involving a conspiracy and directly asked Mahoney during the hearing if he still held such beliefs, which he confirmed.

Therefore, it is reasonable to conclude that, if Dr. Kissin had observed evidence of the delusional thoughts Mahoney expressed to both Dr. Mart and the district court during the hearing, it is possible that her assessment of Mahoney's competency would have been different. It is of no consequence that her report was seemingly more thorough or based on observations made during a longer period, because she was not able to observe the delusional thoughts that both experts identified as the type of thought that affects a person's competency. According to both experts, delusional thoughts distort a person's understanding of one's legal situation and one's ability to consult with counsel. Given the "intensely fact-based nature of competency inquiries," we comfortably find that the district court did not clearly err in concluding that Mahoney was incompetent based on Dr. Mart's testimony and its own observations of his behavior. *Pike v. Guarino,* 492 F.3d 61, 75 (1st Cir.2007).

Having found that the district court did not clearly err in finding Mahoney incompetent, we need not reach Mahoney's final argument on appeal regarding the district court's alleged failure to find that he suffered from a severe mental illness, a requisite finding under applicable Supreme Court precedent for a court to deny a competent defendant the right to self-represent. *See Indiana v. Edwards,* 554 U.S. 164, 178, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008) ("The Constitution permits States to insist on representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.").

III. *Conclusion*

For the reasons set forth above, we affirm the district court's order finding Mahoney incompetent pursuant to section 4241(d).

Affirmed.

Commonwealth of the NORTHERN MARIANA ISLANDS, Plaintiff–Appellant,

v.

CANADIAN IMPERIAL BANK OF COMMERCE, Garnishee–Appellee,

William H. Millard, Defendant,

The Millard Foundation, Intervenor.

Docket No. 12–1857–cv.

United States Court of Appeals, Second Circuit.

Argued: Aug. 22, 2012.

Decided: May 15, 2013.

Background: Commonwealth of Northern Mariana Islands (CNMI), as judgment creditor, moved for turnover order against Canadian bank, in order to obtain judgment debtor's assets from bank's Cayman Islands subsidiary in which judgment debtor allegedly had bank accounts. The United States District Court for the Southern District of New York, Lewis A. Kaplan, J., denied motion for turnover order but granted preliminary injunction pending appeal. CNMI appealed. The Court of Appeals, 693 F.3d 274, certified questions to New York Court of Appeals, which accepted and answered questions, 21 N.Y.3d 55,

967 N.Y.S.2d 876, 990 N.E.2d 114, 2013 WL 1798585.

Holding: The Court of Appeals held that turnover order could not be issued to bank lacking actual possession or custody of judgment debtor's assets.

Affirmed in part and vacated in part.

1. Execution ⇐402(3)

Under New York law, for a court to issue a post-judgment turnover order against a banking entity, that entity itself must have actual, not merely constructive, possession or custody of the assets sought by the judgment creditor; that is, it is not enough that the banking entity's subsidiary might have possession or custody of a judgment debtor's assets. N.Y.McKinney's CPLR 5225(b).

2. Execution ⇐402(3)

Canadian bank lacked "possession or custody" over judgment debtor's Cayman Islands bank accounts, within meaning of New York law authorizing issuance of post-judgment turnover order against bank that had actual, not merely constructive, possession or custody of judgment debtor's assets sought by judgment creditor, where Canadian bank's 92% ownership interest merely gave bank control over its Cayman Islands subsidiary in which judgment debtor allegedly had bank accounts, but not actual possession or custody of debtor's assets. N.Y.McKinney's CPLR 5225(b).

See publication Words and Phrases for other judicial constructions and definitions.

Michael S. Kim, Kobre & Kim LLP, New York, NY, Melanie L. Oxhorn, Ithaca, NY, for Plaintiff–Appellant.

Scott D. Musoff (Timothy G. Nelson, Gregory A. Litt, on the brief), Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY, for Garnishee–Appellee.

Before: CABRANES, STRAUB and HALL, Circuit Judges.

PER CURIAM:

This is an appeal from an order of the District Court for the Southern District of New York (Lewis A. Kaplan, *Judge*) denying Plaintiff Commonwealth of the Northern Mariana Islands' ("CNMI") motion for a turnover order under Rule 69 of the Federal Rules of Civil Procedure and N.Y. CPLR § 5225(b), and granting an injunction pending appeal. After hearing oral argument, we certified to the New York Court of Appeals the following questions:

1. May a court issue a turnover order pursuant to N.Y. CPLR § 5225(b) to an entity that does not have actual possession or custody of a debtor's assets, but whose subsidiary might have possession or custody of such assets?

