

# What to Know About New Jersey Courts Ruling in 'Quasi-in-Rem' Jurisdiction Case for Arbitral Awards

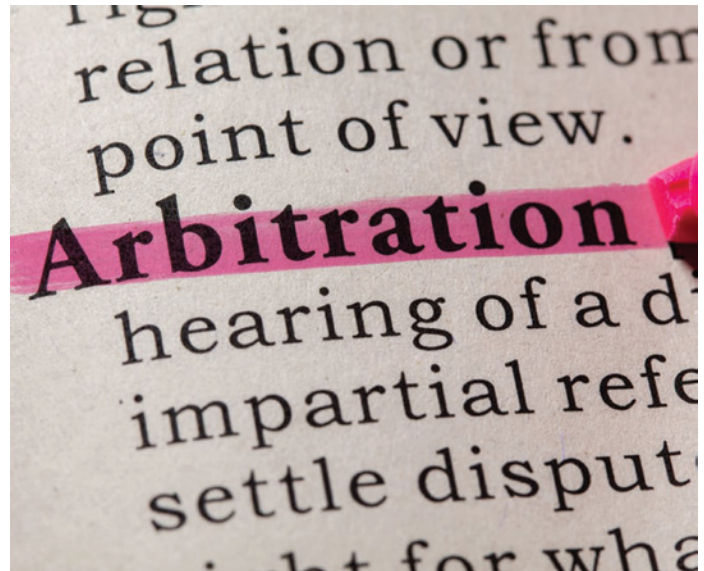
By David N. Cinotti

May 1, 2024

## Introduction

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly called the New York Convention, requires the United States and other state parties to recognize and enforce foreign and nondomestic arbitral awards, with limited exceptions. There are currently 172 state parties to the convention. An award-creditor (the winning party in the arbitration) can take a New York Convention award and have it recognized and enforced as a domestic judgment around the world, in order to reach the award-debtor's assets wherever located. Under Article III of the New York Convention, "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon ..." In the U.S., one of those rules of procedure is the requirement of, and process to obtain, jurisdiction over an award-debtor (the party that lost the arbitration). Given that personal jurisdiction is a constitutional requirement, a U.S. court could not recognize and enforce an arbitral award when it lacks jurisdiction over the award-debtor or its property.

But courts have recognized that due-process requirements operate differently in cases concerning enforcement of judgments than in cases adjudicating a claim in the first instance: A court can assert quasi-in-rem jurisdiction—that is, jurisdiction over a person based on that person's interest in property located within the court's territory—in a proceeding to enforce a judgment when the debtor has assets in the state where the proceeding is filed. Indeed,



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a judgment-debtor should reasonably expect to be haled into court to satisfy a judgment where it has assets. And the property sufficient to support quasi-in-rem jurisdiction includes intangible rights. That reasoning should equally apply to enforcement of arbitral awards.

In *Simplot India v. Himalaya Food International*, Civ. A. No. 23-1612 (RK) (TJB) (D.N.J. Mar. 15, 2024), however, the court appeared to take a narrower approach. It held that it lacked personal jurisdiction in a case seeking recognition and enforcement of a foreign arbitral award because, among other reasons, the award-creditor failed to show that the award-debtor had a clear right to money in a New Jersey bank account belonging to the debtor's subsidiary to which the debtor sold goods. As explained below, I respectfully suggest that the court's approach to quasi-in-rem jurisdiction was unduly restrictive

because it did not consider the award-debtor's intangible right to payment, which likely should have been deemed located in New Jersey.

### **Personal jurisdiction in award-enforcement matters under the New York Convention**

Federal courts have federal-question jurisdiction over petitions to recognize and enforce arbitral awards made in a foreign state, or to confirm "nondomestic" arbitral awards (awards made in the U.S. that have some reasonable connection to a foreign state), under the New York Convention. See 9 U.S.C. Section 202-203; *Telcordia Tech Inc. v. Telkom SA*, 458 F.3d 172, 176 (3d Cir. 2006); see also *CBF Indústria de Gusa S/A v. AMCI Holdings*, 850 F.3d 58, 72-73 (2d Cir. 2017) (explaining difference between recognition/enforcement and confirmation under New York Convention). Federal Rule of Civil Procedure 4(k) governs federal courts' personal jurisdiction. Service of process establishes a court's jurisdiction over the defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located," Fed. R. Civ. P. 4(k)(1)(A), or "when authorized by a federal statute," Fed. R. Civ. P. 4(k)(1)(C). Alternatively, for claims arising under federal law, a federal court can exercise jurisdiction if the defendant is not subject to jurisdiction in any state's courts and exercising jurisdiction would be constitutional. Fed. R. Civ. P. 4(k)(2).

"Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014), unless a federal statute provides for personal jurisdiction. Under Rule 4(k)(1)(C), personal jurisdiction is proper when a federal statute authorizes nationwide service of process; asserting jurisdiction under such a statute "is constitutionally limited only by the Fifth Amendment (i.e., a nationwide minimum contacts analysis), not the Fourteenth Amendment." *Fischer v. Fed. Express*, 42 F.4th 366, 385 (3d Cir. 2022), cert. denied, 143 S. Ct. 1001 (2023). Whether any provision of the FAA authorizes personal jurisdiction in a New York Convention case raises complicated issues that will be left for another day. Instead, this article discusses the exercise of jurisdiction under Rule 4(k)(1)(A) based on state law. As relevant here, New Jersey law permits personal jurisdiction to the extent permissible under the Fourteenth Amendment's Due Process Clause. *Fischer*, 42 F.4th at 385.

