

A9652 Lancman&&&&&&&&&&&& No Same as

Civil Practice Law and Rules

TITLE....Relates to personal jurisdiction and enforceability of certain foreign judgments in cases involving defamation

01/10/08 referred to judiciary

LANCMAN

Amd SS5304 & 302, CPLR

Relates to personal jurisdiction and enforceability of certain foreign judgments in cases involving defamation.

STATE OF NEW YORK

9652

IN ASSEMBLY

(Prefiled)

January 9, 2008

Introduced by M. of A. LANCMAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. This act shall be known and may be cited as the "libel
2 terrorism protection act".
- 3 § 2. Section 5304 of the civil practice law and rules, as added by
4 chapter 981 of the laws of 1970, is amended to read as follows:
- 5 § 5304. Grounds for non-recognition. (a) No recognition. A foreign
6 country judgment is not conclusive if:
- 7 1. the judgment was rendered under a system which does not provide
8 impartial tribunals or procedures compatible with the requirements of
9 due process of law;
- 10 2. the foreign court did not have personal jurisdiction over the
11 defendant.
- 12 (b) Other grounds for non-recognition. A foreign country judgment need
13 not be recognized if:
- 14 1. the foreign court did not have jurisdiction over the subject
15 matter;
- 16 2. the defendant in the proceedings in the foreign court did not
17 receive notice of the proceedings in sufficient time to enable him to
18 defend;
- 19 3. the judgment was obtained by fraud;
- 20 4. the cause of action on which the judgment is based is repugnant to
21 the public policy of this state;
- 22 5. the judgment conflicts with another final and conclusive judgment;
- 23 6. the proceeding in the foreign court was contrary to an agreement
24 between the parties under which the dispute in question was to be
25 settled otherwise than by proceedings in that court; ~~or~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 7. in the case of jurisdiction based only on personal service, the
2 foreign court was a seriously inconvenient forum for the trial of the
3 action[~~7~~]; or

4 8. the cause of action resulted in a defamation judgment obtained in a
5 jurisdiction outside the United States, unless a court sitting in this
6 state first determines that the defamation law applied in the foreign
7 jurisdiction provides at least as much protection for freedom of speech
8 and press as provided for by both the United States and New York consti-
9 tutions.

10 § 3. Section 302 of the civil practice law and rules is amended by
11 adding a new subdivision (d) to read as follows:

12 (d) Foreign defamation judgment. The courts of this state shall have
13 personal jurisdiction over any person who obtains a judgment in a defa-
14 mation proceeding outside the United States against any person who is a
15 resident of New York or, if not a natural person, has its principal
16 place of business in New York, for the purposes of rendering declaratory
17 relief with respect to that resident's liability for the judgment, to
18 the fullest extent permitted by the United States constitution,
19 provided:

20 1. the publication at issue was published in New York, and

21 2. that resident (i) has assets in New York which might be used to
22 satisfy the foreign defamation judgment, or (ii) may have to take
23 actions in New York to comply with the foreign defamation judgment. The
24 provisions of this subdivision shall apply to persons who obtained judg-
25 ments in defamation proceedings outside the United States prior to
26 and/or after the effective date of this subdivision.

27 § 4. This act shall take effect immediately.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A9652

SPONSOR: Lancman&&&&&&&&&&&&&&&&

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments

PURPOSE OR GENERAL IDEA OF THE BILL:

This bill would effectively overrule the recent New York Court of Appeals December 2007 decision in Ehrenfeld v. Mahfouz and protect New Yorkers and New York based publishers and media outlets from local enforcement of foreign defamation judgments designed to squelch their freedom of expression. Overseas jurisdictions, lacking the free speech and free press protections guaranteed by the New York and United States constitutions, often have libel laws designed to discourage and inhibit free expression, rather than promote it. Despots and terrorist networks whose activities have been exposed by American authors and news organizations have increasingly turned to such jurisdictions to obtain defamation verdicts which they could never obtain in an American court in order to harass and intimidate American authors and journalists. This bill would prohibit enforcement of such unfair overseas defamation judgments in New York and give New Yorkers and New York based publishers and media outlets the ability to obtain a declaration in a New York Court to that effect.

SUMMARY OF SPECIFIC PROVISIONS:

Adds subdivision 2(b)(8) to section 5304 of the Civil Practice Law and Rules, prohibiting enforcement in New York of an overseas defamation judgment unless a New York court determines that the overseas defamation law satisfies the freedom of speech and press protections guaranteed by the New York and United States constitutions; adds subdivision (d) to section 5304 of the Civil Practice Law and Rules, providing the courts of this state with personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any person who is a resident of New York or, if not a natural person, has its principal place of business in New York, for the purposes of rendering declaratory relief with respect to that resident's liability for the judgment, provided: (1) the publication at issue was published in New York, and (2) that resident (a) has assets in New York which might be used to satisfy the foreign defamation judgment, or (b) may have to take actions in New York to comply with the foreign defamation judgment.

JUSTIFICATION:

American journalists and authors who relentlessly and doggedly pursue the truth about terrorism's enablers - the financiers, frontmen, promoters, apologists and logisticians who made attacks like 9/11, the Madrid railroad explosions and the London bus and subway bombings possible - are being met with a barrage of libel lawsuits designed to stifle their reporting filed in overseas jurisdictions not sharing our belief, famously articulated by the Supreme Court over forty years ago in *N.Y. Times Co. v. Sullivan*, "that debate on public issues should be uninhibited, robust, and wide-open." Having been routed in numerous defamation cases against journalists, authors and advocacy groups brought here in the United States, the subjects of these exposes are filing defamation claims in foreign courts - England, primarily with lopsided defamation laws that make it virtually impossible, both logistically and substantively, for authors to defend their work on the merits.

The case of Dr. Rachel Ehrenfeld, a distinguished and prolific New York based researcher and the author of "Funding Evil: How Terrorism is Financed - and How to Stop It," is typical. The book identifies a prominent Saudi businessman as a financier of organizations with terrorist ties. Twenty-three copies of her book were sold in England, and excerpts of it were posted on a television station website accessible in England. The Saudi businessman sued Dr. Ehrenfeld in a London court, where he has sued many others who published similar conclusions about his terrorist ties. Dr. Ehrenfeld had neither the financial means to litigate her case in England nor the desire to dignify, let alone submit to, England's asphyxiating defamation laws. The Saudi businessman won a default judgment requiring Dr. Ehrenfeld to pay him \$225,000 in damages and legal fees, publicly apologize and, as interpreted by his lawyers, destroy all remaining copies of her book. The Saudi businessman has cleverly withheld actually attempting to enforce the judgment against Dr. Ehrenfeld in New York, lest he trigger the potential that an American court will refuse to enforce the English judgment. But he has already accomplished his goal. Dr. Ehrenfeld feels the weight of self-censorship every working moment; her publishers are suddenly backing away from running her work. And Dr. Ehrenfeld's intellectual detention has no end in sight. In December 2007, New York State's highest court relied on a narrow and hyper-technical reading of New York's personal jurisdiction laws against non-resident defendants like the Saudi businessman who sued Dr. Ehrenfeld overseas to block a lawsuit filed by Dr. Ehrenfeld in New York to declare the defamation judgment unenforceable against her in New York. So the English judgment will forever hang over Dr. Ehrenfeld's head like the sword of Damocles.

The "Libel Terrorism Protection Act" would protect journalists and authors by declaring overseas defamation judgments unenforceable in New York unless the foreign defamation law provides, in substance and application, the same free speech protections guaranteed under our own constitution, and by giving New York residents and publishers the opportunity to have their day in court here in New York.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:
Immediately.
