Appeal Nos. 18-CV-1257 and 19-CV-64

In the

District of Columbia Court of Appeals

NICHOLAS CZAJKA,

Appellant,

v.

HOLT GRAPHIC ARTS, INC.,

Appellee.

On Appeal from the Superior Court of the District of Columbia, Civil Division
Case No.: 2018-CA-003673 R(RP)
Judge William M. Jackson

Brief of Amicus Curiae the D.C. Land Title Association in Support of Reversal on the Behalf of Appellant Nicholas Czajka

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RULE 28(a)(2) DISCLOSURE OF PARTIES AND COUNSEL TO THIS APPEAL

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Pursuant to Rules 29(c) and 28(a)(2)(B), the D.C. Land Title Association has no parent corporation or subsidiaries and no publicly held corporation holds 10% or more of its stock.

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STATEMENT OF INTEREST

The D.C. Land Title Association ("DCLTA"), pursuant to D.C. Ct. App. Rule 29, files this Amicus Curiae Brief in support of the en banc review of the appeal of Appellant Nicholas Czajka from the majority of the three-judge panel[1] of this honorable Court's Order dated November 23, 2022 affirming the trial court's Judgment dated September 24, 2018 in favor of Appellee Holt Graphic Arts, Inc.

Incorporated in 1997 and located exclusively in Washington, D.C., DCLTA is the recognized representative of the local title insurance industry. DCLTA's membership encompasses every major title insurance underwriter in the District of Columbia, as well as hundreds of other individuals and entities that participate in real estate transactions, including lenders, developers, builders, attorneys, title agents, abstracters, real estate brokers, surveyors, and consultants. DCLTA is the District of Columbia's "state" affiliate of the Washington D.C.-based American Land Title Association ("ALTA").

DCLTA promotes the safe, certain, and efficient transfer of D.C. real estate. To further this end, it advocates high standards of quality and diligence for land title record searches and the preparation of title insurance documents, the elimination of risk before title insurance is issued so that market participants have the best possible chance of avoiding land title problems in the future, and the issuance of title insurance policies to both land purchasers and their lenders to protect against any title difficulties that may arise.

One of the potential risks or problems associated with the issuance of title insurance involves the accurate determination as to whether title to property is encumbered by a court judgment. This appeal involves such a potential situation and its ultimate decision could have a

[1] The panel was not unanimous, rendering a 2-1 opinion.

wide-ranging negative impact on the local title insurance industry. The members of the DCLTA therefore have a substantial interest in the outcome of this appeal.

D.C. Code §15-101(a) allows money judgments rendered by the Superior Court of the District of Columbia to be enforced for a period of twelve years, beginning on the day the judgment is entered by the court. D.C. Code § 15-352 mandates that foreign judgments be treated uniformly with Superior Court judgments. Accordingly, the title industry has worked under the assumption that foreign judgments may be filed in the District Recorder of Deeds as liens on real property in D.C. for twelve years following the date that the judgment is entered in the foreign court. In this case, the majority of the 3-judge panel has interpreted § 15-352 to mean that the twelve-year enforcement period begins on the day the foreign judgment is recorded in the District.

The majority opinion of the three-judge panel of this honorable Court's interpretation of § 15-352, if upheld, imposes upon title insurers risks inimical to the scope and purpose of title insurance. When making decisions related to coverage, DC title insurers have long relied upon the expectation that a judgment can encumber a property for a maximum of twelve years since judgment was entered. The panel's ruling threatens to cast doubt on those insurers' decisions and to create needless uncertainty where none existed before. The ruling, if upheld, will likely cause significant chaos affecting many citizens and businesses in the District which seek to obtain title insurance for transfers of real property interests. Additionally, and possibly much worse, if the three-judge panel's interpretation is upheld and applied retroactively, it could cause scores of prior transactions involving many millions of dollars to suddenly become subject to legal attack by judgment creditors and other interested parties.

The deleterious effects of the majority of the panel's interpretation are apparent. This interpretation invariably discourages title insurance companies from issuing insurance to many

real estate purchasers and their lenders. Further, it denies participants in real estate transactions – including lenders, title insurance underwriters, attorneys, title agents, land developers, and builders – the certainty that they require to conduct business, and thereby thwarts the efficient transfer of real estate. Finally, the three-judge panel's interpretation exposes these participants to potential legal liability associated with the issuance of insurance.

The industry-wide consequences of the three-judge panel's majority Memorandum and Order affirming the trial court's decision has prompted DCLTA to file the Amicus Curiae Brief. As explained more fully below, the Association believes that the panel erred and accordingly should be reversed.

