LEGAL AND BUSINESS JOURNAL

Private International Law

Be the master of your own fate

In this edition of Horse International we would like to draw our readers' attention to problems that may arise while doing equine business in an international setting. This article is illustrated with a real life case which proves that assuming law works the same around the world is obviously wrong. Such assumption might be particularly dangerous in the equine business that, as we all know, is quite informal, predominantly based on trust and trade customs existing for a very long period of time. To this day, a 'handshake' seems to be more important than a contract. In a horse deal such an approach can sometimes be understandable, but the equine business goes beyond a simple example of purchase agreements. There are many situations in which you may rather consider having a contract and think twice before giving your commitment. Think for instance about the following case.

Real life example

Issues that can arise in connection with an international setting in the equine business can be illustrated with a real life case that has been dealt by our law firm. The case goes as follows. A European horse trainer has been engaged by a rich family from the US. Their daughter had high ambitions for one of the past Olympic Games. The family engaged the trainer in Europe and created the necessary infrastructure for the girl to live and train in Europe. Within a short period of time after her arrival, the girl suddenly changed her mind and decided to give up her equestrian career and to go back to the States. The family was obviously not happy with this development and a huge loss they had to take on the investment they had made. Trying to cut their losses, they asked the trainer to help them sell the daughter's horse. Friendly as he was, he told them he was willing to help them out. As the horse was in Europe it was put up for sale in Europe. It took more than a year to find a buyer. It must be noted and stressed that the trainer carried out his contractual obligations in Europe, had never been to the US in connection with this sale and did everything in accordance with the applicable law (his domestic law in Europe). Nonetheless, the problems were just about to arise for him. Not in his home country, but on the other side of the Atlantic Ocean, the home state of the family in the US. The family accused him of a breach of the fiduciary duty and sued him in front of the local court in their home US state, a state that, as already mentioned, he had never been to.

