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COURT OF APPEALS
STATE OF NEW YORK

LELCHOOK,

Appellant,

-against-

NO. 29

SOCIÉTÉ GÉNÉRALE,

Respondent.

20 Eagle Street
Albany, New York
March 12, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

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Official Court Transcriber

1 CHIEF JUDGE WILSON: Good afternoon, everyone.
2 The first case on today's calendar is Lelchook v. Société
3 Générale.

4 Counsel?

5 MR. RADINE: Good afternoon. May it please the
6 court. My name is Michael Radine. I'm speaking on behalf
7 of plaintiffs-appellants. I'd like to reserve three
8 minutes for rebuttal.

9 CHIEF JUDGE WILSON: Yes, sir.

10 MR. RADINE: The Second Circuit asked if, under
11 New York law, a predecessor's jurisdictional status is
12 inherited when the successor assumes all of the
13 predecessor's assets and liabilities. The great weight of
14 persuasive authority, as the Fourth Circuit put it, says it
15 does, and it should here too.

16 As the Second Circuit noted, jurisdictional
17 status is clearly inherited in cases of merger, de facto
18 merger, and mere continuations on the one hand, but not in
19 cases of simple asset acquisitions on the other. It then
20 posited that the scenario before us today, where the
21 defendant acquired all the assets and liabilities of the
22 tortfeasor, appears to fall into the, quote, cloudy middle
23 ground between those ends of the continuum.

24 We submit that the question, therefore, is what
25 meaningfully distinguishes a merger, de facto merger, a



1 mere continuation - - -

2 JUDGE RIVERA: Well, why isn't just a forum
3 selection clause resolve all of that? I'm over here.
4 Sorry.

5 MR. RADINE: Oh, sorry.

6 JUDGE RIVERA: Sorry, Counsel.

7 MR. RADINE: A forum selection clause - - -

8 JUDGE RIVERA: Right? Parties - - - foreign
9 selection clauses. Why not just resolve the issue that
10 way? That would be an express statement of what the
11 parties want to do and what they intend moving forward.

12 MR. RADINE: Well, of course, the plaintiffs have
13 no control over the contract between the parties that are
14 situated - - -

15 JUDGE RIVERA: That is true. But this is about
16 the intent of the party that's assuming the liabilities,
17 right?

18 MR. RADINE: Well, that would be a clear
19 expression. The acquisition of all the liabilities, where
20 those liabilities include claims that are cited in New
21 York, should also be clear enough. As courts have pointed
22 out, corporations, in purchasing each other - - -

23 CHIEF JUDGE WILSON: But would there be a
24 difference between existing claims and ones that don't
25 exist yet?

1 MR. RADINE: No, I don't think there is. I think
2 that both existing claims and claims that don't exist yet
3 in the sense that they haven't been brought yet. They have
4 accrued, but they have not been brought yet. There
5 wouldn't be a difference. It is certainly eminently
6 foreseeable that those claims could be brought in New York
7 - - -

8 CHIEF JUDGE WILSON: And do you need both the
9 acquisition of all assets and all liabilities or just the
10 liabilities? What's sufficient?

11 MR. RADINE: The - - - well, of course, the
12 question is under all assets and all liabilities, but - - -

13 CHIEF JUDGE WILSON: We understand. But I'm
14 asking you, suppose it was just all liabilities.

15 MR. RADINE: Sure. Well, the great weight
16 persuasive authority the Fourth Circuit referenced was
17 referring to not only just liabilities, but just the
18 liability in question. So here, for example, tort
19 liabilities. But what happens when a corporation takes all
20 assets and liabilities is that it essentially takes all the
21 value of the corporation that is hailable in the
22 jurisdiction and removes it along with the liabilities that
23 would offset those assets, so the result is something
24 that's eminently unfair to creditors and plaintiffs.

25 CHIEF JUDGE WILSON: Also, you could think of an

1 insurer as somebody who's assumed liabilities under certain
2 circumstances. So would your rule be sufficient to render
3 foreign insurers liable here directly?

4 MR. RADINE: Well, if they've acquired all
5 liabilities then they would be liable. The question is,
6 would they then be hailed into - - -

7 CHIEF JUDGE WILSON: Yes.

8 MR. RADINE: - - - the jurisdiction - - -

9 CHIEF JUDGE WILSON: - - - if their jurisdiction
10 - - - yes - - -

11 MR. RADINE: - - - I mean, presumably they have
12 acquired those liabilities in order to - - - to defend them
13 as opposed to remove them from the jurisdiction. But if
14 the question is whether the - - -

15 CHIEF JUDGE WILSON: The question is could you
16 sue - - - could you sue them directly here? Would you need
17 to sue the insured party?

18 MR. RADINE: For that liability? Well, the
19 insured party there, of course, would - - - under that
20 insurance policy has the power to gain indemnification.

21 CHIEF JUDGE WILSON: Sure.

22 MR. RADINE: When all the assets are taken, the
23 corporation - - -

24 CHIEF JUDGE WILSON: Is - - - would that be a
25 fair reading of the liabilities transfer here?

1 MR. RADINE: The - - - well - - - sorry, Your
2 Honor?

3 CHIEF JUDGE WILSON: Let me ask you a different
4 way. LCB continued to exist, correct?

5 MR. RADINE: Nominally. All it does is defend
6 this lawsuit.

7 CHIEF JUDGE WILSON: Oh, well, it - - - okay.
8 But it received some hundred - - - several hundred millions
9 of dollars, right?

10 MR. RADINE: It received \$580 million, most of
11 which were - - -

12 CHIEF JUDGE WILSON: And it's - - - and it's all
13 - - -

14 MR. RADINE: - - - which are all gone.

15 CHIEF JUDGE WILSON: Well, all gone now. But as
16 of the - - - as of the moment of the asset and liability
17 agreement, right - - - the execution of that agreement - -
18 - LCB still existed. Yes?

