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

DISTRICT OF COLUMBIA COURT OF APPEALS

NICHOLAS CZAJKA,

Appellant,

v.

HOLT GRAPHIC ARTS, INC.

Appellee.

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

REPLY BRIEF OF APPELLANT

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INTRODUCTION

On November 15, 2001, Appellee Holt Graphic Arts, Inc. ("HGA") obtained a judgment against Allen Wilson ("Mr. Wilson") in the Superior Court of the State of California, County of Alameda (the "Judgment"). In 2006, HGA domesticated the Judgment in the District of Columbia. Pursuant to D.C. Code § 15-101(a), the Judgment was enforceable for a period of twelve years from the date on which execution first could have issued on the Judgment. Under California law, execution on the Judgment could have issued in California as early as November 2001. Therefore, under District of Columbia law, the Judgment was enforceable for a period of twelve years beginning in November 2001. The twelve-year enforcement period expired in November 2013.

The lawsuit giving rise to this appeal involves the real property, once owned by Mr. Wilson, located at 355 I Street, SW, Unit S121, Washington, D.C. 20024 (the "Property"). The personal representative of Mr. Wilson's estate sold the Property to Appellant's predecessors-in-interest, Dylan Kean and Amanda Blatnik (the "Defendants") in 2017. The Defendants sold the Property to Appellant, the current owner, on April 12, 2019.

The only question on appeal is the duration of the enforceability period of the Judgment under District of Columbia law. HGA attempts to obfuscate the question before this Court by introducing issues that are not on appeal and are not pertinent

to the issue that is. Specifically, HGA raises five arguments: (i) that the D.C. Superior Court has had custody of the Property since 2007; (ii) that Mr. Wilson's declaration of homestead exemption tolled the twelve-year statute of limitations for enforcing the Judgment; (iii) that the validity of the domesticated Judgment was already adjudged with finality; (iv) that federal law requires this Court to treat a domesticated judgment as a new judgment with a twelve-year enforcement period running from the date of domestication; and (v) that Defendants did not raise the issue of domestication until after the D.C. Superior Court had granted summary judgment against them.

The first argument fails because it is based on the false premise that the D.C. Superior Court took custody of the Property upon the issuance of the writ of execution in 2007.[1] It is well-established that the mere issuance of a writ of execution, without more, does not give the D.C. Superior Court custody over property subject to a writ of execution. Furthermore, HGA's underlying assumption is contradicted by the trial court record from the 2006 Case. App. 1-6. Because the Property was never in the custody of the D.C. Superior Court, HGA's allegation that Appellant was prohibited from conveying it is meritless.

[1] The 2007 writ was not issued in the lawsuit giving rise to this appeal but rather in a separate lawsuit styled as Holt Graphic Arts, Inc. v. Allen Wilson, Case No. 2006 CA 008134 F (D.C. Sup. Ct. 2006) (the "2006 Case"). App. 80-81. Neither Appellant nor the Defendants were ever made parties to the 2006 Case. App. 1-6.

The second argument fails because any declaration of homestead exemption claimed by Mr. Wilson would have applied only to the Property and would not affect HGA's ability to execute on the Judgment vis-à-vis his other assets. The statute that allows judgment debtors to declare their primary residences exempt from execution does not purport to toll the limitations period for enforcing the underlying judgments. It simply means that a judgment creditor in such a case has fewer assets on which it can execute during the twelve-year lifespan of the judgment.

The third argument fails insofar as it is unsupported by fact or law. HGA asserts that it timely revived the Judgment and that the revival stands alone as a final, enforceable judgment. More specifically, it contends that on March 12, 2017, it moved to revive the Judgment in the 2006 Case, that the court revived the Judgment, and that the revival was final. However, HGA fails to provide any legal or factual support for its bald assertions.

The fourth argument fails because the plain language of D.C. Code §§ 15-101 and 15-352 is unclear, and HGA's naked assertion to the contrary is unsupported by anything in its brief. The absence of case law in the District of Columbia interpreting the relevant provisions of D.C. Code §§ 15-101 and 15-352 requires District of Columbia courts to look to case law from other jurisdictions for guidance. Because the applicable statutes in the District are modeled on the Uniform Enforcement of Foreign Judgments Act (the "UEFJ"), Appellant looked to case law from

jurisdictions that also modeled their corresponding statutes on the UEFJ. HGA's assertion that the statutes cited by Appellant are not persuasive because they are not modeled on the UEFJ is patently false.

