18-CV-1257
19-CV-64

District of Columbia
Court Of Appeals

NICHOLAS CZAJKA, *et al.*

Appellants

v.

HOLT GRAPHIC ARTS, INC.

Appellee

APPELLEE'S OPPOSITION BRIEF

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LIST OF PARTIES AND ATTORNEYS

Nicholas Anthony Czajka was, for all times relevant to this appeal,a resident of the District of Columbia. His present whereabouts are unknown to the Appellee.

Dylan Kean and Amanda Blatnik were previously represented by Michael T. Cantrell and Patrick Jules of McCabe Weisberg & Conway LLC of Laurel Maryland.

Kean and Blatnik were subsequently represented by David Cox and Erica L. Litovitz of Jackson and Campbell PC of Washington DC

In disregard of Orders of Judges Epstein, Morin and Jackson the subject property was conveyed to Nicholas Czajka, a person otherwise unknown to the Appellee. This court previously substituted Czajka as the party appellant over the well founded objection of the Appellee.

Holt Graphic Arts, Inc. is a closely held corporation in California. Holt Graphic Arts was previously represented by Matthew LeFande of Arlington Virginia and now represented by Horace L. Bradshaw Jr. of Washington DC.

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Other Authorities

I. Statement of Issues Presented for Review

1. The subject real property was seized by the Superior Court by its issuance of a writ of Fieri Facias on June 28, 2007. The property has remained in the custody of the Superior Court since that time, although execution of judgment and any statute of limitations have been stayed by the Judgment Debtor's declaration of homestead on that date.

2. The timely revival and validity of the domesticated judgment has been adjudged with finality in the original proceeding, and remains valid and enforceable into year 2031. This result was upheld by the panel from which this en banc review was granted and was consistent with previous District of Columbia Court interpretations of the DC UEFJA.

3. This court should rely upon settled federal law regarding the analogous judgment statutes which establish that a domesticated judgment is a new judgment, a judgment upon a judgment, which the applicable statute of limitations runs from the date of domestication and no earlier. This issue was not properly preserved for appeal, as the previous owners of the property, Kean and Blatnik, failed to raise it in response to summary judgment.

4. There is a jurisdictional component to the Statue of Limitations issue. It was appropriate for the trial judge to review and establish jurisdiction before acting and therein apply federal construction to the DC

Foreign Judgments legislation.

II. Statement of Facts.

On November 6, 2006, Appellee Holt Graphic Arts, Inc. domesticated a California Superior Court final judgment in case 2000-098608. Decedent Allen Wilson was the sole judgment debtor in the California judgment. *Id*. On November 7, 2006, the California judgment was recorded with the District of Columbia Recorder of Deeds. ROD Document 2006151129. At the time of recordation, Decedent Wilson owned a condominium known as 355 I Street SW, Unit S121. *Wilson, v. Holt Graphic Arts*, 981 A.2d 616, 617, n.2 (2009).

Holt Graphic Arts applied to the Superior Court for a writ of execution against the property on December 14, 2006. That application was granted on March 9, 2007. See addendum.[1] On April 5, 2007, the Superior Court dismissed all of Wilson's defenses to the domestication. *Wilson v. Holt Graphic Arts, Inc.*, 2006 CA 8134 F. On May 9, 2007, the Superior

[1] The Appellants made no effort to comply with the requirements of this court's Rule 30 (a). Appellants' counsel made no designation of the record as required ***until four days before their brief was due*** and offered no statement of issues to the Appellee whatsoever. Appellants' counsel subsequently berated the Appellee for failing to participate in designation of the Joint Appendix, a task made impossible by the Appellants' counsels' misconduct. Therefore, the Appellee now supplements the Appellants' Appendix accordingly.

Court ordered Wilson to post bond in the amount of $82,247.62 to stay execution. Wilson did not.

The Judgment of the Superior Court was affirmed. *Wilson*, 981 A.2d 616.

The Superior Court issued a Writ of Fieri Facias against the property on June 28, 2007. On that same date, Wilson tendered a statement to the Superior Court asserting that the property was his primary residence and was exempt from attachment.

