

*International Banking*

**Subpoena to Taiwan Bank's N.Y. Branch Has Worldwide Reach, New York Court Says**

**A** Taiwan bank's New York branch must give judgment creditors information about accounts and records at other branches outside the state, a New York court said (*Matter of B&M Kingstone, LLC v Mega Intl. Commercial Bank Co., Ltd.*, 2015 BL 257120, N.Y. App. Div., No. 158577/14, 8/11/15).

The Aug. 11 ruling by New York Supreme Court's Appellate Division complicates matters for international banks with branches in New York but may ease recoveries by U.S. manufacturers who allege illegalities by overseas competitors.

Judge Rolando T. Acosta said the New York branch of Mega International Commercial Bank must produce information sought by a subpoena.

"We hold that Mega's New York branch is subject to jurisdiction requiring it to comply with the appropriate information subpoenas, because it consented to the necessary regulatory oversight in return for permission to operate in New York," Acosta said.

The court's general personal jurisdiction over the bank's New York branch, he said, "permits it to compel that branch to produce any requested information that can be found through electronic searches performed there."

**Motorola Rejected.** The decision follows two related decisions in 2014 by the New York Court of Appeals (206 BBD, 10/24/14) and the U.S. Court of Appeals for the Second Circuit (221 BBD, 11/17/14) involving Motorola Corp. that said New York's separate entity rule bars courts from issuing garnishment orders against foreign bank branches.

According to Acosta, the Second Circuit's *Motorola* does not govern this dispute, because it was limited to the restraint of assets held in foreign branch accounts.

"Thus, *Motorola's* expressly limited affirmation of the separate entity rule does not apply to the instant case, and the rule does not bar the court's exercise of jurisdiction over Mega to compel a full response to the information subpoena," he said.

**IIB Sees Fallout.** Foreign banks with a presence in New York could feel the impact right away.

In an Aug. 12 statement to Bloomberg BNA, the Institute of International Bankers (IIB) said worldwide discovery orders such as the one in this case "could lead foreign banks to reconsider their decision to operate in New York through a branch because of the burdens and conflicts of laws those orders impose, with potentially negative effects for the economies of New York and the United States as a whole."

"We respectfully disagree with the First Department's conclusion that a foreign bank's licensing of a branch in New York under section 200 of the New York Banking Law can be the jurisdictional basis for discovery of information about accounts held with the bank anywhere in the world outside of New York," IIB Chief Executive Officer Sally Miller said. "Such a result is not supported by the language of the statute or its legislative history."

**Manufacturers Called Victors.** The decision, though unwelcome for some banks, is a victory for American manufacturers battling unscrupulous competitors overseas, according to the plaintiff, Brett Kingstone, who said he has spent 12 years trying to enforce a judgment for more than \$30 million against alleged wrongdoers.

"This is a great day for American industry," Kingstone told Bloomberg BNA Aug. 12. "Now, finally, in our own country, judges are standing up to protect the industrial base that built this country," Kingstone said.

Kingstone's attorney, Elias C. Schwartz of the Law Firm of Elias C. Schwartz in Great Neck, N.Y., Aug. 12 said the ruling means the subpoena effectively has global reach.

"The court recognized that with the technologies that exist today there is no reason to preclude a bank that exists here in the state of New York from having to talk about accounts held by judgment debtors throughout the world," Schwartz told Bloomberg BNA Aug. 12.

According to the court, Mega International Commercial Bank, organized under the laws of Taiwan, has 128 branches worldwide. Of those, 107 are in Taiwan, one is in New York, and the rest are located in 13 other countries.

Mega International could not be reached for comment Aug. 12. The bank's lawyers did not immediately respond to an Aug. 12 request for comment.

**Florida Judgment.** The case stems from a 2003 judgment in Florida in favor of Super Vision International, Inc., which alleged counterfeiting, civil theft, and mis-

appropriation of its proprietary information against Samson Wu and other judgment debtors.

Super Vision assigned its rights against the judgment debtors to B&M Kingstone LLC in 2009. Five years later, the Florida judgment was entered in the state of New York in favor of B&M.

B&M, believing that Mega International maintains accounts for the judgment debtors and holds some of their assets, served Mega International with a subpoena.

Mega International complied with demands for information relating to its New York branch, but refused to turn over similar information about accounts and records at branches outside the state.

A lower court ruled against the bank and ordered it to comply, and Mega International appealed.

B&M Kingstone was represented by Elias C. Schwartz, Michelle Englander and Sarah A. Chussler of The Law Firm of Elias C. Schwartz in Great Neck, N.Y..

Mega International Commercial Bank, Co. was represented by Alun W. Griffiths and Susie Kim of Satterlee Stephens Burke & Burke in New York.

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*The ruling is at <http://www.bloomberglaw.com/public/document/>*

*Matter\_of\_BM\_Kingstone\_LLC\_v\_Mega\_Intl\_Commercial\_Bank\_Co\_Ltd\_No\_.*