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CHFP025

This form should be completed in black.
This notice must be delivered to the Registrar within 21 days of the alteration being made.

Return of change of person authorised to accept service or to represent the branch of an oversea company or of any change in their particulars

(Pursuant to Schedule 21A, paragraph 7(1) of the Companies Act 1985)

Company number: FC1835 Branch number: BR001018

Company name: CITIBANK, N.A.

Branch name (if different to corporate name):

TERMINATION OF AUTHORITY

See overleaf for appointments and change of particulars

Date of termination: Day 01 Month 04 Year 2000

Position vacated (Mark appropriate box(es))

[X] Person authorised to accept service on the company's behalf

[X] Person authorised to represent the company at the branch

Complete these details for resignation of any person authorised to accept service or process on the company's behalf or who was authorised to represent the company in relation to the business of the branch.

Name MR EDWARD ALLEN HOLMES

Address COTTONS CENTRE, HAYS LANE, LONDON SE1 2QT

To whom should Companies House direct any enquiries about the information on this form.

Sandra KNOTT

Citibank International plc, 336 Strand, LONDON, WC2R 1HB

Tel. +44 020 7500 1158

When completed, this form should be delivered to the address on page 4

APPOINTMENT

Persons authorised to represent the company or who may accept service or process

Give the name and address of the person appointed, together with the date of appointment. Mark the box(es) relevant to the appointment. If the appointment is to both positions mark both boxes.

*Delete as appropriate.

* Style/Title MS

Forenames ELLEN

Surname ALEMANY

Address COTTONS CENTRE, HAYS LANE, LONDON SE1 2QT

County/Region LONDON Postcode SE1 2QT

[X] Is authorised to accept service of process on the company's behalf

*AND/~~OR~~

[X] Is authorised to represent the company in relation to that business

Date of appointment — Day 01 Month 04 Year 2000

SCOPE OF AUTHORITY

The authority to represent the company is :-

Is † [X] Authorised to accept service of process on the company's behalf

*AND/~~OR~~

Is † [X] Authorised to represent the company in relation to that business

The extent of the authority to represent the company is : - (give details)

Powers and duties conferred under a Power of Attorney granted 1 April 2000 effective as of 1 April 2000 for the purpose of Article V1 Foreign Branches' of the By-Laws in addition to being an executive officer pursuant to Article IV 'Officers and Agents' Section 12 of the By-Laws.

Give brief particulars of the extent of the powers exercised. (e.g. whether they are limited to powers expressly conferred by the instrument of appointment; or whether they are subject to express limitations.) Where the powers are exercised, jointly give the name(s) of the person(s) concerned.

† Mark box(es) as appropriate

These powers :-

† [x] May be exercised alone

OR

† [ ] Must be exercised with :-
(Give name(s) of co-authorised person(s))

STATE OF NEW YORK}
COUNTY OF NEW YORK}

POWER OF ATTORNEY

-to-

ELLEN ALEMANY

UNITED KINGDOM

In the City, County and State of New York, United States of America, on this 31 day of March, 2000, before me a Notary Public in and for the State and County of New York, United States of America, and the undersigned resident witnesses, legally qualified and personally known to me, appeared: (1) Richard Morrogh, (hereinafter referred to as the "Executing Officer"), a Banker, domiciled in New York, NY, and holding the office of Vice President in Citibank, N.A. (hereinafter referred to as the "Bank"), a national banking association duly constituted, registered and in existence in accordance with the laws of the United States of America now in force, and (2) Glenn S. Gray, a Banker domiciled in Clark, New Jersey, the Assistant Secretary of the Bank (hereinafter referred to as, and in his capacity of, "Assistant Secretary ").

I, the Notary Public, being an Attorney-at-law, as hereinbelow stated, do hereby CERTIFY AND ATTEST:

A. That the Executing Officer and the Assistant Secretary are of full age, competent to act in the premises, to me personally known, and that they are authorized to execute this instrument by virtue of the powers granted to them pursuant to the By-Laws of the Bank and the laws of the United States of America, and that the Executing Officer hereby authorizes and empowers Ellen Alemany, of legal age, a Banker, now residing in the United Kingdom, to act as the Attorney-in-fact (the "Attorney-in-fact") in the name or on behalf of the Bank in the United Kingdom, or any of its Branches, or any interest it may have or represent, said authorization to be effective as of the 1st day of April 2000, as follows:

I. To manage, transact and generally conduct, in the name of the Bank, and in its place and stead, a general banking business at any and all Branches, agencies or offices of the Bank now or hereafter established, with all powers and authority requisite and necessary for that purpose and, subject to the limitations hereinafter expressed, to sign the name of the Bank whenever requisite or expedient in the transaction and conduct of its said business and, generally, to do each and every such act, matter or thing as the nature of the said banking business may require;

II. To: (1) sign ordinary correspondence and indorsements on checks and other bills of exchange deposited for the credit of the Bank; (2) make, sign, draw, issue, indorse, discount, negotiate, pay, accept, collect, receive, renew, extend and protest any and all bills of exchange (whether checks or drafts), promissory notes, letters of credit, and advices of drafts drawn; (3) buy, sell, receive, hold, indorse, transfer, deliver, hypothecate and pledge any and all bills of exchange (whether checks or drafts), bills or lading, insurance certificates, bullion, checks, drafts, exchange, money, accounts, notes, bonds or other negotiable instruments, real and personal property or documents purporting to evidence title thereto, and any and all securities or property whatsoever; (4) accept the transfer and delivery of any and all shares of the capital stock of any corporation or association, whether organized for banking, commercial, industrial or other purposes, including bonds of any State and any and all States' securities, with power to carry out all formalities required by law and regulations applying to the transfer and registration thereof; (5) indorse, transfer and deliver such certificates or share or securities and to effect such transfer on the books of any corporation or association; (6) act as trustee or special depositary; (7) borrow money with or without security; (8) hire, rent or lease any and all real estate and personal property, with power to execute all necessary indentures, leases and other documents in connection therewith, upon such terms as the Attorney-in-fact may find proper, and to accept guaranties and chattel mortgages; (9) take mortgages on real estate or on mortgage credits; cancel them partially or totally, modify or extend them, or to cede, transfer, assign, postpone or otherwise dispose of them with or without general or special warranty;

III. To open, receive, and maintain deposit and other accounts;

IV. To make loans, with or without collateral security;

V. To ask, demand, collect, receive and take all necessary and lawful means to recover any and all moneys, debts or property and to give acquittance therefore;

VI. To give, receive and carry out orders on commission and to forward goods and securities;

VII. To carry out custom house operations;

VIII. To make or obtain acknowledgements and waybills;

IX. To take delivery of letters, telegraphic messages, drafts, packages and securities of any kind, from State Offices or from the Post Offices, Railway, Airline, Express or Steamship companies against the necessary receipt and discharge signature;

X. To procure insurance against fire, marine or other risks to property of the Bank, or in which it may be concerned or have or represent any interests;

XI. To register deeds and other documents and these presents and to pay any and all taxes, fees or other governmental charges determined by law;

XII. To attach, distrain or replevy property;

XIII. To liquidate accounts with debtors and creditors, approving or disapproving their balances;

XIV. To apply for letters of administration upon the estate, or for the appointment of a liquidator or receiver, of any debtor; to institute proceedings in bankruptcy, insolvency or judicial liquidation; to prove, guarantee, verify, accept, dispute or prosecute claims and to sign any composition or other agreement and, in general, to represent the Bank in such proceedings, or in the affairs of any corporation, association or firm and, on behalf of the Bank, to become a director or officer thereof;

XV. To attend, take part in or vote at any and all meetings of creditors, shareholders, directors or officers of any corporation or association or for other business purposes, or to give proxy therefor;

XVI. To adjust, compound, compromise, contest, defend, settle or submit to arbitration, or to the decision of amicable referees, any and all controversies, suits, actions and other legal or equitable proceedings in which the Bank may be interested, and to participate in any plan of distribution of funds;

XVII. To represent and defend the bank and its interests before any and all judges and courts, of all classes and jurisdictions, in any action, suit or proceeding in which the Bank may be a party or may be interested in administrative, civil, criminal, contentious or contentious-administrative matters, and in all kinds of lawsuits, recourses or proceedings of any kind or nature, with complete and absolute representation of the Bank, whether as plaintiff or defendant, or as an interested party for any reason whatsoever, and with power to institute actions, file exceptions, countermand, submit proofs and allegations, initiate the regular and special recourses, make bids, undertake the execution of sentences, challenge all kinds of judges or officials, propound interrogatories, request the recognition of signatures or of documents, institute all kinds of actions for the repression of crimes, file pleas for "amparo" and oppose its being granted to others; and desist from all classes of actions, exceptions and recourses; and for the purpose of representing the Bank before any and all judges and courts and in any action, suit or proceeding whatsoever in which the Bank is interested, to employ, retain, dismiss and grant all necessary powers in favor of solicitors, proctors, lawyers or other persons suitable to defend the rights, privileges and interests of the Bank, and, in general, to exercise all the rights of the Bank in all kinds of suits, actions and legal or equitable proceedings, with power to collect the amount of sums lodged in Court on behalf of the Bank and for such amounts collected to make out receipts in legal form;

XVIII. To employ, retain, suspend or dismiss any and all tellers, clerks and other employees at any Branch, agency or office of the Bank now or hereafter established;

XIX. To authenticate by his signature at any time(s) for the purpose of giving full force and effect thereto for all purposes under any law in force in any country or subdivision of any country: (a) any writing signed by any of the following officers of the Bank: the Chairman, or the President, or any Vice Chairman, or any Corporate Executive Vice President, or any Executive Vice President, or any Senior Vice President, or the Secretary, or the Chief Auditor, or any Vice

President, or any Deputy Chief Auditor, and (b) the then current "Circular of Authorized Signatures of Citibank, N.A. and its Branches". Every such writing of the current Circular so authenticated by him shall be entitled to full faith and credit before every office and authority in any country or subdivision of any country;

XX. To present for official registration certified copies of the Bank's Articles of Association, By-Laws and any other documents required by the laws of any country or place in which this Power of Attorney may be registered or exercised, and to do and perform any and all other acts and things required by the laws of any such country or place relating to the establishment or the maintenance in business of foreign corporations therein and the opening of branches thereof; and

XXI. To substitute or delegate this Power of Attorney in whole or in part in favor of such one or more employees of the Bank, as he may deem advisable, but without divesting himself of any of the powers granted to him by this Power of Attorney; and to grant and execute in favor of any one or more such employees, powers of attorney containing all or such authorizations, as he may deem advisable. Such substitutions, or delegations, and powers of attorney, shall remain in effect after the Attorney-in-fact herein shall have ceased to represent the Bank in the country for which the said employees concerned were appointed, and also after said employees may have been transferred to another country or countries, unless and until revoked by the Attorney-in-fact herein who is hereby granted the necessary power of revocation, or by any other attorney-in-fact of the Head Office of the Bank having such power of revocation. He may also revoke powers of attorney heretofore granted directly by the Head Office of the Bank to any of its employees or to any third parties, as well as any substitutions, delegations or powers of attorney granted by any attorney-in-fact who may heretofore have represented the Bank in the United Kingdom.