The fifth argument fails because, notwithstanding HGA's blanket assertion to the contrary, Defendants raised the issue on appeal before the D.C. Superior Court in their November 21, 2018 motion and timely appealed the D.C. Superior Court's ruling on that motion.

ARGUMENT

A. HGA Falsely Claims that the D.C. Superior Court Has Custody of the Property.

HGA contends that the Property was automatically seized by the trial court in the 2006 Case upon its issuance of a writ of *fieri facias* on June 28, 2007. HGA Br. 1. HGA also claims that the Property has remained in the trial court's custody since that time. HGA Br. 1, 12, 14. Yet, in the very same paragraph, HGA acknowledges that the writ "from 2007 remained *extant*, *unexecuted* and *unreturned*." HGA Br. 14. HGA fails to explain how the D.C. Superior Court came to have custody over the Property given that the 2007 writ was never executed or returned.

In fact, the proposition that the issuance of a writ of *fieri facias* conferred custody of the Property on the D.C. Superior Court is contradicted by a case that HGA cited in its own brief. See Conard v. Atlantic Ins. Co. of N.Y., 26 U.S. 386, 443 (1827). In Conard, the Supreme Court of the United States explained that a

general lien by judgment on land does not, in and of itself, constitute a right in the land itself. See 26 U.S. at 443. Instead:

> It only confers a right to levy on the same, to the exclusion of other adverse interests, subsequent to the judgment . . . . *But, subject to this, the debtor has full power to sell, or otherwise dispose of the land. His title to it is not divested or transferred by the judgment to the judgment creditor.*

Id. (emphasis added). The holding in Conard erodes HGA's argument that the court obtained custody of the Property upon its issuance of a writ of *fieri facias*.

B. HGA Obfuscates the Issues Surrounding the Stay of Execution by Mischaracterizing the Effect of Declaring Property Exempt.

The operative statute at issue in this lawsuit states as follows:

> Except as provided by subsection (b) of this section, every final judgment or final decree for the payment of money rendered in the –
>
> > (1) United States District Court for the District of Columbia; or
> > (2) Superior Court for the District of Columbia,
>
> When filed and recorded in the office of the Recorder of Deeds 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, or from the date of the last order of revival thereof. *The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution*.

D.C. Code § 15-101(a) (emphasis added).

The statute specifically describes the circumstances that will toll the enforcement period. See id. A judgment debtor's declaration of homestead

exemption under D.C. Code § 15-501(a) is noticeably absent from the list of circumstances that will operate as a stay of the enforcement period. The statute allows homeowners to declare their primary residence exempt from distraint, levy, seizure, and sale on execution. See D.C. Code § 15-101(a). Specifically:

> The following property of the head of a family or householder residing in the District of Columbia . . . is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:
> . . .
> (14) the debtor's aggregate interest in real property used as the residence of the debtor, or property that the debtor or a dependent of the debtor in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or dependent of the debtor, except nothing relative to these exemptions shall impair the following debt instruments on real property: deed of trust, mortgage, mechanic's lien, or tax lien[.]

D.C. Code § 15-501(a).

The statute exempts the subject property from "distraint, attachment, levy, or seizure and sale on execution or decree . . ." but does not purport to stay a judgment creditor's ability to enforce a judgment using other means, nor does it purport to toll the enforcement period. See D.C. Code § 15-101(a). HGA even acknowledges the limited nature of the exemption in its brief, stating that "where a homestead exemption is provided, it is declared to be exempt only from sale – not also from execution or attachment." HGA Br. 29 (quoting In re Lynch, 187 B.R. 536, 542-43 (Bankr. E.D. Ky. 1995)) (internal citations and quotations omitted). Notwithstanding, HGA repeatedly claims that the period for enforcing the Judgment

was stayed from the time Mr. Wilson filed his declaration of exemption until the time of his death in 2016. HGA Br. 1, 14-15 (asserting that the writ was "issued by the Superior Court and then stayed until 2016 by Wilson's declaration of homestead"). In light of the foregoing, Mr. Wilson's declaration of exemption under D.C. Code § 15-501(a) did not stay HGA's time period for enforcing the Judgment. HGA's claims to the contrary are without merit.

