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U.S. Second Circuit Court of Appeals Certifies Novel Questions to New York's Highest Court: Does "Inherited-Jurisdiction Theory" Apply if Acquisition Falls Short of Merger?

The legal theory of inherited jurisdiction holds that when two companies merge, the successor corporation "inherits" the predecessor's status for personal jurisdiction purposes. Thus, if the predecessor was subject to jurisdiction in New York, so is the successor, irrespective of the successor's contacts (or lack thereof) with the New York forum. But what happens when the relevant corporate transaction is somewhat less than a merger? Does the inherited jurisdiction theory still apply if the successor purchases the predecessor's assets and liabilities, but a formal or *de factor* merger does not occur?

It turns out that the contours of the inherited jurisdiction theory are "novel and unsettled" areas of New York law. In a recent decision out of the Second Circuit involving the application of the Anti-Terrorism Act of 1990 (ATA) to banks that fund terrorist organizations, the absence of guiding precedent led the Court of Appeals to certify two questions to New York's highest court: 1) "Under New York Law, does an entity that acquires all of another entity's liabilities and assets, but does not merge with that entity, inherit the acquired entity's status for purposes of specific personal jurisdiction?"; and 2) "In what circumstances will the acquiring entity be subject to personal jurisdiction in New York?"

The Case: *Lelchook v. Société Générale de Banque au Liban SAL*

The plaintiffs are representatives of 21 U.S. citizens who were harmed and one who was killed in terrorist attacks by Hezbollah in Israel in 2006. The plaintiffs brought this action under the ATA against Société Générale de Banque au Liban SAL (SGBL), as successor to Lebanese Canadian Bank (LCB), for LCB's provision of extensive financial assistance to Hezbollah in the years leading to the attacks. In 2011, the Department of State designated LCB as a financial institution of primary money laundering concern for Hezbollah. Four months later, SGBL and LCB executed a "Purchase Agreement" providing that in exchange for $580 million, "SGBL … shall receive and assume from [LCB] all of [LCB's] Assets and Liabilities." LCB continued to exist following the transaction, although the plaintiffs allege that LCB was rendered defunct, insolvent, and judgment-proof.

In their complaint, the plaintiffs alleged that "SGBL assumed and bears successor liability for LCB's conduct … and so is also subject to personal jurisdiction in New York." SGBL moved to dismiss for lack of jurisdiction, arguing that "New York Courts have held that short of a merger, an asset acquisition is not sufficient to impute a target's jurisdictional status on an acquiror." The Eastern District of New York agreed with SGBL, concluding that "because Plaintiffs did not allege that SGBL and LCB 'merged' and did not otherwise allege that SGBL has any connection to New York," jurisdiction did not lie.

On appeal, the Second Circuit analyzed New York case law on the “inherited jurisdiction” theory to “resolve the uncertainty” over SGBL’s jurisdictional status as the “less than a merger” successor to LCB’s assets and liabilities. Ultimately, however, the court concluded that “New York law has yet to be definitively resolved” and accordingly certified the issue to the New York Court of Appeals.

Takeaway

A definitive answer to this thorny issue of jurisdictional doctrine now lies in the hands of the highest state court in New York. Stay tuned for our analysis of that decision.