B. That the Executing Officer also said that the Bank hereby ratifies and confirms all that the Attorney-in-fact may or shall lawfully do or cause to be done within the powers conferred upon him by virtue of this instrument, including that which he may do or cause to be done after the revocation of the said powers but before notification of such revocation.

C. That the Assistant Secretary is the Assistant Secretary of the Board of Directors of the Bank and that he exhibited to me the Minute Book of the Bank which verifies each of the following to be true and correct:

1. The By-Laws of the Bank, as now in force, contain among others the following provisions:

ARTICLE IV

OFFICERS AND AGENTS

SECTION 8. SECRETARY. The Board of Directors shall appoint a Secretary, who shall keep accurate minutes of meetings of the Board of Directors and the Executive Committee of the Board. He shall attend to the giving of all notices required by these By-Laws to be given. He shall be custodian of the corporate seal, records, documents and papers of the Association. He shall have and may exercise any and all other powers and duties pertaining by law or regulation to the office of Secretary, or imposed by these By-Laws. He shall also have such further powers and duties as may from time to time be assigned to him by the Board of Directors, the Chairman, the President, or any Vice Chairman.

* * * * *

SECTION 10. VICE PRESIDENTS. . . . Each Vice President shall have specific powers conferred by these By-Laws and such further powers and duties as may from time to time be assigned to him by the Board of Directors, the Chairman, the President, or any Vice Chairman.

* * * *

SECTION 12. ATTORNEYS-IN-FACT. The Board of Directors may appoint one or more attorneys-in-fact as, from time to time, may appear to the Board of Directors to be required or desirable to transact the business of the Association and, subject to the authority of the Board of Directors, the Chairman, the President, any Vice Chairman, and Corporate Executive Vice President, any Executive Vice President/Senior Corporate Officer, any Senior Vice President, or any Vice President designated as Country Corporate Officer may appoint, dismiss and fix the compensation to be paid to such attorneys-in-fact. In the case of attorneys-in-fact who are otherwise employed by the Association or by any affiliated corporate entity, the authority to appoint or dismiss any such attorneys-in-fact may be exercised by any officer having supervision of a major administrative unit, group, division, or department of the Association as may be specified by the Board of Directors. The attorneys-in-fact appointed pursuant to this Section 12

hall exercise such powers and perform such duties as may, from time to time, be conferred upon them by Power of Attorney.

ARTICLE X

MISCELLANEOUS PROVISIONS

SECTION 2 EXECUTION OF INSTRUMENTS. All agreements, indentures, mortgages, deeds, conveyances, transfers, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, proxies and other instruments or documents, may be signed, executed, acknowledged, verified, delivered or accepted in behalf of the Association by . . the Secretary . . . or any Vice President . . ..

* * * * *

2. The Board of Directors of the Bank, at its Organization Meeting, duly held with a legal quorum on April 20, 1999 appointed the Executing Officer as a Vice President and the Assistant Secretary as such, of the Bank, and such appointments have continued, and are now in full force and effect.

3. That the Assistant Secretary stated to me that under Article IV, Sections 8, 10 and 12 and Article X, Section 2 of the By-Laws of the Bank, the Executing Officer has had duly conferred on him the power to execute this Power of Attorney.

D. That the Bank exists in perpetuity in accordance with the laws of the United States of America.

E. That I am a Notary Public in the State of New York, and as such Notary Public am duly authorized to act as such in the County of New York; that I am also an Attorney-at-law, duly authorized to practice as such in the State of New York, and that I have my office at 425 Park Avenue in the City and County of New York; that the Executing Officer and the Assistant Secretary are now in the exercise of their respective offices as hereinbefore stated, and that the Executing Officer and the Assistant Secretary have declared before me under their most absolute responsibility that the particulars contained herein are in full force.

F. That this document is executed after I had made to the Executing Officer and the Assistant Secretary all the legal admonitions and after they had read this instrument; that it is executed in accordance with the laws of the United States of America and of the State of New York, United States of America, and with the extrinsic requisites and formalities that said laws require in order to constitute the same a public document.

G. This power of attorney shall supersede all other powers of attorney issued in respect of the same subject matters.

RICHARD W. MORROGH
Vice President
Executive Staff
399 Park Ave./3rd Fl./Zn. 17
(212) 559-2219

For CITIBANK, N.A.

(Executing Officer)

(Assistant Secretary)

Witnesses:

Audrey Lewis

Dorothy A. Langlois

Subscribed and Sworn before me

COUNTY CLERK
NEW YORK COUNTY

State of New York
County of New York, } ss.:

166294 Form

I, NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court of the State of New York, in and for the County of New York, a Court of Record, having by law a seal,
DO HEREBY CERTIFY pursuant to the Executive Law of the State of New York, that

Kenneth S Cahn

whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of taking the same a NOTARY PUBLIC in and for the State of New York duly commissioned, sworn and qualified to act as such; that pursuant to law, a commission or a certificate of his official character, with his autograph signature has been filed in my office; that at the time of taking such proof, acknowledgment or oath, he was duly authorized to take the same; that I am well acquainted with the handwriting of such NOTARY PUBLIC or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and I believe that such signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal this

MAR 07 2000

FEE PAID $3.00

County Clerk and Clerk of the Supreme Court, New York County

Překlad vybraných části žádosti o registraci údajů o pobočce a plné moci

Na druhém listu žádost v části označené „Jmenování“ (angl. *Appointment*) je jako osoba oprávněná přijímat písemnosti určené společnosti (angl. *authorised to accept service of process on the company's behalf*) a zastupovat společnost ve vztahu k obchodům pobočky (angl. *authorised to represent company in relation to that business*) označena paní Ellen Alemany, bytem Cotton Centre, Hays Lane, Londým, SE1 2QT.

Na druhém listu žádosti je ohledně rozsahu oprávnění (angl. *Scope of appointment*) uvedeno, že pověřená osoba „má práva a povinnosti svěřené jí Plnou mocí udělenou dne 1. dubna 2000 a účinnou od téhož dne pro účely uvedené v čl. VI Zahraniční pobočky stanov“ kromě toho, že je zároveň výkonným úředníkem podle čl. IV „Úředníci a Zástupci“ sekce 12 stanov“.

Podle čl. XVII zmíněné plné moci je paní Ellen Alemany zmocněna „*zastupovat a bránit zájmy Banky před soudci a soudy všech druhů a jurisdikcí a ve všech věcech a řízeních, v který Banka může být stranou nebo může být zúčastněnou osobou ve správních, trestních, sporných nebo sporných správních věcech a ve všech druzích žalob, regresních nároků nebo řízení, s tím, že zastoupení Banky je úplné a bezvýjimečné, bez ohledu na to, zda Banka žalobcem nebo žalovaným*…“

This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2009 No. 1801

COMPANIES

The Overseas Companies Regulations 2009

Made - - - -	*8th July 2009*
Coming into force - -	*1st October 2009*

CONTENTS

Treaty, with a view to making such safeguards equivalent throughout the Community (68/151/EEC)(**a**);

"former name", in the case of an individual, means a name by which the individual was formerly known for business purposes;

"name", in the case of an individual, means the person's Christian name (or other forename) and surname, except that in the case of—

(a) a peer, or

(b) an individual usually known by a title,

the title may be stated instead of the individual's Christian name (or other forename) and surname or in addition to either or both of them; and

"parent law"—

(a) in relation to an overseas company to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), has the meaning given by regulation 31(2), and

(b) in relation to a credit or financial institution to which Chapter 2 of Part 6 applies (institutions required to prepare accounts under parent law), has the meaning given by regulation 44(2).

PART 2

INITIAL REGISTRATION OF PARTICULARS

Application and interpretation of Part

3.—(1) This Part applies to an overseas company that opens a UK establishment.

(2) In this Part—

"director" includes shadow director; and

"secretary" includes any person occupying the position of secretary by whatever name called.

Duty to deliver return and documents

4.—(1) The company must within one month of having opened a UK establishment—

(a) deliver to the registrar a return complying with the requirements of this Part, and

(b) deliver with the return the documents required by this Part.

(2) These requirements apply each time a company opens an establishment in the United Kingdom.

Particulars to be included in return

5.—(1) The return must contain—

(a) the particulars specified in regulation 6 (particulars of the company), and

(b) the particulars specified in regulation 7 (particulars of the establishment).

(2) If at the time the return is delivered the company—

(a) has another UK establishment,

(b) has delivered a return in respect of that establishment containing the particulars specified in regulation 6, and

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(**a**) OJ L 65, 14.3.1968, p. 8. The Directive has been amended on a number of occasions, but the only amendments relevant to the United Kingdom are those made by Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 (OJ L 221, 4.9.2003, p. 13).

(c) has no outstanding obligation under Part 3 in respect of an alteration to those particulars,

the company may instead state in the return that those particulars are included in the particulars delivered in respect of another UK establishment (giving the registered number of that establishment).

Particulars of the company

6.—(1) The particulars of the company to be included in the return are—

(a) the company's name,

(b) the company's legal form,

(c) if it is registered in the country of its incorporation, the identity of the register in which it is registered and the number with which it is so registered,

(d) a list of its directors and secretary, containing—

(i) with respect to each director, the particulars specified in paragraph (3), and

(ii) with respect to the secretary (or where there are joint secretaries, with respect to each of them) the particulars specified in paragraph (4),

(e) the extent of the powers of the directors or secretary to represent the company in dealings with third parties and in legal proceedings, together with a statement as to whether they may act alone or must act jointly and, if jointly, the name of any other person concerned, and

(f) whether the company is a credit or financial institution.