Contrary to HGA's assertions, the only time that does not count toward the period of enforcement is "[t]he time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal . . . ." D.C. Code § 15-101(a). This interpretation of the statute has been adopted by the courts. Indeed, this Court has expressly held that "[a] stay must be affirmatively ordered by the court, or a supersedeas bond must be obtained and filed, before the twelve-year enforcement period can be tolled under section 15-101(a)(2)." Dickey v. Fair, 768 A.2d 540, 541-42 (D.C. 2001). The judgment creditor in Dickey argued that the judgment debtor's filing of an appeal without a supersedeas bond stayed the period for enforcing the judgment. See id. at 541. The Court disagreed, noting that none of the requirements for tolling the enforcement period, *i.e.*, the posting of a supersedeas bond or the entry of a court order to that effect, existed. See id. at 541-42. Thus, the Court held that "the twelve-year period was never tolled" and that the judgment expired twelve years from the

date execution first could have issued thereon. See id. at 542. In so doing, the Court explained that the manner in which a judgment can be enforced is a different issue than whether the judgment can be enforced at all. See id. (citing Lomax v. Spriggs, 404 A.2d 943 (D.C. 1979)) (superseded by statute, as explained in Dickey).[2]

The absence of any stay in the enforcement period is further evidence by D.C. Code § 15-354(b), which states: "If the judgment debtor shows the Superior Court any ground upon which enforcement of a judgment of the Superior Court would be stayed, the Superior Court shall stay enforcement of the foreign judgment for an appropriate period upon requiring the same security for satisfaction of a judgment that is required in the District." The D.C. Superior Court has not entered any order purporting to stay the Judgment – whether in the instant case or in the 2006 Case to which neither the Defendants nor the Appellant were parties.

HGA has not identified any written agreement filed in this case or the 2006 Case, or any other order, that stayed HGA from enforcing the Judgment. At most, HGA could argue that the enforcement period was tolled starting March 14, **2019** –

[2] In Lomax, the judgment creditor sought to enforce a child support order by attaching the wages of the judgment debtor, who was a federal employee. See 404 A.2d at 953. The law at that time prohibited judgment creditors from garnishing the wages of federal employees, making the judgment debtor's wages exempt from attachment. See id. The judgment creditor argued that its inability to garnish the judgment debtor's wages stayed the enforceable period of the judgment. See id. The Court disagreed, finding that the judgment creditor's ability to attach that property had no effect on the lifetime of the judgment. See id. at 953-54.

the date on which Defendants filed their supersedeas bond. However, the question of whether the filing of the supersedeas bond tolled the enforcement period is not on appeal, and the issue is not properly before this Court. HGA has never raised with the D.C. Superior Court the question of whether Defendants were entitled to transfer the Property after the posting of the bond. As such, the D.C. Superior Court never issued an order on that question that could have been appealed. Nor has HGA claimed that such an order exists. In light of the foregoing, the question of whether Defendants were entitled to transfer the Property after posting the bond is not properly before this Court.

In light of the foregoing, the twelve-year enforcement period set forth in D.C. Code § 15-101(a) expired twelve years "from the date when an execution might first be issued thereon . . . ." D.C. Code § 15-101(a). For the reasons described in Appellant's principal brief, the twelve-year period must be measured from the date when execution could first have issued on the Judgment in California, *i.e.*, 2001. Measured from that date, the time period for enforcing the Judgment expired in 2013.

Pursuant to D.C. Code § 15-101(b):

> At the expiration of the twelve-year period provided by subsection (a) of this section, the judgment or decree shall cease to have any operation or effect. Thereafter, *except in the case of a proceeding that may then be pending for the enforcement of the judgment or decree*, action may not be brought on it, nor may it be revived, and execution may not issue on it.

