Supreme Court No. 1037597
Court of Appeals No. 860160 – Division I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ALTERNA AIRCRAFT V.B. LTD.,

Respondent,

v.

SPICEJET LIMITED,

Petitioner.

AMICUS CURIAE MEMORANDUM IN SUPPORT OF REVIEW

David J. Elkanich, WSBA No. 35956
BUCHALTER, A Professional Corporation
1420 Fifth Ave., Suite 3100
Seattle, WA 98101-1337
Telephone: (503) 226-8646
Attorneys for Amicus Curiae
Prof. Aaron D. Simowitz and
Prof. Linda J. Silberman

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I. IDENTITY AND INTERESTS OF *AMICI*

Amici, Linda J. Silberman and Aaron D. Simowitz, professors of law, have taught and written about civil procedure and conflict of laws. *Amici* have an interest in the sound development of doctrine in this field.

II. ARGUMENT

The Court of Appeals erred in both its holding and in its reasoning. The holding of the Court of Appeals that no jurisdictional basis is required to hear an action to recognize and enforce a foreign-country money judgment is wrong and in violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Although the Court observed that debtor's property found within the forum state is sufficient to support an action to recognize and enforce a foreign-country money judgment and need not have any relationship with the underlying claim that gave rise to the initial judgment, that uncontroversial point is irrelevant to the question

posed in this case. *See Alterna Aircraft V.B. Ltd. v. SpiceJet Ltd.*, 559 P.3d 1026, 1032 (Wash. Ct. App. 2024).

A. Debtors' Due Process Rights Require that a Court have a Jurisdictional Basis to Hear an Action to Recognize and Enforce a Foreign-Country Money Judgment.

What the appellate court has done by eliminating any requirement of jurisdiction in a suit to recognize and enforce a foreign judgment is to force debtors who have no connection to Washington to cross the world to assert their defenses or to lose them. *See* 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, 353–54 (2016). Such a system is inconsistent with the commandments of the Due Process Clause of the Fourteenth Amendment and with the language of the Washington statute.

The U.S. Supreme Court recognized in *Shaffer v. Heitner* that, although the existence of a defendant's unrelated property in the absence of minimum contacts did not support jurisdiction in a traditional plenary action, the unrelated property of the

judgment debtor, without more, would be sufficient for an action to recognize and enforce a judgment. However, the Court did not endorse any notion that courts could dispense entirely with jurisdictional requirements for recognition and enforcement actions. *See* 433 U.S. 186, 210 n.36 (1977). Washington's enactment of the Uniform Foreign-Country Money Judgments Recognition Act ("UFCMJRA") requires an "action" to recognize and to enforce a foreign-country money judgment. Wash. Rev. Code Ann. § 6.40A.030. An "action" typically requires jurisdiction, unlike, for example, registration or other purely ministerial acts. Silberman & Simowitz, 91 N.Y.U. L. REV. at 353.

B. Jurisdiction Is an Even More Important Requirement for Judgments Than for Arbitral Awards, Where Courts Have Unanimously Endorsed a Jurisdictional Requirement.

The Court of Appeals erred in rejecting any analogy to cases concerning recognition and enforcement of foreign arbitral awards. The Court of Appeals rejected the relevance of these cases because they are brought under "the Convention on the

Recognition and Enforcement of Foreign Arbitral Awards under chapter II of the Federal Arbitration Act, not the [UFCMJRA]." *Alterna*, 559 P.3d at 1033. The Court's reasoning ignores the fact that both sets of cases implicate the judgment and award-debtor's due process rights under the U.S. Constitution.[1] The unanimous reasoning of federal courts interpreting the due process rights of award-debtors is certainly relevant in this case concerning judgment-debtors.