Decedent Wilson apparently died on June 19, 2016. See *In re Allen Wilson*, 2016 ADM 819 (D.C. Sup. Ct.). Wilson's condominium was sold to Appellees Dylan Kean and Amanda Blatnik on or about February 3, 2017. D.C. ROD Document 2017013407. No satisfaction of Holt Graphic Arts' lien was made at this sale and no release of the lien is recorded. No notice was made to Holt Graphic Arts of either Wilson's death or the sale of his property. The out of state Personal Representative for Wilson, operating without a bond, absconded with the proceeds of this sale.

On March 12, 2017, Holt Graphic Arts timely moved to revive its recorded judgment against Decedent Wilson. Notice of that proceeding was repeatedly afforded to then owners, Kean and Blatnik.

On February 12, 2018, the District of Columbia Probate Court ordered the Personal Representative to produce an accounting and bank statements regarding Wilson's estate, imposed a bond upon him in the amount of $120,000 and ordered him to return the proceeds of the sale of the condominium. 2019 ADM 819.

On February 28, 2018, Holt Graphic Arts informed the Probate Court that the Personal Representative had complied with none of the Court's orders. The Personal Representative remains in contempt of Probate Court orders to obtain a bond and return the funds. The Probate Court has taken no further action against the Personal Representative.

Holt Graphic Arts moved for summary judgment in its foreclosure proceeding against Kean and Blatnik. In their July 16, 2018 opposition to summary judgment, these Defendants expended barely a sentence challenging the twelve year limitation running from the date of domestication. The opposition offered no authorities for this proposition and instead devoted the entirety of argument to the false proposition, again repeated on appeal, that the judgment indexed against Decedent Wilson's name was insufficient notice. Indeed but for a *pro forma* recital of the standard of review, the opposition was devoid of any legal argument

whatsoever. The Defendants' claim of "facts in dispute" was a bald recital of issues already litigated and lost by Decedent Wilson.

> Defendant have not seen the contract referenced by the Plaintiff nor can it state without seeing strict proof that the contract states what Plaintiff claims it says. Moreover to the extent that the cost of this action would be necessary, Defendants would assert they are not Parties to the Contract and thus said provision is not enforceable as to them. This fact would have to be proved through discovery.

Opp'n to MSJ at 4.

> The judgment recorded in the land records was not perfected against real property as it was not recorded as to the Property in dispute. Specifically the Plaintiff has provided no proof that the least sophisticated borrower had any way of knowing that there was a judgment attached to the property.

Id. (footnote omitted).

> Bankruptcy traditionally discharges all debts including statutory liens. Discovery would be needed to validate that the liens and judgments were not discharged.

Id. at 5.

> A bankruptcy order specifically exempting liens flies in the face of the discharge, further information would need to be ascertained to understand whether this fact as stated is true, or if there is some nuance as to why the discharge did not involve all outstanding debts listed in the creditor's matrix.

Id.

> Defendants tendered funds which was for the Purchase of the Property free and clear of all liens. There was no judgment recorded as to the Property in the land records.
>
> Defendants disagree that Plaintiff moved to timely revive its judgment.

Id. [2]

On September 25, 2018, the Superior Court granted summary judgment and ordered that a new Writ of Fieri Facias be issued by the Clerk directing the United States Marshal to seize and sell the condominium. Such judgment was recorded by the Recorder of Deeds on March 19, 2019. ROD document number 2019027504.

On October 8, 2018, Kean and Blatnik moved for reconsideration of the Superior Court judgment. They expressly stated their post-judgment motion was a Rule 60 (b) motion, not a Rule 59 (e) motion. The Superior Court acknowledged in its denial of reconsideration that this was a Rule 60 (b) motion and not a Rule 59 (e) motion. January 7, 2019 Order at 1, 3.

Kean and Blatnik's October 8, 2018 Motion for Relief from Judgment was repeatedly identified as a Rule 60 (b) motion and not a motion with a basis of relief as an error of law. Their new attorneys attempted to file a

[2] Kean and Blatnik made this claim in July 2018, but made no effort to challenge that revival or appeal the February 12, 2019 order of revival. That revival was recorded upon the property prior to conveyance to Czajka.

backhanded and untimely Rule 59 (e) Motion for the first time on November 21, 2018, offering a litany of argument about the legal conclusions of the Superior Court for the first time since the entry of judgment. No such motion was ever filed within the 28 days permitted by the Rule. The Superior Court acknowledged this deficiency and permitted the untimely *de facto* Rule 59 (e) in the unexplained "interests of justice". January 7, 2019 Order at 3.