(2) In the case of a company that is not incorporated in an EEA State, the particulars of the company to be included in the return must also include—

(a) the law under which the company is incorporated,

(b) in the case of a company to which Chapter 2 of Part 5 or Chapter 2 of Part 6 applies (requirement to prepare and disclose accounts under parent law), the period for which the company is required by its parent law to prepare accounts, together with the period allowed for the preparation and public disclosure (if any) of accounts for such a period,

(c) unless disclosed by the company's constitution (see regulation 8)—

(i) the address of its principal place of business in its country of incorporation or, if applicable, its registered office,

(ii) its objects, and

(iii) the amount of its issued share capital.

(3) The particulars referred to in paragraph (1)(d)(i) (directors) are—

(a) in the case of an individual—

(i) name,

(ii) any former name,

(iii) a service address,

(iv) usual residential address,

(v) the country or state in which the individual is usually resident,

(vi) nationality,

(vii) business occupation (if any), and

(viii) date of birth;

(b) in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—

(i) corporate or firm name,

(ii) registered or principal office,

(iii) in the case of an EEA company to which the First Company Law Directive applies, particulars of—

(aa) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and

(bb) the registration number in that register,

(iv) in any other case, particulars of—

(aa) the legal form of the company or firm and the law by which it is governed, and

(bb) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

(4) The particulars referred to in paragraph (1)(d)(ii) (secretary) are—

(a) in the case of an individual—

(i) name,

(ii) any former name, and

(iii) a service address;

(b) in the case of a body corporate, or a firm that is a legal person under the law by which it is governed—

(i) corporate or firm name,

(ii) registered or principal office,

(iii) in the case of an EEA company to which the First Company Law Directive applies, particulars of—

(aa) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state), and

(bb) the registration number in that register,

(iv) in any other case, particulars of—

(aa) the legal form of the company or firm and the law by which it is governed, and

(bb) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

But if all the partners in a firm are joint secretaries of the company it is sufficient to state the particulars that would be required if the firm were a legal person and the firm had been appointed secretary.

(5) For the purposes of paragraphs (3)(a)(ii) and (4)(a)(ii), where a person is or was formerly known by more than one former name, each of them must be stated.

(6) It is not necessary to include in the return particulars of a former name in the following cases—

(a) in the case of a peer or an individual normally known by a title, where the name is one by which the person was known previous to the adoption of or succession to the title,

(b) in the case of any person, where the former name—

(i) was changed or disused before the person attained the age of 16 years, or

(ii) has been changed or disused for 20 years or more.

(7) For the purposes of paragraph (3)(a)(iv) if the person's usual residential address is the same as the person's service address the return need only contain a statement to that effect.

Particulars of the establishment

7.—(1) The particulars of the establishment to be included in the return are—

(a) address of the establishment,

(b) date on which it was opened,

(c) business carried on at it,

(d) name of the establishment if different from the name of the company,

(e) name and service address of every person resident in the United Kingdom authorised to accept service of documents on behalf of the company in respect of the establishment, or a statement that there is no such person,

(f) a list of every person authorised to represent the company as a permanent representative of the company in respect of the establishment, containing the following particulars with respect to each such person—

(i) name,

(ii) any former name,

(iii) service address, and

(iv) usual residential address,

(g) extent of the authority of any person falling within sub-paragraph (f), including whether that person is authorised to act alone or jointly, and

(h) if a person falling within sub-paragraph (f) is not authorised to act alone, the name of any person with whom they are authorised to act.

(2) For the purpose of paragraph (1)(f)(iv) if the person's usual residential address is the same as the person's service address the return need only contain a statement to that effect.

Documents to be delivered with the return: copy of company's constitution

8.—(1) A certified copy of the company's constitution must be delivered to the registrar with the return.

(2) If at the time the return is delivered the company—

(a) has another UK establishment,

(b) has delivered a certified copy of the company's constitution with a return relating to that establishment, and

(c) has no outstanding obligation under Part 3 in respect of an alteration to its constitution,

the company may instead state in the return that a certified copy of the company's constitution has been delivered in respect of another UK establishment (giving the registered number of that establishment).

Documents to be delivered with the return: copies of accounting documents

9.—(1) If the company is one to which Chapter 2 of Part 5 applies (companies required to prepare and disclose accounts under parent law), copies of the company's latest accounting documents must be delivered to the registrar with the return.

(2) The company's latest accounting documents means the accounting documents, prepared for a financial period of the company, last disclosed in accordance with its parent law before the end of the period allowed for delivery of the return or, if earlier, the date on which the company delivers the return.

(3) If at the time the return is delivered the company—

(a) has another UK establishment, and

(b) has delivered the documents required by paragraph (1) in connection with a return relating to that establishment,

the company may instead state in the return that the documents are included in the material delivered in respect of another UK establishment (giving the registered number of that establishment).

Příloha č. 2

Překlad vybraných ustanovení části 2 „Úvodní registrace údajů“ Regulací 2009 dohledatelné na https://www.legislation.gov.uk/ukdsi/2009/9780111479476/contents

I.

Regulace 4 odst. 1

Duty to deliver return and documents

4.—(1) The company must within one month of having opened a UK establishment

(a) deliver to the registrar a return complying with the requirements of this Part, and

(b) deliver with the return the documents required by this Part.

Překlad

Povinnost předložit žádost a dokumenty

4.—(1) Společnost do jednoho měsíce ode dne otevření obchodního výsadku

(a) doručit registrátorovi žádost splňující požadavky podle této části, a

(b) spolu s žádostí doručit dokumenty vyžadované v této části.

II.

Regulace 5 odst. 1 písm. b)

Particulars to be included in return

5.—(1) The return must contain

(a) …, and

(b) the particulars specified in regulation 7 (particulars of the establishment).

Překlad

Údaje v žádosti

5.—(1) Žádost musí obsahovat

(a) …, a

(b) údaje specifikované v regulaci 7 (údaje o obchodním výsadku).

III.

Regulace 7 odst. 1

Particulars of the establishment

7.—(1) The particulars of the establishment to be included in the return are—

(a) address of the establishment,

(b) date on which it was opened,

(c) …,

(d) …,

(e) name and service address of every person resident in the United Kingdom authorised to accept service of documents on behalf of the company in respect of the establishment, or a statement that there is no such person,

(f) a list of every person authorised to represent the company as a permanent representative of the company in respect of the establishment, containing the following particulars with respect to each such person—

(i) …,

…,

(iv),

(g) extent of the authority of any person falling within sub-paragraph (f), including whether that person is authorised to act alone or jointly, and

(h) if a person falling within sub-paragraph (f) is not authorised to act alone, the name of any person with whom they are authorised to act.

Překlad

Údaje o obchodním výsadku

7.—(1) Žádost obsahuje tyto údaje o obchodním výsadku

(a) adresu sídla,

(b) den otevření,

(c) …,

(d) …,

(e) jméno a adresu, na kterou lze doručovat, každé osoby, rezidenta ve Spojeném království, oprávněné přijímat za společnost písemností týkajících se obchodního výsadku nebo sdělení, že žádná taková osoba není,

(f) seznam osob pověřených zastupovat společnost jako stálý zástupce ve vztahu k obchodnímu výsadku, obsahující následující údaje

(i) …,

…,

(iv) …,

(g) rozsah pověření osoby podle písmena f) včetně toho, zda je osoba oprávněna jednat samostatně nebo společně s jinou osobou, a

(h) jestliže osoba podle písmena f) není oprávněna jednat samostatně, jméno osoby, s kterou jsou pověřené jednat společně.

Příloha č. 3
rozhodnutí s překladem očíslovaných částí

Greenbaum v. Handlesbanken, 26 F. Supp. 2d 649 (S.D.N.Y. 1998)

US District Court for the Southern District of New York - 26 F. Supp. 2d 649 (S.D.N.Y. 1998)
November 12, 1998

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26 F. Supp. 2d 649 (1998)

Victoria GREENBAUM, Plaintiff,
v.
Svenska HANDELSBANKEN, NY, Defendant.

No. 95 Civ. 3850 (SS).

United States District Court, S.D. New York.

November 12, 1998.

***650** Robert E. Sapir, Cooper, Sapir & Cohen, Melville, NY, Donald L. Sapir, Robert T. McGovern, Steven R. Shapiro, Sapir & Frumkin LLP, White Plains, NY, for plaintiff.

Peter N. Hillman, Debra M. Patalkis, Mitchell P. Hurley, Chadbourne & Parke, New York City, for defendant.

OPINION AND ORDER

SOTOMAYOR, District Judge.

Following entry of judgment in her favor on her claim of sex discrimination and retaliation in violation of Title VII and the New York City Administrative Code, plaintiff Victoria Greenbaum moves this Court for reconsideration of its decision that the appropriate punitive damages to be applied in this case under Title VII is $50,000. For the reasons to be discussed, the Court grants Greenbaum's motion.

BACKGROUND

Plaintiff Victoria Greenbaum sued her former employer, Svenska Handelsbanken, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the New York City Human Rights Law, NYC Admin.Code § 8-502, alleging sex discrimination and retaliation for filing an EEOC complaint. Following trial, the jury returned a verdict awarding Greenbaum $320,000 in back pay and $1,250,000 in punitive damages. Because of uncertainty over the proper punitive damages evidentiary standard under the NYC law, the Court charged the jury under both a preponderance and a clear-and-convincing standard; the jury found that punitive damages had been proven by a preponderance but not by clear and convincing evidence.

In an Opinion and Order dated September 23, 1997, familiarity with which is assumed, this Court ruled that the proper evidentiary standard for punitive damages under the NYC law was a preponderance standard, the same as under federal law, and awarded Greenbaum the full $1,250,000 in punitive damages under the NYC law. *See Greenbaum v. Svenska Handelsbanken, NY,* 979 F. Supp. 973, 983 (S.D.N.Y.1997). To cover the possibility of the punitive damages award under the NYC law being upset either on post-verdict motions or on appeal, the Court also ruled that the punitive damages award was available to the plaintiff under Title VII but was subject to the damages caps of 42 U.S.C. § 1981a. The Court ruled that the appropriate count of employees, upon which the determination of the proper damages cap is based, should be limited to those employees in Svenska Handelsbanken's New York branch ("SNY"). This ruling was grounded in two holdings. First, that SNY's parent bank in Sweden (Svenska Handelsbanken, A.B., hereinafter "SHB") was not, and could not be, a defendant in this Title VII action. *See id.* Second, relying in part on district court case law holding that the determination of whether a corporation had sufficient employees to be an "employer" under Title VII did not include foreign-based employees, this Court held that even if SHB were properly a defendant, a foreign employer's foreign-based employees should not count towards the number of employees used to determine the punitive damages cap. *See id.* There being no dispute that SNY had at all relevant times between 14 and 101 employees, the Court capped the punitive damages under Title VII at $50,000. *See* 42 U.S.C. § 1981a(b) (3) (A).