2. If the answer to the above question is in the affirmative, what factual considerations should a court take into account in determining whether the issuance of such an order is permissible?

N. Mar. I. v. Canadian Imperial Bank of Commerce, et al., 693 F.3d 274, 275 (2d Cir.2012).

[1] The New York Court of Appeals accepted certification. *N. Mar. I. v. Canadian Imperial Bank of Commerce,* 19 N.Y.3d 1040, 954 N.Y.S.2d 2, 978 N.E.2d 594 (2012). The court answered the first question in the negative, holding that in order "for a court to issue a post-judgment turnover order pursuant to CPLR 5225(b) against a banking entity, that entity itself must have actual, not merely constructive, possession or custody of the assets sought. That is, it is not enough that the banking entity's subsidiary might have possession or custody of a judgment debtor's assets."

N. Mar. I. v. Canadian Imperial Bank of Commerce, No. 58, 21 N.Y.3d 55, 967 N.Y.S.2d 876, 877, 990 N.E.2d 114, 115, 2013 WL 1798585, slip op. at *1 (N.Y. Apr. 30, 2013). The court thus declined to answer the second question. *Id.* 967 N.Y.S.2d at 879, 990 N.E.2d at 117, 2013 WL 1798585, at *3. In light of its decision, we now AFFIRM the order of the District Court and VACATE the injunction.

[2] Familiarity with the facts of this case, as set forth in the District Court opinion below and the New York Court of Appeals' opinion, is presumed. Previously, the District Court, in a well-reasoned and thoughtful opinion, denied Plaintiff's motion for turnover, finding that the Canadian Imperial Bank of Commerce ("CIBC") could not be said to have "possession or custody" over Defendant Millard's Cayman Islands bank accounts within the meaning of N.Y. CPLR § 5225(b). *N. Mar. I. v. Millard,* 287 F.R.D. 204, 213–14 (S.D.N.Y. 2012). In support of its motion, CNMI had pointed to, *inter alia,* CIBC's 92 percent ownership of CIBC FirstCaribbean International Bank ("CFIB"), a governance structure by which CIBC had full oversight of CFIB's operations, as well as overlaps in personnel between the two entities. *Id.* at 206–07. Examining the plain language of the statute, the District Court reasoned that omission in the relevant section of the word "control," which was used elsewhere in the CPLR, could not be treated as inadvertent. *Id.* at 210–11. Thus, the court found that while CNMI had focused on the "practical ability" of CIBC to order CFIB to turn over the judgment debtors' assets, *id.* at 208, it had not satisfied its burden under N.Y. CPLR § 5225(b) to show that CIBC was in "possession or custody" of the Millards' CFIB accounts. Further, although the Millards' accounts were housed at CFIB, that entity, "however closely linked to CNMI," was not served in this action. *Id.* at 214.

The New York Court of Appeals unambiguously confirmed the District Court's conclusion when it held that in order "for a court to issue a post-judgment turnover order pursuant to CPLR 5225(b) against a banking entity" it was "not enough that the banking entity's subsidiary might have possession or custody of a judgment debtor's assets." *N. Mar. I.,* 967 N.Y.S.2d at 877, 990 N.E.2d at 115, 2013 WL 1798585, 2013 WL 1798585, at *1. The New York Court of Appeals, much like the District Court, reasoned that the plain language of § 5225(b) "refers only to 'possession or custody,' excluding any reference to 'control,' " *id.,* 967 N.Y.S.2d at 879, 990 N.E.2d at 117, 2013 WL 1798585, at *3, and that "[t]he absence of this word is meaningful and intentional," *id.*

With this answer to the dispositive certified question, we now AFFIRM the District Court's opinion.

Recognizing that it was dealing with an "unsettled question of New York law on which it [was] unlikely to have the last word," the District Court issued an injunction preventing the further dissolution or movement of the Millards' accounts pending appeal. *N. Mar. I.,* 287 F.R.D. at 214–215. Upon affirmance of the District Court's order denying the motion for a turnover order, we hereby VACATE that injunction. The mandate shall issue forthwith.