Federal courts have uniformly held that an action to recognize and enforce a foreign arbitral award requires a jurisdictional basis, either asset or personal jurisdiction. *See e.g.*, *First Investment Corp. of the Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742 (5th Cir. 2012). These decisions acknowledge that award-debtors have due process rights that

[1] State judgment recognition actions typically implicate debtors' Fourteenth Amendment due process rights whereas federal award recognition actions implicate debtors' Fifth Amendment due process rights. Federal circuit courts have held that the restrictions imposed by the two amendments are identical except for the greater territorial scope of the Fifth Amendment. *See generally* Aaron D. Simowitz, *Federal Personal Jurisdiction and Constitutional Authority*, 56 N.Y.U. J. INT'L L. & POL. 358 (2023).

protect them from having to cross the world to assert their rights—defenses similar to those asserted by judgment-debtors-—or to lose them via waiver. *Id.* at 749-50.

The argument for a jurisdictional requirement is even stronger for actions to recognize and enforce a judgment than for an award. Actions to recognize and enforce an award are subject to a three-year time bar. *See* 9 U.S.C. § 207 (2012). This statute of limitations combined with increasingly onerous jurisdictional requirements poses a serious challenge for award creditors. *See* Silberman & Simowitz, 91 N.Y.U. L. REV. at 381 By contrast, most judgments remain active for decades.

Moreover, arbitration is premised on consent to the power of the arbitral tribunal, typically operating under the auspices of an international treaty governing recognition and enforcement of arbitral awards. *Id.* at 357–58. Although such consent to the authority of an arbitral tribunal might be construed as consent to jurisdiction in an action to recognize and enforce the resulting

arbitral award, no such argument can be made with respect to a foreign judgment.

The decision of the Court of Appeals also creates opportunities for strategic creditors to avoid the requirements of the system of arbitral award recognition and enforcement. This tension is highlighted when courts have held that creditors have a "parallel entitlement" to enforce arbitral awards and to enforce judgments recognizing those arbitral awards. *See* Linda Silberman & Maxi Scherer, *Forum Shopping and Post-Award Judgments*, in Forum Shopping in the International Commercial Arbitration Context 313, 322 (Franco Ferrari ed., 2013). A creditor that cannot satisfy the consistently-held requirement of jurisdiction to bring an action to recognize and enforce an arbitral award can simply convert that award to a foreign-country money judgment and take advantage of the opportunity to commence a judgment recognition action in Washington State without a showing of any jurisdictional nexus.

C. The Holding of the Court of Appeals Will Make

Washington State an Outlier.

Contrary to the view of the Court of Appeals, no other state's courts have held that an action to recognition and enforce a foreign-country money judgment can always proceed without any jurisdictional basis. *See Dynaresource de Mexico S.A. de C.V. v. Goldgroup Res. Inc*., 667 S.W.3d 918, 929 (Tex. App. 2023); *AlbaniaBEG Ambient Sh.p.k. v. Enel S.p.A.*, 160 A.D.3d 93 (N.Y. App. Div. 2018); *Electrolines, Inc. v. Prudential Assurance Co., Ltd.*, 677 N.W.2d 874, 884 (Mich. App. 2003). The Court of Appeals relied extensively on New York and Texas case law, but overlooked more recent case law from both states that marked a significant "retreat" from the cases relied on below. Symeon C. Symeonides, *Choice of Law in the American Courts in 2018: Thirty-Second Annual Survey*, 67 AM. J. COMP. L. 1, 86 (2019).

The Court of Appeals cited and quoted at length from the older New York appellate decisions *Lenchyshyn v. Pelko Electric*, 281 A.D.2d 42 (N.Y. App. Div. 2001) and *Abu Dhabi*

Commercial Bank PJSC v. Saad Trading, Contracting & Fin. Servs. Co., 117 A.D.3d 609 (N.Y. App. Div. 2014), which held that New York courts could hear an action to recognize and enforce a foreign-country money judgment without a jurisdictional basis, although the *Lenchyshyn* decision seemed to assume that the debtors had property within the state. *See Lenchyshyn*, 723 N.Y.S.2d at 291.

