14-4375-cv(L)

14-4378-cv(XAP)

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

IN RE: VITAMIN C ANTITRUST LITIGATION

THE RANIS COMPANY, INC.,

Appellant-Cross-Appellee,

—against—

HEBEI WELCOME PHARMACEUTICAL CO. LTD.,
NORTH CHINA PHARMACEUTICAL GROUP CORPORATION,

Appellees-Cross-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT-CROSS-APPELLEE THE RANIS COMPANY, INC.

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Appellant-Cross-Appellee and plaintiff below, The Ranis Company, Inc., (the "Judgment Creditor") respectfully submits this brief in reply and further support of its appeal of the decision below holding the assets of North China Pharmaceutical Group Corporation ("NCPG") immune from execution (No. 14-4375) and in response to NCPG's and Hebei Welcome Pharmaceutical Co., Ltd.'s cross-appeal of the decision below granting certain of the Judgment Creditor's post-judgment motions (No. 14-4378).

PRELIMINARY STATEMENT

This appeal presents a straightforward question: when is the property of a judgment debtor immune from execution under the Foreign Sovereign Immunities Act (the "FSIA")? As explained in the Judgement Creditor's opening brief (Br. for Appellant-Cross-Appellee, No. 14-4375, Dkt. 62 ("Opening Brief")), under the plain language and structure of the statute only property owned by a "foreign state" within the meaning of the FSIA is entitled to immunity. *A fortiori*, if property of a judgment debtor is *not* owned by a foreign state when execution is sought, it is not immune.

The Appellee-Cross-Appellants, NCPG and Hebei Welcome Pharmaceutical Co., Ltd. ("Hebei Welcome") (together, the "Debtors") ask the Court to ignore the plain import of the statute. The Debtors make two arguments. First, the Debtors conflate immunity from jurisdiction to entertain a claim against a party with

immunity of property from execution. *See* Opening Br. for Appellees-Cross-Appellants, No. 14-4375, Dkt. 85 ("Debtors' Brief") at 18-21.

There is no dispute that the time-of-filing rule is a judicially created doctrine for determining facts relevant to the exercise of subject matter jurisdiction. There is no dispute that the rule is implicated by the FSIA under section 1604 because that section deprives the courts of jurisdiction unless certain exceptions pertain. There is no real dispute that, if an exception to section 1604 immunity confers subject matter jurisdiction, as with diversity jurisdiction, subsequent changed circumstances, including the privatization of a formerly sovereign entity, do not destroy jurisdiction.

The Debtors contend, however, that once subject matter jurisdiction is established under the FSIA, the defendant is somehow forever deemed a "foreign state" for any and all purposes under the FSIA even if it ceases to conform to the statutory definition of a "foreign state." The Debtors are wrong.

Execution immunity is different; "execution immunity inures in the property itself." *Walters v. Indus. & Commercial Bank of China Ltd.*, 651 F.3d 280, 291 (2d Cir. 2011). The existence of execution immunity, and the factual determination of whether an exception applies, can only be made by reference to the character of the property or the use to which it is put *when execution is sought*.

There is no basis to apply a time-of-filing doctrine in the context of execution immunity.

The Debtors otherwise argue, notwithstanding the text of FSIA sections 1609-1611, that the Court *should* adopt section 1604's time-of-filing rule for determining execution immunity, variously for the sake of international comity, reliance interests and policy considerations. *See* Debtors' Br. at 21-24. But the execution immunity provisions of the FSIA are unambiguous. Opening Br. at 9-11. This Court is constrained to give effect to what the statute says.

The Debtors' other responses are not amenable to decision here. The Debtors—hedging against the appeal on this issue—ask the Court to separately adjudicate the status of NCPG and its property *for the first time on appeal*.

The Debtors contend that NCPG should be deemed an "organ" under the FSIA. Debtors' Br. at 24-27. The Debtors also urge the Court to re-write the FSIA so that, even if NCPG is neither an organ nor a majority-owned instrumentality, execution immunity nonetheless embraces its property because, under China's "socialist economy," NCPG's assets are somehow ultimately or beneficially owned by "the whole people of China." Debtors' Br. at 2, 15, 27-28.

The District Court did not consider or render a decision on either of those issues (*see generally* Mem. Decision & Order, Special Appendix ("SPA") 1-19) and the Judgment Creditor has not had the opportunity to introduce evidence on

those issues. Except under limited circumstances not present here, a federal appellate court does not consider an issue not passed upon below.

