No. 86016-0-1

IN THE COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

ALTERNA AIRCRAFT V.B. LTD.,

Respondent,

v

SPICEJET LIMITED,

Petitioner.

PETITION FOR REVIEW BY SPICEJET LIMITED

Cassandra Ekure
Ballard Spahr LLP
1420 Fifth Avenue
Suite 4200
PO Box 91302
Seattle, WA 98111-9402
Tel 206-223-7000

John Hay
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Tel 212-768-6700

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Consitutional Provisions

Other Authorities

I. INTRODUCTION

The Court of Appeal's decision affirming the Trial Court's denial of Petitioner SpiceJet Limited's ("SpiceJet") motion to dismiss for lack of personal or *in rem* jurisdiction violates the Due Process clause of the United States Constitution, U.S. Const. amend. XIV. The Court found that under the Uniform Foreign-Country Money Judgment Recognition Act (the "Uniform Act"), RCW 6.40A, there was no requirement for Respondent Alterna Aircraft V.B. Ltd. ("Alterna") to establish that the court had any form of personal jurisdiction, whether *in personam* or *in rem*, over SpiceJet. The Court held that no minimum contacts with the State, and no property in the State, need be shown.

The U.S. Supreme Court has never sanctioned the sort of extension of personal jurisdiction applied by the Court below. Rather, the decision by the Court of Appeals is unsupported by, and directly conflicts with, more than 75 years of U.S. Supreme Court precedent on the absolute need for "minimum contacts"

with, or property in, the State for a court to validly exercise jurisdiction over a party.

This case raises a significant constitutional law issue which the Court below acknowledged is a "matter of first impression in Washington." Slip op. at 1. The Washington Supreme Court needs to be heard on this subject.

The case is also of major public importance because the Court's decision would create a new standard for jurisdiction for the courts of Washington that would permit the courts to exercise power over judgment debtors who have no nexus to the State. This would be a substantial increase in Washington State court jurisdiction. It impacts not only SpiceJet, but other foreign judgment debtors.

II. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION BELOW

Petitioner SpiceJet Limited seeks review of the Court of Appeals' published decision, *Alterna Aircraft V.B. Ltd. V.*

SpiceJet Ltd., No. 86016-0-1 (Dec. 2, 2024) (Slip Opinion attached as Appendix A).

III. ISSUES PRESENTED FOR REVIEW

1. Whether the lower court violated the Due Process clause of the United States Constitution by exercising jurisdiction over SpiceJet in an action to recognize a foreign judgment pursuant to the Uniform Act where SpiceJet had no contacts with and/or owned no property within the State.

2. Whether personal jurisdiction is required to enforce a foreign judgment pursuant to the Uniform Act, despite the lack of an express jurisdictional requirement in the Uniform Act.

IV. STATEMENT OF THE CASE

A. Factual Background

This is an action filed by Alterna against SpiceJet, seeking to enforce a foreign judgment pursuant to the Uniform Act. Alterna is a company organized under the laws of Ireland. SpiceJet is organized under the laws of India.

On March 2, 2023, the High Court of Justice, King's Beach Division, Business and Property Courts of England and Wales, Commercial Court, case number C.L.-2022-000509, issued a judgment ordering SpiceJet to pay a specific sum to Alterna (the "Foreign Judgment"). The Foreign Judgment was based upon Alterna's claims against SpiceJet for breaching a Lease Agreement relating to certain aircraft. The Lease Agreement was not negotiated, executed, nor performed in Washington. SpiceJet holds no assets in Washington.

On May 2, 2023, Alterna filed an action in the Superior Court for the State of Washington in and for the County of King (the "Trial Court"), Case No. 23-2-07668-1 SEA, to enforce the Foreign Judgment pursuant to the Uniform Act. In its Petition for enforcement, Alterna did not allege general or specific jurisdiction over SpiceJet, nor did it allege any facts supporting such jurisdiction. Rather, Alterna merely asserted that SpiceJet has "personal property" located in the State without identifying

what the alleged property is, or how it establishes the Court's jurisdiction.

B. Procedural Background

SpiceJet moved to dismiss the Petition for lack of personal jurisdiction, based upon Alterna's failure to allege general or specific jurisdiction over SpiceJet in Washington, and its failure to plead any facts supporting its bare assertion that SpiceJet had assets in Washington. The Trial Court denied SpiceJet's motion, holding that Alterna could maintain its action to enforce the judgment notwithstanding the lack of SpiceJet property in the State. (CP 686.) The Trial Court held that it had jurisdiction over SpiceJet despite the lack of contacts or property within the State. (*Id.*) The Trial Court found that "it doesn't make sense to quibble about whether there are assets currently here, especially in the case of personal property, which is obviously not tied to any one particular geography and is moveable, that such judgment should not necessarily be tied to a current existence of personal property." (VRP 42.)

After its motion was denied, SpiceJet chose not to appear in the case to defend on the merits. Rather, it rested on its continued objection to the Trial Court's jurisdiction. On October 27, 2023, the Trial Court granted summary judgment to Alterna on its Petition for recognition and enforcement. (CP 755-57.) Alterna submitted no evidence of property owned by SpiceJet in the State; nor did it proffer evidence of the value of any SpiceJet assets in the State.

On November 20, 2023, the Trial Court entered judgment against SpiceJet for the full amount of the Foreign Judgment. (CP 690.) SpiceJet then appealed to the Court of Appeals of the State of Washington, Division One. (CP 695.)

On December 2, 2024, the Court of Appeals affirmed the judgment of the Trial Court. The Court of Appeals erred in two primary ways.

First, the Court of Appeals determined that personal jurisdiction is not required under the Uniform Act because it does

not expressly state that personal jurisdiction is required. Slip op. at 12.

Second, the Court of Appeals determined that personal property in the state is not required in recognition actions. Slip op. at 14.

V. ARGUMENT FOR REVIEW

A. The Ruling Below That No Personal Jurisdiction Is Required Under The Uniform Act Violates The Due Process Clause.

The U.S. Supreme Court has recognized time and time again the requirement that an individual have "certain minimum contacts" with the relevant forum "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The "minimum contacts" prerequisite for personal jurisdiction exists as a constitutional constraint on the powers of a State, as exercised by its courts, in favor of the due process rights of the individual. *See Omni Capital Int'l v. Rudolf Wolff*

& Co., 484 U.S. 97, 104 (1987) ("The requirement that a court have personal jurisdiction flows not from [Article] III, but from the Due Process Clause. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.").

Accordingly, courts have fashioned certain requirements for personal jurisdiction. Generally, personal jurisdiction can be established through general jurisdiction, based upon the defendant's continuous and systemic contacts with the state; or specific jurisdiction based upon the defendant's case specific links to the state – where the defendant "purposefully avails" itself of a forum and plaintiff's claims arise from defendant's contacts in the state. *Ford Motor Co v. Montana Eighth Jud. Dist. Ct.*, 592 US. 351, 358 (2021).

The constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State such that the defendant should reasonably anticipate being haled into court there. *See Burger King v. Rudzewicz*, 471

U.S. 462, 474 (1985). The Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Courts do recognize, consistent with due process, limited circumstances in which a court can exercise its power to adjudicate a dispute where there is no general or specific jurisdiction over the defendant – primarily where *quasi in rem* jurisdiction is present. In *Shaffer v. Heitner*, the Court explained that a *quasi in rem* judgment "affects the interest of particular persons in designated property," including when a "plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him." 433 U.S. 186, 199 n.17 (1977) (quoting *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958)). As further explained, once "a court of competent jurisdiction" determines that a defendant owes the

plaintiff, the court in a state "where the defendant has property" may exercise jurisdiction "whether or not that State would have jurisdiction to determine the existence of the debt as an original matter." *Id.* at 210 n.36.

The Supreme Court, however, stated that "[t]he effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose personal liability on the property owner, since he is not before the court." *Id.* at 199. Such a limitation, in addition to ensuring potential defendants have notice of their potential liability to suit, avoids placing defendants in an unfair scenario where they must appear and assert defenses in a state with which they have no connection. Thus, any judgment based on a defendant's property is limited to the value of that property. *Id.*; *see also CME Media Enterprises B.V. v. Zelezny*, 2001 WL 1035138, at *3 (S.D.N.Y. Sept. 10, 2001) (judgment limited to amount contained in bank account); *La Dolce Vita Fine Dining Co. v. Zhang*, 2023 WL 1927827, at *1-4 (S.D.N.Y. Feb. 10, 2023), vacated by consent, 2023 WL

5686197 (2d Cir. August 30, 2023) (finding *quasi in rem* jurisdiction over apartment but limiting judgment to the value of the apartment).

Below, the Court held that "[*Shaffer*] does not require a judgment creditor to show a basis for the exercise of personal jurisdiction over a judgment debtor in a recognition action." Slip op. at 11. This is not correct.

First, as explained above, the Supreme Court has consistently held that for a court to have the power to adjudicate any matter before it concerning a defendant, that court must have either *in personam* or *in rem* jurisdiction over that defendant. *See Shaffer*, 433 U.S. at 216.

Second, the Court misreads *Shaffer*, which held that, where the court's jurisdiction over the defendant in an underlying action is based on the defendant's property in the state, *i.e. in rem* jurisdiction, the mere presence of property is not enough; rather, jurisdiction in an award action requires the property be reasonably connected to the underlying claim. *See id.*; *see also*

Burnham v. Superior Ct. of California, Cnty. of Marin, 495 U.S. 604, 620 (1990); *Equipav S.A. Pavimentacao, Engenharia e Comercio Ltda.*, 2024 WL 1966700, at *7 (S.D.N.Y. 2024).

The Court of Appeals quotes *Shaffer*'s famous Footnote 36:

> Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not the State would have jurisdiction to determine the existence of the debt as an original matter.

Slip op. at 11.

The Court, however, misinterpreted this language to mean that once a debt is established, no personal jurisdiction is required to recognize the debt in another state. That is not what the Supreme Court said. Rather, the Supreme Court states that once the debt is established, there is no need to show a reasonable relationship between the property in the State and the underlying cause of action. But *Shaffer* continued to require property in the recognizing state, when it included the phrase: "where the

defendant has property." The Court of Appeals ignored this property requirement.

In *Electrolines, Inc. v Prudential Assurance Co. Ltd.*, the Michigan Court of Appeals followed *Shaffer* and held that personal jurisdiction is required for recognition and enforcement of a foreign judgment. 260 Mich. App. 144, 171 (2003). In *Electrolines*, like here, the Court was faced with an action to recognize and enforce a foreign country judgment under Michigan's uniform recognition and enforcement statutes. There, the Court noted that under *Shaffer*, jurisdiction in a recognition or enforcement action is broader than in an original action, in that for jurisdiction based upon property in the State, there is no need to show a connection between the property and the underlying action. *Id.* at 161. However, the Court dismissed the recognition and enforcement action since it found that there was no property in the State. *Id.* at 162-63. *Cf JPMorgan Chase Bank v Herman*, 175 Conn. App. 662, 669-70 (2017) (personal jurisdiction necessary for enforcement action).

Below, the Court noted that Washington courts have never addressed the need for personal jurisdiction in recognition/enforcement actions. Slip op. at 9. Nationally, there is very little case law addressing the issue in the context of recognition of foreign judgments. This is hardly surprising since, in the vast majority of cases, jurisdiction is not at issue because recognition and enforcement is sought where the debtor has property.

Yet, in a closely analogous situation, confirmation of foreign arbitral awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) (the "New York Convention"), there is substantial instructive jurisprudence. The New York Convention and Uniform Act are very similar and comparable. Actions under the New York Convention are to "confirm" foreign arbitral awards and convert them to U.S. judgments. Similarly, actions under the Uniform Act are to "recognize" foreign judgments and convert them into U.S. state judgments.

Under the Uniform Act, the foreign judgment must be recognized and converted to a U.S. judgment unless the debtor can establish one or more of the enumerated grounds for non-recognition. Likewise, under the New York Convention, the court must confirm the award and convert it to a U.S. judgment unless the debtor can show that one or more of the New York Convention's listed grounds for non-confirmation is met. *See* New York Convention, Article V (listing grounds for non-confirmation). Finally, under both the New York Convention and the Uniform Act, courts cannot revisit/relitigate the merits of the underlying dispute.

In confirming foreign arbitration awards under the New York Convention, courts across the United States have uniformly held that jurisdiction over the foreign judgment debtor, either personal jurisdiction or *in rem* jurisdiction, must be established. *Conti 11. Container Schiffarts-GmbH & Co. v. MSC Mediterranean Shipping Company S.A.*, 91 F.4th 789, 794 (5th Cir. 2024) (to confirm award personal jurisdiction required);

First Inv. Corp. of the Marshall Islands v. Fujian Mawei. Shipbuilding, Ltd., 703 F.3d 742, 748 (5th Cir. 2012) as revised (Jan. 17, 2013) (same); *Frontera Res. Azer. Corp. v. State Oil Co. of Azer. Rep.*, 582 F.3d 393, 396-98 (2d Cir. 2009) (confirmation proceeding under New York Convention requires personal or *quasi in rem* jurisdiction over parties); *Telcordia Tech Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 178-79 (3d Cir. 2006) (observing that "the New York Convention does not diminish the Due Process constraints in asserting jurisdiction over a nonresident alien"); *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory,"* 283 F.3d 208, 212 (4th Cir. 2002) ("[W]hile the [New York] Convention confers subject matter jurisdiction over actions brought pursuant to the Convention, it does not confer personal jurisdiction when it would not otherwise exist."); *see also Emp'rs Ins. of Wausau v. Banco De Seguros Del Estado*, 199 F.3d 937, 941-43 & n. 1 (7th Cir. 1999) (requiring personal jurisdiction in dispute arising under inter-American Convention on International Commercial

Arbitration, but observing that result would be the same under New York Convention).

