage of its work convenience, it can be considered that the claims brought by the Applicant with the High Court of New Zealand and the Court of Qianhai are the same. As the same dispute between the same parties is still being heard by the courts in China, to ensure that the courts in China independently exercise their jurisdiction and judicial powers, and avoid conflict between the results of recognition and enforcement of the judgment rendered by the High Court of New Zealand and the judgment rendered by the Court of Qianhai, it is inappropriate for the Shenzhen Intermediate People’s Court to review the judgment rendered by the Courts in New Zealand according to the principle of reciprocity, and therefore the application of the Applicant was rejected.

In addition, according to Civil Procedure Law of the People’s Republic of China Article 544 of the Opinions of the Supreme People’s Court on Several Issues Concerning the Application, in this case, New Zealand and China did not sign or jointly participate in international treaties, nor did they have a reciprocal relationship, so the parties’ application to the Shenzhen Intermediate People’s Court could not be upheld.

3. Consideration of the System of Recognition and Enforcement of Foreign Court Judgments

In June 2015, the Supreme People’s Court issued Several Opinions on Providing Judicial Services and Safeguards for the “One Belt, One Road” Construction, which specifies that “if the countries along the “One Belt, One Road” have not yet concluded any judicial assistance agreement with China, courts in China may provide judicial assistance to the parties in the other country in advance and actively promote the formation of reciprocal relations, based on the intent of international judicial cooperation and exchange as well as the commitment of the other country to provide judicial reciprocity to China.” This means that our country will adopt a looser principle of “reciprocity in law”, but only to those countries along the “One Belt, One Road” that have not yet signed any agreement on judicial assistance in civil and commercial matters with us. At the 2016 National Foreign-related Commercial and Maritime Trial President Forum, Tribunal No. 4 of the Supreme People’s Court, Zhang Yongjian, further pointed out that, “In order to further equally protect the legitimate rights and interests of Chinese and foreign parties and safeguard the interests of China’s enterprises going abroad in a timely manner, we believe that in the absence of bilateral or jointly concluded international treaties between China and relevant countries, we can consider initiating reciprocity first” and further extending “legal reciprocity” to all countries that have not yet signed a civil and commercial judicial assistance agreement with China[4].

Under the background of the construction of rule of law in China, the construction of a system of recognition and enforcement of foreign court judgments is of great importance, which is related to the normal development of China’s foreign civil and commercial exchanges. As for the construction of
the international legal system, we should first focus on the formulation of bilateral international judicial assistance treaties. Whether constructing the international treaties on the system of recognition and enforcement of foreign court judgments or formulating China’s relevant domestic legislation, we must take into account the balance between national interest and private interest. After all, the recognition and enforcement of judgments rendered by foreign courts are primarily concerned with private interests. When courts apply the principle of reciprocity to relevant cases, they may not only consider national interests, so as to make the principle of reciprocity a tool used for retaliation between countries[5]. Instead, courts shall give a certain weight to private interests, and give necessary consideration to such interests. Otherwise, if only considering national interest to the disregard of private interest, the parties will be made to bear the consequences of unfavorable conduct of the states, and the final damage will still be to national interest.

References

[1] (2017) Su 02 Xie Wai Recognition No.1 2nd