

STATE OF NEW YORK

6687--C

Cal. No. 323

IN SENATE

(Prefiled)

January 9, 2008

Introduced by Sens. SKELOS, GOLDEN, VOLKER, BONACIC, FLANAGAN, FUSCHILLO, GRIFFO, HANNON, LARKIN, LEIBELL, LITTLE, MALTESE, MARCELLINO, MAZIARZ, MORAHAN, PADAVAN, RATH, ROBACH, TRUNZO, WINNER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- ordered to a third reading, passed by Senate and delivered to the Assembly, substituted for Assembly 9652-A recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Short title. This act shall be known and may be cited as
2 the "libel terrorism protection act".
3 § 2. Section 5304 of the civil practice law and rules, as added by
4 chapter 981 of the laws of 1970, is amended to read as follows:
5 § 5304. Grounds for non-recognition. (a) No recognition. A foreign
6 country judgment is not conclusive if:
7 1. the judgment was rendered under a system which does not provide
8 impartial tribunals or procedures compatible with the requirements of
9 due process of law;
10 2. the foreign court did not have personal jurisdiction over the
11 defendant.
12 (b) Other grounds for non-recognition. A foreign country judgment need
13 not be recognized if:
14 1. the foreign court did not have jurisdiction over the subject
15 matter;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 2. the defendant in the proceedings in the foreign court did not
2 receive notice of the proceedings in sufficient time to enable him to
3 defend;

4 3. the judgment was obtained by fraud;

5 4. the cause of action on which the judgment is based is repugnant to
6 the public policy of this state;

7 5. the judgment conflicts with another final and conclusive judgment;

8 6. the proceeding in the foreign court was contrary to an agreement
9 between the parties under which the dispute in question was to be
10 settled otherwise than by proceedings in that court; [or]

11 7. in the case of jurisdiction based only on personal service, the
12 foreign court was a seriously inconvenient forum for the trial of the
13 action[.]; or

14 8. the cause of action resulted in a defamation judgment obtained in a
15 jurisdiction outside the United States, unless the court before which
16 the matter is brought sitting in this state first determines that the
17 defamation law applied in the foreign court's adjudication provided at
18 least as much protection for freedom of speech and press in that case as
19 would be provided by both the United States and New York constitutions.

20 § 3. Section 302 of the civil practice law and rules is amended by
21 adding a new subdivision (d) to read as follows:

22 (d) Foreign defamation judgment. The courts of this state shall have
23 personal jurisdiction over any person who obtains a judgment in a defa-
24 mation proceeding outside the United States against any person who is a
25 resident of New York or is a person or entity amenable to jurisdiction
26 in New York who has assets in New York or may have to take actions in
27 New York to comply with the judgment, for the purposes of rendering
28 declaratory relief with respect to that person's liability for the judg-
29 ment, and/or for the purpose of determining whether said judgment should
30 be deemed non-recognizable pursuant to section fifty-three hundred four
31 of this chapter, to the fullest extent permitted by the United States
32 constitution, provided:

33 1. the publication at issue was published in New York, and

34 2. that resident or person amenable to jurisdiction in New York (i)
35 has assets in New York which might be used to satisfy the foreign defa-
36 mation judgment, or (ii) may have to take actions in New York to comply
37 with the foreign defamation judgment. The provisions of this subdivision
38 shall apply to persons who obtained judgments in defamation proceedings
39 outside the United States prior to and/or after the effective date of
40 this subdivision.

41 § 4. This act shall take effect immediately.