19 MR. RADINE: Nominally, yes.

20 CHIEF JUDGE WILSON: Well, it had - - - I mean,
21 if I have \$580 million, I think of myself as having a
22 little more than a nominal existence, at least financially.

23 MR. RADINE: Well, leaving aside even the
24 significant portion that was immediately seized by the
25 United States before it even left escrow.

1 CHIEF JUDGE WILSON: Okay. Seized is - - - is
2 frozen. That's not a determination, but okay, leave that
3 aside for a minute.

4 MR. RADINE: Their liabilities - - - \$580 million
5 is a lot to you and me.

6 CHIEF JUDGE WILSON: Yeah.

7 MR. RADINE: But to a corporation with the
8 liabilities, the scope of LCBs, it's a pittance.

9 CHIEF JUDGE WILSON: Well, I understand that, but
10 I'm asking a more of a theoretical question, not that has
11 to turn on how much money was left there. I mean, if you
12 suppose it had been \$500 billion, you know, more than
13 enough to satisfy your judgment, my question is, could you
14 have sued LCB here? There would still be jurisdiction over
15 them, right?

16 MR. RADINE: Yes.

17 CHIEF JUDGE WILSON: And if they had an insurer
18 who was liable for that particular judgment, let's say,
19 could you just sue that insurer here, even if it was a
20 foreign insurer, without suing LCB?

21 MR. RADINE: Well, in that case LCB, so I
22 suppose, has all of its assets if it's simply transferred
23 its liabilities.

24 CHIEF JUDGE WILSON: Yes.

25 MR. RADINE: And certainly under New York law,



1 you could sue either the tortfeasor incorporation or
2 whoever's acquired its liabilities. As for the
3 jurisdictional question, it seems that there may be less of
4 a danger if there's been - - - if the assets haven't left
5 the jurisdiction. And that's certainly the basis for other
6 court's holdings about de facto mergers or mere
7 continuations, that the assets have left the jurisdiction.

8 JUDGE RIVERA: Well, would you - - - would you
9 still have the opportunity - - - or the court or the
10 parties to do a personal jurisdiction analysis based on the
11 business the insurer has with an entity that has New York
12 connections? You know - - - I assume in part the Chief
13 Judge's question is that if there was no other ground for
14 personal jurisdiction against that insurer - - - I think
15 that's in part what the question was - - -

16 CHIEF JUDGE WILSON: Uh-huh.

17 JUDGE RIVERA: - - - could they, based on your
18 argument with respect to the company, also sue the insurer
19 under that same theory? Because if you otherwise have
20 personal jurisdiction under some other theory, that's
21 obvious and clear - - - you know, we're not going to talk
22 about that now - - - can you use this theory against an
23 insurer because they've insured the party?

24 MR. RADINE: Right. I don't know that the
25 plaintiff's - - - the needs of the plaintiff are implicated

1 where an entity has simply offloaded its liabilities but
2 not its assets. It does not seem - - -

3 JUDGE HALLIGAN: And why - - - why are the needs
4 of the plaintiff the only relevant touchstone we should
5 look at? And if you look, for example, at our decision in
6 Semenetz, which I realize is a liability decision and not a
7 - - -

8 MR. RADINE: Right.

9 JUDGE HALLIGAN: - - - jurisdiction decision, it
10 suggests that appreciating or accounting for the impact of
11 a rule on businesses is something that should also be taken
12 into account.

13 MR. RADINE: Yes. And as the Second Circuit
14 said, the expectations here on the - - - the corporation
15 are having purchased liabilities that it knew what they
16 were. It didn't have to - - -

17 JUDGE HALLIGAN: So is your view - - - I mean,
18 presumably we're talking at least about, you know, a rule
19 that would apply to the purchase of all assets and
20 liabilities, not specifically the parties to this case,
21 right?

22 MR. RADINE: Correct.

23 JUDGE HALLIGAN: And so if that's the case, is it
24 your view that that expectation is different in kind and a
25 lot more robust than if you're simply buying a product

1 line?

2 MR. RADINE: Yes. Yeah. The product - - -

3 JUDGE HALLIGAN: Then why - - - why is that?

4 MR. RADINE: Because there's not the concern with
5 the product line rule, necessarily, that there is an
6 incentive to remove assets out of the jurisdiction in - - -
7 perhaps to evade a litigation just like this one. The - -
8 - the basis for our argument here is the same as the one
9 for - - - the underlies de facto merger, mere continuation
10 of mergers, the other scenarios in which - - - in which the
11 courts here already find that - - - that personal
12 jurisdiction is - - - that status is inherited to the
13 buyer.

14 JUDGE HALLIGAN: So that seems to me to be about
15 the question of the incentives that we're setting up. But
16 to go back, if we can, to the fairness point for a second,
17 and your exchange with the Chief Judge. So if there's \$500
18 million in assets that LCB has - - - and I understand
19 you're saying only for a short period of time - - - but how
20 do the fairness concerns play out there if you have
21 plaintiffs who presumably could file as against that \$500
22 million?

23 MR. RADINE: I think that the issue is not that
24 it left no cash behind - - -

25 JUDGE HALLIGAN: Uh-huh.



1 MR. RADINE: - - - if you will, but that the cash
2 is insufficient for the liabilities that they purchased.
3 They bought a company that had \$6 billion in assets and
4 paid \$580 million for it - - -

5 JUDGE HALLIGAN: But that's not going to be true
6 in every case, right? I mean, in - - - and that's why I
7 said, it seems to me the level of generality that we're
8 looking at is what's the rule with respect to the purchase
9 of all assets and liabilities, not specifically with
10 respect to the financial circumstances that the parties
11 here have, right?