On March 26, 1998, the Second Circuit decided the case of *Morelli v. Cedel,* 141 F.3d 39 (2d Cir. 1998). In *Morelli,* the Second Circuit held that domestic employees may sue their foreign-based employer for violations of the Age Discrimination in Employment ***651** Act. *See id.* at 41-44. Further, the court said, when counting employees for the purpose of determining whether jurisdiction over the employer exists under the ADEA (which limits its reach to employers with 20 or more employees), *all* employees of the foreign corporation are counted, not just U.S.-based ones. *See id.* at 44-45. The Court invited a motion for reconsideration of its previous ruling on the appropriate Title VII damages cap in light of *Morelli.*

DISCUSSION

Under the amendments to Title VII made by the Civil Rights Act of 1991,

In an action brought by a complaining party under [Title VII] against a respondent who engaged in unlawful intentional discrimination ... the complaining party may recover compensatory and punitive damages ... from the respondent.

42 U.S.C. § 1981a(a) (1). Further,

A complaining party may recover punitive damages under this section against a respondent ... if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

42 U.S.C. § 1981a(b) (1).

Punitive damages are subject to a set of damage caps which increase with the number of persons employed by the respondent. *See* 42 U.S.C. § 1981a(b) (3). The sum of compensatory and punitive damages may not exceed, "in the case of a respondent who has more than 14 and fewer

than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000." 42 U.S.C. § 1981a(b) (3) (A). The cap increases to a maximum of $300,000 available against those respondents with more than 500 employees. *See* 42 U.S.C. § 1981(a) (b) (3) (D).

The Court agrees with Greenbaum that *Morelli* requires this Court to reverse its earlier ruling that only the domestic employees of a foreign employer count for purposes of the damages cap. First, although *Morelli* dealt with the ADEA, not Title VII, the court relied on the purposes of the minimum-employee requirements of Title VII and imputed those purposes to the ADEA as well, noting that "the ADEA was modeled in large part on Title VII." *Morelli,* 141 F.3d at 45. Moreover, in reaching the conclusion that foreign employers of domestic employees were subject to suit under the ADEA, the *Morelli* court explicitly relied on the reasoning that "it is not apparent why the domestic operations of foreign companies should be subject to Title VII and the ADA, but not to the ADEA," *id.* at 43, and that there was no indication in legislative history that Congress intended the scope of the foreign-employer exemptions to differ among the three statutes. *See id.* The Court thus sees no reason why the holding of *Morelli* should not be fully applicable to the Title VII context. *Accord, Da Silva v. Kinsho Int'l Corp.,* No. 97 Civ. 5030, 1998 WL 560054, at *1, 1998 U.S. Dist. Lexis (S.D.N.Y.1998).

In addition, although *Morelli* involved the minimum-employee jurisdictional requirements of the ADEA, not the damage caps of § 1981a, the Court finds the logic applicable. The purposes of the minimum-employee requirement of Title VII include, *inter alia,* "the burdens of compliance and potential litigation costs." *Morelli,* 141 F.3d at 45; *see also id.* (propriety of subjecting defendant to Title VII liability best judged by the impact on defendant's worldwide operations). As noted in *Morelli,* "the nose count of employees relates to the scale of the employer rather than to the extent of protection." *Id.,* Similarly, the purpose of the punitive damages caps are to "protect employers from financial ruin as a result of unusually large awards." *Luciano v. Olsten,* 110 F.3d 210, 221 (2d Cir.1997).

The defendant responds, however, that the Court's earlier ruling was correct that SHB was never a defendant in this case, *see Greenbaum,* 979 F. Supp. at 983, and that therefore SHB is not properly the "respondent" whose employees must be counted. The plaintiff, however, urges that the New York branch of SHB is not a separate legal entity and that therefore SHB has always been the actual defendant in this case, despite ***652** the naming in the caption. The Court agrees with the plaintiff.

To begin with, the Court's earlier ruling was based, in part, on the Court's belief that SHB, as a foreign employer, could not legally be a defendant. *See Greenbaum,* 979 F. Supp. at 983. This holding is obviously now erroneous in light of *Morelli,* which specifically relied on the fact that under Title VII, "a foreign employer's domestic operations are not excluded from the reach of those statutes." *Morelli,* 141 F.3d at 43. Thus, while SHB could not be held liable under Title VII for discrimination in an overseas branch, SHB definitely could have been named as a defendant in this case, for the alleged discrimination occurred at SHB's New York operational branch. SHB was not, however, named in the caption as a defendant; SNY was.

At trial, the plaintiff requested that the caption be changed, based upon evidence presented which suggested that SHB and SNY were not separate legal entities. *See* Tr., at 379-81. This Court recognized that the fact of SNY's juridical status was important to the determination of punitive damages, and allowed the plaintiff to attempt to present evidence at trial if she so

desired. Until this motion for reconsideration, however, the issue of SNY's juridical status was not effectively brought back to this Court's attention.

There does not appear to be any evidence that SNY is separately incorporated from SHB; at least, the defendant, despite the opportunity at trial, in its post-verdict briefing on the Court's original opinion on this issue, and in the briefing on this motion for reconsideration, has brought no such evidence to the Court's attention. The plaintiff, moreover, solicited testimony at trial from Harry Roberts, a deputy General Manager of the bank, that SHB and SNY were not separate legal entities. *See* Tr., at 398. While Roberts's opinion cannot be taken as legally conclusive on the issue of SNY's legal status by this Court, it is nevertheless probative evidence as to the fact of SNY's incorporation. Given the failure of the defendant to rebut this evidence in any way, the Court finds that SNY is not a separate corporation from SHB.[1]

That finding does not end the matter, for SNY could still theoretically have independent juridical status i.e., the ability to sue or be sued even though SHB has no corporate shield of liability from SNY's obligations. At first glance the finding of no liability shield would seem to be dispositive in that, since the point of the employee-number requirement is to calibrate punitive damage limits to the size of the employer and its ability to pay, the fact that SHB would be liable for any judgment rendered against SNY would at least support a powerful argument as to why it is SHB's size that is most pertinent to calculating the cap. However, the plain language of § 1981a presents difficulties with this analysis. The cap is based on how many employees the "respondent" has; assuming this word has the same meaning throughout § 1981a, the "respondent" is the entity against whom the "action [is] brought by a complaining party," § 1981a(a). Thus, if SHB is not the entity against whom this action is brought, it would appear not to be the respondent and therefore not the proper basis for the employee count, regardless of whether SHB is potentially liable for the judgment or whether SHB could have been named.

1) However, the law seems fairly well-settled that the domestic branch of a foreign bank is not a separate legal entity under either New York or federal law. New York has long adhered to the general rule that when considered with relation to the parent bank, [branches] are not independent agencies; they are, what their name imports, merely branches, and are subject to the supervision and control of the parent bank, and are instrumentalities whereby the parent bank carries on its business, and are established for its own particular purposes, and their business conduct and policies are controlled by the parent bank, and their property and assets belong to the parent bank, although nominally held in the names of the particular branches.

2) *Sokoloff v. National City Bank of N.Y.,* 130 Misc. 66, 73, 224 N.Y.S. 102, 114 (Sup.Ct. 1927) (New York parent bank liable for debts of Russian branch), *aff'd,* 250 N.Y. 69, 164 N.E. 745 (1928); *see also Matter of Liquidation of the New York Agency and Other Assets of Bank of Credit and Commerce Int'l, S.A.,* 90 N.Y.2d 410, 422, 660 N.Y.S.2d 850, 856, 683 N.E.2d 756 (1997) ("A branch or agency of a bank is not a separate entity."). Note also that under the New York Banking Law, a foreign banking corporation authorized to operate a branch or agency in New York may sue and be sued, but there are no similar provisions for the branch itself, *see* N.Y. Banking L. §§ 200-a, 200-b, and the foreign corporation must designate an agent "upon whom all process in any action or proceeding against it [the foreign banking corporation] on a cause of action arising out of a transaction with its New York agency or agencies, may be served...." N.Y. Banking L. § 200(3).

3) Federal law also proceeds from the starting proposition that branches are not separate entities from their parents. Thus, the D.C. Circuit has held that the foreign branches of a foreign bank have no standing to contest the forfeiture of a defendant parent bank's assets under 18 U.S.C. § 1963(1) (2) because, not being separate entities, the branches are not a "person, other than the defendant." *See United States v. BCCI Holdings (Luxembourg), S.A.,* 48 F.3d 551, 554 (D.C.Cir.1995), *aff'g* 833 F. Supp. 32 (D.D.C.1993), *cert. denied sub nom. Liquidation Commission for BCCI (Overseas) Ltd., Macau v. United States,* 516 U.S. 1008, 116 S. Ct. 563, 133 L. Ed. 2d 489 (1995). As stated by the Circuit:

4) Our courts have long recognized that, while individual bank branches may be treated as independent of one another, each branch, unless separately incorporated, must be viewed as a part of the parent bank rather than as an independent entity .... Accordingly, we conclude that the branches represented by the appellants have no separate legal identity apart from their parent....

5) *Id.* The law in the Second Circuit agrees with this basic principle. *See First Nat'l Bank of Boston (Int'l) v. Banco Nacional de Cuba,* 658 F.2d 895, 900-01 (2d Cir.1981) ("federal law regards a national bank and its branches as a single entity") (Cuban branches of Boston bank not separate legal entities and therefore branches could have no liabilities to parent that were assumed when branches nationalized); *Vishipco Line v. Chase Manhattan Bank, N.A.,* 660 F.2d 854, 863-64 (2d Cir.1981) (impossibility of payment by Saigon branch of New York parent bank no defense because parent bank ultimately responsible for liabilities of branch); *see also United States v. First Nat'l City Bank,* 379 U.S. 378, 384, 85 S. Ct. 528, 531, 13 L. Ed. 2d 365 (1965) (parent bank "has actual, practical control over its branches; it is organized under a federal statute which authorizes it `to sue and be sued ...' as one entity, not branch by branch") (assets in foreign branch subject to freeze order levied against U.S. parent). Note also that, similar to New York banking law, under regulations promulgated by the Comptroller of the Currency pursuant to the International Banking Act, 12 U.S.C. § 3101 et seq., it is the foreign bank which is amenable to service of process at any of its federal branch locations. *See* 12 C.F.R. § 28.21.