The above law overwhelmingly establishes that in any action in which a court seeks to exercise jurisdiction over a party, personal or *in rem* jurisdiction must be established. Due process requires no less. Here, the Court's decision that personal jurisdiction is not required under the Uniform Act violates that basic Constitutional mandate.

B. The Court of Appeals Erroneously Held That The Uniform Act Does Not Require Personal Jurisdiction.

1. The Uniform Act's Failure To Mention Personal Jurisdiction As A Defense Does Not Mean Jurisdiction Is Not Required.

Below, the Court held that "neither the plain language of the Uniform Act nor case law interpreting and applying the Act require a judgment creditor to show a basis for exercising of personal jurisdiction over a judgment debtor before obtaining recognition of a foreign country money judgment." Slip op. at 4-5. On this point the Court of Appeals is wrong on the law.

The Court of Appeals noted that the Uniform Act provides numerous mandatory and discretionary grounds for nonrecognition, but no express requirement that the Court have personal jurisdiction over the foreign judgment debtor. *Id.* at 7-9.

Courts facing similar arguments – that since the relevant statute did not expressly require personal jurisdiction, no personal jurisdiction was required – have rejected that argument based on the Due Process clause. Those courts hold that whenever a party is called into court to adjudicate a dispute, there must be some basis for personal or *in rem* jurisdiction. *See First Inv.*, 703 F.3d at 750 ("Congress could no more dispense with personal jurisdiction in an action to confirm a foreign arbitral award than it could under any other statute . . . Regardless of Congress's intent in failing explicitly to include a personal jurisdiction requirement, a court is not thereby relieved of its responsibility to enforce those constitutional protections that guard a party from appearing in a forum with which it has no

contacts") (citations omitted); *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1122 (9th Cir. 2002); *Telcordia*, 458 F.3d at 178-79 ("the New York Convention does not diminish the Due Process constraints in asserting jurisdiction over a nonresident alien."); *Base Metal Trading, Ltd.*, 283 F.3d at 212 ("while the Convention confers subject matter jurisdiction over actions brought pursuant to the Convention, it does not confer personal jurisdiction when it would not otherwise exist."); *Crescendo Maritime Co v Bank of Communications Co.*, 2016 WL 750351, at *4 (S.D.N.Y. Feb. 22, 2016) ("Although not required by the New York Convention or the FAA, the enforcing court must have jurisdiction over the respondent's person or property to hear the petition.").

First Inv. succinctly explains the reasoning:

> Personal jurisdiction is not listed as a ground on which confirmation may be denied. Nevertheless, the fact that a treaty and its implementing legislation do not specify that a petition may be dismissed for lack of personal jurisdiction is not dispositive. No less than subject matter jurisdiction—which is a ground to deny enforcement under the New York Convention—personal jurisdiction

> "is 'an essential element of the jurisdiction of a district ... court,' without which the court is 'powerless to proceed to an adjudication.'" *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999) (quoting *Emp'rs Reinsurance Corp. v. Bryant*, 299 U.S. 374, 382, 57 S.Ct. 273, 81 L.Ed. 289 (1937)) (omission in original). Personal jurisdiction "represents a restriction on judicial power ... as a matter of individual liberty." *Id.* at 584, 119 S.Ct. 1563 (quoting *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982)). Requiring a court to have personal jurisdiction over a party as a matter of constitutional due process "protects an individual's liberty interest in not being subject to the binding judgment of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *ITL Int'l, Inc. v. Constenla, S.A.*, 669 F.3d 493, 498 (5th Cir.2012) (quoting *Int'l Shoe Co.*, 326 U.S. at 319, 66 S.Ct. 154). A party's contacts with a forum must be sufficient for the party to "reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

703 F.3d at 749.

Glencore Grain is also on point on the issue. There, the court stated:

> It is a bedrock principle of civil procedure and constitutional law that a "statute cannot grant personal jurisdiction where the Constitution forbids it." This precept reflects the idea that a district court must possess authority over the subject matter and over the parties, distinct powers that flow from distinct areas of the

> Constitution. Though Article III, Section 2, Clause 1 of the Constitution delineates the "character of the controversies over which federal judicial authority may extend," the lower federal courts rely on Congress to confer this authority through statutory grants of jurisdiction. "Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement." The personal jurisdiction requirement, by contrast, "flows ... from the Due Process Clause .... [and] represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty." District courts determine the existence *vel non* of personal jurisdiction not by reference to statutory imprimatur, but by inquiring whether maintenance of a suit against the defendant comports with the constitutional notions of due process as outlined in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), and its progeny.

284 F.3d at 1121 (citations omitted).

Here, as with the cases described above, the fact that the Uniform Act does not mention personal jurisdiction as a defense is not controlling. The Due Process clause requires some basis for jurisdiction for any court to exercise jurisdiction over a defendant. To hold otherwise would render the Uniform Act unconstitutional. *See United States v. Buckland*, 289 F.3d 558, 564 (9th Cir. 2002) (en banc) (discussing requirement to interpret statutes to avoid questions of unconstitutionality); *see also First*

Inv., 703 F.3d at 749; *Glencore*, 284 F.3d at 1121; *Conti II.*, 91 F.4th at 794–95.

2. The Distinction Between Recognition And Enforcement Actions Is Arbitrary And Misplaced

The Court of Appeals makes the distinction that, while personal jurisdiction is required for an enforcement action, it is not required for a recognition action. Slip op. at 11-12.

First, this distinction is not supported by any U.S. Constitutional law precedent. Indeed, it is contrary to well established case law. *See* Section V.A above.

Second, this distinction makes no sense. The result of a recognition action is the entry of a state judgment. It is the burden of having to appear to defend the recognition action and the negative impact of entry of judgment that is unfair to SpiceJet given its lack of presence in Washington.

The Court below erroneously gave short shrift to the Due Process concerns and the burdens on SpiceJet, an Indian company with no contact with the State, to appear and defend

itself in Washington. It is not correct to conclude that no unfairness will result from demanding that a judgment debtor with no connection to the state be forced to appear in the state from around the world and compelled to assert defenses there:

> That the judgment debtor has no connection to the enforcing forum does not mean that the debtor has no reason to be troubled by the existence of an outstanding judgment rendered in that forum.
>
> If the judgment debtor chooses not to defend a recognition action where it has no assets the existence of an outstanding judgment may have reverberations during the life of the judgment.
>
> The effect of a rule that permits recognition without a jurisdictional nexus is likely to encourage creditors to shop for the forum that offers the most lax standards for judgment recognition. The problem is compounded if other nations will grant recognition to such a judgment, or it other states within a federal system view the judgment as itself entitled to enforcement without defenses, as under the Full Faith and Credit Clause of the U.S. Constitution.

See Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought?, L. Silberman & A. Simowitz, 91 N.Y.U. L. Rev. 344, 353-57 ("Silberman").

3. The Cases Relied On By The Court Below Are Flawed And Should Not Be Followed

Below, the Court relied on two New York intermediate appellate cases and a Texas appeals court case to support its decision that personal jurisdiction is not required under the Uniform Act.

First, the Court relied on *Lenchyshym v Pelko Elec., Inc.*, 281 A.D.2d 42 (4th Dept. 2001). *Lenchyshym* held that "the judgment debtor need not be subject to personal jurisdiction in New York," and that proceedings could be maintained in the state "even if defendants do not presently have assets in New York." *Id*. at 47.[1]

However, the *Lenchyshym* reasoning is flawed. First, it was based on the absence of an express jurisdictional

[1] This determination is dicta because, unlike here, the debtor in *Lenchyshym* had assets in the forum – i.e. a bank account in New York. *Id*. at 50; *see also Electrolines*, 260 Mich. App. at 162.

requirement in the state recognition statute - the CPLR - which is an improper analysis. *See* Section V.B.1 above.

Second, the *Lenchyshym* court based its decision on its belief that the judgment debtor was not impacted by recognition and no unfairness existed in requiring the debtor to defend the action in New York. That assumption is also incorrect as explained above. *See* Section V.B.2.[2]

---

[2] The *Lenchyshym* court cites to 18 various state court cases purportedly supporting the proposition that no jurisdiction is required to recognize or enforce a foreign judgment in a state. However, these cases are distinguishable and involve situations where the court either noted there was property present in the forum state, s*ee, e.g., First v. State, Dep't of Soc. & Rehab. Servs. ex rel. LaRoche*, 247 Mont. 465, 474–75 (1991), expressly noted that the jurisdictional question hinged on the presence of property, *see, e.g., Tabet v. Tabet*, 644 So. 2d 557, 559 (Fla. Dist. Ct. App. 1994), or did not address the jurisdictional question at all, *see, e.g., Breezevale Ltd. v. Dickinson*, 693 N.Y.S.2d 532 (1st Dep't 1999) (concerning whether jurisdiction needed over creditor where it was undisputed jurisdiction required over debtor).

Further, the *Lenchyshym* decision has been strongly criticized and should be afforded no weight. As commentators have noted:

> Maintaining a recognition and enforcement action in the United States has traditionally required personal jurisdiction over the debtor or the attachment of the debtor's property. The Due Process Clause serves here, as it does in plenary actions, to protect a defendant from the burdens of litigating in a forum where it has a limited connection. Although the costs and litigation burdens on a debtor in a recognition/enforcement action are less than in a full plenary action, a debtor nonetheless can assert defenses to recognition and enforcement of a foreign award or judgment . . .
>
> A judgment debtor has a number of defenses available to challenge the original judgment and should not be forced to raise those defenses in any forum in which the judgment creditor might choose to bring a recognition/enforcement action. The debtor should only be required to respond to an action for recognition or enforcement in a court where the debtor's property has some connection to the forum and it is fair to require him to respond there.

Silberman at 353-54 (citations omitted).

The Court of Appeals also relied on *Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting & Fin. Servs. Co.*, 117 A.D.3d 609 (1st Dep't 2014). However, as the

Court below noted, *Abu Dhabi* relied heavily on the faulty reasoning of *Lenchshym*. Slip op. at 10. The *Abu Dhabi* court based its decision on the fact that the relevant statute did not expressly require personal jurisdiction. 117 A.D.3d at 611-12. For the reasons stated above, this argument is not consistent with Due Process requirements. *See* Section V.B.1.

The *Abu Dhabi* court, like the court in *Lenchshym* and the Court below, dismissed the consequences to the judgment debtor, describing an action to recognize a foreign country judgment as a "ministerial function." *Abu Dhabi*, 117 A.D.3d at 611. But the Uniform Act provides for substantive defenses that need to be adjudicated by the court.[3] Nothing about that adjudication is "ministerial." And, as described above, the ramifications to the judgment debtor are not inconsequential. *See* Section V.B.2.

---

[3] *See* RCW 6.40A.030.

The *Abu Dhabi* court, like the Court below, seems to attribute significance to the fact that the judgment debtor there, and SpiceJet here, did not present evidence of any defenses. That is irrelevant to any analysis of jurisdiction. Personal jurisdiction and the court's power to adjudicate a matter is based upon contacts with the state and not the efficacy or even existence of a defense. There is no support in the law for a two-tiered system of jurisdiction – one where the party asserts a defense and one where the party does not.

The final case relied on by the Court below is *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476 (Tex. App. 2008). There the Court held that it was permissible to recognize a foreign judgment absent property in the state so as to allow the judgment creditor to pursue enforcement "if or when the judgment debtor appeared to be maintaining assets in Texas." *Id.* at 481. The *Haaksman* court, however, relied on *Lenchshym* and its same flawed reasoning and misinterpretation of *Shaffer*. *Id.* at 479-481. There is no constitutional law precedent that

sanctions jurisdiction based, not on present contacts with the state, but on the possibility that there may be contacts in the future. *See* Section V.A. above.[4]

VI. CONCLUSION

For all these reasons, SpiceJet respectfully asks this Court to grant review and revise the Court of Appeals as to these issues of substantial public importance.

Respectfully submitted on January 2, 2025.

BALLARD SPAHR LLP

By: *s/ Cassandra Ekure*
Cassandra Ekure
WSBA No 52433
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
Tel 206-223-7000
ekurec@ballardspahr.com

[4] An underlying premise of the decision of the Court below, as well as the decisions upon which it relies, seems to be a fear that judgment debtors can remove assets from states to avoid enforcement. That is not a legitimate concern. When property is located in the state, the judgment creditor, in conjunction with its recognition action, can attach or freeze those assets while recognition is litigated. *See* RCW 6.25.060.

John Hay, admitted pro hac vice
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Tel 212-768-6700
john.hay@dentons.com

CERTIFICATE OF COMPLIANCE

Counsel for SpiceJet Limited certify that the body and footnotes of this Petition contain 4,995 words in compliance with RAP 18.17.