The Debtors further hedge by purporting to "appeal" the District Court's exercise of personal jurisdiction over NCPG for these post-judgment proceedings. Debtors' Br. at 28-29. But the Debtors' prior appeal of the judgment on that ground (No. 13-4791) deprived the District Court of jurisdiction to pass on the question of personal jurisdiction again. Mem. Decision & Order, SPA-10. And whether or not the District Court was permitted to reconsider that issue, *the District Court did not consider it*. There is nothing for this Court to review in relation to personal jurisdiction over NCPG outside of the separate appeal in Case No. 13-4791.

This appeal begins and ends with the language and operation of the execution immunity statutes. Because NCPG is not currently a "foreign state" within the meaning of the FSIA, its property is not the property "of a foreign state" entitled to immunity from execution.

By their cross-appeal, the Debtors' assert everything but the kitchen sink as a basis to reverse the District Court's orders enforcing the judgment against Hebei Welcome. Debtors' Br. at 29-42. As explained below, the Debtors' cross-appeal does not raise any serious issues.

ARGUMENT

A. THE PLAIN MEANING OF THE FSIA PERMITS ONLY ONE INTERPRETATION

The execution immunity provisions of the FSIA refer to the use or character of property in the present tense. Section 1609 provides that "property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter." 28 U.S.C. § 1609.

Section 1610 provides for exceptions to execution immunity under certain circumstances for "property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States." 28 U.S.C. § 1610. This Court has confirmed that commercial use is to be determined *at the time execution is sought*. *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009) ("Thus, the property that is subject to attachment and execution must be 'property in the United States of a foreign state' *and* must have been 'used for a commercial activity' *at the time* the writ of attachment or execution is issued.") (emphases in original).

Similarly, notwithstanding section 1610, section 1611 *inter alia* makes property immune from execution if it is property "of a foreign central bank" or "is, or is intended to be, used in connection with a military activity and is of a military character, or is under the control of a military authority or defense agency." 28

U.S.C. § 1611. Plainly, whether any particular property is entitled to immunity turns on the character of the property at the time execution is sought, not the character of the property when the suit was first filed.

In the context of these straightforward provisions, when execution against a judgment debtor's property is sought, the inquiry proceeds as follows: (1) is the property the property of a foreign state within the meaning of section 1603? (if not, it enjoys no immunity); (2) if so, is it used for a commercial activity in the United States?; (3) even if it is, is it nonetheless immune as central bank property or military property? The historical status of the property at the time of filing of the suit—ordinarily years prior to any attempt at execution—has no bearing on any of those inquiries.

Section 1604, on the other hand, confers subject matter jurisdiction over claims against "foreign states" where an exception to immunity pertains. 28 U.S.C. § 1604. If, as here, the defendant ceases to fit the definition of a "foreign state" under section 1603 sometime during the pendency of the suit, subject matter jurisdiction yet survives. *See e.g.*, *Leith v. Lufthansa German Airlines*, 897 F. Supp. 1115, 1116 (N.D. Ill. 1995) ("Once [FSIA] jurisdiction attached we do not believe that Congress intended it to terminate because of subsequent events, just as a change in citizenship destroying diversity does not end a diversity suit originally properly brought").

The Debtors contend "[t]he principal question for Ranis' appeal is whether NCPG is a 'foreign state' for FSIA purposes in this litigation . . . ." Debtors' Br. at 18. The Debtors thus posit that because a change from sovereign to private status does not deprive the District Court of subject matter jurisdiction, NCPG somehow forever remains a "foreign state" for any and all purposes under the FSIA. The Debtors are wrong.

That under the time-of-filing rule the privatization of a defendant does not destroy jurisdiction does not mean the defendant is forever deemed a "foreign state" for all purposes under the FSIA, *it simply means that subject matter jurisdiction persists*. *See, e.g., Olympia Express, Inc. v. Linee Aeree Italiane, S.P.A.*, 509 F.3d 347, 350 (7th Cir. 2007) ("We agree with *Leith*; the jurisdictional basis of the suit continued to be, and remains, that Act, and nothing else. But this does not mean that a change in the defendant's status that occurs after a suit is filed cannot alter the plaintiffs' right to a jury trial.").