12 MR. RADINE: Yes, Your Honor. But the rule is -
13 - - is preventative, as in the rule does not - - - as in so
14 many rules that seek to deter or prevent unfairness to a
15 party, or you know, a fraud on the court or on the party.
16 The rule doesn't only kick in after it's shown to have been
17 needed. The statute of frauds is true whether or not the
18 oral argument - - - or sorry - - - the oral contract is - -
19 - was valid or not. The idea is that the rule prevents - -
20 -

21 CHIEF JUDGE WILSON: You might - - - you might
22 have a rule that kicks in when it's needed, which would be
23 something like if you showed that the transfer was for the
24 purpose of avoiding jurisdiction, then there's
25 jurisdiction.

1 MR. RADINE: Well, I think that that - - - it
2 certainly should be included in the, in the rule, in the
3 sense that it would cover that situation as well, but I
4 don't know that the intent necessarily matters - - -

5 CHIEF JUDGE WILSON: When - - - well, no?

6 MR. RADINE: Well - - -

7 CHIEF JUDGE WILSON: - - - I mean, it seems - - -
8 it seems to me that in a lot of the cases, the concern
9 that's expressed is not allowing parties to set up
10 corporate entities elsewhere for the purpose of avoiding
11 jurisdiction and avoiding the liability that, you know,
12 would be easy to satisfy if you had jurisdiction, very
13 difficult without it. And that could be accomplished by a
14 different sort of rule. And so when you were mentioning
15 the difference between 580 million and \$6 billion, that's
16 what struck me is that you're really kind of arguing for a
17 rule like that.

18 MR. RADINE: Well, it seems that the - - -
19 instead of trying to make that determination in every case
20 - - - just as that we don't ask for a - - - in other
21 situations of inherited jurisdiction, whether there's an
22 insurance policy or indemnification that could cover
23 plaintiffs, we simply have a rule saying we're not going to
24 allow a buyer corporation to take the assets and
25 liabilities out of the jurisdiction without being at least

1 hailable here. Of course, the - - - there's no question
2 that the buyer is liable in these scenarios so that they
3 already face. The only question is whether they have to
4 defend it here or there. And the - - - the argument we're
5 making is - - - is that in a situation, it's fair to have
6 them defend the case here in New York where they purchase
7 liabilities that include - - -

8 CHIEF JUDGE WILSON: So why couldn't you have
9 pursued the case - - - maybe you still are - - - against
10 LCB to judgment, gotten a judgment of whatever amount, and
11 then tried to enforce that using the assumption of
12 liabilities provision.

13 MR. RADINE: You mean enforced it in Lebanon - -
14 -

15 CHIEF JUDGE WILSON: Yeah.

16 MR. RADINE: - - - or SGBL - - -

17 CHIEF JUDGE WILSON: Yeah.

18 MR. RADINE: - - - is - - - so I see my time is
19 expired. Let's answer Your Honor's question. I think that
20 it's in New York's interest to provide enforceable
21 judgments. I think that judgment enforcement is much
22 easier where the court has jurisdiction over the judgment
23 debtor itself for a variety of reasons, whether it's for
24 discovery or for seizure or for other practices that assist
25 in that process.

1 As this court said in Grant-Howard that the
2 Schumacher forms of acquiring liabilities are, quote,
3 "Consistent with the desire to ensure that a source remains
4 to pay for the victim's injuries." And I think that means
5 a source that this court has control over and can make
6 demands of, rather than sending plaintiffs out to try their
7 luck abroad.

8 JUDGE HALLIGAN: Chief, may I ask one last
9 question?

10 CHIEF JUDGE WILSON: Of course.

11 JUDGE HALLIGAN: You say at footnote 7 of your
12 brief that SGBL made claims in the Southern District, but
13 you're not arguing, I take it, that they purposefully
14 availed themselves here and therefore, you know, satisfy
15 302 on their own terms. Is - - - is there a reason that
16 you aren't making that argument? Or maybe I'm missing
17 something.

18 MR. RADINE: Well - - -

19 JUDGE HALLIGAN: How does that play into our
20 analysis of successor jurisdiction?

21 MR. RADINE: We highlight that to - - - well,
22 I'll say the reason why we don't rely on that is that's not
23 the Second Circuit's question is whether SGBL's own conduct
24 - - -

25 JUDGE HALLIGAN: Yes.

1 MR. RADINE: - - - also - - -

2 JUDGE HALLIGAN: But did you litigate that in the
3 Federal court?

4 MR. RADINE: Was that raised - - -

5 JUDGE HALLIGAN: Did you rely on that in the
6 Federal court?

7 MR. RADINE: To the Second Circuit?

8 JUDGE HALLIGAN: No, in - - - in the District
9 court.

10 MR. RADINE: Oh, the District court? I don't
11 believe so. We raised it simply to make the point that the
12 jurisdiction is one that, for the same monies as in the
13 purchase money, that the buyer will come here to take
14 advantage of the jurisdiction to make sure it retains, but
15 then argues that any monies it has are outside of this
16 court's or courts of New York's jurisdiction when the
17 plaintiffs come and seek them.

18 JUDGE HALLIGAN: Thank you.

19 MR. RADINE: Thank you, Your Honors.

20 CHIEF JUDGE WILSON: Thank you.

21 MR. LESKE: Good afternoon. May it please the
22 court. My name is Brian Leske. I represent SGBL in this
23 matter.

24 An out of state asset and liability purchaser
25 does not inherit the jurisdictional status of its



1 predecessor under New York law for three reasons. First,
2 it is blackletter law that there must be a statutory basis
3 for personal jurisdiction, and it must be applied to each
4 defendant to a case.

5 Here, CPLR 302(1)(a) authorizes jurisdiction over
6 an out-of-state corporation based on its own conduct within
7 the forum or that of its agent.

