

How To Enforce A NY Lease Guarantee Against A UK Co.

By **Jesse Schneider** and **Allyson Hopper** (February 3, 2020, 4:43 PM EST)

Great Britain formally left the European Union on Jan. 31. While the impacts will be far reaching, one change will be the enforcement of court judgments between the U.K. and the rest of the EU. For a judgment in an EU member state to be enforced in the U.K., parties will likely have to follow the same procedures currently used for the enforcement of U.S. judgments in the U.K. By way of example, this article will discuss enforcing the guarantee of a U.K. parent company that secures a New York lease.

Often, when dealing with U.K. enterprises, New York landlords are forced to accept guarantees from U.K. parent companies with limited assets in the United States. More often than not, these foreign guarantors refuse to submit by agreement to New York jurisdiction.

This begs the question: How worthwhile is such a guarantee from a U.K. parent entity and what do you do to enforce a guarantee on a lease in New York if the guarantor parent entity is a U.K. company with no assets in the United States?

Assume a tenant is unable to pay its rent. A landlord will typically commence an action against both the tenant and its U.K. parent guarantor. In order to obtain a judgment against the foreign guarantor, however, a landlord will first need to establish jurisdiction over the U.K. entity.

Because there is no reciprocity between the United States and the U.K. in terms of recognizing each other's judgments, the second step requires bringing a separate action in the U.K.

Jurisdiction Issues

The first hurdle is the need to establish jurisdiction over the U.K. parent company in order to obtain a judgment against them for breach of the guarantee.

Each state has its own long arm statute, which may or may not allow jurisdiction based on the minimal contact of guaranteeing a lease. As relevant here, the New York long arm statute provides for specific jurisdiction over a foreign defendant that, among other things, (1) "transacts any business within the state or contracts anywhere to supply goods or services in the state," or (2) "owns, uses or possesses



Jesse Schneider



Allyson Hopper

any real property situated within the state." [1]

Thus, the U.K. parent entity would have to transact business independently in New York to confer jurisdiction in the state. The business transactions of the subsidiary whose lease is guaranteed would be insufficient.

If the lease that the U.K. entity guaranteed is in New York, then the U.K. entity will be found to have "transact[ed] ... business within the state" which would subject it to specific jurisdiction under Civil Practice Law and Rules Section 302(a). In *Chase Manhattan Service Corp. v. National Business Systems Inc.*, foreign bank NBS/Canada argued that a guarantee on a lease, absent any further contacts with New York, was insufficient to subject NBS/Canada to personal jurisdiction.

However, the court found that the bank was subject to personal jurisdiction under Section 302(a)(1) because:

[t]he guarantying of the Lease by [foreign defendant], including the promise to make payments to plaintiff in New York, constitutes "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and the protection of its laws." [2]

This proposition has been applied beyond guaranteeing a lease, to include, for example, a guarantee of a contract. In *Mago International LLC v. LHB AG*, the court found that the foreign entity was subject to jurisdiction in New York under Section 302(a)(1) because the foreign entity entered into a guarantee contract for the benefit of a New York corporation, and thus "should have known that a perceived failure to fulfill its obligations would give rise to suit by the same New York corporation in its home forum." [3]

Enforcing a New York Judgment in the U.K.

What happens after New York judgment is obtained against the U.K. company? Assuming the assets of the U.K. company are not in New York and are located in the U.K., the New York judgment needs to be enforced in the U.K.

Surprisingly, there is no reciprocal agreement between the United States and the U.K. recognizing the enforcement of each other's judgments. Accordingly, a U.S. judgment can only be enforced in England at common law by bringing a new action under which the judgment is seen as a contractual obligation.

For the English court to consider enforcing the contractual obligation, it must be satisfied of six elements:

1. The U.S. judgment must be a final and conclusive judgment.
2. The judgment to be enforced must be for an ascertainable and definite sum of money.
3. The English court must be satisfied that the U.S. court had jurisdiction to hear the claim.
4. The U.S. judgment must not have been obtained by fraud.
5. An English court will not recognize or enforce a U.S. judgment if to do so would be contrary to English

public policy or the European Convention on Human Rights.

6. A judgment will not be enforced without the debtor having been given sufficient notice of the underlying U.S. proceedings.

To bring a proceeding against the judgment debtor in the U.K., the claim must be served within England. Luckily, the U.K. court will not usually reconsider the merits of the underlying judgment, even if it disagrees with it, unless there is a compelling reason to do so. Consequently, the claimant under the new proceeding will typically apply for summary judgment in the U.K..

If all six of the above elements are met, the U.K. court will usually grant the summary judgment. Summary judgment enables a party to enforce a U.S. judgment in the U.K. courts quickly, without having to go through the hassle and expense of full-blown proceedings and a full trial.

Ultimately, it is easier to enforce a guarantee against a U.S. entity with assets in the United States. However, while the process for enforcing a guarantee against a U.K. entity involves the extra step bringing a new action in the U.K., the judgment is very likely to be upheld and enforced in the U.K. courts.

Jesse Schneider is a partner and Allyson Hopper is an associate at Davis & Gilbert LLP.

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[1] N.Y. C.P.L.R. § 302(a).

[2] Chase Manhattan Service Corp. v. National Business Systems, Inc., 766 F. Supp. 203, 205 (S.D.N.Y. 1991).

[3] 2014 U.S. Dist. LEXIS 85410, at *13 (S.D.N.Y. June 18, 2014).