In 2018, New York courts sharply limited these decisions. *See AlbaniaBEG*, 160 A.D.3d 93. In *AlbaniaBEG*, a New York intermediate appellate court held that the *Abu Dhabi* holding should be restricted to "the circumstances that were presented by that case," in which the judgment debtor did not assert any defenses to recognition of the foreign-country money judgment. *Id.* at 107. In *AlbaniaBEG*, the judgment debtor raised five grounds for nonrecognition. The court held that, under these circumstances, the judgment creditor must establish that New York courts have jurisdiction over the judgment debtor or its assets. As a leading scholar of conflict of laws observed:

"*AlbaniaBEG* is more of a retreat from, rather than a clarification of *Abu Dhabi*." Symeonides, 67 AM. J. COMP. L. at 88. The *AlbaniaBEG* decision "walked back much," *id*., of *Abu Dhabi*'s holding when it held:

> Because we believe that the Constitution requires, as a matter of due process, a jurisdictional nexus with New York as a prerequisite to maintenance in this state of . . . proceeding to recognize and enforce a foreign country judgment of contested validity, it is of no moment that [New York's Uniform Act] does not expressly provide that lack of such a jurisdictional nexus constitutes a defense in such a proceeding.

AlbaniaBEG, 160 A.D.3d at 110, n. 19. The same court reiterated this holding in later decisions. *See Harvardsky Prumyslovy Holding, A.S.-V Likvidaci v. Kozeny,* 166 A.D.3d 494 (N.Y. App. Div. 2018), *Akhmedova v. Akhmedov*, 189 A.D.3d 602, 603 (N.Y. App. Div. 2020).[2]

In the view of *amici*, the only reason that the New York court in *AlbaniaBEG* did not require jurisdiction in *all* actions to

[2] See also *Cargill Financial Services International, Inc., et al. v. Taras Barshchovskiy*, No. 24-CV-5751 (LJL), 2025 WL 522108, at *3–4 (S.D.N.Y. Feb. 18, 2025).

recognize and enforce a foreign-country money judgment is that it was bound by the prior panel precedent in *Abu Dhabi*. *Amici* anticipate that, when New York's highest court eventually addresses this issue, it will hold that all actions to recognize and enforce a foreign-country money judgment require either personal or asset jurisdiction.

In addition to the older New York cases, the Washington Court of Appeals in this case relied on one 2008 intermediate appellate decision from a Texas court. *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476 (Tex. App. 2008). However, a subsequent decision from a Texas intermediate appellate court recognized that *Haaksman* was superseded when Texas enacted the 2005 version of the UFCMJRA—the same version of the UFCMJRA enacted in Washington. *See Dynaresource de Mexico S.A. de C.V.*, 667 S.W.3d at 918.

The Texas appellate court held that the "UFCMJRA does not address seeking recognition in a forum court when the purported judgment debtor has no ties, no presence,

and no assets in the forum state." *Id.* at 926. Therefore, the appellate court held that such actions for recognition were governed by generally applicable Texas civil procedure, under which it is "antithetical to our system of justice to be able to file a suit for recognition of a judgment when the purported judgment debtor has no ties to the state in which recognition is sought, either through assets to attach or seize by enforcement or personal jurisdiction over the judgment debtor." *Id.* The Texas court noted that the U.S. Supreme Court's cases addressing the Due Process Clause of the Fourteenth Amendment were "instructive in concluding that a nexus to Texas, either in rem or in personam, is required to exercise jurisdiction over a defendant/judgement debtor." *Id.* at n.8.

A review of current case law from every state court to have considered the issue presented here demonstrates that Washington would be alone in permitting every recognition and enforcement action of a foreign-country money judgment to proceed without any jurisdictional basis.

D. The Holding of the Court of Appeals Creates Broad Forum-Shopping Opportunities That Could Render the Jurisdictional Requirements of Sister States Meaningless.