The Debtors otherwise suggest that "[f]oreign countries have a reasonable reliance interest" that privatization of a formerly sovereign entity involved in litigation in the United States will not have any consequences. Debtors' Br. at 22. Even if it were genuine, such reliance would not inform the meaning of the statute and, given this appeal presents an issue of first impression, the Debtors' reliance argument is dubious in any event.

The Debtors' reliance and policy arguments come from the Seventh Circuit case, *Olympia Express, Inc. v. Linee Aeree Italiane, S.P.A.* Debtors' Br. at 21-22. In that case, the Seventh Circuit held the Italian government's post-filing divestment of the defendant entity did not serve as a basis for permitting an untimely jury demand. *See generally Olympia Express*, 509 F.3d 347.

The Seventh Circuit struggled (unsatisfactorily) with the question of whether the FSIA's prohibition on jury trials was jurisdictional or not. *Olympia Express*, 509 F.3d at 350-52 (comparing 28 U.S.C. § 1330(a) with § 1441(d)). Bolstering its conclusion that a post-divestment jury demand should have been ignored under the circumstances, in *dicta*, the Seventh Circuit (Posner, J.) further observed: "If the result of the jury trial in this case is allowed to stand, a foreign government may think twice before privatizing one of its instrumentalities that has been sued in a U.S. court." *Olympia Express*, 509 F.3d at 352.

With all due respect for the Seventh Circuit, a foreign government *should* think twice before privatizing an instrumentality that has waived immunity from jurisdiction and is a defendant or judgment debtor in a U.S. court action, particularly in the post-judgment context of immunity from execution. By virtue of section 1609 of the FSIA, informed by the definition of "foreign state" under section 1603 and as interpreted by the Supreme Court in *Dole Food Co. v. Patrickson*, 538 U.S. 468 (2003), the nations of the world are on notice that only

the property of a "foreign state" will enjoy immunity from execution in enforcement proceedings in the U.S. courts. That is a workable and predictable rule.

On the other hand, importing a time-of-filing rule in this context—as urged by the Debtors—would only foster unpredictability and create confusion. Whether particular property would be subject to post-judgment attachment or execution would be determined, not by reference to the straightforward inquiry of its ownership when the execution is sought, but rather by reference to whether it was owned by a foreign state at the time the suit was brought by the same particular judgment creditor now seeking to execute on the property.

For example, in this case, NCPG argues that the Judgement Creditor here cannot execute on its assets to satisfy the judgment because when the underlying suit was brought, NCPG was majority-owned by an agency of China. If a similarly situated plaintiff brought its action in 2010, after NCPG's ownership was transferred to a commercial holding company, that plaintiff would now be free to execute on those very same assets. Surely, whether an asset is immune from execution cannot be a function of the identity of the party seeking to execute on it or the vintage of service of the summons and complaint in one given case versus another.

B. THE SECOND CIRCUIT DOES NOT CONSIDER ISSUES NOT PASSED UPON BELOW

1. NCPG's Status As An "Organ" Was Not Decided Below

NCPG opposed the Judgment Creditor's turnover motion on the ground that NCPG was a majority-owned "instrumentality" at the time the suit was brought. *See generally* Mem. Supp. Defs.' Mot. Dissolve Restraining Notices & Stay Enforcement & Opp'n Pl.'s Renewed Turnover Mot., No. 1:06-md-1738-BMC-JO, Dkt. 885. The District Court agreed, and this appeal followed.

NCPG did not oppose the Judgment Creditor's motion for a turnover order on the ground that it is an "organ" under the FSIA. *Id.* There is no decision below on that issue for this Court to review.

The Debtors complain in a footnote that the District Court refused to consider their argument, raised for the first time in a reply brief below, that NCPG is an "organ" of China within the meaning of the FSIA. Debtors' Br. at 26 n.5. Notably, however, the Debtors did not appeal the District Court's decision *not to consider* that argument.

The Debtors instead ask this Court to adjudicate its status as a sovereign organ for the first time on appeal. The Court should not consider that issue for the first time here, particularly given the fact-intensive inquiry required for determining whether an entity is an "organ" under the FSIA.