6) It is true that, for certain purposes, both New York and federal law treat branches as separate entities. Thus, for example, under the New York version of the Uniform Commercial Code, a bank's liability for the actions of one of its branches is governed by the law of the place where the branch, not the parent, is located. *See* N.Y.U.C.C. Law § 4-102(2); *see also* N.Y.U.C.C. Law § 4-106 (branch considered separate bank for purposes of place or time of performance); § 4-A-105 (branch considered separate bank for purposes of funds transfers). Attachments served on one branch are not effective to garnish an account at a different branch of the same bank, at least under federal admiralty law. *See Reibor Int'l Ltd. v. Cargo Carriers (KACZ-CO.) Ltd.,* 759 F.2d 262, 264 (2d Cir.1985); *Det Bergenske Dampskibsselskab v. Sabre Shipping Corp.,* 341 F.2d 50, 53-54 (2d Cir.1965); *but see Digitrex, Inc. v.* ***654** *Johnson,* 491 F. Supp. 66, 69 (S.D.N.Y.1980) (service of attachment on main office sufficient to attach accounts at branch) (applying New York law); *S & S Machinery Corp. v. Manufacturers Hanover Trust Co.,* 219 A.D.2d 249, 252, 638 N.Y.S.2d 953, 955 (1st Dep't 1996) (approving *Digitrex* rule).

7) The rationale for the so-called "separate entity" rule, however, has to do with the practical realities of branch banking namely, that branches cannot (or could not, at the time the rules

were first formulated) communicate instantaneously and therefore, in order to avoid multiple liabilities, a bank must be able to limit its responsibilities to one branch at a time:

Clearly, however, the rationale which underlies these limited exceptions to the legal identity of a bank and its branches have no application to Title VII law. There is no practical reason, for example, why a parent bank would be stifled by distance or communication impracticalities in its ability to defend against an action based on alleged Title VII violations at one of its branches. Moreover, a foreign bank may not, under federal law, establish domestic operations absent its pledge to "conduct all of its operations in the United States in full compliance with" federal and state anti-discrimination provisions. *See* 12 U.S.C. § 3106a(2) (A). Thus, this Court finds the general principle applicable that a branch bank is not a separate legal entity from its foreign parent, and in the same way that an unincorporated division of a corporation cannot be sued or indicted, *see BCCI (Luxembourg),* 833 F. Supp. at 38-39, SNY was not the proper party defendant, SHB was. The plaintiff's request at trial to correct the caption to reflect Svenska Handelsbanken, A.B. as the proper defendant should have been granted.

The defendant argues that it is now unfair to allow this substitution, because "had SHB been a defendant, the entire complexion of this case would have been different." Def. Reply Letter, at 1. For example, says the defense, "discovery (and trial) surely would have escalated into examination of SHB's employment practices world-wide." *Id.* The Court disagrees. It is difficult to understand how more limited discovery prejudiced the defendant. It was the defendant who vigorously, and in most instances, successfully opposed the expansion of discovery into its worldwide operations. Further, when plaintiff brought the legal status of SNY to the Court's attention, the Court indicated that the sole relevance of substituting SHB for SNY would be on the punitive damages cap. *See* Tr., at 380. SHB's worldwide practices were not at issue in this case; only SHB's U.S. operations were subject to Title VII and the New York antidiscrimination laws. Moreover, there is no question of unfair surprise in this change. First, SHB is amenable to process under both federal and New York law, and was therefore properly served. Second, SHB was clearly on notice of the suit against SNY, as officers of SHB testified at trial that they knew of Greenbaum's EEOC filings. Finally, since SNY was not a separate corporate entity from SHB, SHB knew all along that it had no shield from liabilities incurred by SNY.

The Court thus finds that the proper "respondent" for purposes of the § 1981a(b) (3) is the parent bank, Svenska Handelsbanken, A.B. Further, under the Second Circuit's ruling in *Morelli,* the entire worldwide employment of SHB is to be counted. Because the parties do not dispute that SHB has over 500 employees, the proper punitive damages cap under Title VII is $300,000.

CONCLUSION

For the foregoing reasons, the Court grants the plaintiff's motion for reconsideration. The Court will cap the punitive damages available under Title VII at $300,000.

SO ORDERED.

NOTES

[1] To the extent that this or other factual findings are necessary for determining the proper punitive damages cap but were not submitted to the jury at trial, the Court now makes these findings pursuant to Fed.R.Civ.P. 49.

Překlad

1) Nicméně, vypadá to, že právo se ustálilo v tom, že domácí pobočka zahraniční banky není samostatnou právnickou osobou podle práva státu New York, ani podle federálního práva. New York se po dlouhou dobu přidržuje obecného pravidla, že o vztahu mezi pobočkami a jejich mateřskou bankou se uvažuje tak, že pobočky nejsou nezávislými jednatelstvími; jak naznačuje již jejich označení, jsou to jen pobočky a podléhají dohledu a kontrole banky a jsou nástrojem, jimž mateřská banka podniká, a jsou vytvořeny pro své vlastní konkrétní účely a jejich obchodování a postupy jsou kontrolovány mateřskou bankou, a jejich majetek náleží mateřské bance, byť formálně jej drží svým jménem příslušná pobočka.

2) *Sokoloff v. National City Bank of N.Y.,* 130 Misc. 66, 73, 224 N.Y.S. 102, 114 (Sup.Ct. 1927) (mateřská banka v New Yorku odpovídá za dluhy své pobočky v Rusku), *aff'd,* 250 N.Y. 69, 164 N.E. 745 (1928); *srov. dále Matter of Liquidation of the New York Agency and Other Assets of Bank of Credit and Commerce Int'l, S.A.,* 90 N.Y.2d 410, 422, 660 N.Y.S.2d 850, 856, 683 N.E.2d 756 (1997) ("Pobočka nebo jednatelství banky není separátní entitou."). Stojí rovněž za povšimnutí, že podle newyorského zákona o bankách zahraniční banka s povolením provozovat pobočku nebo jednatelství v New Yorku může žalovat a být žalována, ale tento zákona nemá obdobné ustanovení ve vztahu k pobočce, *srov.* N.Y. zákon o bankách §§ 200-a, 200-b, a zahraniční korporace musí ustanovit zástupce "kterému může být doručováno v řízení o žalobě nebo jiném v řízení proti zahraniční korporaci vedenému z důvodu majícího původ v obchodu s jejím jednatelstvím v New Yorku...." N.Y. zákon o bankách § 200(3).

3) Federální právo rovněž vychází z premisy, že pobočky nejsou samostatné entity odlišné od jejich matek. Proto D.C. Circuit rozhodl, že zahraniční pobočka zahraniční banky není v postavení osoby oprávněné napadnout propadnutí majetku mateřské banky žalovaného podle 18 U.S.C. § 1963(1) (2), poněvadž jako nesamostatné entity pobočky nejsou „osobou odlišnou od žalovaného“. *Srov. United States v. BCCI Holdings (Luxembourg), S.A.,* 48 F.3d 551, 554 (D.C.Cir.1995), *aff'g* 833 F. Supp. 32 (D.D.C.1993), *cert. denied sub nom. Liquidation Commission for BCCI (Overseas) Ltd., Macau v. United States,* 516 U.S. 1008, 116 S. Ct. 563, 133 L. Ed. 2d 489 (1995). Jak Circuit uvedl

4) Naše soudy dlouhodobě uznávaly, že zatímco s jednotlivými pobočkami bank lze zacházet jako by byly vůči sobě navzájem nezávislé, na každou pobočku, ledaže byla inkorporována, se musí nahlížet spíše jako na část mateřské banky, než na samostatnou entitu… S ohledem na to uzavíráme, že pobočky zastoupené odvolatelem, na rozdíl od svých mateřských bank, nemají samostatnou právní identitu.

5) Id. Právo aplikované Druhým Obvodem souhlasí s tímto základním principem. *Srov. First Nat'l Bank of Boston (Int'l) v. Banco Nacional de Cuba,* 658 F.2d 895, 900-01 (2d Cir.1981) (“federální právo považuje národní banku a její pobočky a jednu entitu”) (kubánské pobočky Bostonské banky nejsou samostatné právnické osoby, a proto pobočky nemohly mít dluhy vůči mateřské bance, které by byly převzaty znárodněním poboček); *Vishipco Line v. Chase Manhattan Bank, N.A.,* 660 F.2d 854, 863-64 (2d Cir.1981) (to, že saigonská pobočka mateřské banky v New Yorku není s to platit, není obranou, poněvadž odpovědnost za dluhy pobočky nakonec nese mateřská banka); *srov. dále United States v. First Nat'l City Bank,* 379 U.S. 378, 384, 85 S. Ct. 528, 531, 13 L. Ed. 2d 365 (1965) (mateřská banka "má skutečnou, praktickou kontrolu nad jejími pobočkami; je organizována podle federálního zákona, který ji opravňuje žalovat a být žalovaná… jako

jedna entita, nikoli po jednotlivých pobočkách") (zmrazení majetku v zahraniční pobočce podle příkazu směřujícího vůči americké matce). Nelze nevidět ani to, že podobně jako právo státu New York týkající se bank, podle nařízení Kontrolora měny vyhlášených podle zákona o mezinárodním bankovnictví, 12 U.S.C. § 3101 et seq., je to zahraniční banka, které lze doručovat žalobu do místa kterékoliv její federální pobočky. *Srov.* je 12 C.F.R. § 28.21.

