2025 | VOL. 29 | NO. 2

NY Business Law Journal

A publication of the Business Law Section of the New York State Bar Association

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Key Considerations for Businesses Under the One Big Beautiful Bill Act

Is 'Successor Jurisdiction' About To Become a Thing? How About Successor Liability?

By Stuart M. Riback

As every litigator knows, where a defendant can be sued depends on a combination of long-arm statutes and due process considerations: the defendant has to have minimum contacts with the forum court before the defendant can be sued there. So typically, after a seller transfers a business to a buyer, a later plaintiff can establish personal jurisdiction over the buyer based only on the buyer's own contacts with the forum. The seller's contacts don't count.

Or maybe they do. Recent case law in New York imputes the seller's forum contacts to the buyer if the buyer purchased all of the seller's assets and liabilities. That means the buyer can be sued in New York if the seller could have been sued here, so long as the claims could have been asserted against the seller. This has implications. Read on.

A. Terror Attacks and Subsequent Litigation

First, the facts. Members of the Lelchook family and others were killed or injured by Hizbollah rocket attacks while in Israel in 2006. These attacks led to a number of different lawsuits, including one against Lebanese Canadian Bank (LCB) in the Southern District of New York (SDNY) under the Anti-Terrorism Act and the Justice Against Sponsors of Terrorism Act. The plaintiffs alleged that LCB facilitated the terror attacks by financing Hizbollah. The lawsuit eventually featured over 90 victim plaintiffs.

1. The First Certified Question

Years of litigation ensued. By 2010, the Second Circuit perceived an unsettled issue of New York state law. Specifically, under CPLR 302(a)(1), could courts in New York exercise specific jurisdiction over LCB? LCB's contacts with New York consisted entirely of repeatedly using a correspondent bank account in New York. Was that enough contact to support personal jurisdiction? The Second Circuit certified the question to the New York Court of Appeals. The Court of Appeals ruled that there was an "articulable nexus or substantial relationship between the transaction" and the claims in the claims in the case, which was sufficient to permit New York courts to assert personal jurisdiction over LCB. *Licci v. Lebanese Canadian Bank,* 20 N.Y.3d 327, 338-40 (2012).

Based on that ruling, the Second Circuit held that LCB could be sued in New York consistently with due process. *Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 165 (2013). The Second Circuit later ruled in related litigation that claims against LCB for aiding and abetting the Hizbollah attacks could survive a motion to dismiss, *Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842 (2d Cir. 2021). So LCB was definitely exposed.

2. LCB Sells to SGBL

While this was going on, the U.S. Treasury Department in 2011 designated LCB an institution of "primary money laundering concern," citing LCB's connection with Hizbollah. A few months later, Société Générale de Banque au Liban SAL (SGBL) entered into an agreement with LCB under which LCB sold all its assets and all its liabilities to SGBL. The liabilities sold included "liabilities and/or obligations and/or debts of any kind, character or description, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, determined, determinable or otherwise" – in other words, the parties' agreement made sure that every liability of every imaginable type was transferred to SGBL. The deal closed on June 22, 2011.

This transfer of all liabilities meant that SGBL definitely was on the hook to the plaintiffs: if LCB was legally responsible for the effects of the Hizbollah attacks, SGBL would be liable. But unlike LCB, SGBL to all appearances had not engaged in any conduct in New York that could subject SGBL to personal jurisdiction in New York. So could the plaintiffs sue SGBL in New York? Were LCB's jurisdictional contacts with New York imputed to SGBL?

3. The Second Certified Question

This issue came up in the Second Circuit in the *Lelchook* case in 2023. The Lelchooks had sued SGBL based on LCB's actions. When the case reached the Second Circuit, the court was faced with the issue whether SGBL was subject to personal jurisdiction in New York – did it acquire LCB's amenability to suit in New York or only its exposure to liability? The Second Circuit certified the question to the New York Court of Appeals. *Lelchook v. Société Générale de Banque au Liban SAL*, 67 F.4th 69, 88 (2d Cir. 2023).