"It is a general rule that a 'federal appellate court does not consider an issue not passed upon below.'" *Pinnacle Nursing Home v. Axelrod*, 928 F.2d 1306, 1317 (2d Cir. 1991) (citing and quoting *Singleton v. Wulff*, 428 U.S. 106, 120-21 (1976) ("Only in exceptional circumstances such as when the proper resolution of a claim is not in doubt, or where injustice might otherwise result, will an appellate court be justified in resolving an issue not decided below . . . Since we are without a sufficient factual record to apply the relevant legal principles, we decline to decide this issue on appeal.")); *see also RCM Securities Fund, Inc. v. Stanton*, 928 F.2d 1318, 1335-36 (2d Cir. 1991) ("With respect to the Rhodes defendants' cross-appeal from the district court's failure to address their motion to dismiss the complaint against the estate, we dismiss for lack of jurisdiction. The district court has entered no order at all with regard to the motion to dismiss, and there is thus nothing to review.").

Whether an entity is an "organ" under the FSIA depends on a fact-intensive consideration of several factors, including:

> (1) whether the foreign state created the entity for a national purpose; (2) whether the foreign state actively supervises the entity; (3) whether the foreign state requires the hiring of public employees and pays their salaries; (4) whether the entity holds exclusive rights to some right in the [foreign] country; and (5) how the entity is treated under foreign state law.

In re Terrorist Attacks on September 11, 2001, 538 F.3d 71, 85 (2d Cir. 2008).

The Debtors claim that NCPG "is wholly owned and controlled by the Chinese government, serves as an investment manager for the government's pharmaceutical investments over which it has exclusive control, promotes the government's health and economic development policy goals, and is treated as a state-owned enterprise under Chinese law." Debtors' Br. at 26. But as evidence for those claims, the Debtors point to a single page of a translation of a disclosure made in conjunction with a debt offering. *Id.* (citing J.A. 299).

That portion of the disclosure recounts the history of NCPG and states that Jizhong Energy Croup Co. Ltd. is "the controlling shareholder" of NCPG. It also states that the "company's actual controller is the State-owned Assets Supervision and Administration Commission of Hebei Province." J.A. 299. That is not a sufficient record for adjudicating NCPG's claim that it is an "organ" under the FSIA.

Further, the Judgment Creditor has not had the opportunity to introduce evidence on this issue. Under the circumstances, the Court should not depart from the general rule that a "federal appellate court does not consider an issue not passed upon below." *Pinnacle Nursing Home*, 928 F.2d at 1317.

2. The District Court Did Not Consider The Effect Of China's "Socialist Economy" Or Any Notion Of Beneficial Sovereign Ownership

The Debtors also invite the Court to make new law in relation to the Chinese government's supposed attenuated and indirect investments in NCPG. In particular, the Debtors argue that under China's "socialist economy," NCPG's property is somehow ultimately or beneficially owned by "the whole people of China." Debtors' Br. at 2, 15, 27-28. But like the FSIA "organ" issue, this argument was never considered or decided below by the District Court.

In any event, there is no authority that supports the Debtors' position. At best, the Debtors confuse legal title to NCPG's assets (about which there is no factual dispute) with the sovereign character of some or all of the indirect owners of shares in the capital stock of NCPG.

The Debtors cite *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan Minyak*, 313 F.3d 70 (2d Cir. 2002) for the theory that, even if NCPG is not itself entitled to sovereign immunity, some sort of residual immunity adheres in its assets that could preclude execution. Debtors' Br. at 27-28. But that argument depends on either a misrepresentation of the holding in that case or the facts of this one.

In *Karaha Bodas*, the issue was the *legal ownership* of certain funds. 313 F.3d at 75 ("The question on appeal concerns *the ownership* of the funds in the Bank of America trust accounts") (emphasis supplied). This Court affirmed the

trial court's finding that Indonesia actually legally owned some of the disputed funds. *Id.* at 92-93. If China actually owned the assets at issue here, it would of course moot the issue on appeal.

But the Debtors do not contend that China or any Chinese government agency actually has legal title to NCPG's assets, only that NCPG somehow holds property indirectly for the benefit of the Chinese government or the Chinese people. Debtors' Br. at 27-28. Respectfully, that is not a real issue in the context of the FSIA.

3. NCPG's Prior Appeal Deprived The District Court Of Jurisdiction To Again Consider NCPG's Objection To The Exercise of Personal Jurisdiction

The Debtors otherwise object to or to purport to "appeal" the District Court's exercise of personal jurisdiction over NCPG for post-judgment proceedings. Debtors' Br. at 28-29. But the Debtors' prior appeal of the judgment on that ground (No. 13-4791) deprived the District Court of jurisdiction to pass on that issue again. Mem. Decision & Order, SPA-10.

