



## Dispute Resolution

### PRC Court for the first time Recognizes and Enforces a Commercial U.S. Court Judgment

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On June 30, 2017, the Wuhan Intermediate People's Court ("**Wuhan Court**") issued a verdict (the "**Case**") ordering the recognition and enforcement of a commercial judgment rendered by the Los Angeles County Superior Court, California, USA ("**LA Court**"). This marks the first time for a PRC court to recognize and enforce a commercial judgment from a U.S. court<sup>1</sup>, which is of landmark significance and is thus noteworthy for all law practitioners and interested parties.

#### Case Background

In this Case, the applicant, Li Liu (the "**Applicant**"), applied to the Wuhan Court to recognize and enforce judgment No. EC62608, rendered by the LA Court (the "**U.S. Judgment**"), against the respondents, Li Tao and Wu Tong (the "**Respondents**"), related to a dispute between them involving an equity transfer agreement. Based upon the information contained in the U.S. Judgment, the background of the Case is summarized as follows:

On September 22, 2013, the Applicant and the Respondents signed an Equity Transfer Agreement providing that the Respondents would transfer to the Applicant a 50% equity interest held in JiaJia Management Inc. for consideration of US\$ 150,000. After the Applicant paid US\$ 125,000 to the Respondents, the Respondents absconded with the money. On July 17, 2014, the Applicant filed a suit in the LA Court on the grounds that the Respondents had misappropriated the US\$ 125,000 by fabricating the equity transfer transaction. Subsequently, the LA Court, in the absence of the Respondents, rendered a judgment ordering the Respondents to refund to the Applicant the amount of US\$ 125,000 plus interest, a total of US\$

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<sup>1</sup> According to *Provisions of the Supreme People's Court on the Issues Concerning the Procedures for PRC Citizens to Apply for the Recognition of Divorce Judgments by Foreign Courts*, PRC courts may recognize divorce judgments rendered by U.S. courts. In practice, PRC courts have recognized many foreign divorce judgements.

147,492. However, the Respondents did not comply with the U.S. Judgment after it became effective. The Applicant therefore applied to the Wuhan Court to have the U.S. Judgment recognized and enforced since the Respondents had assets available for enforcement in Wuhan, Hubei Province.

### **Basis for the Wuhan Court Verdict**

The Wuhan Court issued the above verdict based on the following grounds:

- a. The Applicant had submitted a certified copy of the U.S. Judgment and a Chinese translation, which satisfied the procedural requirement for applying for the recognition and enforcement of a foreign court judgment;
- b. The Applicant had submitted evidence that precedent exists of U.S. courts recognizing and enforcing civil judgments rendered by PRC courts, thereby confirming a reciprocal relationship between China and the United States for the mutual recognition and enforcement of each other's civil judgments;
- c. The U.S. Judgment aimed to resolve a dispute in relation to an equity transfer agreement between the two parties, which was not in violation of the basic principles of PRC law and did not damage national sovereignty, national security and social and public interests;
- d. Although the U.S. Judgment was made in the absence of the Respondents, the evidence submitted by the Applicant certified that the LA Court had issued summonses to the Respondents in accordance with judicial procedures. The submitted evidence included an investigation request lodged by the Applicant against the Respondents, an LA Court order requiring the summonses to be served by public notice and the notice as issued in newspapers;
- e. Since the Case was heard for the purpose of rendering judicial assistance, the PRC court's review did not involve an examination of the substantial rights and obligations of the disputed parties. As a result, the Wuhan Court did not uphold the Respondents' defense arguments that the equity transfer agreement was legitimate and effective and that the U.S. Judgment was flawed.

### **Legal rules and practice related to recognition and enforcement by PRC courts of foreign court judgments**

The provisions under PRC law related to recognition and enforcement of a foreign judgment by the PRC government mainly refer to Articles 281 and 282 of the *Civil Procedure Law of the People's Republic of China* and related judicial interpretations.

Under Article 281 of the *Civil Procedure Law*, "[i]f a legally effective judgment or ruling made by a foreign court requires recognition and enforcement by a people's court of the People's

Republic of China, the party concerned may directly apply for recognition and enforcement to the intermediate people's court with jurisdiction of the People's Republic of China. Alternatively, the foreign court may, pursuant to the provisions of an international treaty 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 enforce the judgment or ruling.”