ARGUMENT

I. THE MAJORITY'S INTERPRETATION OF D.C. CODE § 15-352 CANNOT BE READ IN HARMONY WITH THE PLAIN LANGUAGE OF D.C. CODE § 15-101(a)

As described in more detail in the parties' briefs, this appeal involves the interpretation of D.C. Code § 15-352, governing the filing of foreign judgments, when read in tandem with D.C. Code § 15-101(a), which defines the enforceability of money judgments rendered in the Superior Court of the District of Columbia as "for the period of twelve years only from the date when an execution might first be issued thereon." The trial court found, and the majority of the three-judge panel of this honorable Court upheld, that the twelve-year period of enforceability of foreign judgments tolls when a judgment creditor files the judgment in the Superior Court of the District of Columbia, enabling judgment creditors to delay enforceability and acquire more than 12 years' time to enforce a foreign judgment in the District. The question presented is whether this interpretation of § 15-352 is accurate, or whether the time for enforceability in Washington D.C. should toll when the judgment is entered in the foreign court.

When engaging in statutory interpretation, a court must first look to see "whether the statutory language at issue is plain and admits of no more than one meaning*." Facebook, Inc. v. Wint*, 199 A.3d 625, 628 (D.C. 2019). "The preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *Janko v. Gates*, 741 F.3d 136, 139–40 (D.C. Cir. 2014) (quoting *BedRoc Ltd. v. United States*, 541 U.S. 176, 183 (2004) (plurality opinion of Rehnquist, C.J.)). If ambiguity exists, courts should also consider statutory context and structure, evident legislative purpose, and the potential consequences of adopting a given interpretation. *J.P. v. District of Columbia*, 189 A.3d 212, 219 (D.C. 2018); *Cherry v. District of Columbia*, 164 A.3d 922, 928 (D.C. 2017); *Frey v. United States*, 137 A.3d 1000, 1004 (D.C. 2016).

Both of the statutes relevant to this case, when interpreting the plain language therein, establish that the timeframe for enforceability of a foreign judgment in the District begins when that judgment is entered by the foreign trial court. Section 15-352 states, in relevant part, that "[a] foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner." The plain language of this statute indicates that foreign judgments are to be treated the same way that Superior Court judgments are treated. Thus, it stands to reason that foreign judgments are enforceable in D.C. for the period of twelve years from the date when an execution might first be issued thereon in the jurisdiction in which the judgment was originally entered, just as enforceability of a Superior Court judgment begins at the time the Superior Court enters judgment.

Section 15-101(a) also supports this interpretation. That statute states, in relevant part, that a money judgment issued by the Superior Court of the District of Columbia "is enforceable, by execution issued thereon, for the period of twelve years ***only*** from the ***date when an execution might first be issued thereon***[.]" (emphasis added). There is no dispute that, pursuant to § 15-101(a), domestic judgment creditors have twelve years to collect on Superior Court judgments beginning on the day the judgment is entered by that court. The language of the statute makes clear that the date the Superior Court enters its judgment is the *only* date on which the clock begins to run. It thus follows that the date a foreign trial court enters judgment should start the clock as well, especially considering the mandate of § 15-352 to treat foreign judgments the same as Superior Court judgments.

Further, the inclusion of the word "might" in § 15-101(a) indicates that the legislature intended the twelve-year period to begin to run on the earliest day possible – the first day that

execution *might* be possible. The majority opinion, however, would allow a judgment creditor to wait until the very last day execution would be possible in the original jurisdiction before filing the foreign judgment in D.C. Superior Court, thereby restarting the clock for twelve years.

II. THE MAJORITY'S INTERPRETATION CREATES ILLOGICAL OUTCOMES

The majority's interpretation essentially couples § 15-101(a) with the enforcement periods of foreign jurisdictions, permitting judgment creditors to select for themselves when the enforcement period in D.C. begins. Should they choose to delay filing in D.C., foreign judgment creditors are granted the windfall of the time periods of both the foreign jurisdiction *and* the District in order to enforce their judgments. Under the panel's majority opinion judgment debtors may have to wait with bated breath, potentially for years, to find out whether their judgment creditor will record a judgment in the D.C. Superior Court, thus starting the twelve-year enforceability clock. Such debtors would be unfairly disadvantaged by allowing the judgment creditor to extend the statutory enforceability of its judgment without complying with the laws pertinent to renewing judgments in the foreign jurisdiction in which the judgment is entered. Thus, extending the period of enforceability beyond the statute of limitations established by the legislatures of either jurisdiction. See examples infra.

The alternative statutory interpretation put forth by Judge Easterly in her dissenting opinion, however, permits the District to retain autonomy in the governance of judgment enforcement and creates certainty as to the time period of enforceability. District residents, property owners, and industry professionals can be assured that a judgment expires twelve years after it is entered in the trial court, regardless of where that trial court may be. Foreign judgments are not afforded preferential treatment.