On January 18, 2019, Kean and Blatnik moved the Superior Court for a stay of the "January 7, 2019 Order Granting Bill of Costs and Granting Motion for Attorney's Fees". Mot. at 1. See also Mot. Mem. at 7 (also only referencing the January 7, 2019 Order).

By their own words,

> A supersedeas bond is "appropriate in normal situations to protect an enforceable judgment in favor of the moving party." *Redding & Co. v. Russwine Construction Corp.*, 417 F.2d 721, 727 (D.C. Cir. 1969). Further, a supersedeas bond serves to "***preserve the status quo while protecting the non-appealing party's rights pending appeal***." *Purcell v. Thomas*, 28 A.3d 1138, 1145 (D.C. 2011).
>
> Where, as here, t***he judgment determines the disposition of property in controversy***, "the amount of the supersedeas bond or undertaking must be fixed at a sum that will secure but not exceed the amount recovered ***for the use and detention of the property***, the costs of the action, costs on appeal, interest, and damages for delay." SCR 62-I(a)(3)(B).

Mot. Mem. at 3 (emphasis added, paragraph enumeration omitted).

Kean and Blatnik's prayers for relief contained no mention of any intent to further alienate the property nor did the motion seek any such order permitting the sale of the property by the Defendants. Holt Graphic Arts contested this motion, setting forth that the appropriate amount for a bond to stay execution should be set at $396,101.15, not the suggestion of $25,225.23 as first set forth in the Motion.

On January 31, 2019, Holt Graphic Arts filed suit in the Superior Court against the Personal Representative for breach of fiduciary duty and conversion. 2019 CA 651 B. Holt Served the Personal Representative via the Recorder of Wills as provided by D.C. Code 20-303(b)(7). The Superior Court later struck the service as the Clerk of the Court never signed the summons provided in the service package. On May 20, 2019, Holt Graphic Arts filed a praecipe with the Superior Court Clerk requesting re-issuance of the summons. The Clerk never reissued the summons and the Superior Court dismissed the case on August 9, 2019 for want of prosecution.

Holt Graphic Arts' original domesticated judgment was revived by the Superior Court on February 12, 2019 without objection. Such revived

judgment was recorded by the Recorder of Deeds on March 19, 2019. ROD document number 201902506.

On March 1, 2019, the Superior Court ordered Kean and Blatnik to submit a supersedeas bond in the amount of $176,413.38. While not requested in the original Motion, such bond would cover "the September 24, 2018 Order Granting Plaintiff's Motion for Summary Judgment, the September 24, 2018 Judgment, and the January 7, 2019 Amended Judgment." Order at 1-2. The record reflects the subsequent tender of a bond in that amount.

On May 24, 2019, Holt Graphic Arts learned for the first time that Kean and Blatnik sold the property to Anthony Czajka on April 12, 2019 without prior notice to or permission of the Superior Court. Kean and Blatnik's attorneys would not have revealed this development but for the fact that this court ordered the personal appearance of these Defendants at mediation. On May 17, 2019, more than a month after this transaction, David Cox, attorney for the Defendants, made a false and misleading statement to the mediator omitting this development from their responses when asking to excuse the Defendants' appearances from mediation.

This court substituted Mr. Czajka as the Appellant in this matter, over Holt Graphic Arts's objection and apparently with no change in counsel. Nothing further is known to Holt Graphic Arts about Mr. Czajka.

Appellant sought appeal from the Trial Court's ruling. The Panel conducted a complete, thoughtful and in depth analysis of the background and the arguments concerning the well established 12 year statute of limitations for the DC UEFJA. The appeal was denied and the judgment for the 22 year old debt was again awarded Mr. Holt. Appellant submitted a Petition for En Banc Review. This review was granted.

The title company now seeking permission to submit an amicus brief, knowingly disregarded the liens against the property which allowed the Personal Representative to abscond with the proceeds of a suspect sale without satisfying the appellee, Holt's claim against the estate. The DC Probate Court issued an order demanding an accounting and the return of the proceeds. This Title company repeated their bold disrespect of our Probate Court as well as the ruling of Judge Jackson by again disregarding the liens on a second sale of the property to substituted appellant Czajka. These actions were in conflict with the history of this case as well as our various court rulings.