6) Je pravdou, že pro určené účely jak právo státu New York tak i federální právo nahlíží na pobočky jako na separátní entity. Proto, např. podle verze Jednotného obchodního zákoníku přijaté ve státě New York se odpovědnost banky za jednání některé z jejích poboček řídí právem místa pobočky, nikoliv sídla mateřské banky. *Srov.* N.Y.U.C.C. Law § 4-102(2); *srov. dále* N.Y.U.C.C. Law § 4-106 (pobočka se považuje za separátní banku pro účely určení místa nebo času jednání); § 4-A-105 (pobočka se považuje za separátní banku pro účely převodu prostředků). Zajišťovací příkaz doručený pobočce nelze účinně připínat k účtu vedenému jinou pobočkou stejné banky alespoň podle práva admirality. *Srov. Reibor Int'l Ltd. v. Cargo Carriers (KACZ-CO.) Ltd.,* 759 F.2d 262, 264 (2d Cir.1985); *Det Bergenske Dampskibsselskab v. Sabre Shipping Corp.,* 341 F.2d 50, 53-54 (2d Cir.1965); *ale srov. Digitrex, Inc.* ***654** *v. Johnson,* 491 F. Supp. 66, 69 (S.D.N.Y.1980) (zajišťovací příkaz doručený do ústředí banky postačuje k zajištění prostředků na účtu vedeném pobočkou) (podle práva státu New York); *S & S Machinery Corp. v. Manufacturers Hanover Trust Co.,* 219 A.D.2d 249, 252, 638 N.Y.S.2d 953, 955 (1st Dep't 1996) (podporující pravidlo v rozhodnutí *Digitrex*).

7) Zdůvodnění pravidla tzv. "separátní entity", však spočívá v praktických reáliích bankovní činnosti pobočky, zejména v tom, že pobočky nemohou (nebo nemohly v době formulování pravidel) komunikovat mezi sebou okamžitě, a proto, za účelem zabránění vzniku vícenásobní odpovědnosti, banka musí mít možnost omezit její odpovědnost za jednání pouze jedné pobočky:

Příloha č. 4
rozhodnutí s překladem očíslovaných částí

Digitrex, Inc. v. Johnson, 491 F. Supp. 66 (S.D.N.Y. 1980)

U.S. District Court for the Southern District of New York - 491 F. Supp. 66 (S.D.N.Y. 1980)
June 12, 1980

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491 F. Supp. 66 (1980)

DIGITREX, INC., Plaintiff,
v.
J. Howard JOHNSON et al., Defendants.

No. M-18-302.

United States District Court, S. D. New York.

June 12, 1980.

***67** Robert L. Kassel, New York City, for defendants; Philip R. Brookmeyer, New York City, of counsel.

Simpson, Thacher & Bartlett, New York City, for Garnishee Manufacturers Hanover Trust Co.; Thomas M. Bistline, New York City, of counsel.

MEMORANDUM AND ORDER

KNAPP, District Judge.

Before us is a motion for an order directing Manufacturers Hanover Trust Company ("Manufacturers Hanover") to release certain assets maintained by defendant J. Howard Johnson in an account at one of Manufacturers Hanover's branch offices, which assets were frozen pursuant to a restraining notice served on April 28, 1980, upon Manufacturers Hanover's main office. For reasons set forth in this opinion, the motion is denied.

On November 16, 1979, plaintiff Digitrex, Inc. obtained in U.S. District Court for the Southern District of Texas, Laredo Division, a judgment of $256,000 together with $20,000 as attorneys' fees against various parties including defendant Johnson. On March 26, 1980, plaintiff, alleging that the Texas judgment had not been paid, entered said judgment with this court, and on April 28 caused the above-mentioned restraining notice to be served upon Manufacturers Hanover's main office. The restraining notice stated that "it appears" that Manufacturers Hanover is "in possession or in custody of property in which the judgment debtor has an interest to wit: any bank account or accounts", and that pursuant to section 5222(b) of the New York Civil Practice Law and Rules, the effect of the restraining notice was to forbid Manufacturers Hanover "to make or suffer any sale, assignment or transfer of, or any interference with, any such property" except as provided in CPLR § 5222(b).

Defendant contends that the restraining notice was legally ineffective with regard to his account at the Manufacturers Hanover branch office for two reasons: (1) because "New York case law unequivocally states that a restraining notice must be served upon the particular branch at which the depositor's account is maintained"; and (2) because it failed to specifically identify the account to be frozen. We reject both contentions.

In arguing that in order to be effective, the restraining notice would have had to be served upon the Manufacturers Hanover branch office at which defendant's account was maintained rather than on Manufacturers Hanover's main office, defendant relies primarily on *National Shipping & Trading Corp. v. Weeks Stevedoring Company* (S.D.N.Y.1966) 252 F. Supp. 275. In that case, Judge Bonsal vacated a writ of foreign attachment of respondent's account on the ground that it had been served on the main office of the Marine Midland Grace Trust Company whereas the respondent had maintained an account only at a branch office of that bank. Judge Bonsal ***68** found specifically that "[t]he New York rule, adopted for federal purposes, is that each branch of a bank `is a separate and distinct business entity.'" *Id.* at 276, quoting *Bluebird Undergarment Corp. v. Gomez* (City Ct.N.Y.1931) 139 Misc. 742, 744, 249 N.Y.S. 319, 321.

1) However, Judge Bonsal went on to explain the purpose for this rule by quoting *Cronan v. Shilling* (S.Ct.N.Y. 1950) 100 N.Y.S.2d 474, 476, *affirmed* (1st Dep't) 282 A.D. 940, 126 N.Y.S.2d 192:

   "Unless each branch of a bank is treated as a separate entity for attachment purposes, no branch could safely pay a check drawn by its depositor without checking with all other branches and the main office to make sure that no warrant of attachment had been served upon any of them."

2) We believe that this rule is no longer valid. Counsel for Manufacturers Hanover informs us:

   "Today, Manufacturers Hanover, along with most other large commercial banks in New York City, uses highspeed computers with central indexing capabilities to keep track of its depositors' checking accounts. The employment of these computers, together with other sophisticated communications equipment, has enabled the Bank to monitor checking accounts *from its main office.* This, in turn, has permitted the centralization at the main office of many administrative functions, such as the imposition of a hold on a depositor's account. Under these circumstances, service of a restraining notice at the Bank's main office promotes, rather than endangers, the orderly transaction of banking business." (Emphasis supplied)

We take judicial notice of the fact that the operations at most if not all New York City commercial banks, including Manufacturers Hanover, have become largely computerized as described by Manufacturers Hanover's counsel. Consequently, it is clear that the argument in favor of the rule set forth in 1950 in *Cronan, supra,* is no longer persuasive.

We are mindful that a similar argument to the one now made by Manufacturers Hanover in this connection was made before and rejected by the Court of Appeals for this Circuit more than fifteen years ago in *Det Bergenske Dampskibsselskab v. Sabre Shipping Corporation* (2d Cir. 1965) 341 F.2d 50, 53:

"Libelants . . . contend that technological improvements in communications and record-keeping have rendered the justification for the rule obsolete, while the proliferation of bank branches has increased the burden of the libelant of locating the proper branch office on which to serve

the warrant of foreign attachment. These arguments, however, are properly addressed to the New York authorities. We may not alter an established rule of New York law when there has been no indication by the New York lawmakers that they have changed their point of view."

We are not aware, however, of a single case within the past fifteen years in which the rule in question has been reaffirmed by any New York appellate court.[1] To be sure, Professor David D. Siegel in the 1978 Practice Commentary to CPLR § 5222, C:5222:5 following CPLR § 5222 (McKinney 1978), has unambiguously restated the rule, thereby ***69** implying its continued validity.[2] However, that Commentary is not buttressed by any recent case law. On the contrary, in the Commentary to CPLR § 5201 which defines the type of property subject to attachment, C:5201:13 following CPLR § 5201 (McKinney 1978), Professor Siegel cites only *National Shipping & Trading Corp., supra,* for the proposition that a levy on a bank account must be effected at the branch at which the account is maintained.[3]

We do not believe that the New York courts would today perpetuate an obsolete interpretation of the attachment statute which would, according to the uncontroverted statement of one of New York's leading banks, not only render creditors' remedies less effective but interfere with the orderly business of the very banking institutions the interpretation was originally designed to protect. Believing that New York courts would today act in a sensible fashion, certainly the federal courts should not have to wait until some state court litigant brings a case to appellate attention before doing likewise. Consequently, we hold that service of the restraining notice in the case at bar on Manufacturers Hanover's main office was sufficient and legally effective.

We now turn to defendant's contention that the restraining notice was legally ineffective because it "fail[ed] to satisfy the `specificity' clause of CPLR § 5222(b)." The statute in question contains no such "specificity" requirement. Section 5222(b) provides only in this connection:

"All property in which the judgment debtor is known or believed to have an interest then in and thereafter coming into the possession or custody of [a person other than a judgment debtor served with a restraining notice], *including any specified in the notice,* and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor, shall be subject to the notice." (Emphasis supplied)

This means that a restraining notice *may* specifically identify the property to be attached, but certainly section 5222(b) cannot be read to require that a judgment debtor know the precise number of a bank account he wishes to have frozen. Nor do the two cases cited by defendant in this connection, *Sumitomo Shoji New York, Inc. v. Chemical Bank New York Trust Company* (S.Ct. 1st Dep't N.Y.Cty.1965) 47 Misc.2d 741, 263 N.Y.S.2d 354, *affirmed* (1st Dep't) 25 A.D.2d 499, 267 N.Y.S.2d 477; *Walter v. Doe* (Civil Ct.N.Y.1978) 93 Misc.2d 286, 402 N.Y.S.2d 723, in any way support his position. Furthermore, we find that the desired object of the restraining notice was adequately described therein to allow Manufacturers Hanover to locate and "freeze" it. Consequently, we must reject as unfounded defendant's contention that the restraining notice was legally ineffective for failure to specifically identify the account to be frozen.

Defendant's motion is accordingly denied.

SO ORDERED.

NOTES

[1] The rule was reiterated in *Buy Fabrics, Inc. v. Ada Company, Inc.* (S.Ct.N.Y.Cty.1973) 76 Misc.2d 607, 608, 351 N.Y.S.2d 522, 523: "Service on one *branch* should not be permitted to accomplish a restraint on accounts and funds in other branches because of the substantial interference with routine banking business. (*Cronan v. Shilling,* Sup., 100 N.Y.S.2d 474, aff'd 282 App.Div. 940, 126 N.Y.S.2d 192 . . .)." (Emphasis supplied) It is clear, however, that we are not bound to follow lower state courts on an issue of state law on which there is no definitive ruling by the state's highest court. *Commissioner v. Estate of Bosch* (1967) 387 U.S. 456, 87 S. Ct. 1776, 18 L. Ed. 2d 886. It being established to our satisfaction that whatever may be the situation where service is made on a "branch" service on the main office can cause no interference, "substantial" or otherwise, with routine banking business, we conclude that a New York court would not vacate the restraining order here at issue.