According to Article 282 of the *Civil Procedure Law*, “Having received an application or a request for recognition and enforcement of a legally effective judgment or ruling of a foreign court, a people's court shall review such judgment or ruling pursuant to international treaties concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity. If, upon such review, the people's court considers that such judgment or ruling neither contradicts the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and the public interest, it shall rule to recognize its effectiveness. If enforcement is necessary, it shall issue an order of enforcement, which shall be implemented in accordance with the relevant provisions of the Law. If such judgment or ruling contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security or the public interest, the people's court shall refuse to recognize and enforce the judgment or ruling.”

According to Paragraph 1, Article 544 of the *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*, “Where a party concerned applies to a competent intermediate people's court in the People's Republic of China for recognition and enforcement of a judgment or ruling which is rendered by a foreign court and is legally effective, and the country where the court is located does not conclude or participate in any international treaty or has reciprocal relations with the People's Republic of China, the intermediate people's court shall reject such application, unless the party applies to the people's court for enforcement of a divorce judgment which is rendered by a foreign court and is legally effective.”

Based on the above provisions, since China and the United States have not reached or acceded to any international treaty related to the mutual recognition and enforcement of each other's court judgments, the recognition and enforcement of a U.S. court judgment by a PRC court may only be conditioned upon the existence of a reciprocal relationship between the two countries. Otherwise, a PRC court would generally refuse to recognize and enforce such foreign court judgments<sup>2</sup>. However, PRC law fails to clearly specify the criteria for determining whether a

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<sup>2</sup> For example: According to Reply of the Supreme People's Court on whether the People's Court of PRC shall Recognize and Implement the Judgements of Japanese Courts on Credit and Debt Disputes ([1995] Min Ta Zi No. 17): “Since China and Japan have not concluded or acceded to any international treaty for mutual recognition and enforcement of each other's court rulings, and the two countries have not established reciprocal relationship in relation to such mutual recognition and enforcement ... .. People's Courts of the PRC shall not recognize and implement the ruling of Japanese courts.”

reciprocal relationship exists. In judicial practice, PRC courts strictly adopt the reciprocity principle, which means that a PRC court will determine that there exists a reciprocal relationship between China and the foreign country only if the PRC court confirmed there was a precedent of the foreign country's courts recognizing and enforcing PRC court judgments. Only under this circumstance could the PRC court recognize and have enforced a judgment rendered by a court in the foreign country<sup>3</sup>. Thus, it is difficult in practice for PRC courts to trigger the reciprocity principle. In fact, PRC courts have quite rarely recognized foreign court judgments absent an international treaty, and have not confirmed reciprocity in order to enforce such judgments absent the foreign court's preceding recognition and enforcement of a PRC court judgment<sup>4</sup>.

### **The influence of this case on judicial practice with respect to PRC court recognition and enforcement of U.S. court judgments**

In this case, the Wuhan Court determined that a reciprocal relationship existed between China and the United States for the mutual recognition and enforcement of each other's civil judgments based upon a California U.S. District Court ruling in 2009 to recognize and enforce a commercial judgment rendered by the Hubei Higher People's Court in the case *Hubei Gezhouba Sanlian Company v. Robinson Helicopter Company* ("Sanlian Case"). The Wuhan Court ruled to recognize and enforce the U.S. Judgment because of this earlier U.S. court ruling. The Wuhan Court clearly made this ruling based upon the legal provisions and the reciprocity principle described above. The significance of the Case lies in that it is the first time for a PRC court to apply the reciprocity principle to recognize and enforce a commercial judgment rendered by a U.S. court. The Case sets an example for other PRC courts for how to deal with similar matters, or it at least demonstrates that it is possible to successfully apply to a PRC court for the recognition and enforcement of a commercial U.S. court judgment. This development will encourage more efforts to seek enforcement of U.S. court judgments in China.

However, in practice, PRC courts have discretion, albeit limited, to determine whether reciprocity exists between China and the foreign country, since there are no clearly establishment criteria provided under PRC Law. Unlike under the common law system, judgments made by PRC local courts lack binding effect. Thus, we cannot theoretically rule out the possibility that a PRC court may reject an application to recognize and enforce a U.S. court judgment because the

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3 For example, the Nanjing Intermediate People's Court accepted an application submitted by Kolmar Group AG and Sutex Group to recognize and enforce a Singapore High Court civil judgment because the court found that there was a reciprocal relationship between China and Singapore since a Singaporean court had once recognized and enforced a PRC court judgment.