8 JUDGE TROUTMAN: But does this apply to successor
9 jurisdiction in an instance like this?

10 MR. LESKE: It does, Your Honor. Plaintiffs have
11 made the - - - the argument that the long-arm statute only
12 has to be applied to the predecessor, but there's no basis
13 for that conclusion. Each defendant - - - due process has
14 to be - - - has to be satisfied with regard to each
15 defendant to a lawsuit. And if a lawsuit involved two
16 tortfeasors where the claim was made against both of them,
17 the court would apply the long-arm statute to both of them.

18 CHIEF JUDGE WILSON: So how do you - - -

19 JUDGE HALLIGAN: But wouldn't that make - - -

20 CHIEF JUDGE WILSON: Go ahead. I'm sorry.

21 JUDGE HALLIGAN: I was just going to say,
22 wouldn't that make successor jurisdiction irrelevant
23 essentially? I mean, if you have to show that the party
24 independently satisfies 302 without regard to whether the
25 predecessor satisfies 302, then you're not really

1 inheriting or imputing anything, are you?

2 MR. LESKE: Well, I think you are. And I think
3 the way to look at it is this: The courts have - - - that
4 have considered a successor liability theory have found
5 that it's not the - - - it's not the fact of liability
6 that's important; it's the basis for successor liability.
7 And virtually all those courts that have looked at that
8 issue have found that where the predecessor and the
9 successor are one and the same, meaning where a plaintiff
10 has alleged plausible facts of alter ego, of merger, of de
11 facto merger, of a mere - - -

12 JUDGE RIVERA: Yeah. But the - - - the question
13 here is whether to go further.

14 MR. LESKE: The question here - - -

15 JUDGE RIVERA: No one is debating - - -

16 MR. LESKE: Yeah.

17 JUDGE RIVERA: - - - what you've just described.

18 MR. LESKE: Yeah.

19 JUDGE RIVERA: Everyone acknowledges those
20 exceptions.

21 MR. LESKE: Yeah. So I don't think you're - - -

22 JUDGE RIVERA: Why not go further here.

23 MR. LESKE: So I don't think - - -

24 JUDGE RIVERA: - - - given accepting all assets
25 and all liability.

1 MR. LESKE: I understand. I - - - I think the
2 analytical point here is that the entities are the same.
3 So the contacts of the predecessor are the contacts of the
4 successor. And you're just going ahead, actually, and
5 applying the long-arm statute or applying a due-process
6 analysis. So that's where the successor liability comes in
7 here. To you - - -

8 JUDGE HALLIGAN: Well, that - - - that to me
9 seems - - - seems maybe a bit tautological, right? I - - -
10 I think - - -

11 MR. LESKE: Uh-huh.

12 JUDGE HALLIGAN: - - - the question, as Judge
13 Rivera says, is should we also do that when there is a
14 purchase of all assets and liabilities, understanding that
15 we, you know - - - and other jurisdictions have - - - have
16 - - - at least other jurisdictions have done it with
17 respect to a merger, whether actual or de facto.

18 MR. LESKE: Yeah. Well, two - - - two answers to
19 that. First, obviously, the text of the long-arm statute
20 itself, when you apply it, makes no reference to successors
21 and only imputes contacts, which is really what you're
22 doing in - - -

23 CHIEF JUDGE WILSON: And so - - - but the long-
24 arm statute then wouldn't really even allow you to reach a
25 merged entity, right?

1 MR. LESKE: Well, this court has not reached the
2 issue. The Second Circuit certainly has - - - has weighed
3 in. And the - - - the - - - again, the analysis - - -

4 CHIEF JUDGE WILSON: Well, no, I guess what I'm
5 saying is you seem to be saying if this had been a merger,
6 there would be jurisdiction, because it wasn't, there
7 isn't.

8 MR. LESKE: Yeah, I think - - - yeah - - -

9 CHIEF JUDGE WILSON: So far - - - are you with me
10 so far?

11 MR. LESKE: I am with you this far.

12 CHIEF JUDGE WILSON: Okay. So but I don't then
13 understand how under your statutory argument, a merger
14 would fit into this if it's a New York corporation that's
15 merged into a Delaware corporation.

16 MR. LESKE: So the - - - the - - - the analysis
17 that has been adopted is that the two - - - only one entity
18 survive a merger, and both the predecessor and the
19 successor survive in that entity. So you're back again to
20 the analysis that those entities are one and the same. So
21 the jurisdictional context of the predecessor are the
22 jurisdictional context of this - - -

23 JUDGE RIVERA: So does that require the - - -

24 MR. LESKE: - - - and that's not the case - - -
25 oh.

1 JUDGE RIVERA: - - - and that requires the
2 predecessor no longer exists in any form?

3 MR. LESKE: Well, a merger is - - - is normally
4 not a - - -

5 JUDGE RIVERA: That's what I mean.

6 MR. LESKE: Yes. Yes, that's right.

7 JUDGE RIVERA: There's now only one entity that
8 remains.

9 MR. LESKE: One surviving entity in that
10 situation. And it's not an all-cash transaction like an
11 asset liability purchase. And I hear - - - I think this is
12 what the court is looking for. The difference between the
13 scenarios of de facto merger, a corporate reorganization, a
14 merger, and an all cash asset and liability purchaser is
15 threefold. First, both - - - there are two legal entities
16 involved here - - -

17 JUDGE GARCIA: Counsel, just - - - I interrupt
18 you - - - but - - - I understand that - - - but does it
19 matter the basis for long arm jurisdiction that's asserted
20 - - - asserted because he - - - and, again, maybe going
21 back to something that Chief Judge said early on, which is
22 you bought assets and liabilities, the company, and you - -
23 - the basis for jurisdiction here is (a) (1) doing business.
24 And the doing business that we found gave long-arm
25 jurisdiction was the corresponding accounts in New York.

