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NY Expands Jurisdictional Reach Over Foreign Banks Using Correspondent Accounts

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The New York Court of Appeals recently gave a leg-up to plaintiffs seeking to hale foreign banks before New York state courts, clarifying that the use of a New York-based correspondent account could, under certain circumstances, suffice to provide personal jurisdiction, even where the foreign bank does not direct that funds be deposited into the New York account. On November 22, 2016, the Court, in a 4–3 decision in *Al Rushaid v. Pictet & Cie*, determined that a New York court could exercise jurisdiction over a Saudi businessman’s suit against a Swiss bank that allegedly accepted transfers of laundered funds from its New York-based correspondent accounts. Although the Swiss bank lacked any physical presence in New York, and did not itself deposit funds in the New York accounts, the majority found that “repeatedly approv[ing] deposits and the movement of funds through [a New York] account for the benefit of its customer” constituted “transacting business in New York” within the meaning of CPLR § 302(a)(1).

In the underlying action, Saudi businessman Rasheed Al Rushaid sued Swiss bank Pictet & Cie for aiding and abetting three employees of his oil business in obtaining bribes and kickbacks from third-party vendors. The vendors allegedly wired the illegal payments to Pictet’s correspondent accounts in New York, and the funds in turn were transferred to Pictet accounts in Switzerland that had been set up by a Pictet executive for the allegedly corrupt employees.

Judge Jenny Rivera, writing for the majority, acknowledged that under the Court’s prior precedent, merely owning a New York correspondent account or “passively and unilaterally” receiving funds through such an account, would not give rise to personal jurisdiction over a bank or individual. On the other hand, “[r]epeated use of a correspondent account on behalf of a client” constitutes a course of dealing in New York giving rise to personal jurisdiction—whether the “use” of the account involved the foreign bank actively depositing money or simply “approv[ing] deposits and the movement of funds.”

The majority found that Pictet “affirmatively act[ed]” by crediting the funds transferred first to the New York correspondent account and then to the employees’ accounts in Switzerland, and that crediting these transactions was an “essential step in the money-laundering scheme.” As a result, exercise of personal jurisdiction over Pictet was warranted under New York’s Long Arm statute and within the bounds of “traditional notions of fair play and substantial justice” under the due process clause of the United States Constitution.

Notably, Judge Eugene F. Pigott authored a sharp dissent, arguing that “the majority risks upending over forty years of precedent that holds the mere maintenance of a New York correspondent account is insufficient to assert personal jurisdiction over a foreign bank.” Judge Michael Garcia’s concurrence, however, sought to temper the differences between the majority and dissent, pointing out that they in fact differed only on the factual question of whether Pictet’s conduct was “purposeful,” “affirmative,” or “deliberate.”

Nevertheless, the Court’s decision makes it clear that foreign banks, despite having no other connection to New York, may be subject to the state’s long arm jurisdiction through the use of correspondent accounts.

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