Whether the District Court was entitled as a matter of doctrine to consider the issue again, the District Court elected not to. There is nothing for this Court to review here outside of the separate appeal in Case No. 13-4791. On the merits of NCPG's objection to the exercise of personal jurisdiction, the Judgment Creditor respectfully refers the Court to its submissions and argument in Case No. 13-4791.

C. THE DISTRICT COURT HAD THE DISCRETION TO AUTHORIZE SUBSTITUTE SERVICE IN THE UNITED STATES

The Debtors contend the District Court abused its discretion when it authorized service of a N.Y. CPLR § 5222 restraining notice in the United States on Hebei Welcome by service on its U.S. counsel. Debtors' Br. at 29-32. That contention is without merit. Ordering substitute service on Hebei Welcome's counsel as its (involuntary) agent for service was well-within the District Court's discretion, was permitted under New York law, and was not precluded by the Hague Service Convention.

The District Court specifically found that "for the entirety of this litigation, Hebei [Welcome] has regularly accepted service of process and other judicial documents without requiring resort to the Hague Convention;" that Hebei Welcome's "sudden insistence on service through the Hague Convention is solely for the purpose of delay;" and that "[r]equiring service of these restraining notices on defendants through the Hague Convention would be expensive, time-consuming[,] uncertain [and] pointless." Mem. Decision and Order, SPA-1-19.

New York law permits service of a summons and complaint on any "foreign corporation" by service on any agent authorized by "law to receive service" and, if service is "impracticable," "as the court, upon motion without notice, directs." N.Y. CPLR § 311. Where the law of the forum permits service in a manner that

does not require transmission of documents abroad, it is no offense to the Hague Convention. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988).

D. THE SEPARATE ENTITY RULE MAY LIMIT THE EFFECT OF RESTRAINING NOTICES, BUT DOES NOT REQUIRE THEY BE DISSOLVED

The Debtors also purport to "appeal" the District Court's refusal to rule on Hebei Welcome's motion to dissolve restraining notices served on the New York branches of certain Chinese Banks. The Debtors contend those restraining notices violate the "separate entity rule." Debtors' Br. at 32-33.

Under the "separate entity rule," a judgment creditor's service of a N.Y. CPLR § 5222 restraining notice on a garnishee bank's New York branch is as a matter of law *ineffective* to freeze assets associated with the bank's foreign branches. *See, e.g., Motorola Credit Corp. v Standard Chartered Bank*, 21 N.E.3d 223 (N.Y. 2014). In other words, if there are assets associated with New York branches of those banks, the restraining notices were and continue to be effective. On the other hand, if there are not assets associated with the New York branches, under the separate entity rule, the restraining notices were ineffective. In either case, there is nothing to dissolve.

E. THE ORDER APPEALED IS NOT AN ADVISORY OPINION

Hebei Welcome's argument that the turnover order is an advisory opinion is nonsensical. Debtors' Br. at 33-34. The District Court ordered the turnover of the

contents of certain bank accounts. Hebei Welcome contends on the basis of conclusory denials that those accounts contain zero assets.[1]

If true, that does not render the order an advisory opinion; instead it either proves immediate compliance with the order or is instead a theoretical defense to contempt for inability to comply. In any case, the District Court's order does not threaten Article III of the U.S. Constitution.

F. BANK DEPOSITS ARE IN A DEBTOR'S "POSSESSION OR CUSTODY" WITHIN THE MEANING OF N.Y. CPLR § 5225(A)

It is well-settled that a turnover motion for a debtor's bank deposits is properly brought against the debtor itself (and need not be brought against the banks as garnishees). The Debtors suggest that a decision of the New York Court of Appeals, in *Commonwealth of the Northern Mariana Islands v. Canadian Imperial Bank of Commerce*, 990 N.E.2d 114 (N.Y. 2013), has somehow overruled that proposition *sub silentio*. Debtors' Br. at 34-35

[1] Hebei Welcome (like NCPG) continues to defy the order of the District Court to furnish asset-related discovery that would confirm or deny Hebei Welcome's claim. The Debtors did not appeal that aspect of the District Court's order. They are in open contempt of the discovery order while at the same time asking this Court for relief from other aspects of the District Court's order. *See* Pl.'s Mem. Supp. Civil Contempt & Receivership Mot., No., 1:06-md-1738-BMC-JO, Dkt. 922.