1 That money was going through. So you bought assets, you
2 bought liabilities, you bought that business. Presumably
3 you bought that asset with the goodwill that comes with it
4 from doing business in New York. Why don't you buy this,
5 too?

6 MR. LESKE: Yeah. Well, if we're talking - - -
7 this lawsuit was not filed until well after. If a company
8 used assets that were purchased, then there's going to be
9 jurisdiction - - -

10 JUDGE GARCIA: Yeah. But you bought those
11 assets. You bought, presumably, the - - - the ability to
12 do that business here - - -

13 MR. LESKE: Yeah.

14 JUDGE GARCIA: - - - corresponding accounts.
15 Right.

16 MR. LESKE: But - - - and if the claim arose from
17 those assets - - - this claim did not arise from the
18 purchase of those assets. It happened nine years later.
19 And Greenberg is a very good example of that, where a New
20 York company, where the owners of the company dissolved the
21 company and took it to Canada, and this court looked at it,
22 and it didn't find that it was a successorship, and that
23 therefore there was jurisdiction. It found that it was
24 that the Canadian company, the reincarnated version, was
25 doing business, and it hinged its analysis on the long-arm

1 statute. It just didn't simply jump ahead and say
2 successor, predecessor, there's going to be jurisdiction.

3 But the two other reasons why an asset and
4 liability purchaser is different is that two - - - two
5 companies survive the transaction and - and go ahead and do
6 their own thing. And the third thing, which is probably
7 most important, and that's clear on the record here, is
8 that there are no continuity of ownership of the
9 predecessor in the successor. So you have two separate
10 companies doing their own thing with no ownership interest
11 - - -

12 JUDGE RIVERA: So two separate companies doing
13 their own thing - - -

14 MR. LESKE: Which means the jurisdictional
15 contacts are different - - -

16 JUDGE RIVERA: - - - the predecessor exists in
17 some form. Right? So they would have - - - the court
18 would have jurisdiction over that predecessor. Am I
19 correct - - -

20 MR. LESKE: Absolutely would have jurisdiction
21 over the predecessor.

22 JUDGE RIVERA: I'm following this argument so
23 far? Okay. And then your position is so then they should
24 sue that predecessor.

25 MR. LESKE: Absolutely.

1 JUDGE RIVERA: Am I following you? Okay. The
2 predecessor has - - - has entered this agreement where
3 someone else holds the liability. So the predecessor would
4 - - -

5 MR. LESKE: Certainly could bring - - -

6 JUDGE RIVERA: - - - bring them in as a third-
7 party?

8 MR. LESKE: LCB could have brought S - - - if
9 they thought that S - - - SGBL was responsible for the
10 tort.

11 JUDGE RIVERA: Yes.

12 MR. LESKE: They certainly - - - well, they - - -
13 they had every opportunity and would have brought SGBL in,
14 and plaintiffs could have at that time brought them in
15 also.

16 The key thing here, though, is that New York law
17 already has ample tools to handle these problematic
18 situations, none of - - -

19 JUDGE TROUTMAN: Could there ever be personal
20 jurisdiction in an instance where all of the assets and all
21 of the liabilities are bought?

22 MR. LESKE: I think, again, if the - - - the
23 analysis that the courts have used - - - and this is even
24 in the North Carolina decision - - - is that when - - - and
25 the Patent (ph.) decision out of the Fifth Circuit is when

1 the entities are one and the same, they are, and a merged
2 entity is - - - is essentially - - - is - - -

3 JUDGE TROUTMAN: So one needs to disappear, so to
4 speak?

5 MR. LESKE: One needs to - - - one needs to
6 disappear. Or courts have also find where the predecessor
7 actually has an ownership interest in the successor and is
8 just merely abusing the corporate form, or is trying to
9 secret assets out of - - - out of - - -

10 JUDGE RIVERA: But there is - - - is there not in
11 the courts already an exception for fraud, which is closer
12 to what the Chief Judge was asking your opponent about
13 before?

14 MR. LESKE: Absolutely. The New York tools that
15 already - - - the tools in New York that already exist are
16 alter ego. If the two are one and the same, then you - - -
17 the jurisdictional is - - - contacts are going to be the
18 same. If there's fraud on the court, or - - -

19 JUDGE RIVERA: If they fall short of alter ego,
20 it's clearly done for some fraudulent purpose?

21 MR. LESKE: Or fraudulent purpose.

22 JUDGE RIVERA: That - - - that was my point.

23 MR. LESKE: That was actually presented in the
24 North Carolina case.

25 JUDGE RIVERA: That was my point. So then you'd

1 have the trial on the fraudulent purpose. And if you find
2 the fraudulent purpose, if that's the finding of the court,
3 then - - -

4 MR. LESKE: I would say - - -

5 JUDGE RIVERA: - - - then - - - then - - - then
6 you would say personal jurisdiction is appropriate?

7 MR. LESKE: Then I think there would be personal
8 jurisdiction because - - -

9 JUDGE RIVERA: Now, what - - - what theoretically
10 is the reason for that?

11 MR. LESKE: Well, courts have always had an
12 inherent power to exercise their - - -

13 JUDGE RIVERA: Okay.

14 MR. LESKE: - - - if a company or if a bad actor
15 is trying to avoid jurisdiction. And at least this - - -
16 these - - - your court's - - - this court's opinions have
17 held that that's actually a fraud on New York - - -

18 JUDGE RIVERA: Uh-huh.

19 MR. LESKE: - - - and therefore, that represents
20 some personal activities under the long-arm statute that
21 would allow you to reach a company in that situation. But
22 none of those are - - - none of the - - - the unfairness
23 concerns are presented with an asset and liability
24 purchaser. SGBL had no connection to any of the tax.
25 There's no ownership interest. It's not a corporate

1 reorganization of LCB.