(emphasis added). HGA filed the complaint initiating the instant case on May 23, 2018. As such, this case is not a proceeding that was "then pending for the enforcement of the judgment . . . ." Indeed, this case was not filed until five years **after** the expiration of the twelve-year enforcement period provided by D.C. Code § 15-101(a).

This is relevant insofar as any lien on the Property resulting **from** the Judgment "may be enforced only by an action to foreclose." D.C. Code § 15-102. The 2006 Case, to which neither Appellant nor the Defendants were parties, is not an action to foreclose. Thus, to the extent a lien was created by recording the Judgment with the Recorder of Deeds, the 2006 Case did not operate as an action to enforce that lien. See D.C. Code § 15-102. If it had, and HGA was, as it claims, simply waiting for the Property to become unexempt to execute the writ issued in that case, it would have done so in that proceeding. Instead, it chose to file a separate lawsuit against the Defendants.

C. HGA Fails to Provide Any Support for Its Assertion that the Revival of the Judgment Cannot Be Adjudicated.

HGA asserts that in the 2006 Case, it filed a motion to revive the Judgment. HGA Br. 15. Although it fails to state whether its motion was granted, it cites D.C. Code § 15-101(a) for the proposition that every final judgment rendered in the D.C. Superior Court "is enforceable . . . for the period of twelve years only from the date

when an execution might first be issued thereon, or from the date of the last order of revival thereof." HGA Br. 15. It goes on to cite D.C. Code § 15-101(b) for the proposition that the judgment ceases to have any effect at the expiration of the twelve-year period. HGA Br. 16. However, HGA fails to address the fact that it moved to revive the Judgment **after** the Judgment had already expired. For the reasons set forth in subparts (A) and (B) of this brief, and as further expounded in Appellant's principal brief, the period for enforcing the Judgment – or for moving to revive the Judgment – expired in 2013. Because the Judgment had expired four years before HGA sought to revive it, any attempts at revival did not – and could not have – succeeded. HGA fails to offer any support suggesting otherwise. Harping on Appellant's decision not to challenge the claimed revival proceedings in a separate lawsuit does not change this fact.

D. HGA Relies on Case Law from Other Jurisdictions to Support Its Proposed Interpretation of the Operative Statutes but Argues that Appellant Cannot Do the Same.

There is no case law in the District of Columbia that addresses the question of whether the twelve-year period for enforcing a foreign judgment domesticated in this jurisdiction under D.C. Code § 15-352 is measured from the date execution on such judgment could first have issued in the rendering jurisdiction or the date execution could first have issued in the District of Columbia. Therefore, the Court must look to case law from other jurisdictions for guidance. HGA contends that

because the District's statute was modeled after the UEFJ, this Court must look solely to case law from federal courts interpreting 28 U.S.C. § 1963 and cannot consider case law from courts of states that, like the District, have adopted statutes modeled on the UEFJ.

Pursuant to 28 U.S.C. § 1963, a final judgment entered in any court and registered with a court in another jurisdiction "shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner." The statute does not provide any insight into the date from which the enforcement period is measured. See, e.g., Home Port Rentals v. Int'l Yachting Grp., Inc., 252 F.3d 399 (5th Cir. 2001); Wells Fargo Equip. Fin. V. Asterbadi, 841 F.3d 237 (4th Cir. 2016).

Moreover, HGA disregards the fact that cases cited by Appellant were issued by courts in states whose corresponding statutes are modeled on the UEFJ, *i.e.*, Florida, Montana, Idaho, and North Carolina. Instead, HGA argues that the corresponding statutes in those states are inapplicable because they provide for an enforcement period measured from the date the judgment was entered rather than the date on which execution first could have issued. HGA Br. 27. HGA references two Florida statutes – F.S.A. §§ 55.10 and 55.081. HGA Br. 24, 25. With regard to the former, HGA simply notes that it imposes a twenty-year enforcement period on judgment liens and then asserts that the statute is inapplicable because it "has no

meaningful limitations otherwise on the execution of judgment." HGA Br. 24. HGA fails to identify what, in its opinion, would constitute a meaningful limitation. It gives no examples of meaningful limitations that should have been, but were not, included. Nor does HGA offer any explanation as to why the statute's alleged omission of "meaningful limitations otherwise" renders it inapposite. The second Florida statute referenced by HGA, *i.e.*, F.S.A. § 55.081, is not at issue – or even mentioned – in the Florida case cited by Appellant. See Hess v. Patrick, 164 So.3d 19 (Fla. 2nd DCA 2015).

