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## The Enforcement of Foreign Judgments in Belize

Published: October 19, 2012  
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This is the first part of a two part series on the enforcement of foreign judgments in Belize.

Readers may recall the on-going case concerning the US oil company Chevron and the people of Ecuador highlights the difficulties encountered when enforcing a foreign judgment in a different jurisdiction.

Chevron is fighting a ruling by an Ecuadorian court forcing it to pay \$19 billion in damages resulting from pollution in the Amazon. Chevron claims the judgment handed down by a court in Ecuador last year is fraudulent and not enforceable under New York Law.

However, an injunction issued by a court in New York blocking the judgment in March 2011 was overturned in January 2012 by an appeals court, affirming the company had prematurely challenged the judgment and the New York judge could not stop other foreign courts from enforcing it.

Considering the difficulties facing both parties in this case and the questions it raises regarding enforcement of foreign judgements, I decided to express some thoughts on enforcement of foreign judgments in Belize.

Generally, foreign judgments may be enforced in Belize both by Statute and at common law. The Reciprocal Enforcement of Judgements Act (Chapter 171) of the Laws of Belize ("the Statute") provides for the registration and enforcement of foreign judgments, but it is of limited application since the judgments of many foreign countries are not within its scope. There then remains a considerable area within which enforcement at common law is the only process possible, and it remains of practical importance because many countries including the United States do not have any reciprocal enforcement and recognition of judgements arrangement with Belize.

By the Statute the Minister, if he is satisfied that substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgements given in the Superior Court of Belize, may by Order extend to that foreign country by mutuality the benefits of the Statute.

In which case a judgment creditor under a judgment to which the benefit of Statute are extended, may apply to the Supreme Court of Belize at anytime within six years after the date of the judgment to have the judgment registered in the Supreme Court. The Supreme Court will then have the same powers and control over the execution of the registered foreign judgment as if the judgment had been a judgment originally given by the Supreme Court of Belize and entered on the date of registration. Presently, the Statute now extends to all members of the former British Commonwealth of Nations.

Since as at this date, the United States is not a country to which by mutuality the benefits of the Statute have been extended the judgments or orders of the Courts of the United States may not be registered and enforced in Belize under the Statute.

Accordingly, as far as the Statute is concerned where the benefits of the Statute do not extend to a foreign judgment, a claimant must reinstate or duplicate any proceedings in

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Belize to access and or execute against assets of a judgment debtor situate in Belize, or alternatively seek enforcement of a foreign judgement at common law.

A Foreign judgment for a liquidated demand in money creates a debt between the parties. It is a debt by simple contract only and does not merge or extinguish the original cause of action unless there has been an election to take the judgment in discharge of the claim. Hence when the original cause of action does not merge in the judgment, the claimant may sue in Belize upon it, if actionable here, or upon the judgment of the foreign court, if the Statute does not apply, or upon both.

Subject to certain exceptions below, a judgment of a foreign court of competent jurisdiction which is final and conclusive on the merits is considered to be conclusive in Belize between the parties and privies as to any issue upon which it adjudicates. Save to the extent of the exceptions mentioned below, such a judgment is not impeachable or examinable on the merits, whether for error of fact or of law.

Such a judgment will not be enforced directly by execution, but may be enforced by an action in *personam* on the part of the person in whose favour the judgment was given for the sum due under the judgment.

It is immaterial that the judgment is a default judgment, that is, as long as the court is one which in view of Belize Law had jurisdiction over the defendant, and he fail to defend, the court's judgment might be enforced in Belize as fully as if he did defend the case on the merits.

The primary conditions to be satisfied for the foreign judgment to be enforceable are: the foreign court had jurisdiction in the matter; it must be for a definite sum of money, other than a sum payable in respect of taxes, penalties or multiple damages; it must finally and conclusively determine the rights and liabilities of the parties to it so as to be *res judicata* in the country it has been pronounced; there was no fraud by the judgment creditor in the court in obtaining the judgment; the recognition and enforcement of the judgment would not be contrary to public policy or natural justice; the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the foreign court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the court; and the judgment-debtor was duly served with the process of the foreign court and did appear.

Although every presumption is to be made in favour of a foreign judgment and the burden of proof lies on the party who seeks to impeach it, such a judgment may be impeached on the ground that the foreign court lacked jurisdiction, or the judgment was obtained by fraud, or that its recognition or enforcement would be contrary to public policy, or that it was obtained in proceedings which were contrary to natural justice.

Civil Appeal No. 4 of 2009 between Seabreeze Company Limited (In Receivership) v. Prophecy Group L.C was an action to enforce a United States judgment in the amount of US\$2.417 Million obtained against the appellant by the respondent from the Circuit Court of Okaloosa County, Florida, in the United States of America.

The Court of Appeal of Belize unanimously determined that in the absence of any Statutory arrangements for reciprocal enforcement of judgments such as the one obtained in Florida by Prophecy, direct execution of the judgment in Belize is not possible that the common law rule of enforcement by an action on the judgment will apply in those circumstances.

That the rule is that a judgment in *personam* of a foreign court of competent jurisdiction which is final and conclusive on the merits is also conclusive between the parties and their privies as to any issue upon which it adjudicates. The court went on to say that such a judgment "may nonetheless be impeached on the ground that it was obtained by fraud, or that its recognition or enforcement would be contrary to public policy, or that it was obtained in proceedings which were contrary to natural justice."

Furthermore, the Court was of the view that a domestic court asked to enforce a foreign judgment has "a heightened duty" to protect the interest of defendants by ensuring that minimum standards of fairness have been applied by the foreign court, the burden of alleging unfairness in the foreign legal system rests with the defendant in the foreign action.

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Finally, the law is quite clear that foreign judgments originating from commonwealth countries may be enforced in Belize without re-litigation by virtue of Statute and foreign judgments originating from non-commonwealth countries may be enforced in Belize at common law by an action on the judgment subject to the usual defences.

*Dated the 19<sup>th</sup> day of October, 2012*

**Rodwell R.A. Williams S.C., C.B.E**