4 During past two years, PRC courts have relaxed somewhat on this position. For example, as stipulated in the *Several Opinions of the Supreme People's Court on the Provision of Judicial Service and Guarantee by People's Courts for the "One Belt and One Road" Construction (2015)*: "Some countries along the route that have not yet concluded a judicial assistance agreement with China, PRC courts may, based upon mutual intent to establish international judicial cooperation and the commitment of the other countries as to provide reciprocal judicial assistance, consider to take the initiative to render judicial assistance to relevant parties from the corresponding country, so as to promote the establishment of reciprocal relations between the two countries."

court is not bound to rely upon the Sanlian Case in determining that a reciprocal relationship exists between China and the United States, or because the court determines that the previously existing reciprocal relationship had been terminated for any reason (for example, a U.S. court had refused to recognize and enforce other PRC court judgments following the Sanlian Case).

Finally, it is worth mentioning that the reason that the U.S. court ruled to recognize and enforce the PRC court judgment was not based upon the reciprocity principle or to take the lead in establishing a reciprocal relationship. In fact, the judgment was entered primarily based on the *Uniform Foreign-Money Judgments Recognition Act*, which did not take into account the existence of a reciprocal relationship in determining whether to recognize the PRC court judgment. Therefore, we have no reason to expect U.S. courts to engage in quid pro quo or enter into a virtuous cycle of reciprocity by consistently recognizing PRC court judgments in the future. In other words, we cannot expect a more positive attitude from U.S. courts for the recognition and enforcement of commercial PRC court judgments in the future, or for a more proactive stance with respect to PRC courts.

**Attachment: Applicant Li Liu applies to have recognized and enforced a civil judgment rendered by a foreign court against Respondents Li Tao, Wu Tong**

**People's Republic of China**

**Wuhan Intermediate People's Court of Hubei Province**

**Civil Ruling**

(2015) E Wuhan Zhong Min Shang Wai Chu Zi No. 00026

The Applicant: Li Liu, female, Han nationality, born on June 15, 1979, residing at No.90 Yi Fen Chang Dormitory, Hu Bin Nong Ken Group Company, Yueyanglou District, Yueyang, Hunan

Agent ad litem: Guanlin Chen, Hunan Jinqiu Law Firm.

The Respondent: Li Tao, female, Han nationality, born on November 6, 1986, residing at Room A, 4th Floor, Building 7, Zone B.C of Wanda Plaza, Wuhan Lingjiaohu, No.15 Tang Jiadun Road, Jiangnan District, Wuhan City, Hubei Province

Agent ad litem: Hang Chen, Hubei S&H Law Firm

The Respondent: Wu Tong, male, Han nationality, born on September 12, 1977, residing at Room A, 4th Floor, Building 7, Zone B.C of Wanda Plaza, Wuhan Lingjiaohu, No.15 Tang Jiadun Road, Jiangnan District, Wuhan City, Hubei Province

Agent ad litem: Hang Chen, Hubei S&H Law Firm

With respect to application of the Applicant Li Liu, which requests to have recognized and enforced the civil judgment rendered by a foreign court against the Respondents Li Tao and Wu Tong, the court accepted the case and organized a collegial panel in accordance with law on October 19, 2015. Subsequently, the court held two hearings, respectively, on December 25, 2015 and March 15, 2016. The Applicant Li Liu, his Agent ad litem Guanlin Chen, the Respondents Li Tao, Wu Tong and their jointly appointed Agent ad litem Hang Chen attended the hearings. The trial review of this case has been completed.

The Applicant claimed that: On December 22, 2013, the Applicant and the Respondent signed an equity transfer agreement, stipulating that Respondent would transfer 50% equity interest held by her in JIAJIA MANAGEMENT INC to the Applicant, for a consideration of US\$ 150,000. After the Applicant paid US\$ 125,000 to the Respondent as agreed, the Respondent absconded with the money. After reporting the situation to the local police, who declined to pursue the case, the Applicant filed a lawsuit in Los Angeles County Superior Court of California (the "LA Court"). The LA Court passed judgment No. EC062608 (the "Judgment") on July 24, 2015, ordering Respondents to refund to the Applicant US\$ 125,000, plus interest of US\$ 20,818 incurred thereupon before the trial (during the period between September 25, 2013 to May 25,