[2] "If the property pursued by the judgment creditor is a bank account maintained by the judgment debtor, the creditor must be sure to serve the restraint on the branch in which the account is kept. For enforcement purposes, a bank account is deemed property of the judgment debtor only at that branch regardless of how many other branches the bank may maintain."

[3] "The levy on a bank account, incidentally, must be effected at the branch where the defendant maintains the account, notwithstanding the many branches the bank may have. *National Shipping & Trading Co. v. Weeks Stevedoring Co.,* 252 F. Supp. 275 (S.D.N.Y.1966). Even a levy at the home office of the bank will not be effective if the judgment debtor's particular account is maintained at an outlying branch."

Překlad

1) Nicméně soudce Bonsal dále vysvětlil účel tohoto pravidla citací rozhodnutí ve věci *Cronan v. Shilling* (S.Ct.N.Y. 1950) 100 N.Y.S.2d 474, 476, *affirmed* (1st Dep't) 282 A.D. 940, 126 N.Y.S.2d 192:

   "Nebude-li pro účely zajištění majetku povinného na každou pobočku banky nahlíženo jako na separátní entitu, žádná pobočka by nemohla bezpečně proplatit šek vystavený jejím vkladatelem bez toho, aby si u všech poboček a ústředí banky ověřila, že jim zajišťovací příkaz nebyl doručen."

2) Věříme, že toto pravidlo již není platné. Právní zástupce Manufacturers Hanover nás informoval:

   "Dnes, Manufacturers Hanover, spolu s většinou jiných v New Yorku, používá vysokorychlostní počítače se schopností centrální indexace umožňující sledovat šeková konta svých vkladatelů. Zavedení těchto počítačů, spolu s dalšími sofistikovanými prostředky komunikace, umožnilo Bance monitorovat šeková konta *z ústředí*. Tato skutečnost zase umožnila centralizaci mnoha administrativních funkcí na úrovni ústředí, jakou je i pozastavení nakládání s prostředky na účtu vkladatele. Za těchto okolností doručení oznámení o omezení do ústředí Banky spíše podporuje, než ohrožuje řádné (pravidelné) bankovní obchody.". (dodatečně zvýrazněno).

Příloha č. 5
rozhodnutí s překladem očíslované části

S & S Machinery Corp. v. Manufacturers Hanover Trust Co., 219 A.D.2d 249, 638 N.Y.S.2d 953 (1996)
March 14, 1996 · New York Supreme Court, Appellate Division

219 A.D.2d 249, 638 N.Y.S.2d 953
S & S Machinery Corp., Appellant,*v.*Manufacturers Hanover Trust Company et al., Respondents

[638 NYS2d 953]

First Department,

*250APPEARANCES OF COUNSEL

Alfred R. Fabricant and *Lawrence C. Drucker* of counsel, New York City *(Fabricant & Yeskoo, P. C.,* attorneys), for appellant.

Robert T. Stephenson of counsel, New York City *(Andrew N. Keen* on the brief; *Chemical Bank Legal* Department, attorneys), for respondents.

OPINION OF THE COURT

Williams, J.

The issue on this appeal is whether the defendant bank processed and responded to plaintiff judgment creditor's restraining notice and information subpoena in a reasonable manner, as a matter of law.

This action is the result of plaintiff's efforts to enforce a judgment obtained in July 1991 against Masinexportimport (Masin), a Romanian trading company, in the amount of $1,573,163.20 plus costs. In April 1992, plaintiff, unsuccessful in its collection efforts thus far, served restraining notices and information subpoenas on several New York banks which it had reason to believe might hold accounts for the judgment debtor. Plaintiff had discovered that Masin was an entity of the Romanian government and counsel reasoned that since the Republic of Romania had long maintained relationships with these banks, the company might also.

On April 23, 1992, both Chemical Bank and Manufacturers Hanover Trust Co. (MHT)* were served with a restraining notice and information subpoena requiring that they refrain from making or allowing any sale, assignment, transfer or interference with any of Masin's property then or thereafter coming into their possession, and to answer written questions as to whether they held any of Masin's assets. MHT was served at its main office located at 270 Park Avenue, Manhattan. The *251process specified Masin as a Romanian corporation, but did not provide a United States address or any account numbers.

By letter dated May 14, 1992, MHT stated that "a search of records of said Trust Company failed to reveal any open or closed accounts" belonging to Masin. In fact, as plaintiff discovered subsequently, the corporate trust department of MHT, located at all relevant times at 450 West 33rd Street, Manhattan, was in possession of approximately $1.5 million worth of United States Government Treasury bonds which it was holding as escrow agent pursuant to an agreement between Masin and Summit Machine Tool Manufacturing Corp. (Summit). The escrow agreement had been entered in November 1990 as part of the settlement in an arbitration commenced by Masin against Summit which did not involve the plaintiff herein.

On May 16, 1992, Summit and Masin entered into an amended escrow agreement, at Masin's request, which provides that Summit and Masin would instruct MHT to deliver the bonds to Summit which would convert them into nonnegotiable drafts; that there would be 10 drafts, each with a face amount of $153,300; and that the original escrow agreement would be rescinded. On or about May 19, 1992, Masin sent a letter to MHT instructing that it transfer the bonds to Summit, that the escrow agreement was rescinded, and discharging MHT as escrow agent. MHT complied with these instructions and Summit, subsequently, deposited the drafts with an Oklahoma bank, beyond the reach of plaintiff's restraining notice.

At the time the postjudgment process was served, MHT had a centralized computer database which included "routine retail account and personal and commercial loan information", but not corporate trust accounts. This database was accessible from the main office. Affidavits submitted by bank officials failed to explain the exclusion of corporate trust accounts from the database and asserted that computerization of these records was not mandated by law or regulation. They also asserted that MHT received over 100,000 postjudgment enforcement devices in 1992 and that there was no record of the corporate trust department ever receiving the process at issue here.

Subsequently, plaintiff brought the instant action alleging that the defendant bank intentionally misrepresented the facts in its response to the postjudgment process, that it knew that it held the bonds, and that it consented to and participated in a scheme by Masin and Summit to deny plaintiff recourse to the bonds or at the least, made misrepresentations "negligently or recklessly and without regard for the actual facts".

*252The bank moved for summary judgment on the grounds that the restraining notice was not properly served on MHT, and that it did not properly lie against the escrowed bonds. In the alternative, the bank sought to reduce the *ad damnum* to reflect the alleged present value of the bonds and argued that punitive damages were inappropriate in this case.

Plaintiff answered the motion by alleging that the circumstances set forth in the complaint clearly showed that MHT, upon receiving the postjudgment process, warned Masin or Summit that plaintiff was trying to execute its judgment by recourse to the bonds and that the bank had this information in its exclusive possession, warranting an order denying summary judgment and allowing the case to proceed.

The motion court granted summary judgment solely on the ground that the restraining notice, having been served at the main office instead of the corporate trust office, had not been properly served. It also noted the absence of proof that the corporate trust department had actual knowledge of the restraining notice.

Summary judgment should not have been granted on this basis. Contrary to the motion court's ruling, service of the restraining notice and information subpoena upon MHT's main office was legally sufficient. The rule stated in *Digitrex, Inc. v Johnson* (491 F Supp 66 [SD NY]) should have been applied, and the limitation on that rule stated in *Therm-X-Chemical & Oil Corp. v Extebank* (84 AD2d 787) does not require a contrary result.

1) The *Digitrex* court argued persuasively that the old New York rule, requiring that the judgment creditor serve his post-judgment process on the particular branch of the bank where the judgment debtor's assets were located, was obsolete in an era when large commercial banks use centralized computer databases to handle their accounts. In light of this technological advance, it reasoned that service of post-judgment process on a bank's main office, rather than on the particular branch, should constitute legally sufficient service. The bank in question in *Digitrex* was MHT.

The subsequent *Therm-X* decision limited *Digitrex* by requiring that the old rule be followed "where the main office of a bank does not have high-speed computers with central indexing capabilities to keep track of its depositors' accounts" *(Therm-X-Chemical & Oil Corp. v Extebank, supra).* MHT's argument here, that the restraining notice and information subpoena had to be served on its corporate trust department **253*since that database was not integrated into its centralized computer system, not only ignores the fact that MHT has a centralized computer database which, 16 years after *Digitrex,* is presumably more efficient and inclusive of the bank's records, but also ignores the policy rationale supporting *Digitrex,* i.e., elimination of the inefficiency to the bank and judgment creditors of scattershot service of postjudgment process on bank branches and departments in an effort to locate assets. Consequently, service of postjudgment process on MHT's main office was a reasonable way to proceed and should be no less binding here than it was in *Digitrex.*

Aside from the question of service, the inadequate state of the record here also precludes summary judgment. MHT as summary judgment movant bears the initial burden of making a prima facie showing of entitlement to judgment as a matter of law; only then does the burden shift to the opposing party to come forward with evidentiary proof establishing the existence of issues of fact. Failure on the part of the movant to carry his burden requires denial of the motion, the sufficiency of the opposing papers notwithstanding *(Alvarez v Prospect Hosp.,* 68 NY2d 320, 324; *Tillmon v New York City Hous. Auth.,* 203 AD2d 19, 20; *Logan v Cardi,* 202 AD2d 355).

Here, MHT needed to establish, as a matter of law, that it met the applicable legal standard in its processing of and response to the restraining notice and subpoena. A review of relevant case law indicates that the applicable legal standard by which MHT's conduct should be measured is that originally set forth in *Therm-X* and refined in subsequent decisions: a case-by-case determination based on practicality and fairness, i.e., reasonableness, under the circumstances *(see, Zemo Leasing Corp. v Bank of N. Y.,* 158 Misc 2d 991, 993; *Carrick Realty Corp. v Flores,* 157 Misc 2d 868, 874-876; *Intercontinental Credit Corp. Div. v Roth,* 152 Misc 2d 751, 755, *vacated on other grounds* 154 Misc 2d 639).

In *Zemo,* for example, the issue was whether a bank should be liable for failure to timely impose a "hold" on a judgment debtor's accounts where it placed the hold by the close of business one day after receiving the restraining notice and information subpoena, yet the judgment debtor managed to withdraw money from the accounts in the interim. The court reasoned that where a bank acts "in a commercially reasonable fashion and in good faith" it

should be afforded a reasonable period of time to process the restraint and subpoena and impose the "hold" on the account *(supra,* at 993).