The New York Court of Appeals did not overrule that long-standing rule. Instead, as explained below, the case upon which the Debtors rely further supports the District Court's order below.

In *Northern Mariana Islands*, the New York Court of Appeals decided questions of law certified by this Court; namely, whether a judgment creditor can obtain a turnover order against a bank to garnish property that the bank itself did not hold, but that was separately held by a foreign subsidiary of the bank not subject to the court's personal jurisdiction. *Northern Mariana Islands*, 21 N.Y.3d 55. The New York Court of Appeals held that, even if the parent bank could effectively control its subsidiary by virtue of its majority ownership, the assets at the subsidiary were not in the parent's "possession or custody" for purposes of N.Y. CPLR § 5225(b). *Id.* at 60-64.

The Debtors suggest this holding limits the reach of debtor turnover orders to property actually physically in the possession of the debtor, and as a result a creditor has to pursue a debtor's bank deposits by proceeding against the bank. But the New York Court of Appeals' decision in the case actually forecloses the Debtors' argument.

The New York Court of Appeals, when distinguishing the issue raised by the certified questions, reaffirmed that a debtor's bank deposits are in the debtor's "possession" under the turnover statute:

> In *Miller v Doniger*, 28 A.D.3d 405 (1st Dep't 2006), the judgment debtor, who was in New York, was directed to turn over his out-of-state Wachovia bank accounts to the judgment creditor. Similarly, in *Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 41 A.D.3d 25 (1st Dep't 2007), the Appellate Division observed that "a turnover order merely directs a defendant, over whom the New York court has jurisdiction, to bring its own property into New York" . . . Thus, "[h]aving acquired jurisdiction of the person, the court can compel observance of its decrees by proceedings in personam against the owner within the jurisdiction." *Koehler*, 12 N.Y. 3d at 539. However, in these cases, the garnishee was directed to deliver assets *already within its possession*. No case supports the Commonwealth's attempt to broadly construe *Koehler* and require that a garnishee be compelled to direct another entity, which is not subject to this state's personal jurisdiction, to deliver assets held in a foreign jurisdiction. Such an expansion is inconsistent with the plain language and scope of section 5225 (b).

Northern Mariana Islands, 21 N.Y.3d at 64 (emphasis added).

There can be no serious dispute that Hebei Welcome has "possession" of its own bank deposits sufficient to support a turnover order for those deposits under N.Y. CPLR § 5225(a). The Court should affirm the District Court's turnover order.

G. ENFORCING THIS JUDGMENT DOES NOT OFFEND THE U.S. CONSTITUTION

According to the Debtors, no U.S. court judgment may be enforced in relation to a judgment debtor's foreign assets or affairs without violating the Commerce Clause or the Due Process Clause. Debtors' Br. at 40-41. The Debtors are wrong.

The Debtors object to the application of New York's statutory judgment enforcement remedies on Hebei Welcome. Debtors' Br. at 41 (describing Hebei Welcome's "legislative jurisdiction objection"). But Hebei Welcome has had its day in court and enforcing the resultant judgment against Hebei Welcome does not implicate the Due Process Clause. *Cf. Endicott-Johnson Corp. v. Encyclopedia Press*, 266 U.S. 285, 288 (1924) ("the established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court, should, after a judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment.").

And plainly, enforcing the judgment by resort to New York's post-judgment procedures, made applicable by Fed. R. Civ. P. 69(a)(1), does not tread on the Commerce Clause. This Court has approved of the extraterritorial reach of a New York turnover order to enforce a U.S. district court judgment. *Koehler v. Bank of Bermuda Ltd.*, 577 F.3d 497 (2d. Cir. 2009).

CONCLUSION

For the foregoing reasons and the reasons set forth in the Judgment Creditor's Opening Brief, the Judgment Creditor respectfully requests the decision below denying its turnover motion in relation to NCPG's assets on the basis of sovereign immunity be reversed and that the District Court's judgment enforcement orders in relation to Hebei Welcome be affirmed.

Dated: New York, New York
May 29, 2015

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4646 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-Point Times New Roman proportional font.

Dated: May 29, 2015

Respectfully submitted,

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