

# Recognition of Russian court judgments in the United States (recent precedents)

Despite the current state of political relations between the United States and Russia, as the recent court precedents show, the US courts acknowledge Russian judicial process, and it is possible to enforce Russian court judgments in the United States.

While the United States is a party to conventions that address enforcement of foreign arbitration awards, it is not a signatory to any conventions on enforcement of foreign court judgments. As a result, a foreign judgment needs to be first recognized in a U.S. court and then enforced locally.

Each of the U.S. states has a different approach to enforcement of foreign judgments, and the founding principles are outlined in the U.S. Supreme Court case *Hilton v Guyot*, 159 US 113 (1895). The case dealt with a French company trying to enforce a judgment of a French court against a U.S. national. The below excerpt is commonly cited by the U.S. courts to this day.

“When an action is brought in a court of this country by a citizen of a foreign country against one of our own citizens to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least, of the truth of the matter adjudged, and the judgment is conclusive upon the merits tried in the foreign court unless some special ground is shown for impeaching it, as by showing that it was affected by fraud or prejudice or that, by the principles of international law and by the comity of our own country, it is not entitled to full credit and credit.”

Below, we analyze two recent cases where Russian banks tried to recognize and enforce Russian court judgments in the United States. In both cases, the U.S. courts sided with the Russian parties on the issue of recognition of the Russian court decisions. Please note that our analysis does not address the merits of the underlying cases but only focuses on the recognition issues.

## **I. VTB Bank (PJSC) v Igor Mavlyanov, Supreme Court, New York County, 30 January 2018**

### **Background facts:**

VTB Bank loaned money to a Russian legal entity (Torgovo-proizvodstvennaya Kompaniya YASHMA (Yashma)) under two loan facility agreements. Igor Mavlyanov, a Russian citizen and the sole shareholder of the debtor entity, executed personal guarantees in relation to Yashma's loan obligations. Each personal guarantee provided that “[d]isputes or differences arising out of this Agreement ... shall be considered in accordance with the current legislation of the Russian Federation in the Meshchansky District Court of Moscow”.

In 2015, Yashma defaulted on its obligations under the loan facility agreements. VTB Bank initially demanded payment from Yashma and then from Mr. Mavlyalov, in accordance with the terms of his guarantees. In January 2016, VTB Bank initiated proceedings against Mr. Mavlyanov before the Meshchansky District Court of Moscow to recover amounts allegedly due and owing under the terms of the

guarantees.

Through legal counsel, Mr. Mavlyanov actively participated in those actions, challenged the enforceability of each guarantee and objected to the Bank's calculation of the alleged debt. In April 2016, the Moscow court issued judgments in favor of VTB Bank and awarded the bank money judgments in relation to both guarantees. Mr. Mavlyanov appealed in the Moscow City Court and later with the Russian cassation court. Both appeals were denied.

### **New York court's analysis:**

In accordance with the New York court's analysis, "Historically, New York courts have accorded recognition to the judgments rendered in a foreign country under the doctrine of [international] comity ... [a]bsent some showing of fraud in the procurement of the foreign country judgment or that recognition of the judgment would do violence to some strong public policy of this State".

In accordance with New York statutory law, a foreign judgment may not be recognized in New York if "a foreign country judgment is not conclusive if it was rendered under a system that does not provide for impartial tribunals or due process procedures, or if the foreign court did not have personal jurisdiction over the defendants".

The New York court recognized that the Russian judgments were final, conclusive, and enforceable, pursuant to Russian law and proceeded to review Mr. Mavlyanov's position that the Russian judgments should not have been recognized "because they were not the product of fair proceedings and, therefore, violate the public policy of New York".

The New York court had the following to say about Russian proceedings:

"With regard to the other ground mandating non-recognition, the record conclusively demonstrates that the Moscow Court system accorded Mavlyanov due process of law. Federal courts sitting in New York have found that the Russian legal system provides a fair and adequate forum for litigants and that judgments from Russia should be afforded full faith and credit (see e.g. *Base Metal Trading SA v Russian Aluminum*, 253 F Supp 2d 681, 708-709 [SD NY 2003], *affd sub nom. Base Metal Trading Ltd. v Russian Aluminum*, 98 F Appx 47 [2d Cir 2004]; *Parex Bank v Russian Sav. Bank*, 116 F Supp 2d 415, 425 [SD NY 2000]). "The Court of Appeals has 'repeatedly emphasized that it is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation'" (*Base Metal Trading SA v Russian Aluminum*, 253 F Supp 2d at 709, quoting *Blanco v Banco Indus. de Venezuela, SA.*, 997 F2d 974, 982 [2d Cir 1993])...

While Mavlyanov contends, in general terms, that recent political concerns between the United States and Russia require the denial of the motion, he fails to articulate any objective reason why those concerns require this court to deny recognition of judgments issued by a Russian court against a Russian citizen, who agreed to litigate in Russia in accordance with Russian law, which arose out of guarantees executed in Russia."