2 JUDGE RIVERA: Well - - - well, did they plead
3 that? Did they plead it was fraudulent and that's another
4 reason - - -

5 MR. LESKE: They didn't - - -

6 JUDGE RIVERA: - - - to exercise personal - - -

7 MR. LESKE: Yeah - - -

8 JUDGE RIVERA: - - - putting aside the merits of
9 the claim - - -

10 MR. LESKE: Yeah - - -

11 JUDGE RIVERA: - - - not before us - - -

12 MR. LESKE: Most of the arguments that we're
13 hearing today and your questions are really not even
14 presented by this case, because the plaintiffs have never
15 argued - - -

16 JUDGE RIVERA: Uh-huh. Okay.

17 MR. LESKE: - - - that the long-arm statute
18 applied. They've never argued personal availment that SGBL
19 did anything. They're not - - - they haven't argued
20 merger. They haven't argued - - -

21 JUDGE RIVERA: So it sounds like under your
22 recommended rule, they can - - - if the predecessor exists,
23 they can sue the predecessor - - - at the time they want to
24 bring the lawsuit - - - they can sue the predecessor in New
25 York because the predecessor - - -



1 MR. LESKE: Absolutely - - - or afterwards.

2 Yeah.

3 JUDGE RIVERA: - - - personal jurisdiction over
4 them?

5 MR. LESKE: Yeah. Absolutely.

6 JUDGE RIVERA: And or sue the entity that assumed
7 the liabilities wherever they can - - -

8 MR. LESKE: Wherever they can - - - yeah - - -

9 JUDGE RIVERA: - - - get personal jurisdiction
10 over them, correct?

11 MR. LESKE: Wherever they can be found. And the
12 Semenetz court actually made that crystal clear, that - - -
13 and this court has consistently found in Feathers and in a
14 host of other cases, that liability and jurisdiction are
15 two different concepts. And the question in - - -

16 JUDGE RIVERA: Can you move to consolidate those
17 cases once you do that?

18 MR. LESKE: You probably could. You could either
19 bring them to - - - you could sue - - - you could sue the
20 two entities together. You could bring it separately. But
21 - - - but this court has always - - - has consistently
22 recognized that liability and jurisdiction are different.
23 And you have to decide the jurisdictional question before
24 you even think about the liability question.

25 JUDGE HALLIGAN: Can we go back to the fairness

1 question for a minute?

2 MR. LESKE: Sure.

3 JUDGE HALLIGAN: So if I'm understanding the
4 timing correct - - - and you know, correct me if I have it
5 wrong - - - so the attacks at issue were in 2006, and I
6 believe there was a separate action, but based on some
7 similar theories filed against LCB in 2008; is that right?

8 MR. LESKE: That's right.

9 JUDGE HALLIGAN: And then in 2011, the Treasury
10 Department designated LCB a primary money laundering
11 concern. And then this deal took place a couple months
12 after that, right?

13 MR. LESKE: Yeah - - -

14 JUDGE HALLIGAN: And so I would expect that,
15 especially as sophisticated a player as your client, would
16 have considered those liabilities and priced them into the
17 deal. So help me understand how the fairness concerns play
18 out here.

19 MR. LESKE: Yeah. You know, the - - - the
20 argument - - - the plaintiff's argument has been that
21 somehow that you can unmoor the liabilities and the
22 jurisdiction, and that's not so. As we know, you can sue
23 LCB, and you can get that - - - the \$600 million, which is
24 far more than what they've, you know, asked for here. And
25 a company - - - you know, the - - - the expectations of

1 SGBL is not the same as the - - - the personal
2 jurisdictional analysis that this court has to make under
3 301. It's not a foreseeability analysis. Purposeful
4 availment and foreseeability are two different things. And
5 even - - -

6 JUDGE RIVERA: So - - - so I - - -

7 JUDGE HALLIGAN: So that seems like it's a - - -
8 it's an ex ante ex post question, right? In other words,
9 would it be the case that if we were to have a rule that
10 applied prospectively so that anyone in the market that was
11 going to look to do a purchase of all assets and
12 liabilities would take that into account, it would be
13 different. Is it a notice proposition or something else?

14 MR. LESKE: Yeah - - - it's a very difficult rule
15 because it would represent really a sea change in - - - in
16 asset and liability purchases and in jurisdictional law
17 because - - -

18 JUDGE HALLIGAN: Well, I'm not sure the court has
19 pronounced on it yet - - -

20 MR. LESKE: Yeah - - - no, I - - - yeah - - -

21 JUDGE HALLIGAN: - - - so I don't know if it
22 would represent a sea change, but - - -

23 MR. LESKE: Plaintiff's theory, taken to its
24 logical conclusion, means any time there's liability of a
25 company, there's personal jurisdiction. That's - - -

1 JUDGE RIVERA: Well, could you write into the
2 agreement that the party does not waive any personal
3 jurisdiction challenges it may have?

4 MR. LESKE: Yeah. I mean, the parties - - - the
5 two contracting parties are free to make - - - come to any
6 agreement that they have. We're here - - - you know, for -
7 - -

8 JUDGE RIVERA: I'm saying if we agree with them,
9 would it be possible for the parties to say we're - - - or
10 the party to - - - to negotiate, I don't want to fall under
11 that rule. I want to avoid that rule. And so I don't
12 waive. Right. You'd make your decision if there was a
13 lawsuit at the time, whether or not it's beneficial to your
14 client, to nevertheless subject yourself to personal
15 jurisdiction in New York. Right? That - - -

16 MR. LESKE: Yeah. Parties are free to contract
17 and limit their liabilities and - - - and limit the assets,
18 obviously. Here we're here on a motion to dismiss where
19 plaintiff's allegations have to be taken as true. And they
20 alleged that SGBL assumed all the liabilities and all the
21 assets, and we don't have an opportunity to contest that at
22 the motion to dismiss stage. So that's where we are now -
23 - -

24 JUDGE RIVERA: So if I may, just to clarify your
25 responses to Judge Halligan, if I'm understanding you

1 correct, it may be a crude way of putting it, but it seems
2 to me what you're saying is that when you negotiated the
3 price, you negotiated, we may be liable for X, Y, and Z,
4 and that will be this amount. But you weren't negotiating.
5 And wherever we've got to defend that liability, that will
6 always be New York - - - or that will include New York.
7 You're saying that wasn't part of the price point?

