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Dutch court says nay to giving effect to US ruling on punitive damages

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Dutch courts can give effect to judgments issued by foreign courts, even in the absence of an international instrument facilitating such recognition, provided that certain key criteria are met. However, the Den Bosch Appeal Court recently ruled that a foreign ruling that orders someone to pay punitive damages cannot be recognised and enforced in the Netherlands.

Facts

The dispute arose following the purchase of a horse by an American citizen from a horse breeder and trainer in the early 2000s. Some years later, the American citizen requested that the trainer sell the horse again, which had remained in the Netherlands for training purposes.

An agreement was reached whereby the trainer would arrange the sale of the animal, keeping a 10% commission for his services. The trainer informed the seller that the horse could fetch a purchase price of between \$250,000 and \$350,000. A deal was concluded at \$347,000 and the trainer took his commission.

Subsequently, the seller discovered that the trainer had in fact sold the horse for \$480,000. The seller brought an action in the US District Court for the Middle District of Tennessee, claiming for compensatory and punitive damages. The Court found in favour of the seller and awarded him \$250,000 in compensation, and a further \$250,000 in punitive damages.

Several years later, after the death of the American citizen, his inheritors launched a legal action in the Netherlands in order to enforce the judgment.

Decision

Under article 431 of the Code of Civil Procedure, foreign judgments are unenforceable in the Netherlands in the absence of an international instrument (such as EU Regulation 1215/2012, which regulates, among other things, the recognition of judgments between EU member states). In the absence of such instrument for judgments originating from the United States, the claimants in this case were required to bring a new action in the Dutch courts.

The Supreme Court held in a ruling in 1924⁽¹⁾ and a subsequent ruling in 2014⁽²⁾ that the Dutch courts may limit such new actions to a summary review of the foreign ruling and adopt its findings, provided that it meets four conditions:

- the foreign court accepted jurisdiction on grounds which are accepted internationally;
- the foreign proceedings followed the basic principles for due process;
- the foreign judgment does not contravene Dutch public order; and
- the foreign judgment neither conflicts with a judgment rendered in the Netherlands nor with a judgment rendered in a jurisdiction in relation to which an international instrument for recognition exists.

The Den Bosch Appeal Court found that the Tennessee judgment met the criteria for the first, second and fourth condition. However, it held that part of the judgment came in conflict with Dutch public order.

Domestic liability law is aimed at bringing the victim back to the position as if the wrongful act had not occurred. Therefore, the Court recognised and gave effect to the Tennessee court's judgment for compensatory damages.

However, the Den Bosch Appeal Court rejected the request for summary recognition and enforcement of the punitive part of the judgment, which it ruled ran counter to domestic public order. The punitive element, which was intended to punish the trainer and act as a deterrent to future misdeeds, effectively introduced a criminal law aspect to what were civil proceedings. Therefore, the court declined to adopt the punitive damages as part of its ruling.

Comment

Punitive damages are considered to run counter to the fundamental character of Dutch liability law, which was designed to compensate a victim for their losses. Further action which might seek to punish a defendant or act as a deterrent to recidivism should be dealt with in Netherlands's criminal courts and should not play a role in civil proceedings.

For further information on this topic please contact Haco van der Houven van Oordt at AKD by telephone (+31 88 253 50 00) or email (hvanoordt@akd.nl). The AKD website can be accessed at www.akd.nl.

Endnotes

(1) ECLI:NL:HR:1924:19.

(2) ECLI:NL:HR:2014:2838.