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• CASE COMMENT — CAPITAL ONE v. SOLEHDIN •

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In *Capital One v. Solehdin*,¹ the Ontario Superior Court of Justice recognized judgments of a Louisiana bankruptcy court and held that they were enforceable in Ontario. The judgments were summary judgments against guarantors under their respective guarantees. The decision is significant — it is one of the first cases where guarantors challenged the recognition and enforcement of such judgments of a foreign bankruptcy court on the basis that the foreign bankruptcy court lacked the jurisdiction to grant the judgments.

Capital One, National Association loaned monies to Fair Vista, Ltd. for, in part, the purchase of a hotel in Louisiana. The loan was guaranteed by Nizar and Yasmeen Solehdin and limited guarantees were obtained from two other individuals. Fair Vista filed for bankruptcy under Chapter 11 of the *United States Bankruptcy Code* in the United States Bankruptcy Court of the Western District of Louisiana. Capital One commenced actions on the guarantees in the first Judicial District Court for the Parish of Caddo

in the State of Louisiana. Mr. Solehdin counter-claimed and the two limited guarantors commenced a crossclaim against the Solehdins for contribution. Capital One transferred its action from the Louisiana state court to the Louisiana bankruptcy court alleging that Mr. Solehdin's counterclaim challenged orders of the Louisiana bankruptcy court and were actually claims of the bankruptcy estate. Summary judgment was granted against the Solehdins and the limited recourse guarantors by the Louisiana bankruptcy court and Capital One applied to the Ontario Superior Court of Justice for an order recognizing these judgments and their enforceability in Ontario.

The Court summarized the law regarding the recognition and enforcement of foreign judgments: (1) the "real and substantial connection" test (*e.g.* whether there is a real and substantial connection to the foreign jurisdiction) which previously only applied to interprovincial judgments also applies to foreign judgments; (2) the real and substantial connection test is the primary test although other factors

such as residence in or written attornment to a foreign jurisdiction can strengthen the real and substantial connection; (3) parties cannot confer jurisdiction on a court where legislation prohibits it; and (4) once this territorial jurisdiction is determined, unless the foreign judgment was arrived at by fraud, violates natural justice (*e.g.* the foreign procedure) or is contrary to domestic public policy, it is not appropriate for a court to determine if the foreign court had jurisdiction vis-à-vis its own laws.

The Solehdins argued that the judgments issued by the Louisiana bankruptcy court did not relate to Fair Vista's bankruptcy (*e.g.* the judgments could not have altered the rights or liabilities of Fair Vista or influenced the administration of its estate), were therefore beyond the limited statutory jurisdiction of the Louisiana bankruptcy court and therefore there could be no real and substantial connection. Capital One argued that there was a real and substantial connection to the Louisiana bankruptcy court: (1) Capital One was located and carried on business in Louisiana; (2) the guarantees were executed in Louisiana and the loan was, in part, to fund the purchase of a hotel located in Louisiana; and (3) the cause of action (*e.g.* the bankruptcy of Fair Vista) occurred in Louisiana. Capital One also argued that

the issue of the Louisiana bankruptcy court's jurisdiction was moot because the Solehdins did not appeal the judgments or the Final Dismissal Judgment of the Louisiana bankruptcy court.

The Court recognized the foreign judgments and held that they were enforceable in Ontario. The Court agreed with Capital One that there was a real and substantial connection and disagreed with the Solehdins that the Louisiana bankruptcy court acted beyond its statutory jurisdiction: (1) it was not clear that the Louisiana bankruptcy court acted beyond its statutory jurisdiction — Capital One's and the Solehdins' experts disagreed with each other; (2) the Louisiana bankruptcy court decided it had jurisdiction; and (3) the Solehdins did not appeal the judgments or the Final Dismissal Judgment of the Louisiana bankruptcy court.

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¹ *Capital One v. Solehdin*, [2010] O.J. No. 863, 2010 ONSC 1012.