In April 2024 the Court of Appeals ruled that SGBL succeeded to LCB's "jurisdictional status" when it acquired all of LCB's assets and liabilities. *Lelchook v. Société Générale de Banque au Liban SAL*, 41 N.Y.3d 629 (2024). Its analysis began with an acknowledgement that prior case law did not

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provide an answer. The Court turned, therefore, to the "separate but related question of successor liability" to "inform" the inquiry. *Id.* at 635. New York has accepted successor liability only in four limited circumstances: express or implied assumption of the predecessor's liability; consolidation or merger with the predecessor; the buyer was a "mere continuation" of the seller; or the sale transaction was a fraud designed to escape liabilities.

New York does not accept the "product line" exception that several states recognize. If a buyer acquires a manufacturing business and continues to provide product, but did not assume the seller's liabilities, certain states nevertheless permit tort plaintiffs to sue the buyer even for injuries that occurred before the purchase, even though the buyer did not assume those liabilities. The Court of Appeals held that the decision whether to accept successor jurisdiction should turn on the same factors that the Court looked at when it was considering the product line exception. Specifically, "the impact of our rule on parties to a potential acquisition, whether imputing jurisdiction fairly reflects the reasonable assumptions and expectations of the parties to such transactions, whether doing so induces responsible parties to internalize responsibility for risks they create, and the impact of imputing jurisdiction on those injured by a predecessor's acts." *Id.* at 636-37.

Though these factors had led the Court to reject the product line exception, in this case the "factors tip in favor of allowing successor jurisdiction where a successor purchases all assets and liabilities." *Id.* at 637. The Court of Appeals explained its conclusion with several observations. If the buyer purchased all liabilities, that suggests the agreed purchase price (arrived at after due diligence) took account of the risks of litigation and an ultimate adverse judgment. Any reasonable pre-purchase investigation would also account for the locations where such litigation might be. In this particular case, litigation arising from the Hizbollah bombing was already underway in New York when SGBL bought LCB's assets and liabilities. Case law in other jurisdictions authorized successor jurisdiction in any case where there was successor liability – here, of course, there was successor liability as a contractual matter, because SGBL assumed LCB's liabilities – so SGBL could hardly have ignored this risk. Thus, in the Court of Appeals' view, it was eminently reasonable to impute to SGBL the contacts LCB had that subjected it to personal jurisdiction in connection with the plaintiffs' claims. In essence, when SGBL purchased all of LCB's liabilities, those liabilities were accompanied by LCB's liability-related contacts with New York.

That left only one real issue for the Second Circuit to decide: is imputing LCB's New York contacts to SGBL consistent with due process? To establish personal jurisdiction over a defendant, a plaintiff has to show both that state law authorizes it and that doing so does not offend due process. The Court of Appeals' ruling established that state law autho-

rized personal jurisdiction over SGBL. How about due process? SGBL didn't have its own contacts with New York. Was it fair for a New York court to assert jurisdiction over SGBL simply because another company whose assets SGBL bought had contacts with New York?

4. The Second Circuit's Due Process Ruling

In August the Second Circuit answered "yes." *Lelchook v. Société Générale de Banque au Liban SAL*, 147 F.4th 226 (2d Cir. Aug. 11, 2025). The Second Circuit started its discussion by enumerating four factors to be considered in the due process analysis:

> (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest ... in furthering substantive social policies.

Id. at 245. Based on an evaluation of these factors, the Second Circuit determined that it was fair to subject SGBL to jurisdiction in New York. First, technology mitigates any burden on SGBL. Second, New York has an interest in its position as a financial center; because LCB's contacts were based on its corresponding bank in New York, New York has interests in regulating these relationships. Third, the plaintiffs have an interest in recovering from a solvent company (SGBL) rather than one that has dissipated its assets (LCB). In that connection, the Second Circuit observed that ruling for SGBL "would both enable and incentivize companies to pass their assets on to successors in other jurisdictions and shield them from direct claims for liabilities in that forum." *Id.* at 246 (quote cleaned up). Such a result is to be avoided. Fourth, the court rejected the idea that asserting jurisdiction would be an affront to international comity, because New York was asserting specific jurisdiction rather than general. Also, there was nothing unfair about the long statute of limitations for the claims because the United States' policy is to facilitate recovery for terror victims.