BALLARD SPAHR LLP

By: *s/ Cassandra Ekure*

Cassandra Ekure
WSBA No 52433
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
Tel 206-223-7000
ekurec@ballardspahr.com

John Hay, admitted pro hac vice
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Tel 212-768-6700
john.hay@dentons.com

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January, 2025, I electronically filed the foregoing **PETITION FOR REVIEW BY SPICEJET LIMITED** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James P. Savitt Jacob P. Freeman Fennemore Craig, P.C. 1425 Fourth Avenue Suite 800 Seattle, WA 98101-2272 Telephone: 206.749.0500 Facsimile: 206.749.0600 jsavitt@fennemorelaw.com jfreeman@fennemorelaw.com	☒ ☐ ☒ ☐ ☐ ☐	Court ECF eService by U.S. Mail by Electronic Mail by Electronic Mail pursuant to e-service agreement by Overnight Delivery by Hand Delivery

s/ Peter Elton
Peter Elton, Legal Assistant

Appendix A

FILED
12/2/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ALTERNA AIRCRAFT V.B. LTD., Respondent, v. SPICEJET LTD., Appellant.	No. 86016-0-I DIVISION ONE PUBLISHED OPINION

FELDMAN, J. — In this appeal, we must decide, as a matter of first impression in Washington, whether a judgment creditor must show a basis for the exercise of personal jurisdiction over a judgment debtor before obtaining recognition of a foreign country money judgment under the Uniform Foreign-Country Money Judgments Recognition Act (the Uniform Act), chapter 6.40A RCW.

In a lawsuit in the United Kingdom, Alterna Aircraft V.B. Limited obtained a judgment (the Foreign Judgment) against SpiceJet Limited for more than $11M, plus litigation costs and postjudgment interest, arising out of SpiceJet's failure to pay Alterna for the rental of two aircraft. SpiceJet has not paid the Foreign Judgment. Alleging that "SpiceJet owns cognizable interests in personal property located in King County, Washington," Alterna filed a Petition for Recognition of Foreign-Country Money Judgment (the Petition) in the trial court below. In

response, SpiceJet filed a motion to dismiss for lack of personal jurisdiction under CR 12(b)(2). The trial court denied SpiceJet's motion and granted recognition of the Foreign Judgment.

SpiceJet argues the trial court erred in denying its motion to dismiss for lack of personal jurisdiction. Because the trial court correctly concluded that Alterna was not required to show a basis for the exercise of personal jurisdiction over SpiceJet in this recognition action under the Uniform Act, we affirm.

I

Alterna is an aircraft company incorporated in Ireland. SpiceJet is an airline incorporated in India. Alterna agreed to lease two aircraft to SpiceJet in June 2019. SpiceJet agreed to pay Alterna over $205,000 per month per aircraft under the terms of the leases. Alterna delivered the aircraft to SpiceJet in July 2019, and SpiceJet soon began to fall behind on monthly payments. After Alterna made written demands for payment, it terminated the leases on February 25, 2020. Alterna and SpiceJet attempted to resolve the outstanding payments and coordinate return of the aircraft in a series of agreements in 2020 and 2021. SpiceJet, however, did not return the aircraft on the agreed upon date in December 2021, causing it to be liable for all sums owed under the original agreements.

Alterna subsequently filed a civil action and motion for summary judgment regarding SpiceJet's breach of the lease agreements in the High Court of Justice, King's Bench Division, Business and Property Courts of England and Wales Commercial Court (the English High Court). In response, SpiceJet submitted arguments on some of the legal costs claimed by Alterna, indicated it did not intend

to respond to the rest of the summary judgment motion, and requested a three-month stay of execution of any judgment. Under the English High Court's Civil Procedure Rule 24.2, the court can properly grant summary judgment where it concludes:

> (a) (i) that claimant has no real prospect of succeeding on the claim, defence or issue, or (ii) that defendant has no real prospect of successfully defending the claim or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

Applying that standard, the court made detailed written findings and determined SpiceJet had an obligation to pay Alterna and had failed to do so. The court granted Alterna's motion and ordered SpiceJet to pay Alterna in excess of $11M under the lease agreements plus litigation costs and interest.

In 2023, Alterna filed the Petition in the trial court below seeking recognition of the foreign judgment under the Uniform Act. SpiceJet filed a motion to dismiss for lack of personal jurisdiction under CR 12(b)(2).[1] After hearing argument from both parties, the trial court ruled as follows:

> *Lenchyshyn versus Pelko Electric*, [281 A.D.2d 42, 723 N.Y.S.2d 285 (N.Y. App. Div. 2001),] which is a federal case out of New York, I think, really sums up the state of the case law on this point, which is that this is not a situation where this is a novel or new lawsuit. This is simply porting over a judgment from one jurisdiction to another, a situation that arises on a regular basis, and a situation that there is an entire uniform code that's been developed to facilitate such enforcement actions in other jurisdictions.
>
> And in that case, the court explained, I think rather logically, that—that it doesn't make sense to quibble about whether there are assets currently here, especially in the case of personal property, which is obviously not tied to any one particular geography and is moveable, that such a judgment should not necessarily be tied to a

[1] SpiceJet also moved to dismiss under CR 12(b)(4) for insufficient service of process, but it does not raise any arguments related to that motion in this appeal.

> current existence of personal property.
>
> So for that reason, it seems as if fairness and practicality does dictate a finding of jurisdiction in this case.

The court then entered a written order incorporating its oral ruling and denying SpiceJet's motion to dismiss.

In addition to responding to SpiceJet's motion to dismiss, Alterna filed a motion for summary judgment seeking recognition of the Foreign Judgment. In response to Alterna's motion, SpiceJet filed a "Notice Relating to Petitioner's Motion for Summary Judgment," stating that it would not submit any filing in response to Alterna's summary judgment motion and would instead rely solely on its defense of lack of personal jurisdiction. The trial court granted Alterna's motion and entered an order and final judgment recognizing the Foreign Judgment. This timely appeal followed.

II

SpiceJet argues the trial court erred in denying its motion to dismiss for lack of personal jurisdiction under CR 12(b)(2).[2] That is so, SpiceJet argues, because Alterna was required to establish a basis for the exercise of personal jurisdiction over SpiceJet in this recognition action under the Uniform Act—such as the current existence of personal property in Washington—and failed to do so. But as explained below, neither the plain language of the Uniform Act nor case law

[2] Traditionally, territorial jurisdiction had three categories: in personam, in rem, and quasi in rem. These terms, however, "have only modest analytic utility in modern context. This is because the specific distinctions between them as bases of jurisdiction have to a large extent been obliterated." RESTATEMENT (SECOND) OF JUDGMENTS § 5 cmt. b (AM. L. INST. 1982). In the modern context, "[j]urisdiction in personam, in rem, and quasi in rem are forms of personal jurisdiction." RESTATEMENT (FOURTH) FOREIGN RELATIONS LAW OF THE UNITED STATES § 422, cmt. a (2018). Therefore, this opinion generally refers to "personal jurisdiction" instead of the traditional categories.

interpreting and applying the Act require a judgment creditor to show a basis for the exercise of personal jurisdiction over a judgment debtor before obtaining recognition of a foreign country money judgment. Accordingly, the trial court correctly denied SpiceJet's motion to dismiss for lack of personal jurisdiction.