2015), plus a trial costs equal to US\$ 1, 674, for a total of US\$ 147,492. The Judgment had come into effect, but the Respondents failed to comply. The Respondents are currently residing at Room A, 4th Floor, Building 7, Zone B.C of Wanda Plaza, Wuhan Lingjiaohu, No.15 Tang Jiadun Road, Jiangnan District, Wuhan City, Hubei Province and have assets available for enforcement in Wuhan. Given that the Judgment does not violate the basic principles of national sovereignty, security and social interests of China, in order to safeguard the legitimate rights and interests of the Applicant, the Applicant hereby requests the court to rule as follows: 1. Acknowledge the Judgment rendered by the LA Court should have legal effect in China; 2. Order the Respondents to pay to the Applicant the following amounts as specified in the Judgment: US\$ 125,000, plus interest incurred thereupon equal to US\$ 20,818, plus trial costs equal to US\$ 1, 674, for a total of US\$ 147, 492, which is equal to RMB 940, 040.26 (calculated according to the exchange rate on September 12, 2015). Besides this, the Respondents should also pay to the Applicant the overdue interest incurred during the period from 25 May 2015 to the date of enforcement of the Judgment; 3. The Respondents should bear the fees and expenses related to the enforcement.

The Respondents Li Tao and Wu Tong claim that: 1. The Judgment passed by the LA Court does not have legal effect in the People's Republic of China, for the Respondents had not been served with notice to attend the trial where the adverse judgment was ruled against them; 2. the Respondents should not be required to refund the equity transfer price amount to the Applicant, since the Equity Transfer Agreement signed between the Applicant and the Respondent is true, legitimate and effective. Thus, the Respondents request to dismiss the Applicant's application.

Upon review and consideration, this court has determined that the Respondent Li Tao and the Applicant Li Liu signed an Equity Transfer Agreement on September 22, 2013 in the United States, which provided that Li Tao would transfer to Li Liu a 50% equity interest which she held in JIA JIA MANAGEMENT INC (shares registered in California). Li Liu subsequently made two payments to the Respondent, respectively, on September 22, 2013 and September 25, totaling US\$ 125,000. According to bank account information submitted by Li Liu, a bank account owned by Wu Tong, the husband of Li Tao, was credited with US\$ 125,000 during the period between September 14 and October 16, 2013. Thereafter, Applicant Li Liu filed a lawsuit in the LA Court against the Respondents on July 17, 2014, on the grounds that the two Respondents illegally obtained the US\$ 125,000 by fabricating the equity transfer transaction. The case was entered under case no. EC062608. On October 7, 2014, the U.S. investigation company Rolan issued an investigation report with respect to the personal information and contact address of Respondents Li Tao and Wu Tong in the United States. The U.S. attorney was then entrusted by Applicant Li Liu to attempt delivery of the litigation materials to the address as stipulated in such investigation report, but the documents failed to be properly delivered to the recipients. On January 8, 2015, Judge William D. Stewart of the LA Court issued an order to permit delivery of the relevant summons and notice by making a public

announcement in the SAN GABRIEL VALLEY TRIBUNE. The announcement was then published four times in the SAN GABRIEL VALLEY TRIBUNE on January 15, January 22, January 29 and February 5, 2015. On July 24, 2015, Judge William D. Stewart of the LA Court rendered the Judgment with Respondents in absentia. According to the LA Court opinion, since the LA Court served summonses to Respondents in accordance with procedures when the Respondents failed to appear before the LA Court to respond to the Applicant's complaint, the LA Court heard the case and entered the Judgment in Respondents' absence. Upon review and consideration of the case, the judge ordered Respondents Li Tao and Wu Tong to refund to Applicant Li Liu the amount of US\$125,000, plus interest incurred thereupon as of the date of Judgment equal to US\$ 20,818 (calculated from September 25, 2013 to May 25, 2015, at a daily rate of US\$ 34.24 per day), plus trial costs equal to US\$ 1,674, totaling US\$ 147,492. On the same day, the Judgment was filed by the U.S. attorney for Applicant Li Liu. According to the news report entitled the "PRC Court Ruling Recognized and Enforced in the United States for the First Time" (*China Law Journal*, January 2010 issue) submitted by the Applicant, the court confirms that a civil judgment was recognized and enforced by a U.S. court in a product infringement dispute rendered by the Hubei Higher People's Court in the case of *Hubei Gezhouba Sanlian Industrial Co., Ltd., Hubei Pinghu Travel Vessel Co., Ltd. v. United States Robinson Helicopter Co., Ltd.*