*254Reasonableness, especially the reasonableness of a party's conduct, has been held to be a question of fact *(see, e.g., Argentina v Otsego Mut. Fire Ins. Co.,* 86 NY2d 748, 750; *Dershowitz & Eiger v Helmsley,* 219 AD2d 497; *Inter-Power of N. Y. v Niagara Mohawk Power Corp.,* 213 AD2d 110; *LaRose v Amazon Assocs.,* 139 AD2d 568; *Heimrich v Stevens,* 67 AD2d 1093).

On the record before us, MHT failed to establish as a matter of law that its search and response to plaintiff's restraining notice and information subpoena were reasonable, leaving a number of factual questions unanswered, *inter alia:* why it did not disclose to plaintiff the limited scope of its search in response to the restraining notice and subpoena; why information about corporate trust accounts was not included in its central database; what were its procedures at the time for processing the thousands of items of postjudgment process it allegedly received and particularly those involving its corporate trust clients; and did it in fact assure certain customers protection from postjudgment inquiry by routing such process only to the computer database while keeping their assets out of that database, or in some other manner. Hence, summary judgment was inappropriate for this reason as well.

In light of the views expressed above, it is unnecessary to address defendants' remaining contentions.

Accordingly, the order of Supreme Court, New York County (Ira Gammerman, J.), entered July 6, 1994, which granted a motion by defendants for summary judgment dismissing the complaint, is unanimously reversed, on the law, and the motion for summary judgment denied, with costs.

Murphy, P. J., Wallach, Kupferman and Ross, JJ., concur.

Order, Supreme Court, New York County, entered July 6, 1994, which granted a motion by defendants for summary judgment dismissing the complaint, reversed, on the law, with costs, and the motion for summary judgment denied.

*

These banks have since merged.

Překlad

1) Soud ve věci *Digitrex* přesvědčivě argumentoval, že staré newyorské pravidlo vyžadující, aby věřitel s vykonatelnou pohledávkou zahájil výkon rozhodnutí u pobočky, v které má povinný majetek, se stalo obsolentním od doby, kdy velké obchodní banky začali používat centrální počítačovou databázi ke spravování účtů. Ve světle tohoto technologického pokroku je důvodné, aby výkon rozhodnutí u ústředí banky místo u jednotlivé pobočky byl považován za souladný s právem. Bankou ve věci *Digitrex* byla MHT.

Příloha č. 6

Jednotný obchodník zákoník ve znění přijatém ve státě New York
dohledatelné: https://www.nysenate.gov/legislation/laws/UCC/A4

I.

Sekce 4-106

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place 1ctio to which action may be taken or notices or orders shall be given under this Article and under Article 3.

Překlad:

Pobočka nebo samostatná kancelář banky je samostatnou bankou pro účely určení lhůty, v které lze jednat (plnit) a určení místa, kde lze plnit (jednat) nebo místa, do kterého lze učinit oznámení nebo podat příkaz podle tohoto článku nebo článku 3.

II.

Sekce 4-104 odst. 1 písm. (g) a (h)

(1) In this Article unless the context otherwise requires

(g) „Item“ means any instrument for the payment of money even though 1ctio not negotiable but does not include money;

(h) „Midnight deadline“ with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

Překlad

(1) Pro účely tohoto článku, ledaže z kontextu plyne něco jiného,

(g) „Položkou“ se rozumí platební prostředek, byť neobchodovatelný, s výjimkou peněžních prostředků“;

(h) „O půlnoci“ se ve vztahu k bance rozumí půlnoc pracovního dne bank následujícího po pracovním dni bank, v kterém banka obdržela příslušný nástroj nebo oznámení, nebo po pracovním dni bank od kterého začíná běžet lhůta k jednání, podle toho, který z těchto dní je pozdější;

III.

Sekce 4-102 odstavec 2

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

Překlad

(2) Odpovědnost banky za jednání nebo nečinnost při nakládání s jakýmkoliv prostředkem za účelem prezentace, placení nebo inkasa se řídí právem místa, kde banka sídlí. V případě jednání nebo nečinnosti pobočky nebo samostatné kanceláře banky nebo na pobočce nebo v samostatné kanceláři banky se její odpovědnost se řídí právem místa, kde sídlí pobočka nebo samostatná kancelář.

IV.

Sekce 4-103 odstavec 3

(3) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

Překlad:

(3) Jednání nebo nečinnost v souladu s tímto článkem nebo podle předpisů Federálních rezerv nebo provozních předpisů zakládá jednání s obvyklou péčí a, při neexistenci zvláštních instrukcí, jednání nebo nečinnost odpovídající pravidlům zúčtovacího místa a obdobné nebo odpovídající obecným bankovním zvyklostem, které není zapovězené tímto Článkem, zakládá *prima facie* výkon obvyklé péče.

V.

Sekce 4-109 písm. e)

The „process of posting“ means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(e) correcting or reversing an entry or erroneous action with respect to the item.

Překlad:

Procesem „účetního zápisu“ se rozumí obvyklý postup banky plátce při rozhodnutí o proplacení platebního prostředku a při zaznamenání platby včetně jednoho nebo více dalších kroků podle úvahy banky:

(e) oprava nebo navrácení do původního stavu záznamu nebo chybného jednání ve vztahu k položce.

Příloha č. 7

§ 138 odst. 1 věta první

1. Notwithstanding section 1-105 of the uniform commercial code, any bank or trust company or national bank located in this state which in accordance with the provisions of this chapter or otherwise applicable law shall have opened and occupied a branch office or branch offices in any foreign country shall be liable for contracts to be performed at such branch office or offices and for deposits to be repaid at such branch office or offices to no greater extent than a bank, banking corporation or other organization or association for banking purposes organized and existing under the laws of such foreign country would be liable under its laws.

Překlad:

1. Bez ohledu na oddíl 1-105 jednotného obchodního zákoníku, kterákoliv banka nebo trust nebo národní banka se sídlem v tomto státě, která podle ustanovení uvedených v této kapitole nebo podle jiného použitelného práva otevřela a zprovoznila jednu nebo více poboček v kterékoliv cizím státě, odpovídá za plnění smluv touto pobočkou nebo pobočkami a za výplatu vkladů přijatých v této pobočce nebo pobočkách pouze rozsahu, v jakém by odpovídala banka, bankovní korporace nebo jiná organizace nebo asociace zřízené a působící za účelem výkonu bankovní činnosti podle práva příslušného cizího státu.

Příloha č. 8

§ 1348. Banking association as party

…

All national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.

Překlad:

§ 1348. Bankovní asociace jako účastník

…

Všechny národní bankovní asociace se pro účely řízení, které vedou nebo která jsou vedena proti nim, považují za občany Států, v kterých se nacházejí.

Záznam o ověření elektronického podání doručeného na elektronickou podatelnu: Vrchní soud v Olomouci

dle vyhlášky 259/2012 Sb.

Pořadové číslo zprávy:	*6106 / 2020*	Ev. číslo:	*c0fb1f13-07ad-458c-a9f7-9f49d265027f*
Druh podání:	*Datová zpráva z ISDS*	ID zprávy:	*830111260*
Věc:	*přílohy k podání doručeného 9. října t.r.*		

Odesílatel:

ID schránky:	*jsufv4u*	Typ datové schránky:	*PFO*
Osoba:	*Tomáš Zagar - Zagar Tomáš, JUDr.*	Adresa:	*28. října 767/12, 11000 Praha 1, CZ*

Dodáno do DS dne:	*11.10.2020 19:32:35*	**Odesláno do DS dne:**	*11.10.2020 19:32:35*
Č.j. příjemce:		Č.j. odesílatele:	
Sp.zn. příjemce:	*13 VSOL 133/2020*	Sp.zn. odesílatele:	
Lhůta končí:		K rukám:	*Ne*
Číslo zákona:	Paragraf v zákoně:	Odstavec paragrafu:	Písmeno v paragrafu:

Ověření obálky:	*Podpis je platný*		
Podepsal:	*Informační systém datových schránek - produkční prostředí*	Vystavil:	*PostSignum Qualified CA 4*
Sériové číslo certifikátu:	*0152a467*	Platnost:	*21.08.2020 - 10.09.2021*
Antivirový test:	*Proběhl v systému ISDS*	Obsah podání:	OK
Elektronický podpis:	*Platný*	Časové razítko:	*Platné (připojeno 11.10.2020 19:32:35)*
Certifikát:	*Ověřeno na základě CRL z 11.10.2020 17:25:08*		
Datum a čas autom. ověření:	*11.10.2020 19:45:01*		

Počet podaných příloh:8

Číslo přílohy Výsledek	Název příl. CRL	Identifikace podepisující osoby	Identifikace vystavitele certifikátu	T	U	K	P	R	A	C	V
1	*Příloha č. 1.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					
2	*Příloha č. 2.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					
3	*Příloha č. 3.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					
4	*Příloha č. 4.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					
5	*Příloha č. 5.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					
6	*příloha č. 6.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					
7	*příloha č. 7.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					
8	*příloha č. 8.pdf*										
Podpis není připojen (žádný podpis).				*A*	*N*	*N*					

Čas ověření příloh:	*11.10.2020 19:45:01*	Ověření příloh:	*ověřováno automaticky*

Vysvětlení stavů při ověření příloh (vztaženo vždy k datu a času dodání):
Stav "?" znamená, že systém tuto operaci ještě neprovedl, ale provedena bude
Stav "-" znamená, že systém tuto operaci neprovádí
Stav "!" znamená, že systém tuto operaci nemůže provést
Stav "*" znamená, že bylo ověřeno proti CRL z uvedeného data.

T	Technické parametry[1]:	A=splňuje	N=nesplňuje
U	Uznávaný elektronický podpis / značka:	A=připojen	N=nepřipojen

K	Kvalifikované časové razítko:	A=připojeno	N=nepřipojeno
P	Uznáv. el. podpis kvalif. cerfikát (platnost):	A=platný	N=neplatný
R	Kvalifikované časové razítko (platnost):	A=platné	N=neplatné
A	Akreditovaný poskytovatel certifik. služeb[2]:	A=ano	N=ne
C	Kvalifikované časové razítko:	A=platné	N=neplatné
V	Vytvořeno před zneplatněním certifikátu:	A=ano	N=ne

[1] Technické parametry – velikost, formát, škodlivý kód.
[2] Stav "Z"(Zahraniční) = certifikát není od české certifikační autority

Kontrola podpisů a razítek byla provedena na základě CRL seznamů platných k datu a času ověření datové zprávy.