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Breaking the Ice - Overview on the First Chinese Judgment Recognized and Enforced by the United States Courts

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On August 12, 2009, the United States District Court for the Central District of California ("District Court") issued a judgment against Robinson Helicopter Company, Inc ("RHC"), a California corporation as the defendant, recognizing and enforcing a Chinese judgment in favor of Hubei Gezhouba Sanlian Industrial Co., Ltd. ("Gezhouba") and Hubei Pinghu Cruise Co., Ltd. ("Pinghu"), two corporations located in China as the plaintiffs. This case resulted from a serious helicopter accident in 1994. The following 15 years witnessed a series of long-drawn litigations between both parties in the courts of China and the United States. It is really a litigation war among RHC, Gezhouba and Pinghu. Finally, Gezhouba and Pinghu won the litigation war against the RHC and further obtained compensations (RMB 1,912,294.03 for Gezhouba and RMB 4,531,569.02 for Pinghu) respectively.

I. Fact and Procedures

On the afternoon of March 22, 1994, a model R-44 helicopter designed and manufactured by RHC and purchased by Gezhouba took off from a tourist boat owned by Pinghu with three passengers. Because of the defects in the production of the R-44 helicopter, it crashed into the Yangtze River six minutes later resulting in the death of the three passengers. Upon the helicopter accident, Gezhouba and Pinghu embarked on a series of litigations against RHC in Chinese and the United States courts to recover their losses therein. Generally speaking, the series of litigations were comprised of three stages.

In the first stage, Gezhouba and Pinghu took action against RHC before the Los Angeles Superior Court ("California Litigation"). On March 14, 1995, Gezhouba and Pinghu sued RHC for their damage from the helicopter crash based on the cause of action of negligence, strict liability, and breach of implied warranty in the Los Angeles Court. However, the Los Angeles Court granted RHC’s motion to dismiss the California Litigation on the ground of forum non conveniens. The motion of Gezhouba and Pinghu was dismissed finally.

In the second stage, Gezhouba and Pinghu sued RHC before the Higher People’s Court of Hubei Prov-
In summary, Chinese Judgment is the most important law applicable to the present case to determine whether judgments from foreign countries shall be recognized in the United States courts. Firstly, according to the UFMJRA, foreign judgments seeking to be recognized in the United States shall meet two basic requirements: (i) the judgments shall be about granting or denying recovery of a sum of money instead of taxes, penalty, divorce, maintenance and so on; (ii) the judgments shall be final, conclusive and enforceable according to the laws of the foreign counties where the judgments were made. Secondly, the foreign court shall have jurisdiction over the subject matter or personal jurisdiction. Thirdly, the foreign judgments shall be issued under a judicial system that can provide impartial tribunals or procedures compatible with the requirements of due process of law. Fourthly, the defendants in the litigations in foreign courts shall receive notice of the proceeding in the foreign courts in sufficient time to enable the defendants to defend. In addition, the foreign judgments shall meet other relevant requirements, if applicable, such as statute of limitations, public policy of the state or of the United States.

In present case, to determine whether the Chinese Judgment can be recognized and enforced, the following major issues were considered by the District Court: (i) whether the China Court properly accepted jurisdiction over the defendant; (ii) whether China Court organized an impartial litigation and complete procedures; (iii) whether RHC was properly served with notice of the proceedings and given a reasonable opportunity to take part in China Litigation; (iv) whether the statue of limitations had expired before China Litigation.

According to the fact of this case and relevant Chinese and the United States laws and related international treaty, the District Court made the following reasoning and decisions.

First, China Court had jurisdiction over RHC. In the California Litigation, RHC argued that Los Angeles Court was not the proper court according to the principle of forum non conveniens and agreed to submit to the jurisdiction of the proper court in China. Then, Gezhouba and Pinghu launched and won the China Litigation and sought enforcement in United States. It was obvious that RHC could not make the argument that China Court did not have the jurisdiction over this case.

Second, China Court organized an impartial litigation and complete procedures. Chinese Judgment was made by the three-judge panel with sufficient evidences presented at trial. RHC had not provided any evidence indicating that China Court could not provide impartial tribunal or procedures compatible with the requirements of due process of law. The District Court held that China Court was more than fundamentally fair and did not offend against basic fairness.