This court finds:

This case involves an application for the recognition and enforcement of a dispute ruling rendered by a foreign court. According to Article 281 of the *Civil Procedure Law of the People's Republic of China*, "if a legally effective judgment or ruling made by a foreign court requires recognition and enforcement by a people's court of the People's Republic of China, the party concerned may directly apply for recognition and enforcement to the intermediate people's court with jurisdiction of the People's Republic of China. Alternatively, the foreign court may, pursuant to the provisions of an international treaty 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 enforce the judgment or ruling". According to Article 282 of the same, "[h]aving received an application or a request for recognition and enforcement of a legally effective judgment or ruling of a foreign court, a people's court shall review such judgment or ruling pursuant to international treaties concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity. If, upon such review, the people's court considers that such judgment or ruling neither contradicts the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and the public interest, it shall rule to recognize its effectiveness. If enforcement is necessary, it shall issue an order of enforcement, which shall be implemented in accordance with the relevant provisions of the Law. If such judgment or ruling contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty,



security or the public interest, the people's court shall refuse to recognize and enforce the judgment or ruling.” In this case, the Respondents Li Tao and Wu Tong have real estate located in Wuhan, Hubei Province. This court, which is located in the place where the property subject to enforcement is situated and is within the place of habitual residence of the Respondents, has the jurisdiction over this case according to law.

Together with the application to recognize and enforce the foreign court Judgment, the Applicant Liu Li also submitted a certified copy of the Judgment issued by the LA Court and the Chinese translation thereof, which satisfies the procedural requirement for applying to recognize and enforce of a judgment rendered by a foreign court. Since the United States and China have not concluded or acceded to any international treaties related to mutual recognition and enforcement of each other's civil judgments, the Applicant's application should be reviewed based on whether there exists a reciprocal relationship between the two countries. According to the evidence submitted by the Applicant, U.S. courts have established a precedent to recognize and enforce civil judgments rendered by PRC courts. Thus, it is confirmed that there exists a reciprocal relationship between the United States and China for the mutual recognition and enforcement of each other's civil judgments. In addition, the Judgment rendered by the U.S. court aimed to resolve a dispute between the Applicant and the Respondents in respect of the equity transfer contract between the two parties, which did not violate the basic principles of PRC law or breach the national sovereignty, security and social public interest. As to the Respondents' defense that they did not receive the trial notice, the court finds that the Judgment clearly provided that the Judgment was made in the absence of the Respondents. According to evidentiary documents submitted by the Applicant, including the investigation report of the Respondents, a U.S. court may permit summonses to be delivered by making public announcements, including announcements issued in newspapers, and this court confirmed that the LA Court had issued the summonses to the Respondents in accordance with that procedure. With respect to the Respondents' claim that requiring the court to find that the Equity Transfer Agreement between the two parties is true, legitimate and effective and thereby the Respondents should not be required to refund the transfer price, the court believes that since this case was heard for purposes of judicial assistance, the court's review shall not involve the review of substantial rights and obligations of the two parties. Given that the LA Court has ruled with respect to the effectiveness of the agreement, the Respondents' claim in this regard cannot be upheld.

Therefore, the Applicant's application requesting to recognize and enforce the Judgment rendered by the LA Court is sustained by this court. However, another claim of the Applicant requesting the Respondents to pay overdue interest incurred during the period from May 25, 2015, the day when the LA Court issued the ruling, to the date of enforcement of the U.S. Judgment, is not sustained by the court, since it does not fall within the scope of review when considering an application for the recognition and enforcement of a foreign court judgment.

Upon review by the collegial panel, and in accordance with item (11), Paragraph 1, Article 154, Article 281 and 282 of the *Civil Procedure Law of the People's Republic of China*, Paragraph 1, Article 543 and Paragraph 1, Article 546 of the *Interpretation of the Supreme People's Court on the Application of Civil Procedure Law of the People's Republic of China*, this court ruled as follows:

1. The Judgment rendered by the LA Court is hereby recognized and to be enforced;
2. All other requests made by the Applicant Li Liu are hereby dismissed.

The application fee equal of RMB 100 for this case shall be borne by the Respondents Li Tao and Wu Tong.

The presiding judge: Qianxi Zhao

Judge: Jie Yu

Judge: Yanhong Xiong

Date: June 30, 2017

Clerk: Lei Xu

## ● **Important Announcement**

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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