A

CR 12(b)(2) governs motions to dismiss for lack of personal jurisdiction. In *State v. LG Elecs., Inc.*, 186 Wn.2d 169, 375 P.3d 1035 (2016), our Supreme Court provided substantial guidance in deciding such motions. The court noted, "When a motion to dismiss for lack of personal jurisdiction is resolved without an evidentiary hearing, the plaintiff's burden is only that of a prima facie showing of jurisdiction." *Id.* at 176 (citing *MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 418, 804 P.2d 627 (1991)). Addressing the applicable standard of review, the court stated, "We review CR 12(b)(2) dismissals for lack of personal jurisdiction de novo." *Id.* (citing *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 963, 331 P.3d 29 (2014)). Lastly, *LG Electronics* also confirms that, in deciding a motion to dismiss, the allegations of a complaint must be accepted as true. *Id.* at 185.

The Uniform Act, in turn, governs recognition of foreign country money judgments in Washington. RCW 6.40A.030. When, as here, an appeal concerns the interpretation of a statute, we review the trial court's decision de novo. *Bennett v. Seattle Mental Health,* 166 Wn. App. 477, 483, 269 P.3d 1079 (2012) ("interpretation and meaning of a statute is a question of law subject to de novo review"). "The goal of statutory interpretation is to discern and carry out legislative

intent." *Id.* "Absent ambiguity, a statute's meaning is derived from the language of the statute and we must give effect to that plain meaning as an expression of legislative intent." *Id.* at 484. Additionally, "'Common sense informs our analysis, as we avoid absurd results in statutory interpretation.'" *Linville v. Dep't of Ret. Sys.*, 11 Wn. App. 2d 316, 321, 452 P.3d 1269 (2019) (quoting *State v. Alvarado*, 164 Wn.2d 556, 562, 192 P.3d 345 (2008)).

The National Conference of Commissioners on Uniform Laws and the American Bar Association approved the Uniform Act in 1962. The Act codified long held legal principles applied by the majority of courts in the United States. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW pt. IV introductory note at 230 (AM. L. INST. 1987). The Prefatory Note to the uniform draft includes the following reasons for adopting this legislation:

> In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused recognition abroad either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved or because no certification of existence of reciprocity could be obtained from the foreign government in countries where existence of reciprocity must be certified to the courts by the government. Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad.

UNIF. FOREIGN MONEY–JUDGMENTS RECOGNITION ACT (1962) prefatory note, § 4, 13 pt. 1 U.L.A. 489, 490, 517-18 (2022). In 2005, the Commissioners on Uniform Laws promulgated a revision to the Uniform Act, noting the increase in international trade and international litigation and stating, "there is a strong need for uniformity

between states with respect to the law governing foreign country money-judgments." Uniform Laws, Summary, 2005 Foreign-Country Money Judgments Recognition Act.

Washington adopted the Uniform Act in 1975 and the revised Uniform Act in 2009. LAWS OF 1975, ch. 240 § 1-12; LAWS OF 2009, ch. 363 § 1-12. The Act authorizes state courts to recognize foreign country money judgments that are final, conclusive, and enforceable under the law of the country where rendered. RCW 6.40A.020(1). In such circumstances, the statute provides that a court "shall recognize a foreign-country judgment" except where there are grounds for nonrecognition. RCW 6.40A.030(1). As a general rule, the word "shall" is "presumptively imperative and operates to create a duty rather than conferring discretion." *State v. Bartholomew*, 104 Wn.2d 844, 848, 710 P.2d 196 (1985).

Subsections (2) and (3) of RCW 6.40A.030 provide mandatory and discretionary grounds for nonrecognition, respectively. Subsection (2) provides:

> A court of this state may not recognize a foreign-country judgment if:
>
> (a) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
>
> (b) The foreign court did not have personal jurisdiction over the defendant; or
>
> (c) The foreign court did not have jurisdiction over the subject matter.

RCW 6.40A.030(2). Subsection (3), in turn, states:

> A court of this state need not recognize a foreign-country judgment if:
>
> (a) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
>
> (b) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

> (c) The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;
>
> (d) The judgment conflicts with another final and conclusive judgment;
>
> (e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
>
> (f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
>
> (g) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
>
> (h) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

RCW 6.40A.030(3). Lastly, subsection (4) of RCW 6.40A.030 states that a party "resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) of this section exists." RCW 6.40A.030(4).

SpiceJet has not asserted that any of the grounds for nonrecognition under Washington law exist here. Thus, there is no dispute that the Foreign Judgment was rendered under a judicial system that provides impartial tribunals and procedures compatible with the requirements of due process of law, that the English High Court had personal jurisdiction over SpiceJet and jurisdiction over the subject matter of the parties' dispute, and that the Foreign Judgment was fairly obtained. RCW 6.40A.030(2), (3). Instead, the issue is whether Alterna must also show a basis for the exercise of personal jurisdiction over SpiceJet in the *recognizing forum* before it may properly seek recognition of the Foreign Judgment under the Uniform Act.

No appellate court in Washington has squarely addressed the above issue. In such circumstances, the Washington Legislature has directed courts to look to decisions in other jurisdictions interpreting the Uniform Act. Specifically, RCW 6.40A.900 provides, "[i]n applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it." There are, by recent count, 37 other states that have adopted a version of the Uniform Act. *See* Foreign-Country Money Judgments Recognition Act - Uniform Law Commission (uniformlaws.org) (listing states that have adopted a version of the Uniform Act). In addition to *Lenchyshyn*, which the trial court cited and relied on below, two cases decided by appellate courts in other states that have adopted a version of the Uniform Act are particularly instructive here.

The first such case is *Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting & Fin. Servs. Co.*, 117 A.D.3d 609 (N.Y. App. Div. 2014) (*Abu Dhabi*), which was decided by the same court that decided *Lenchyshyn*. The defendant in *Abu Dhabi* argued that the trial court could not properly recognize a foreign country money judgment unless the petitioner could establish personal jurisdiction. Similar to the circumstances here, the court in *Abu Dhabi* noted:

> In the present action, defendant has actual notice of the enforcement action and does not argue that the English judgment fails to meet the requirements of CPLR 5303[3] or that any grounds for nonrecognition of a foreign country money judgment exist. Nor does defendant provide a reason why the judgment should not be recognized as a matter of substance.

[3] CPLR article 53 is New York's version of the Uniform Foreign Country Money Judgments Recognition Act. *See* CPLR 5308, 5309.

Id. at 611. Then, relying heavily on its prior opinion in *Lenchyshyn*, the court rejected the defendant's jurisdiction argument as follows:

> Under these circumstances, "a party seeking recognition in New York of a foreign money judgment (whether of a sister state or a foreign country) need not establish a basis for the exercise of personal jurisdiction over the judgment debtor by the New York courts," because "[n]o such requirement can be found in the CPLR, and none inheres in the Due Process Clause of the United States Constitution, from which jurisdictional basis requirements derive" (*see Lenchyshyn*, 281 AD2d at 47; *see also Haaksman v Diamond Offshore [Bermuda], Ltd.*, 260 SW3d 476, 480 [Tex App 2008]; *Pure Fishing, Inc. v Silver Star Co., Ltd.*, 202 F Supp 2d 905 [ND Iowa 2002]). Although CPLR 5304 (a) provides that the trial court may refuse recognition of the foreign country judgment if the foreign country court did not have personal jurisdiction over the judgment debtor, it does not provide for nonrecognition on the ground that the New York court lacks personal jurisdiction over the judgment debtor in a CPLR article 53 proceeding.