8 MR. LESKE: Yeah. That wasn't - - - it's not in
9 the record of what the agreement said - - -

10 JUDGE RIVERA: Focus on the liability itself, not
11 the form - - -

12 MR. LESKE: Yeah. Plaintiff's theory is - - - is
13 purely that a liability equals jurisdiction. And as I
14 said, our position - - -

15 JUDGE RIVERA: So I'm saying - - - in response to
16 Judge Halligan, I think she was getting to this point. And
17 as they argued in their brief, you're already factoring
18 that into the price.

19 MR. LESKE: Into the - - - into the - - -

20 JUDGE RIVERA: And you're saying, no, that's not
21 being factored into the price. If I'm understanding you.

22 MR. LESKE: I think that's right. I mean, I
23 think this is - - - you know, this is a corporate
24 transaction. You can't affect the rights of a third-party
25 against you. You can react against - - - you can insure

1 against - - -

2 JUDGE HALLIGAN: No. But you surely can
3 negotiate with respect to the scope of liabilities that
4 you're assuming, right?

5 MR. LESKE: Certainly. And that's why LCB - - -

6 JUDGE HALLIGAN: So if you want to carve
7 something out; you can certainly do - - -

8 MR. LESKE: You can - - - you - - - absolutely.
9 And if - - - again, if LCB thought SGBL was responsible for
10 the liability, they certainly could have and would have
11 brought them into the - - - the lawsuit. And I know you
12 asked one question about the Southern District, and I see
13 my time is up. If I may.

14 CHIEF JUDGE WILSON: Yes, go ahead.

15 MR. LESKE: There was a - - - there was some
16 monies that were - - - that were - - - were held frozen by
17 the Justice Department involving the transaction, and SGBL
18 came in and filed as an innocent owner in the asset to
19 respond and make a claim in that asset forfeiture action.
20 And in it, it expressly reserved all its rights to personal
21 jurisdiction. It was not subjecting itself to jurisdiction
22 in New York or otherwise. It was filing, as federal law
23 allows you to do, a claim as an innocent owner. And what
24 SGBL was saying is in the process of - - -

25 JUDGE HALLIGAN: Without purposeful availment.



1 MR. LESKE: Excuse me?

2 JUDGE HALLIGAN: Without purposeful availment of
3 employing - - -

4 MR. LESKE: Certainly. And it certainly doesn't
5 arise from the suit, which is really what you need in
6 conjunction. The activity has to be suit-related for
7 purposes of specific jurisdiction. So not only did they
8 reserve the right, but it certainly had nothing to do with,
9 you know, the lawsuit that was filed almost ten years
10 later, so - - -

11 CHIEF JUDGE WILSON: Thank you.

12 MR. LESKE: Thank you very much.

13 MR. RADINE: So as Your Honors heard, defendant's
14 view is that what makes sense of their theory, that you
15 would apply the long-arm statute, essentially, twice to
16 predecessor and then to successor, is that they're the
17 exact same entity. The entity is only moved and no longer
18 exists here. That's not true for - - - first of all, for
19 all the forms of successor jurisdiction in New York.

20 As the Eastern District held, but relying on
21 First Department cases, to the extent - - - and this is in
22 a successor jurisdiction case. This is Gould v. ILKB. To
23 the extent the successor defendants argue successor
24 liability pursuant to a de facto merger requires ILKB's
25 dissolution, New York law holds otherwise. So it's already

1 not the case in de facto merger.

2 Now, in a de facto merger, we have a sort of
3 defunct shell left in the jurisdiction, which is what we
4 have here precisely. Then - - -

5 CHIEF JUDGE WILSON: Well, in 580 million being
6 defunct. Okay.

7 MR. RADINE: Well, the question is whether there
8 is - - - the LCB would implead SGBL to protect its assets.
9 SGBL - - - LCB is rendered defunct such that all of its
10 creditors now are coming for that \$580 million, whether the
11 claims are already brought, as in the plaintiff's original
12 suit against LCB, or those claims are yet to be sued upon.

13 JUDGE HALLIGAN: But when you say they're a
14 shell, what exactly do you mean, given the amount of money?
15 I'm not following - - -

16 MR. RADINE: Well, LCB has no assets. The money
17 was - - - it has no money. It represented to the United
18 States Supreme Court that it has no money to pay a
19 judgment.

20 JUDGE HALLIGAN: But where's the 500-plus million
21 dollars?

22 MR. RADINE: Well, the United States seized - - -

23 JUDGE HALLIGAN: Is it frozen?

24 MR. RADINE: No, I just - - - I don't know where
25 it is as the plaintiff, but it's LCB who is represented the

1 Supreme Court that they have no money. I don't know where
2 it went. Some the United States took due to their
3 wrongdoing. Some may have gone to other creditors. I
4 don't - - - no, they're in liquidation in Lebanon, so I
5 imagine it's gone to creditors in - - - in Lebanon.

6 But they have no incentive. And I think this
7 even goes to the Chief Judge's question about insurance.
8 They have no incentive to implead SGBL because they have no
9 money to get back. They have no assets which could be
10 seized. They effectively don't exist except as a shell
11 corporation. So unlike - - -

12 CHIEF JUDGE WILSON: I'm not so sure about that.
13 It depends on what the liabilities that were assumed by
14 SGBL are, right? I mean, they may have already paid out
15 claims that are really liabilities. I don't know that - -
16 - you know, what the terms of that are exactly. But they
17 may - - - there may be some money they can get back.