Under well-known due-process principles, personal jurisdiction may be asserted over a nonresident if the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). For nonresidents over which the court lacks general jurisdiction, "[s]pecific jurisdiction is established when a nonresident defendant has 'purposefully directed' his activities at a resident of the forum and the injury arises from, or is related to, those activities." *Telcordia*, 458 F.3d at 177 (footnote omitted). But satisfying traditional due-process tests for general or specific personal jurisdiction can be difficult in many award-enforcement cases because award-debtors are often not U.S. parties, and their U.S. assets are often unrelated to the underlying dispute that was decided in the arbitration. See Restatement (Third) of U.S. Law of Int'l Comm. Arb. & Investor-State Arb. Section 4.25 reporters' note (a)(ii).

The Supreme Court has acknowledged an alternative to those traditional tests when the plaintiff is seeking to enforce a judgment against the defendant's assets. In *Shaffer v. Heitner*, 433 U.S. 186 (1977), the court held that the presence of a defendant's property in the state is not sufficient by itself to convey personal jurisdiction over the defendant. The court also stated, however, that "[o]nce it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a state where the defendant has property, whether or not that state would have jurisdiction to determine the existence of the debt as an original matter." *Id.* at 210 n.36.

Lower courts have applied that principle to assert jurisdiction over defendants in cases seeking to enforce judgments against in-state property. And courts have also recognized that the same principle can support jurisdiction in proceedings to enforce arbitral awards against nonresidents. For example, the Ninth Circuit held that a district court had quasi-in-rem jurisdiction in an action to enforce a French arbitral award over a foreign award-debtor who had funds in an Oregon bank account. See *Cerner Middle East v. iCaptive*, 939 F.3d 1016 (9th Cir. 2019). The court explained that quasi-in-rem jurisdiction to

enforce the award existed because the tribunal that had issued the award had jurisdiction to decide the dispute and the respondent award-debtor had assets in Oregon, where the petitioner award-creditor sought enforcement of the award. See *id.* at 1028-29.

### The ‘Simplot India’ case

In *Simplot India*, the petitioners sought recognition and enforcement under the New York Convention of an arbitral award made in Singapore. Among other proposed bases for personal jurisdiction, the petitioners argued that the court had quasi-in-rem jurisdiction because the Indian respondent sold goods to its affiliate, a New Jersey corporation, and the affiliate had a bank account in the state, out of which it presumably would pay for the goods. The court rejected that argument as too speculative because the petitioners did not show that there were funds in the affiliate’s New Jersey bank account that belonged to the respondent. The court reasoned that “the handful of cases in which courts have exercised quasi in rem jurisdiction have involved in-jurisdiction assets to which the respondent or defendant had the only claim and to which the claim was ironclad.” *Id.* at \*12. The court did not discuss, however, whether the respondent award-debtor’s right to payment for the shipments was an intangible property right that belonged to the respondent and that was sited in New Jersey, where the affiliate was located.

As other courts have explained, intangible property rights can support quasi-in-rem jurisdiction in an action to enforce a judgment. For example, in *Office Depot v. Zuccarini*, 596 F.3d 696 (9th Cir. 2010), the Ninth Circuit held that the district court had quasi-in-rem jurisdiction in an action to enforce a judgment against an out-of-state defendant because the defendant owned internet domain names that were deemed located in California under federal law, even though the domain names were not themselves involved in the litigation giving rise to the judgment. See *Id.* at 699-703. In another case, a district court held that it had quasi-in-rem jurisdiction to enforce an Italian judgment because the defendant had the right to receive retainer payments from an in-state company. See *Motu Novu v. Percival*, No: 4:16-cv-06545-SBA (N.D. Cal. Dec. 1, 2017). The court stated that “quasi in rem jurisdiction

applies to tangible and intangible assets alike.” *Id.* at \*5. The court noted that the situs of intangible property is a “legal fiction” and is “context-specific,” and determined that the right to receive the retainer payments was deemed located in California because that is where “the payments originate[d],” i.e., from the California company paying them. *Id.*

These cases show that an award-debtor can reasonably be haled into court where it has a property right—tangible or intangible—that could be used to satisfy an arbitral award in whole or in part. If there is a dispute as to whether the tribunal had jurisdiction to issue the award, that could be litigated in the enforcing jurisdiction, as it is a basis to refuse recognition of an award under Article V(1) of the New York Convention. That approach to quasi-in-rem jurisdiction is consistent with the U.S. due-process principles articulated in *Shaffer* and other cases, and would further U.S. compliance with its treaty obligations under the New York Convention to recognize and enforce foreign arbitral awards with only limited exceptions.

In *Simplot India*, the court could have considered whether the respondent award-debtor’s intangible right to payment for the goods was sited in New Jersey, where the payments likely originated—i.e., from the New Jersey affiliate—rather than asking whether the respondent had a right to specific funds in a New Jersey bank account. At least, that issue might have warranted jurisdictional discovery. Further, it appears unduly favorable to award-debtors—which owe a debt that they are refusing to pay—to require an award-creditor to prove an “ironclad” and sole right to tangible assets located in New Jersey in order to establish jurisdiction to enforce an award. In future cases under the New York Convention, parties should consider making broader arguments about the types of property rights that can support quasi-in-rem jurisdiction, including focusing on intangible property rights that might be deemed located in the state where enforcement is sought.

**David N. Cinotti** is partner with *Pashman Stein Walder Hayden*. He focuses his practice on commercial litigation, international and domestic arbitration, and appellate litigation.