This issue was discussed in *Coleman v. WGST, LLC*, 328 So. 3d 698, 703 (Miss. Ct. App.), reh'g denied (Aug. 24, 2021), cert. denied, 329 So. 3d 1200 (Miss. 2021), interpreting Mississippi's

Uniform Enforcement of Foreign Judgment act, which has language substantially similar to the District's statute. The Court of Appeals of Mississippi determined that "[e]nrolling a foreign judgment does not reset the applicable statute of limitations period, and to hold otherwise would allow foreign judgments more time for enforcement than judgments rendered within the State of Mississippi. It would also contravene the plain terms of [Mississippi's Uniform Enforcement of Foreign Judgment Act]." *Id.* at 703.

Here, the majority's interpretation not only gives preferential treatment to foreign judgments over local judgments, it also gives preferential treatment to certain foreign judgments over other foreign judgments. A 50-state review of laws defining money judgment execution time periods reveals that, while states such as Kansas[2], Michigan[3], and Pennsylvania[4] limit the enforceability of a judgment to five years post-entry, states such as Rhode Island[5], Indiana[6], Virginia[7], and Florida[8] extend the enforceability period to twenty years. Thus, depending on how the majority's interpretation is extrapolated, it is possible for one foreign judgment to be enforceable in Washington D.C. for a period of 17 years, while another could be enforced for 32 years. Considering that the statute being interpreted to obtain such a result is entitled the "***Uniform*** Enforcement of Foreign Judgments Act," (emphasis added) such inconsistencies reveal the error in this interpretation and lend credence to the minority opinion's analysis.

[2] Kan. Stat. Ann. § 60-2043.
[3] Mich. Comp. Laws Ann. § 600.2809.
[4] Pa. R.C.P. No. 3023.
[5] R.I. Gen. Laws Ann. § 9-26-33.
[6] Ind. Code. Ann. § 34-11-2-12.
[7] Va. Code Ann. § 8.01-251.
[8] Fla. Stat. Ann. § 55.081.

III. THE MAJORITY'S INTERPRETATION CREATES NEEDLESS CONFUSION IN THE REAL ESTATE INDUSTRY AND AN UNREASONABLE RESTRAINT ON THE ALIENATION OF REAL PROPERTY

The land title industry requires a substantial degree of certainty in order to operate. Along with the confusion between judgment debtors and creditors caused by the majority's opinion, the entire real estate industry of the District of Columbia will suffer negative impacts by the uncertainty resulting from upholding the majority's decision. Quite simply, the majority's opinion leaves too many variables and too many unanswered questions to permit real estate attorneys, title companies, and title insurance underwriters to make firm determinations as to the status of clean title for District of Columbia properties. It is a basic business principle that uncertainty in the market only serves to hurt consumers, who will bear the financial brunt of the effects of the majority of the 3-judge panel's decisions. Here, real estate consumers face the risk of reduced title insurance coverage at higher premiums, and higher costs and fees for real estate transactions overall.

Amicus provides this Court with several examples to demonstrate the confusion caused by the 3-judge panel's interpretation of § 15-352:

> EXAMPLE 1: Judgment Debtor owns real property in Washington, D.C. A money judgment is entered against Judgment Debtor in the state of Virginia. Virginia permits enforcement of a judgment for up to 20 years after judgment is entered.[9] 19 years after the judgment is entered, Judgment Creditor attempts to record the judgment in the District. Is this judgment, which would have long been expired had it originally been entered in D.C. Superior Court, enforceable in Washington D.C. for an additional 12 years, for a total of 31 years of enforceability, thus imputing three decades of encumbrance on the real property?
>
> EXAMPLE 2: Judgment Debtor owns real property in Washington, D.C. A money judgment is entered against Judgment Debtor in the state of Virginia. Virginia permits enforcement of a judgment for up to 20 years after judgment is entered. 19 years after the judgment is entered, Judgment Creditor attempts to record the judgment in Connecticut, which also permits

[9] Va. Code Ann. § 8.01-251.

> judgment enforcement for 20 years[10] and which has (for this hypothetical) also interpreted its Uniform Judgment statute in the way the District of Columbia's panel have interpreted D.C. Code § 15-352 in this case. Judgment Creditor gains an additional 20 years to enforce the judgment in Connecticut. Is Judgment Creditor permitted to record the judgment in Washington D.C. 19 years later, and 38 years after it was originally entered, essentially allowing Judgment Creditor to "forum-hop" in perpetuity?
>
> EXAMPLE 3: Judgment Debtor owns real property in Washington, D.C. A money judgment is entered against Judgment Debtor in the state of Virginia. Virginia permits enforcement of a judgment for up to 20 years after judgment is entered.[11] 19 years after the judgment is entered, and 7 years after such judgment would be rendered unenforceable in the District had the judgment originally been entered therein, Judgment Debtor sells the real property to Third Party. Could Judgment Creditor record the Virginia judgment in D.C. and attempt to enforce it against Third Party for another 12 years?
>
> EXAMPLE 4: Judgment Debtor owns real property in Washington, D.C. A money judgment is entered against Judgment Debtor in the state of Utah. Utah permits enforcement of a judgment for up to eight years after the judgment is entered.[12] The eight-year enforcement expires before Judgment Creditor records the judgment in the District. Is this judgment, which is essentially "dead" in its original jurisdiction, recordable and enforceable in D.C.?
>
> EXAMPLE 5: Judgment Debtor owns no real property. A money judgment is entered against Judgment Debtor in the state of Virginia. Virginia permits enforcement of a judgment for up to 20 years. 19 years after the judgment is entered, Judgment Debtor inherits property in the District. Could Judgment Creditor seek to collect on the 19-year-old judgment by recording the judgment and enforcing it against the decedent's District of Columbia probate estate?