18 MR. RADINE: That LCB could get back from SGBL?

19 CHIEF JUDGE WILSON: Yeah. If - - - if LCB paid
20 out claims that were subject to the assumption of liability
21 in the contract, I assume they'd be entitled to recoup
22 those.

23 MR. RADINE: Oh, claims - - - monies that they've
24 already paid.

25 CHIEF JUDGE WILSON: Yeah. Yeah.

1 MR. RADINE: Well, they entered liquidation and
2 then were purchased by SGBL. So perhaps other creditors
3 could do some sort of claw back action in Lebanon. I don't
4 know. But here in New York, they have no incentive to
5 implead, unlike an insured party, SGBL, because they have
6 literally nothing to lose to plaintiffs.

7 CHIEF JUDGE WILSON: So I'm curious about one
8 thing in your complaint that may not amount to anything,
9 but your complaint is filed long after the transaction in
10 question. And yet it alleges that up to the present time,
11 LCB is engaged in the various terrorist activities that
12 you're complaining about. It seems as if you assumed, even
13 when you filed the complaint, that they were still an
14 ongoing business.

15 MR. RADINE: I believe - - - I don't have the
16 cite in front of me - - - I believe the complaint says that
17 LCB - - -

18 CHIEF JUDGE WILSON: It says, including the
19 period between 2004 and the present day, LCB carried out
20 the Hezbollah wire transfers and provided Hezbollah with
21 other banking services.

22 MR. RADINE: Oh, that period ends in 2011,
23 because once the United States designated LCB, it lost the
24 capacity to bank through New York correspondent banks. So
25 it's alleged in the complaint, certainly, that it ceased

1 banking operations as of 2011.

2 I see that's my time.

3 CHIEF JUDGE WILSON: Did you have one more point
4 you wanted to make? I interrupted you.

5 MR. RADINE: I did - - - no, thank you, Your
6 Honor. Just about liability and jurisdiction not traveling
7 with each other. Just to make clear, of course, acquiring
8 a liability in the sense that if you are in California and
9 you're a non-New Yorker and you assault a New Yorker, you
10 have liability to that New Yorker. But there's not
11 jurisdiction over you in New York on those facts because
12 all you have is a liability.

13 The issue here is the liabilities are liabilities
14 that arose in New York. And under this court's 2012 Licci
15 decision, the liabilities are to claims in New York,
16 including ones that existed already - - - that have been
17 brought, I mean. And ones that had already accrued - - -
18 these liabilities accrued in 2006, but had yet to be
19 brought. So to be clear, the difference between liability
20 simpliciter and liabilities for claims that have a
21 relationship to New York in the sense that the jurisdiction
22 already attaches there.

23 CHIEF JUDGE WILSON: Suppose - - - I'm sorry, go
24 ahead.

25 JUDGE RIVERA: And then - - - I'm sorry, just to

1 follow up, to be clear on the - - - the other point you're
2 making with that. Therefore, when they negotiate this
3 purchase, they understand that there are some liabilities -
4 - - I don't know if they're all, but certainly the ones
5 you're talking about - - - were in - - - incur in New York
6 to the extent that that the predecessor would have been - -
7 - would have been subject to personal jurisdiction in New
8 York. And so that's something that they understood at the
9 time they entered their agreement.

10 MR. RADINE: Yeah - - -

11 JUDGE RIVERA: Is that in part what you're - - -

12 MR. RADINE: Sure. I mean, they already had, of
13 course, the lawsuit that sort of precedes this one in New
14 York. But knowing this full scope of Hezbollah's attacks
15 on Americans, for example, and knowing that the Anti-
16 Terrorism Act exists, then they would know not only about
17 that suit, but any number of claims that would have accrued
18 up until the purchase in 2011, as in there were - - -

19 JUDGE RIVERA: But then anticipate that the
20 lawsuits would at least start in New York. Whether or not
21 they can proceed in New York is another story, but that
22 there would be people seeking to bring these claims in New
23 York.

24 MR. RADINE: Right.

25 JUDGE RIVERA: That's the link? Okay.



1 MR. RADINE: Yes.

2 CHIEF JUDGE WILSON: And to sort of take your
3 last example and change it a little bit, a - - - a minor
4 who is domiciled in California with the minor's parents
5 comes to New York and injures a New York resident. Can the
6 parents be sued in New York? They have legal liability for
7 the minor.

8 MR. RADINE: Just working this out. So the minor
9 has come to New York. They have legal liability for that
10 minor.

11 CHIEF JUDGE WILSON: And the parents have never
12 set foot in New York.

13 MR. RADINE: Right. I don't know. It's a good
14 question. I mean, if they can - - - if the reason why the
15 plaintiff - - - they're all good questions, right? It's
16 your job. But I - - - if the issue of the liability is
17 because that the minor's judgment-proof, for example, then
18 yes, it may be appropriate in that circumstance where, you
19 know, there's nothing else to be done for the plaintiff
20 except chase the parents around the world.

21 JUDGE RIVERA: Or they're the guardian, and
22 they're responsible because they allowed the child to come
23 to New York, and they're responsible for conduct that
24 happens in New York. That may be a tort.

25 MR. RADINE: No. They're - - - yeah, certainly

1 another possibility.

2 JUDGE RIVERA: There you go.

3 MR. RADINE: I'll take it.

4 All right. Thank you very much, Your Honors.

5 (Court is adjourned)

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C E R T I F I C A T I O N

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of *Lelchook v. Societe Generale de Banque au Liban SAL*, No. 29 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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