As for the corresponding statutes in the other states, HGA's argument is simply not relevant insofar as the question of whether the enforcement period is measured from the judgment date or the date execution first could have issued in a particular state is not at issue on appeal. There is no question that enforcement runs from the date on which execution could have issued. Indeed, the only question is whether enforcement runs from the date on which execution first could have issued in the rendering state or the registration state. HGA fails to acknowledge or in any way address that issue.

Regardless, HGA should not be permitted to argue that Appellant cannot look to case law from other jurisdictions when its own brief relies primarily on case law from other jurisdictions with equally similar – or dissimilar – statutes. Specifically, HGA relies on Wells Fargo Equip. Fin. V. Asterbadi, 841 F.3d 237 (4th Cir. 2016)

(interpreting Virginia and Maryland statutes), Home Port Rentals v. Int'l Yachting Grp., Inc., 252 F.3d 399 (5th Cir. 2001) (interpreting Louisiana statutes), and Stanford v. Utley, 341 F.2d 265 (8th Cir. 1965) (interpreting Missouri statutes). Appellant respectfully directs this Court to the argument section of its principal brief, wherein Appellant discusses the Wells Fargo, Home Port Rentals, and Stanford cases and explained why they are distinguishable from the instant case.

E. Defendants Raised the Issue Before on Appeal in a Motion that Was Ruled on by the D.C. Superior Court, and that Ruling Was Timely Appealed.

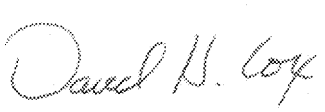
HGA contends that this appeal should be dismissed because Defendants did not raise the issue on appeal until a November 21, 2018 supplemental memorandum that Defendants filed in support of their reply to HGA's opposition to their motion for relief from judgment (the "Memorandum"). HGA Br. 30. In support of its position, HGA contends that, while Defendants initially filed a Rule 60(b) motion, the Memorandum is better characterized, in HGA's opinion, as a Rule 59(e) motion. HGA then devotes four pages to discussing the differences between motions filed under D.C. Superior Court Rules 59(e) and 60(b). While there is no question that the two rules are distinct, HGA fails to offer any explanation as to how that distinction is pertinent to the issue at hand. More importantly, HGA offers no support for its assertion that the arguments presented in the Memorandum are not properly before

this Court. In light of the foregoing, the assertion that the arguments presented in the Memorandum are not on appeal is meritless.

CONCLUSION

For the reasons set forth in Appellant's principal brief as well as the reasons set forth above, this Court should reverse the D.C. Superior Court's Orders of September 24, 2018, September 25, 2018, and January 7, 2019 because the twelve-year limitations period for enforcing the Judgment is measured from the date on which execution first could have issued on the Judgment in the rendering jurisdiction of California. Any other interpretation of D.C. Code § 15-101(a) would create unintended and illogical outcomes. HGA's interpretation of the statute would encourage judgment creditors to delay filing judgments in the District of Columbia in order to obtain the windfall of the time periods of both the foreign jurisdiction and the District of Columbia to enforce their judgments. Judgment debtors could be forced to wait years, or even decades, to learn whether their judgment creditors will record the judgment in the D.C. Superior Court, thus starting the twelve-year enforceability clock. Allowing judgment creditors to extend the enforceability of their judgments without complying with the laws governing the renewal of judgments in the foreign jurisdiction where the judgment was entered would unfairly disadvantage judgment debtors.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2023, I caused a true and correct copy of the foregoing Reply Brief of Appellant to be served by the Court's electronic filing system, and by first-class mail, postage pre-paid, upon:

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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.

David H. Cox
Signature

18-CV-1257 and 19-CV-64
Case Number(s)

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Name

8/10/2023
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