### **Outcome**

VTB Bank's motion was successful, and the court recognized and enforced Russian court judgments against Mr. Mavlyanov. The New York court ordered as follows:

"ORDERED that the two foreign country money judgments entered in favor of plaintiff VTB Bank (PJSC) (Bank) against defendant Igor Mavlyanov by the Meshchansky District Court of Moscow, awarding the Bank the total sum of RUB 2,245,899,146.78 in January 2017, are hereby recognized by this court, pursuant to CPLR article 53; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of RUB 2,245,899,146.78 (to be converted into United States dollars at the rate of exchange prevailing on the date of entry of the Russian judgments), together with statutory postjudgment interest at the rate of 9% per annum, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.”

## **II. AO Alfa-Bank\* v Oleg Yakovlev, Court of Appeal, Fourth Appellate District, Division One, State of California, 12 March 2018**

### **Background facts:**

Mr. Yakovlev was a Russian businessman who owned several Russian legal entities. Alfa-Bank loaned funds in 2007 and 2008 through a series of cash advances to a Russian company named Trial Trading House, LLC. The loans were secured by Yakovlev’s personal guarantee, subject to a separate surety agreement. With each cash advance to Trial Trading House, Mr. Yakovlev executed a supplemental agreement to the surety agreement guaranteeing the amount of that advance.

Under the surety agreement, the parties agreed to resolve all disputes in Meschansky District Court in Moscow. The surety agreement also specified a Moscow address of Mr. Yakovlev for notices (along with Mr. Yakovlev’s obligation to notify the bank of an address change). The address in the surety agreement also match Mr. Yakovlev’s registered address in Russia.

When Trial Trading House defaulted on its loan obligations, Alfa-Bank turned to Mr. Yakovlev for repayment under the sureties. In May 2009, Alfa-Bank filed a statement of claim against Yakovlev in the Meschansky District Court. By then, Mr. Yakovlev had already fled Russia and sought political asylum in the United States. He did not notify Alfa-Bank of any change in address.

The Moscow court attempted to serve Yakovlev with process at his Moscow residence. Without any response from Mr. Yakovlev, the case went to trial in his absence. In September 2009, the Moscow court entered judgment in Alfa-Bank’s favor. The judgment was not appealed within the relevant timeframe.

In 2014, Alfa-Bank brought the lawsuit in the Superior Court of San Diego County to recognize the Russian court judgment. The San Diego court ruled against Alfa-Bank, and the bank appealed. Below is the summary of the appellate court’s legal analysis.

### **Court’s analysis:**

Mr. Yakovlev objected on several grounds, among them the argument that he was not notified of the Russian proceeding, and that the Russian proceeding was incompatible with due process. Basically, Mr. Yakovlev was arguing that the service of process in the Russian proceeding was “ineffective”.

Under California statutory law, “the party seeking recognition of a foreign country judgment bears the initial burden to establish that the judgment falls within the scope of the statute.” In accordance with court documents, the parties did not dispute “that the Russian judgment conforms to the threshold requirements for recognition: it grants recovery of a sum of money; is final, conclusive, and enforceable in Russia; and is not a judgment for taxes, a fine, or other penalty, or a domestic relations judgment.”

As far as the relevant grounds for non-recognition go, “a judgment cannot be recognized if the foreign court lacked personal jurisdiction over the defendant. The court also has discretion not to recognize a judgment if: “(1) if the defendant did not receive notice of the foreign proceeding in sufficient time to enable him to defend... or (2) the specific proceeding in the foreign court was incompatible with due process of law.”

In accordance with the California court, “due process does not require actual notice; it requires only a method of service “reasonably calculated” to impart actual notice under the circumstances of the case. Service by registered mail to the address Yakovlev designated in the surety agreement met that standard.” Alfa-Bank provided a Russian law expert to explain the service of process under Russian law and provided copies of summons letters and telegrams sent to Yakovlev Russian registered address.

After an extensive analysis, the California court concluded that “[F]oreign courts are not required to adopt ‘every jot and tittle of American due process’... Russia “is not bound by our notions of due process,” and we do not “insist on the additional niceties of domestic jurisprudence” in deciding whether to enforce a Russian judgment.”

## **Outcome**

The appellate court reversed the decision of the San Diego trial court. The trial court was ordered to grant Alfa-Bank’s motion to recognize the Russian judgment and conduct further proceedings consistent with the opinion of the appellate court. The most recent development in the process was the issuance of the writ of execution (money judgment) on 27 March 2019, which means that the Sheriff of San Diego could then collect on the judgment for Alfa-Bank.

In general, straightforward monetary awards of foreign courts are more likely to be recognized and enforced in the United States. Also, it is important to point out that a foreign judgment should not be a penalty. “A judgment is a penalty even if it awards monetary damages to a private individual if the judgment seeks to redress a public wrong and vindicate the public justice, as opposed to affording a private remedy to a person injured by the wrongful act” (Plata v. Darbun Enterprises, Inc., 2014). As a result, foreign judgments for fines, penalties or taxes will not be enforced.

\*In the original court documents AO Alfa-Bank is spelled as AO ALPHA-BANK

Please feel free to contact us if you have any questions about recognition of Russian judgments in the U.S. We will be happy to assist you through this process, both in Russia and the United States.

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