The Court of Appeals' decision also opens up Washington State as a magnet for forum-shopping judgment creditors. Scholars have documented the practice of "judgment arbitrage" where a judgment creditor obtains recognition of a foreign-country money judgment in a state that imposes no jurisdictional requirements and then seeks to use the operation of the Full and Faith Credit Clause of the U.S. Constitution to obtain recognition of the state judgment in other states that *do* require jurisdiction for actions to recognize foreign judgments. *See* Gregory Shill, *Ending Judgment Arbitrage: Jurisdictional Competition and the Enforcement of Foreign Money Judgments in the United States*, 54 HARV. INT'L L.J. 459 (2013). The decision below enables judgment creditors to use Washington, in effect, to obtain recognition in states that do impose jurisdictional requirements.

The highest court for the District of Columbia noted that "where a court's power to recognize a foreign country judgment is unmoored from any jurisdictional requirement, one state's lax standards could thwart another state's policy of strict control." *Ahmad Hamad Al Gosaibi & Bros. Co. v. Standard Chartered Bank.*, 98 A.3d 998, 1007 (D.C. 2014).[3]

E. The Court of Appeals Misconstrued the Distinction Between "Recognition" and "Enforcement."

The Court of Appeals articulated a distinction between "recognition" and "enforcement" of a foreign-country money judgment. This distinction exists, but the Court misunderstood its nature and its import for this case.

The Court observed that "recognition" and "enforcement" are different concepts and that "recognition" typically does not require jurisdiction while "enforcement" does. Its reasoning

[3] The forum-shopping enabled by decisions like the Court of Appeals' has already split other courts on whether a judgment recognizing a foreign-country judgment is, in fact, a sister-state judgment subject to the Full Faith and Credit Clause. *Compare Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co.*, 99 A.3d 936, 943 (2014) *with Ahmad Hamad Al Gosaibi*, 98 A.3d at 1007.

misunderstands the distinction. "Recognition" of a judgment can refer to a court's determination that a foreign judgment is legally binding between two parties for purposes of preclusion. *See* RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW § 481, cmt. b (2018). Asserting the preclusive effect of a foreign-country money judgment generally does not require an independent basis for jurisdiction—in part because the act of asserting a merits defense like preclusion does not require a separate action and typically subjects a party to the jurisdiction of the court anyhow by virtue of a general appearance. *See id.* at § 482, cmt. a (2018). By contrast, "an *action* to recognize and enforce" a judgment refers to the very different act of requesting that a court convert a foreign-country money judgment into a full-fledged judgment of the recognizing state. Converting a judgment in this way—sometimes referred to as "domesticating" a judgment—can and should require an independent basis of jurisdiction. *See id.* at cmt. b (2018). Subsequent "enforcement" consists of remedies sought by the creditor to obtain the debtor's

assets to be applied to satisfaction of the judgment. These "enforcement" activities might well require their own jurisdictional bases, such as the presence of property against which execution is sought or personal jurisdiction over a third-party garnishee holding the debtor's assets. *See id*. at § 486, cmt. c (2018). But such jurisdictional requirements for subsequent enforcement do not relieve the Court of its obligation to ensure a jurisdictional basis for the initial "action" to recognize a foreign-country money judgment and to convert it into a Washington State judgment.

III. CONCLUSION

Amici respectfully ask that the Court grant the Petition for Review to vacate and reverse the decision of the Court of Appeals.

The undersigned hereby certifies under RAP 18.17(2)(b) that this documents contains 2,479 words.

RESPECTFULLY SUBMITTED this 3rd day of March, 2025.

Respectfully submitted,
BUCHALTER, A Professional Corporation

By: *s/ David J. Elkanich*
David J. Elkanich, WSBA No. 35956
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing AMICUS CURIAE MEMORANDUM IN SUPPORT OF REVIEWto be served on the following person[s]:

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

John Hay, admitted pro hac vice
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-108
Phone: 212-768-6700
john.hay@dentons.com

Jacob P. Freeman
Fennemore Craig, P.C.
1425 Fourth Ave., Suite 800
Seattle, WA 98101-2272
Telephone: 206.749.0500
jsavitt@fennemorelaw.com
jfreeman@fennemorelaw.com

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/s/ David J. Elkanich
David J. Elkanich

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Phone: (206) 319-7045

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