Third, RHC was properly served according to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Convention”). Under the Hague Convention, the complete certificate is the evidence that service conforms with the Convention. Sufficient evidences, including the completed certificate returned by the United States central authority, indicated that the service had been made in compliance with the laws of the United States and the Hague Convention.

Fourth, the statue of limitations had not expired. According to California laws on civil procedures, the statue of limitations on the actions regarding foreign judgments shall be 10 years. China’s civil procedure laws and regulations keep silence on the statue of limitations on the litigation related to foreign elements. Hence, the statue of limitations had not expired in the instant case.

In summary, Chinese Judgment
was final, conclusive, and enforceable under the laws of China and involved the granting of recovery of a sum of money. In addition, the Chinese Judgment met any other relevant requirements. Therefore, it was recognized and enforced thereby.

III. Impact and Executive Suggestions

This is the first case in which a court of the United States recognized and enforced a judgment made by a Chinese court. In view of the lack of a treaty between China and the United States regarding judgment mutual recognition, this case is a milestone in the history of legal practices between China and the United States and is also an achievement for the Chinese enterprises seeking for Chinese judgments enforcement in the United States courts. Upon issuance of the foregoing judgment, this case had become a leading case and the judgment had become a precedent regarding Chinese judgment recognition in the United States legal system. Due to the doctrine of “stare decisis” by which judges are obliged to obey the set-up precedents established by prior decisions, from then on, every litigants in the United States courts could cite this case to support their argument regarding judgment recognition. This case has material impact on present or potential cases related to Chinese judgment recognition in the United States courts.

However, it is worth noting that the fact of this case was very unique and the Gezhouba and Pinghu benefited from the California Litigation very much. Although the plaintiffs lost the California Litigation, they ensured that China Court had the lawful jurisdiction over the case and RHC could not go back on its word and challenge the jurisdiction of China Court. In addition, in consideration of the lack of judgment which was made by the courts of the United States and enforced in China till now, judges of the courts of the United States may break the precedent on the ground of public policy or principle of reciprocity in next case similar to this one. Therefore, Chinese entities proposing to enforce Chinese judgments in the United States still have to get ready for tough proceedings before the courts of the United States.

Here are certain executive suggestions for Chinese entities planning to enforce Chinese judgments in the United States. First, Chinese entities shall try to make sure that the judicial proceeding in the Chinese court is complete and fair according to relevant laws and regulations. Collection of the evidences designed to certify the complete legal procedures is very important. Second, although it will take a long time to arrange the service, Chinese entities must conduct the service strictly according to the Hague Convention and relevant laws of China and the United States. Otherwise, the defendants in the United States can argue that they have not been notified of the litigations and judgments in China. In China, Ministry of Justice is the central authority which is responsible for service of the documents under the Hague Convention. Third, in respect of statute of limitations, China law has different provisions from the United States law, even the laws in different states of the United States have various provisions. Upon obtaining judgments before Chinese courts, Chinese entities should better take actions before the United States immediately to avoid unnecessary troubles. Fourth, if applicable, Chinese entities may insert the venue clauses stipulating that Chinese courts have the jurisdiction on potential litigations arising therefrom into their agreements executed with the United States entities. Last but not least, Chinese entities may choose arbitration as the dispute resolution when they sign agreements with foreign entities including the United States entities. Since 1987, both China and the United States have been the signatories of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which has been currently executed by more than 130 countries around the world. Therefore, Chinese arbitral awards can be recognized and enforced in the United States easier than Chinese judgments.

IV. Future

The United States court’s recognition of the Chinese judgment reflects that Chinese courts have made a great progress towards openness and justice and have been recognized in more and more countries. In recent years, Chinese entities also gradually got used to the protracted cross-border litigations. For Chinese entities, the instant case also provided successful experiences during the process of “go global”. “Go global” not only means Chinese entities investing in the sectors of foreign countries or trading with foreign entities but also means Chinese entities solving international disputes via various solutions by skilled experts.

It is difficult for China and the United States to reach an agreement on mutual recognition of judgment in the near future for many economic and political reasons. In China, there is no precedent of judgment from the United States recognized and enforced by Chinese court. However, individuals or enterprises from the United States may request Chinese courts to enforce the judgments made in the courts of the United States on the ground of principle of reciprocity upon the instant case. Chinese enterprises which are currently sued in the United States shall keep a close eye on the development of this.

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