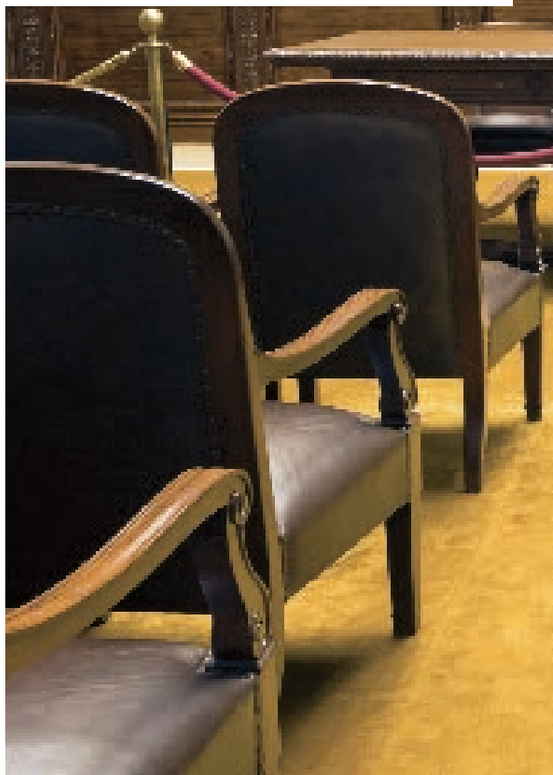
Proceedings in the US

The US Court assumed jurisdiction pursuant to the US so-called long arm jurisdiction, assuming that phone calls and messages sent from Europe to the family in the US without any physical contact were sufficient to assume its jurisdiction. The trainer could not bear the financial burden of the civil proceedings in the US and eventually had to drop the case. The US Court and jury judged in the verdict that the trainer was in breach of his fiduciary duty towards the family, awarding compensatory and punitive damages. A favour that he wanted to do towards the family turned into a legal and financial nightmare. The damages awarded to the family where twelve (12) times higher than the agreed commission he received. As the trainer had no assets in the US, he was not really afraid of the enforcement of the US judgement. His advisors told him that he was rather safe in the EU as an American judgement, considering a lack of an enforcement treaty between the EU and the US, was not easily enforceable in the EU. The US are not a party to The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, which is a multilateral treaty governing the enforcement of judgments entered by one nation's legal authorities in other signatory nations. The EU countries are signatories to this treaty. That there is no treaty on enforcement of US Court's verdicts in the EU is therefore true. Please note that contrary to a US court judgment, an arbitral award from a US based arbitration institute can be recognised pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the so-called 'New York Convention'), but this does not mean that the enforcement of a US Court judgment would be impossible. The trainer in our case was eventually faced with the enforcement of the US judgment in the EU.

Recognition in the Netherlands

Based on the Dutch law, the Dutch Supreme Court formulates four conditions for the recognition of foreign judgments in the Netherlands that must be cumulatively met. According to the Dutch Supreme Court foreign judgements can be in principle recognized in the Netherlands as long as:

- The jurisdiction of the judge who rendered the decision is based on a ground of jurisdiction that is generally acceptable by international standards.
- The foreign decision has been concluded in legal proceedings that meet the requirements of a proper judicial procedure that provides sufficient safeguards.
- The recognition of the foreign decision is not contrary to Dutch public policy.
- The foreign decision is not incompatible with a decision of the Dutch court between the same parties, or with a previous decision of a foreign court between the same parties in a dispute concerning the same subject matter and base on the same cause of action, provided that this earlier judgment is subject to recognition in the Netherlands.



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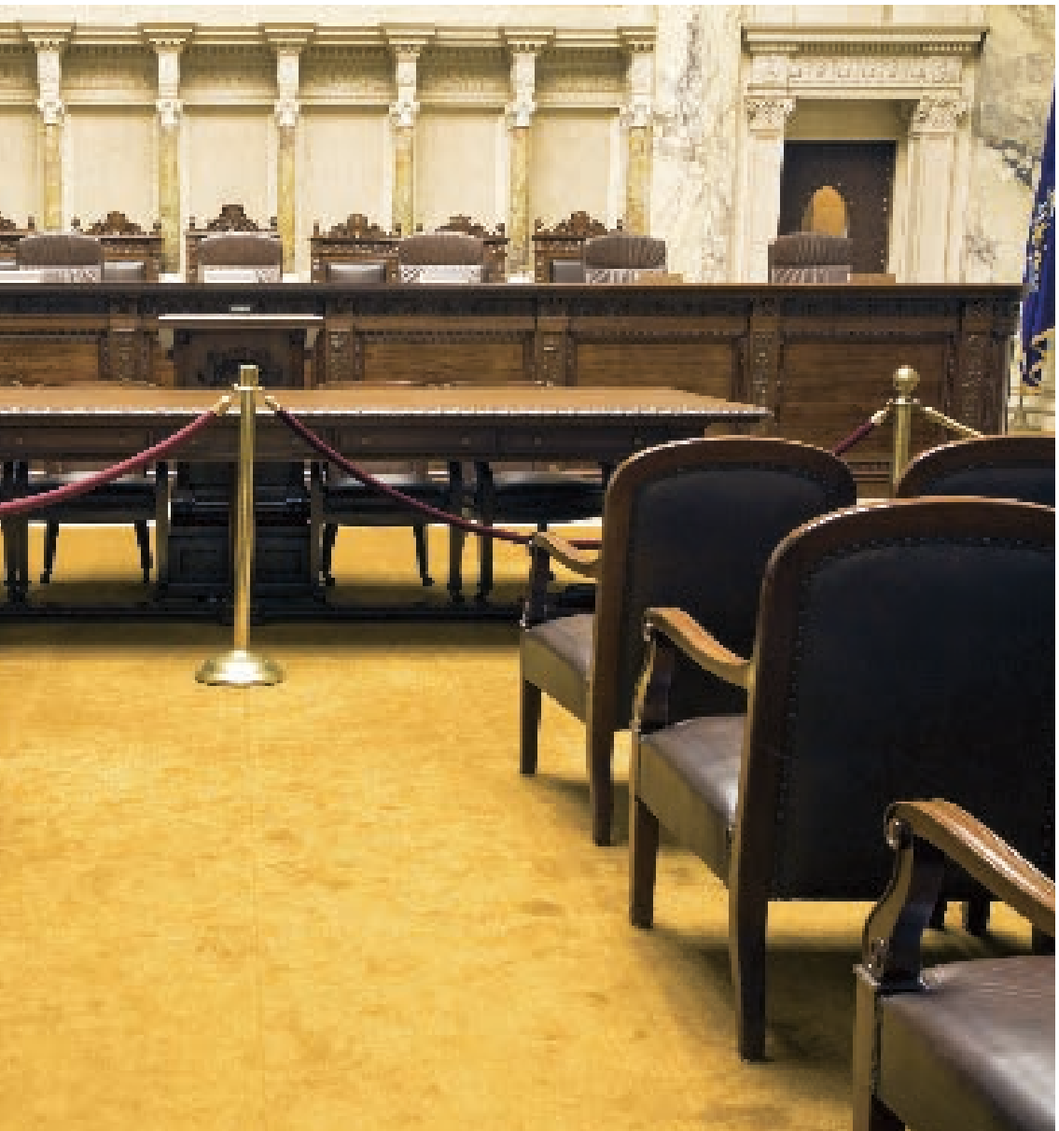
Projecting these criteria on the case of the trainer, we can see that the US judgment can be in principle recognised in the Netherlands. From a practical point of view it seems that a party that is opposing the recognition of a foreign judgment is however the underdog. At the end of the day, there is already a judgment which is, as the Dutch Supreme Court states, in principle enforceable. Another option is to request the Dutch Court to consider the case de novo. In other words, the Dutch court starts from scratch and decides the case by itself. Obviously, this option is less tempting for foreign parties with a foreign judgment issued in their favour.

