

1
2 UNITED STATES COURT OF APPEALS
3 For the Second Circuit
4

5
6 August Term, 2012
7

8 Argued: August 22, 2012 Decided: September 5, 2012
9 Amended: September 6, 2012
10

11 Docket No. 12-1857-cv
12

13
14 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
15 *Plaintiff-Appellant,*
16

17 —v.—
18

19 CANADIAN IMPERIAL BANK OF COMMERCE,
20 *Garnishee-Appellee,*
21

22 WILLIAM H. MILLARD,
23 *Defendant,*
24

25 THE MILLARD FOUNDATION,
26 *Intervenor.*
27

28
29
30 Before: CABRANES, STRAUB AND HALL, *Circuit Judges.*
31
32

33 On appeal from an order of the United States District Court for the Southern District of
34 New York (Lewis A. Kaplan, *Judge*) denying Plaintiff-Appellant's application for a turnover
35 order pursuant to N.Y. C.P.L.R. § 5225(b). We **CERTIFY** questions to the New York Court of
36 Appeals regarding the appropriateness of such an order where the assets are in the direct
37 possession not of the garnishee, but rather of the garnishee's subsidiary.
38

39
40 MICHAEL S. KIM (Melanie L. Oxhorn, *on the brief*) Kobre & Kim LLP,
41 New York, NY, for *Plaintiff-Appellant.*
42

43 SCOTT D. MUSOFF (Timothy G. Nelson, Gregory A. Litt, *on the brief*)
44 Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY, for
45 *Garnishee-Appellee.*

1
2 PER CURIAM:

3 For the reasons set forth in the District Court’s well-reasoned and thorough opinion,
4 *Commonwealth of the Northern Mariana Islands v. Canadian Imperial Bank of Commerce*, No.
5 11-mc-00099-LAK (S.D.N.Y. Apr. 12, 2012), ECF No. 97, resolution of this case turns upon
6 unresolved issues of New York State law regarding the interpretation of N.Y. C.P.L.R.
7 § 5225(b). We believe it is more appropriate for the New York Court of Appeals to address this
8 matter because it is in a better position than this Court to determine how § 5225(b) should be
9 interpreted in light of New York’s overall statutory scheme (including, but not limited to,
10 consideration of whether the identical language in § 5225(a) should be given the same meaning
11 as § 5225(b) and what the legislature intended when enacting § 5225(b)).

12 For the foregoing reasons and pursuant to New York Court of Appeals Rule 500.27 and
13 Local Rule 27.2 of this Court, we respectfully **CERTIFY** to the Court of Appeals the following
14 questions:

- 15 1. May a court issue a turnover order pursuant to N.Y. C.P.L.R. § 5225(b) to an entity that
16 does not have actual possession or custody of a debtor’s assets, but whose subsidiary
17 might have possession or custody of such assets?
- 18 2. If the answer to the above question is in the affirmative, what factual considerations
19 should a court take into account in determining whether the issuance of such an order is
20 permissible?

21 “As is our practice, we do not intend to limit the scope of the Court of Appeals’ analysis
22 through the formulation of our question, and we invite the Court of Appeals to expand upon or
23 alter [these] question[s] as it should deem appropriate.” *Joseph v. Athanasopoulos*, 648 F.3d 58,
24 68 (2d Cir. 2011).

1 It is hereby **ORDERED** that the Clerk of this Court transmit to the Clerk of the New
2 York Court of Appeals a copy of this opinion as our certificate, together with a complete set of
3 the briefs, the appendix, and the record filed in this Court by the parties. The parties shall bear
4 equally all fees and costs that may be imposed by the New York Court of Appeals in connection
5 with this certification. This panel will resume its consideration of this appeal after the
6 disposition of this certification by the New York Court of Appeals. The stay imposed by the
7 District Court shall remain in effect at least until we dispose of the case upon its return to this
8 panel.