Id. The court then turned to the defendant's argument that the petitioner must, at the very least, show that the judgment debtor has property in the forum state and rejected that argument as well:

> Nor does the CPLR require the judgment debtor to maintain property in New York for New York to recognize a foreign money judgment. While CPLR 5304 provides a list of specific reasons why the trial court may refuse recognition of the foreign country judgment, the lack of property in the state is not one of them. Thus, "even if defendant [] do[es] not presently have assets in New York, plaintiff[ ] nevertheless should be granted recognition of the foreign country money judgment pursuant to CPLR article 53, and thereby should have the opportunity to pursue all such enforcement steps in future, whenever it might appear that defendant[ ] [is] maintaining assets in New York, including at any time during the initial life of the domesticated [English] money judgment or any subsequent renewal period." (*Lenchyshyn*, 281 AD2d at 50).

Id. at 612. Thus, while a judgment creditor must show that the judgment debtor has property in the forum state to *enforce* a judgment *after* it has been duly recognized, *Abu Dhabi* squarely holds it is not necessary to show any such basis

for the exercise of personal jurisdiction in a *recognition* action under the Uniform Act.

The other case that is especially instructive here is *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476 (Tex. App. 2008). There, as in *Abu Dhabi*, the court carefully distinguished between *recognition* and *enforcement* of a foreign country money judgment. Addressing the purported absence of property in the forum state, the court held, "even if a judgment debtor does not currently have property in Texas, a judgment creditor should be allowed the opportunity to obtain recognition of his foreign-money judgment and later pursue enforcement if or when the judgment debtor appears to be maintaining assets in Texas." *Id.* at 481. *Haaksman*, like *Abu Dhabi*, thus confirms that the Uniform Act does not require property in the forum state to recognize a foreign country money judgment.

The United States Constitution also does not require property in the forum state in a recognition action. The United States Supreme Court addressed that issue in *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569 (1977), where it stated:

> Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.

Id. at 210 n.36. While *Shaffer* requires minimum contacts between the defendant and the forum in the action that determines the defendant's liability to the plaintiff (*id.* at 207-12), it does not require a judgment creditor to show a basis for the exercise of personal jurisdiction over a judgment debtor in a recognition action.

Numerous courts have recognized this point. Addressing the significance of the *Shaffer* footnote (quoted above), the court in *Lenchyshyn* noted: "Those courts that have cited the *Shaffer* footnote have held uniformly that no jurisdictional basis for proceeding against the judgment debtor need be shown before a foreign judgment will be recognized or enforced in a given state." 281 A.D.2d at 48 (citing 18 cases so holding). In *Abu Dhabi*, the court explained:

> [S]ince CPLR article 53 and the English court are already protecting the defendant's due process rights, including personal jurisdiction, the court charged with recognition and enforcement should not be required to grant further protection during a ministerial enforcement action (*see Lenchyshyn*, 281 AD2d at 49). There is no unfairness to the defendant if the plaintiff obtains an order in New York recognizing the foreign judgment, which can then be enforced if the defendant is found to have, or later brings, property into the State (*Lenchyshyn* at 50).

117 A.D.3d at 613. Thus, while personal jurisdiction is required to establish the underlying liability in the originating forum (conceded here), it is not required to recognize the judgment on that established liability in the recognizing forum.[4]

This rule—that it is not necessary to establish a basis for the exercise of personal jurisdiction over a judgment debtor in a foreign country money judgment recognition action—also makes practical sense. The Court in *Shaffer* explained that a judgment debtor, like SpiceJet, "should not be able to avoid payment of his obligations by the expedient of removing his assets to a place where he is not subject to an in personam suit." 433 U.S. at 210 (quoting *Restatement (Second)*

[4] *Accord Koh v. Inno-Pac. Holdings, Ltd.,* 114 Wn. App. 268, 269, 54 P.3d 1270 (2002) ("once it has been determined by a court of competent jurisdiction that a defendant is a debtor of the plaintiff, an action to realize on that debt in Washington, where the defendant has a property interest in a limited liability company, is proper whether or not Washington would have had jurisdiction to determine the existence of the debt as an original matter").

of Conflict of Laws § 66 cmt. a (AM. L. INST. 1971). A leading law review article similarly explains, "Practical considerations lay behind the preservation of quasi-in-rem jurisdiction for recognition and enforcement actions—debtors could easily frustrate satisfaction of judgments and awards if they could shield assets simply by placing them where they were not subject to personal jurisdiction." Linda J. Silberman & Aaron D. Simowitz, *Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought*, 91 N.Y.U. L. REV. 344, 390 (May 2016). The trial court also recognized this issue, noting, "it doesn't make sense to quibble about whether there are assets currently [in Washington], especially in the case of personal property, which is obviously not tied to any one particular geography and is moveable." SpiceJet's jurisdiction argument ignores these practical considerations and, if accepted, would allow judgment debtors to avoid recognition of a valid foreign country money judgment under the Uniform Act simply by moving property to another state. Our holding here avoids that absurd result. *See Linville*, 11 Wn. App. 2d at 321 (cited and quoted above).

B

While SpiceJet claims that substantial precedent supports its jurisdiction argument, the cases it relies on are inapposite. First, SpiceJet relies on enforcement cases, thereby conflating recognition actions with enforcement actions. Enforcement actions in Washington are governed by the Uniform Enforcement of Foreign Judgments Act, ch. 6.36 RCW, not by the Uniform Act at issue here. The Restatement (Third) of Foreign Relations Law § 481 cmt. h (1987) summarizes enforcement actions as follows:

> [A]n action to enforce a judgment may usually be brought wherever property of the defendant is found, without any necessary connection between the underlying action and the property, or between the defendant and the forum. The rationale behind wider jurisdiction in enforcement of judgments is that once a judgment has been rendered in a forum having jurisdiction, the prevailing party is entitled to have it satisfied out of the judgment debtor's assets wherever they may be located.

The court in *Lenchyshyn* similarly stated, "even if defendants do not presently have assets in New York, plaintiffs nevertheless should be granted recognition of the foreign country money judgment pursuant to CPLR article 53, and thereby should have the opportunity to pursue all such enforcement steps *in futur*o, whenever it might appear that defendants are maintaining assets in New York." 281 A.D.2d at 50. At present, the sole issue before us is recognition of the Foreign Judgment, which does not require that SpiceJet possess personal property in Washington.