Considering that courts refrain from opining on hypotheticals, none of these questions can be answered until either (1) the legislature weighs in on the issue; or (2) each fact scenario arises and is tested in the courts. Unless and until one or the other of these things happen, the entire real estate industry will remain in limbo, unsure of how to consider the impact of foreign judgments

[10] Conn. Gen Stat. Ann. § 52-380a.
[11] Va. Code Ann. § 8.01-251.
[12] Utah Code Ann. § 78B-5-202.

on clean title. Those responsible for making such decisions – title agents, real estate attorneys, and title insurance underwriters – will be forced to conduct extensive, individualized 50-state surveys to determine the status of any foreign judgments and what the laws are in each jurisdiction regarding the enforceability of the same. Particularly considering the exceptionally transient nature of D.C. residents, many of whom having moved to the District temporarily from out of state, and considering that the goal of § 15-352 is to provide a uniform system for enforcing foreign judgments, the lack of uniformity in the methodology for applying § 15-352 to particular foreign judgments creates unnecessary confusion. Such uncertainty will invariably result in a chilling effect on the real estate market, fewer title insurers willing to provide policies to home buyers and lenders, higher premiums for those who do, lenders refusing to issue mortgages due to lack of title coverage, and a general increase in the cost of real estate transactions in one of the most expensive markets in the country – not to mention the highly unfortunate outcome of innocent homeowners, such as Appellant, facing judicial foreclosure or enforcement of the lien through a writ of fieri facias and marshal sale due to an error in interpreting the various statutes at play.

The extension of the statute of limitations under the panel's majority opinion creates an unfair and unreasonable restraint on the alienation of real property. In the facts underlying this case, the judgment was believed to be expired based on a calculation of twelve years from the date when the judgment was entered in the foreign jurisdiction and therefore, the judgment had expired. Based on the belief that the judgment had expired, the property was sold without the judgment being satisfied and title insurance was issued. Nearly seventeen years after the judgment was entered in California, even though the judgment had expired and was not renewed, the judgment creditor was able to enforce judgment against an unsuspecting bona fide purchaser because the judgment creditor, simply by delaying filing its judgment in D.C. Superior Court, bought more

time to enforce its judgment. Thus, a judgment debtor could be restrained from selling its real property free of the judgment for decades.

The minority's opinion, on the other hand, is clear: a foreign judgment is enforceable in Washington D.C. for 12 years after it is entered in the original foreign trial jurisdiction. Those in the real estate market can have confidence in their decisions related to clean title with this interpretation. Not only is the dissent's interpretation harmonious with the plain language of the statute, but by decoupling the D.C. law from those in other jurisdictions, this interpretation prevents a bevy of unanswered questions that could have a rippling effect on the real estate industry.

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CONCLUSION

For the foregoing reasons, Amicus Curiae the D.C. Land Title Association respectfully requests that this honorable Court, on en banc review, reverse the decision of the three-judge panel affirming the ruling of the trial court.

Respectfully submitted,

COUNCIL, BARADEL, KOSMERL & NOLAN, P.A.

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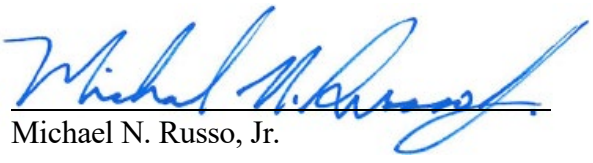
CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2023, true copies of the foregoing Brief of Amicus Curiae were served via the District of Columbia's e-filing service on all parties of record.



Michael N. Russo, Jr.

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

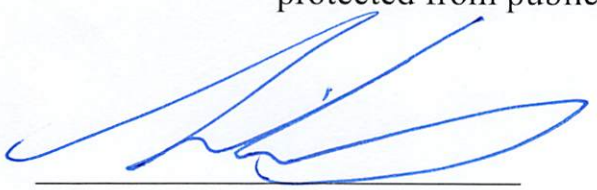
2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

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