

# Second civil chamber : Seizure of receivable and territoriality principle in enforcement proceedings

10/12/2020



**Seizure of receivable and territoriality principle in enforcement proceedings: such a seizure can only take effect if the garnished third party is established in France (registered office in France or legal entity with the power to pay a claim owed by a debtor for which the entity is garnished).**

Ruling no 1366 of 10 December 2020 (19-10.801) – Cour de cassation (Court of Cassation) - Second Civil Chamber - ECLI:FR:CCAS:2020:C201366

**Dismissal**

Only the french version is authentic

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## Summary

Insofar as a garnishment order, which allows a creditor with a writ of enforcement to seize claims of their debtor for a sum of money in the hands of a third party, in application of Article L. 211-1 of the Civil Enforcement Proceedings Code, entails imposing a constraint on the garnishee, the rule of territoriality in enforcement proceedings, which is derived from the principle of the independence and sovereignty of States, implies that the order can only be enforced if the garnishee is established in France.

A garnishee is established in France if it is a legal entity, which either has its registered office in France or has an entity there with the power to pay a claim owed by a debtor for which the entity is garnished.

Following the exact application of these principles, a cour d'appel (court of appeal), after finding that the claim resulted from the opening of bank accounts in the New York branch of a bank, whose head office is in London, ordered the lifting of the garnishment carried out in France at a branch in which no account was opened in the name of the garnishee debtor.

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*Appellant(s) : Mr A... X...*

*Respondent(s) : Panama Canal Authority (PCA) ; and others*

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## Facts and Procedure

1. According to the ruling under appeal (Paris, 24 May 2018) and associated productions, based on an arbitral award that is enforceable in France and imposed on the Republic of Panama, Mr X... had a garnishment order, on 15 November 2016, carried out on the Paris branch of the Standard Chartered Bank (the bank), having its head office in London, against the State of Panama and the Panama Canal Authority (PCA).
2. The bank first informed the bailiff that it did not hold any accounts in the debtor's name and then told them that the bank's New York branch held funds on behalf of the Panama Canal Authority.
3. The bank and the PCA brought a challenge before an enforcement judge. A cour d'appel (court of appeal) upheld the judgement that ordered that the garnishment be lifted and dismissed a claim for damages.

## Reviewing plea

### On the first part of the plea

#### Statement of plea

4. Mr X... objects to the ruling that ordered the lifting of the garnishment order carried out by him on 15 November 2016 to the Standard Chartered Bank against the State of Panama and the Panama Canal Authority. The objection points out that even though there is a "principle of territoriality of civil enforcement proceedings that prohibits French enforcement agents from physically intervening on the soil of a foreign State, it does not prevent the exercise of a garnishment order of claims to a foreign legal entity. This is possible even if the said entity is located abroad, but has an establishment in France, which is likely to declare the extent of the obligations of the legal entity towards the debtor, as long as no material intervention is carried out on the territory of another State and that no infringement of its sovereignty is thus characterised. The cour d'appel (court of appeal) ruled by holding that the territoriality principle for means of enforcement precludes garnishment at a French branch of the Standard Chartered Bank against the Panama Canal Authority, on the grounds that this claim results from the opening of bank accounts by the Panama Canal Authority in the New York branch of the Standard Chartered Bank, with its head office in London, and that the garnishment order immediately confers jurisdiction on claims abroad held by the Panama Canal Authority. By ruling in this way, the court of appeal violated Articles L. 211-1 and L. 211-2 of the Civil Enforcement Proceedings Code, and the principles governing private international law."

#### Court's response

5. According to Article L. 211-1 of the Civil Enforcement Proceedings Code, any creditor in possession of a writ of execution that records a liquid and payable claim may, in order to obtain payment, garnish the related receivable held by a third party for the debtor.

6. If such a measure entails some form of constraint on the garnished third party, the territoriality rule for enforcement proceedings (based on the principle of the independence and sovereignty of States) dictates that it can only take effect if the garnished third party is established in France.

7. A garnishee is established in France if it is a legal entity, which either has its registered office in France or has an entity there with the power to pay a claim owed by a debtor for which the entity is garnished.

8. Following the exact application of these principles, a cour d'appel (court of appeal), after finding that the claim resulted from the PCA opening bank accounts in the New York branch of the bank, whose head office is in London, ordered the lifting of the garnishment carried out in France at a branch in which no account was opened in the name of the garnishee debtor.

9. Consequently, the plea is unfounded.

### On the second and third parts of the plea

## Statement of plea

10. Mr X... objected the same objection to the ruling, whereas :

“2°/ Article R. 211-1 of the Civil Enforcement Proceedings Code provides that a creditor may serve a bailiff's act upon a third party. Article 690 of the Civil Procedure Code specifies that the notification intended for a privately owned legal entity or a public establishment of an industrial or commercial nature is made at its headquarters. By ruling that the garnishment order report had been irregularly served on the French branch of Standard Chartered Bank, since the branch did not hold accounts in the name of the garnishee debtor, the court of appeal violated Article R. 211-1 of the Civil Enforcement Proceedings Code, and Article 690 of the Civil Procedure Code ; 3°/ Article 694 of the Civil Procedure Code sets out that the actions of nullifying notifications are governed by provisions on procedural acts for nullification. Article 114 of the Code of Civil Procedure makes the pronouncement of nullity subject to proof of a grievance caused by the irregularity. In the case in point, supposing that serving the seizure report on the French branch of Standard Chartered Bank was irregular, it could only be an irregularity in form, which could lead to its nullity only if the bank could prove the grievance that it caused to the bank. In ruling as it did, on the ground that the garnishment order report had been irregularly served since the branch did not hold the accounts of the garnishee debtor, without noting any grievance, the cour d'appel (court of appeal) violated Articles R. 211-1 of the Civil Enforcement Proceedings Code, and Article 114, Article 690 and Article 694 of the Civil Procedure Code.”

## Court's response

11. The plea is irrelevant in that it attacks the over-abundant grounds of the ruling relating to the methods by which a garnishment is served. Since it is for substantive reasons, based on the impossibility of carrying out an enforcement measure with a banking institution in France that does not hold any account in the name of the garnishee debtor, the measure was ordered to be lifted.

12. Consequently, the plea cannot be upheld.

## ON THESE GROUNDS, the Court :

DISMISSES the appeal ;

**President : Mr Pireyre**

**Reporting judge : Ms Dumas, Judge Referee**

**Advocate-General : Mr Aparisi, Advocate-General Referee Lawyer(s) : SCP Ortscheidt  
- SCP Alain Bénabent - SCP Foussard et Froger**

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