Consistent with the foregoing discussion, the cases cited by SpiceJet merely acknowledge that there must be personal property in the recognizing forum to *enforce* a foreign country money judgment. SpiceJet's key case, *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1127-28 (9th Cir. 2002), held that Glencore Grain could not enforce the award at issue because it had not identified any assets in the forum. At the same time, the court noted that Glencore Grain could "of course" seek enforcement "in the future if it discovers property in the forum." *Id.* at 1128 n.9. In *Electrolines, Inc. v. Prudential Assurance Co.*, 677 N.W.2d 874, 882 (Mich. App. 2003), the court again differentiated between recognition and enforcement actions, explaining, "key to our resolution of this appeal is the understanding that a foreign country money judgment cannot be enforced until it has been recognized and that [Michigan's Uniform Recognition

Act] is not an enforcement Act." Similarly, in *JPMorgan Chase Bank, N.A. v. Herman*, 168 A.3d 514, 520 (Conn. App. 2017), the court held that an enforcement action may proceed if the judgment debtor has property in the forum state. Because Alterna does not seek enforcement in the action before us, SpiceJet's enforcement cases are inapposite.

Second, SpiceJet cites cases analyzing recognition of foreign arbitral awards. *See Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 397 (2d Cir. 2009); *First INV. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 749 (5th Cir. 2013); *Simplot India UC v. Himalaya Food Int'l Ltd.*, 2024 WL 1136791, at *11-12 (D.N.J. Mar. 15, 2024) (citing arbitration cases). These cases are governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards under chapter II of the Federal Arbitration Act, not the Uniform Foreign Money Judgments Recognition Act adopted in Washington and applicable here. Additionally, whereas a foreign country money judgment is a *judicial* decree of a foreign government, an unconfirmed arbitral award is a *contractual* decree and has the force and effect of a judgment only if and after it is confirmed by court order. *See* RCW 7.04A.250(1). Given these significant distinctions, cases regarding foreign arbitral awards, like enforcement cases, do not control the personal jurisdiction issue in this case.

III

Because Alterna was not required to establish a basis for the exercise of personal jurisdiction over SpiceJet to seek recognition of the Foreign Judgment

under the Uniform Act, the trial court did not err in denying SpiceJet's motion to dismiss for lack of personal jurisdiction.[5] Accordingly, we affirm.

Feldman, J.

WE CONCUR:

Chung, J.

Smith, C.J.

[5] Alterna also argues, in the alternative, that even if it was required to establish a basis for the exercise of personal jurisdiction over SpiceJet to seek recognition of the Foreign Judgment under the Uniform Act, it did so by alleging in its Petition that "[t]his Court has jurisdiction for this action, if and to the extent required, *inter alia* because SpiceJet owns cognizable interests in personal property located in King County, Washington, that can be applied to satisfy the foreign-country money judgment described herein." Under *LG Electronics*, this allegation must be accepted as true for purposes of deciding SpiceJet's motion to dismiss. 186 Wn.2d at 185. Nonetheless, we need not address this issue because, as discussed in the text above, the trial court correctly concluded that Alterna was not required to establish such a basis for the exercise of personal jurisdiction to obtain recognition of the Foreign Judgment under the Uniform Act.

Appendix B

Chapter 6.40A RCW
UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

Sections

RCW 6.40A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Foreign country" means a government other than:

(a) The United States;

(b) A state, district, commonwealth, territory, or insular possession of the United States; or

(c) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States Constitution.

(2) "Foreign-country judgment" means a judgment of a court of a foreign country. [2009 c 363 s 2.]

RCW 6.40A.020 Applicability. (1) Except as otherwise provided in subsection (2) of this section, this chapter applies to a foreign-country judgment to the extent that the judgment:

(a) Grants or denies recovery of a sum of money; and

(b) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(2) This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(a) A judgment for taxes;

(b) A fine or other penalty; or

(c) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(3) A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment. [2009 c 363 s 3.]

RCW 6.40A.030 Recognition of foreign-country judgments—Grounds for nonrecognition. (1) Except as otherwise provided in subsections

(2) and (3) of this section, a court of this state shall recognize a foreign-country judgment to which this chapter applies.

(2) A court of this state may not recognize a foreign-country judgment if:

(a) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) The foreign court did not have personal jurisdiction over the defendant; or

(c) The foreign court did not have jurisdiction over the subject matter.

(3) A court of this state need not recognize a foreign-country judgment if:

(a) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(b) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(c) The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;

(d) The judgment conflicts with another final and conclusive judgment;

(e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(g) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(h) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(4) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) of this section exists. [2009 c 363 s 4.]

RCW 6.40A.040 Personal jurisdiction. (1) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(a) The defendant was served with process personally in the foreign country;

(b) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(c) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(e) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(f) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(2) The list of bases for personal jurisdiction in subsection (1) of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (1) of this section as sufficient to support a foreign-country judgment. [2009 c 363 s 5.]

RCW 6.40A.050 Recognition—How raised. (1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense. [2009 c 363 s 6.]

RCW 6.40A.060 Judgments entitled to recognition—Enforceability. If the court in a proceeding under RCW 6.40A.050 finds that the foreign-country judgment is entitled to recognition under this chapter then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this state. [2009 c 363 s 7.]

RCW 6.40A.070 Stay in case of appeal. If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so. [2009 c 363 s 8.]

RCW 6.40A.080 Time limitations for commencement of action. An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country. [2009 c 363 s 9.]

RCW 6.40A.090 Savings clause. This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this chapter. [2009 c 363 s 12.]

RCW 6.40A.900 Uniformity of interpretation. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c 363 s 10.]

RCW 6.40A.901 Short title. This chapter may be known and cited as the uniform foreign-country money judgments recognition act. [2009 c 363 s 1.]

RCW 6.40A.902 Chapter applies to actions commenced on or after July 26, 2009. This chapter applies to all actions commenced on or after July 26, 2009, in which the issue of recognition of a foreign-country judgment is raised. [2009 c 363 s 11.]

LANE POWELL PC

January 02, 2025 - 12:57 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86016-0
Appellate Court Case Title:	Alterna Aircraft V.B. Limited, Respondent v. SpiceJet Limited, Appellant

The following documents have been uploaded:

- 860160_Petition_for_Review_20250102125441D1970827_6271.pdf
  This File Contains:
  Petition for Review
  The Original File Name was 2025.01.02 Spicejet Petition for Review.pdf

A copy of the uploaded files will be sent to:

- John.hay@dentons.com
- eltonp@lanepowell.com
- jfreeman@fennemorelaw.com
- jsavitt@fennemorelaw.com
- seaeservice@fennemorelaw.com

Comments:

Sender Name: Cassandra Ekure - Email: ekurec@lanepowell.com
Address:
1420 5TH AVE STE 4200
SEATTLE, WA, 98101-2375
Phone: 206-679-2178

Note: The Filing Id is 20250102125441D1970827