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BKL SECURES COMPLETE VICTORY FOR KOREAN BANK IN USD 38 MILLION U.S. GARNISHMENT PROCEEDING

- Georgia Court Holds That State Garnishment Law Does Not Reach Customer Accounts in Korea

Bae, Kim & Lee LLC ("**BKL**") has secured a complete victory for a Korean bank ("**Bank A**") in a USD 38 million garnishment proceeding before a Georgia state court.

The proceeding placed Bank A, as garnishee, at risk of being held liable for the full amount of the underlying USD 38 million judgment and raised complex legal issues with significant financial implications. In response, BKL worked closely with U.S. counsel to develop and implement a coordinated defense strategy. Those efforts ultimately resulted in the court accepting Bank A's principal arguments, ordering the release of the garnishment, and dismissing the case against Bank A in its entirety.

The decision may provide an important reference point for Korean financial institutions facing similar attempts to reach customer accounts through overseas enforcement proceedings.

I. BACKGROUND AND KEY ISSUES

The case arose out of efforts to enforce an approximately USD 38 million judgment entered against Korean companies in Georgia. In the course of those enforcement efforts, the plaintiff commenced garnishment proceedings against Bank A as garnishee, proceeding on the basis that Bank A was a "financial institution" under Georgia law and therefore subject to the garnishment procedures applicable to financial institutions.

Bank A's Georgia office was a state representative office that did not engage in banking activities, while the relevant customer accounts and assets were located in Korea. The key issues were therefore whether Bank A qualified as a "financial institution" under Georgia's garnishment statute and whether a Georgia garnishment could reach customer accounts located in Korea.

II. BKL'S ROLE

BKL advised on the Korean-law issues arising from the proceedings, including whether a U.S. garnishment could reach accounts maintained in Korea and the restrictions under Korean financial laws on the disclosure of customer financial information and the freezing of customer accounts.

BKL worked alongside U.S. counsel in developing the litigation strategy and key submissions, including on the extraterritorial reach of Georgia's garnishment statute, international comity, and the legal status of Bank A's U.S. operations. This close collaboration continued through the hearing and the supplemental briefing that followed.

III. THE COURT'S DECISION

The Georgia court ultimately accepted both of Bank A's principal defenses.

First, the court held that Bank A did not qualify as a "financial institution" under Georgia's garnishment statute. In reaching that conclusion, the court considered the nature of Bank A's U.S. operations, including that its presence in Georgia was limited to a state representative office that did not engage in banking activities.[1] Because Bank A was not a "financial institution" for purposes of the statute, the financial-institution garnishment summons served on Bank A was improper, and personal jurisdiction over Bank A never attached.

Second, the court found that Bank A did not hold any accounts or funds belonging to the judgment debtors in the United States and expressly held that Georgia's garnishment statute "does not extend into Korea."

Accordingly, the court granted Bank A's motion, opened the default, directed the release of the garnishment, and dismissed the case against Bank A in its entirety.

IV. SIGNIFICANCE AND KEY TAKEAWAYS

The decision eliminated Bank A's potential exposure to approximately USD 38 million and resulted in a complete victory for the Bank. It is also significant as a landmark ruling on whether a garnishment under U.S. state law can reach customer accounts maintained in Korea by a Korean bank.

Importantly, the court did more than simply open Bank A's default. It also accepted Bank A's key arguments regarding the jurisdictional defect in the garnishment summons and the limits on the extraterritorial reach of Georgia's garnishment statute. The decision therefore has important implications for Korean financial institutions with various forms of presence in the United States that may face cross-border enforcement proceedings.

In light of the decision, Korean financial institutions with representative offices, branches, or other operations in the United States should consider reviewing the legal status and actual scope of activities of each U.S. office, as well as whether it may qualify as a "financial institution" under applicable state law. Institutions should also ensure that appropriate procedures are in place to promptly escalate any litigation or enforcement documents served on a U.S. office to their legal departments.

Drawing on the combined expertise of its International Dispute Resolution and Financial Services teams, BKL worked closely with U.S. counsel to bring together the Korean-law and U.S. litigation aspects of the case, eliminate approximately USD 38 million in potential

1 Bank A also operates a branch, as opposed to a representative office, in another U.S. state. The branch, however, does not solicit deposits or other customer funds from the general public as part of its business.

exposure, and secure dismissal of the case in its entirety. BKL will continue to draw on this experience and expertise to help Korean financial institutions navigate complex cross-border disputes and enforcement proceedings and pursue the best possible outcomes.

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