Finally, SGBL urged that it was not the same entity as LCB, so there is no basis to impute LCB's contacts to SGBL – in effect, the Second Circuit observed, SGBL advocated for a rule that would deny "specific personal jurisdiction over a successor entity if the successor and predecessor are not effectively one another's alter egos." *Id.* at 247. The Court was having none of it: "Although LCB still formally exists as a separate entity, SGBL's acquisition resembles a merger in key respects. …" including – crucially – the fact that "SGBL expressly acquired all of LCB's liabilities."

The bottom line after the Second Circuit's decision is that SGBL will have to defend against the plaintiffs' lawsuit in New York.

B. Open Questions After *Lelchook*

To some extent this holding is limited because SGBL acquired all of LCB's assets and liabilities. Most acquiring companies in a normal business context do not agree to take on all the liabilities of the seller. Most typically, there are excluded liabilities. And even more typically, the seller doesn't sell all of its own assets, but only one of its business lines or a group of related assets. How does this decision affect such sales? Does it affect them at all?

At first glance it appears that it won't affect them. The Court of Appeals' analysis looked specifically at successor liability to "inform" the decision about successor jurisdiction. So the fact that SGBL had acquired LCB's liabilities in addition to its assets appears to loom large in the analysis.

But on closer examination things aren't so clear. Consider that the Court of Appeals identified the factors that drove its decision: "the impact of our rule on parties to a potential acquisition, whether imputing jurisdiction fairly reflects the reasonable assumptions and expectations of the parties to such transactions, whether doing so induces responsible parties to internalize responsibility for risks they create, and the impact of imputing jurisdiction on those injured by a predecessor's acts." 41 N.Y.3d at 636-37. These factors do not turn on whether the buyer acquires all of the seller's assets and liabilities; they simply tilt in favor of successor jurisdiction when the buyer does so.

Because these factors do not require that all the assets and liabilities be transferred to the buyers, it is entirely conceivable that a less than 100% conveyance can lead to successor jurisdiction. Let's consider some possible scenarios.

First, imagine that the seller is a subsidiary of a larger company. Only the subsidiary sells all its assets and liabilities – in other words, the entity that is the seller disposed of all its assets and liabilities but the overall enterprise did not. Is there successor jurisdiction? How do the factors apply? Should the court look only at the specific entity that disposed of all its assets and liabilities, or should the court consider the overall business of the seller? To what extent does the formal structure of what gets sold determine whether the buyer acquires the seller's jurisdictional status?

Or suppose the seller sold all the assets and liabilities of one of its divisions – an entire line of business, but not a separate entity. How do the factors apply? How about if a seller sold almost all its assets and liabilities but retained some of its liabilities? Does (or should) the inquiry depend on how significant was the *amount* of liabilities retained? Or

does (or should) it turn on the *nature* of the retained liabilities? Or does it make a difference at all if less than 100% was transferred?

These are all issues of state law, of course. So on top of these questions, there is still the overarching issue of whether any ruling that imputes a seller's contacts to the buyer can pass muster under the due process clause in a transaction that does anything other than transfer 100% of assets and liabilities of the seller.

Now that the Court of Appeals has opened the door to permitting successor jurisdiction, it is a fair bet that plaintiffs will start to test the limits of the new rule. Because real life consistently produces fact patterns beyond anyone's wildest imagination, it is anyone's guess what kinds of cases will make their way through the courts.

It might not be restricted to jurisdiction, either. Remember: when the Court of Appeals listed the factors that supported asserting jurisdiction over SGBL, it looked to the reasons for rejecting successor *liability* for the purchase of a product line. But if successor liability turns on a list of factors, why is there any reason to think that the potential set of scenarios in which successor liability can be imposed is limited? So long as a plaintiff can argue that the listed factors militate in favor of successor liability, the possibility exists that there can be such liability even in a case where liability was not assumed, where there was no merger or consolidation, where the buyer was not merely a "continuation" of the seller and where there was no fraud. Expect plaintiffs to make this argument in the future.

In other words, *Lelchook* might well be the start of a rethinking *both* of jurisdictional issues under the CPLR for M&A transactions *and* of the scope of successor liability. Or maybe not – maybe *Lelchook* is the paradigmatic one-off whose result was driven heavily by distaste for a terror-abetting entity and its efforts to avoid accountability. Only time will tell how this will shake out.

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