Facing the recognition: game over?
Our readers could ask themselves what then? Can you still prevent this from happening? The answer is yes. The game is not over. Referring to the criteria set out above, there are of course possibilities, but it must be stated that these are not easy to achieve. The case of our trainer is still pending. Though, our firm has been able to mitigate the risk for the trainer, up to an extent, by obtaining a preliminary injunction judgment ruling that prima faciae punitive damages are not compatible with domestic law. The preliminary injunction judgment also declared the accrued US post judgment interest rate not applicable and enforceable in the trainer's home country. For the rest, the case is still pending in the main proceedings on the merits, and we shall come back to this when the litigation is over. The most important lessons to learn while doing business with parties from outside the EU is: 'be the master of your own fate'. Ideally, ask a lawyer to prepare a straightforward contract with the essential elements like the financials, the applicable law and the forum choice (your choice for the competent judge). It is also recommendable to add a provision limiting your liability in connection with the agreement up to the amount you receive from it. A counterpart will normally accept it (in the end they want to do business with you), but this provision can be a lifeline when things go wrong. If there is no lawyer around, draw up a simple document yourself. This might be an e-mail confirming your terms, like for instance the agreed commission, stating that your domestic law is applicable to the agreement and that if something happens the parties need to litigate the case in your hometown. In the event you have not done all this and all of a sudden you are confronted with a claim from abroad, you should contact your lawyer. What you could do in that case is to request your own local court to issue a negative statement of liability in the matter. By obtaining such, you could oppose the enforcement of the foreign judgment based on the fourth criterion mentioned above being: the foreign decision is not incompatible with a decision of the domestic court between the same parties, or with a previous decision of a foreign court between the same parties in a dispute concerning the same subject matter and based on the same cause of action. ■



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If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us via info@europeanequinelawyers.com or by telephone +31-(0)135114420.

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