III. Argument

1. Standard of Review.

This court reviews a lower court's decision for errors of law *de novo*. *In re G.A.P.*, 133 A.3d 994, 997 (D.C. 2016).

2. The Superior Court has had continuous custody of Decedent Wilson's condominium since June 28, 2007.

Holt Graphic Arts has established by record evidence that it holds a lien against Decedent Wilson's condominium property in the District of Columbia.

> [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.

Wilson, 981 A.2d at 619 (quoting D.C. CODE § 15-352).

A lien upon Decedent Wilson's real property came into existence upon Holt Graphic Arts' recordation of the domesticated foreign judgment on

November 6, 2006. However, Holt Graphic Arts' specific interest in Wilson's condominium was perfected upon the Superior Court's issuance of a Writ of Execution upon the property on June 28, 2007, well within even the California limitations period. On that same date, Decedent Wilson made a formal homestead declaration to the Superior Court. No action of the Superior Court or the Bankruptcy Court ever suspended action of the 2007 writ of execution, only Wilson's claim of homestead stayed execution itself. Upon Wilson's declaration of homestead, all Wilson could achieve was the right to remain upon the property as his primary residence for the remainder of his years. ***The property was already seized by the Superior Court in execution of judgment.*** Upon Wilson's death, that limited right terminated, and Holt Graphic Arts' right to the property remained unencumbered.

> Now, it is not understood that a general lien by judgment on land, constitutes, *per se*, a property, or right, in the land itself. It only confers a right to levy on the same, to the exclusion of other adverse interests, subsequent to the judgment; and when the levy is actually made on the same, the title of the creditor for this purpose relates back to the time of his judgment, so as to cut out intermediate incumbrances [*sic*].

Conard v. Atlantic Ins. Co., 26 U.S. 386, 443 (1828). See *In re Stanley's Asphalt Paving, Inc.*, 353 B.R. 63, 66 (Bankr. D. Del. 2006) (“the Trustee's

position is inferior to any judgment creditor that has perfected its lien by having the sheriff levy on the debtor's personal property.")

The original writ remained stayed until ordered to proceed by the Superior Court in 2018. The fact that the Superior Court again ordered the issuance of a writ, *de rigueur*, is of no consequence whatsoever given that the one from 2007 remained *extant*, *unexecuted* and *unreturned*. The condominium was in the custody of the Superior Court continuously from 2007, and that fact was only affirmed by the Court's acts in 2018.

> When the bringing of an action is stayed by an injunction or other order of a court of justice, o*r by statutory prohibition*, the time of the stay may not be computed as a part of the period within which the action must be brought.

D.C. CODE § 12–304 (emphasis added).

The calculation of any limitation must necessarily deduct the *nine years* Decedent Wilson claimed homestead and execution was prohibited by statute. This necessarily includes tolling the time for execution upon the domesticated judgment and the time for returning the 2007 writ. The Appellants' present claim that Holt Graphic Arts did not file suit to enforce judgment until 2018 is false. Holt Graphic Arts petitioned for a writ of execution in 2007. That writ was issued by the Superior Court and

then stayed until 2016 by Wilson's declaration of homestead. Holt's hands were tied by statute at every moment from the declaration of homestead until Wilson's death. It is impossible to claim that there was any undue delay by Holt Graphic Arts when execution was initiated the same year as the California judgment was domesticated, itself only six years old at the time. Regardless of any of the Appellants' argument about what date the statute of limitations should run from, there was less than ten years run from the date of the California judgment, as Decedent Wilson's homestead declaration tolled the entire period from the 2007 seizure of his property by the Superior Court up to until his death.

2. Holt Graphic Arts timely revived the domesticated judgment and that revival stands alone as a final enforceable judgment

On March 12, 2017, Holt Graphic Arts moved in the original domestication proceeding to revive the judgment which formed the lien against Decedent Wilson's condominium.

> "every final judgment or final decree for the payment of money rendered in 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, or from the date of the last order of revival thereof....."

National Bank of Washington v. Carr, 829 A.2d 942, 943 n.2 (D.C. 2003) (quoting D.C. CODE § 15-101 (a)).

> At the expiration of the twelve-year period...the judgment or decree shall cease to have any operation or effect. Thereafter, except in the case of a proceeding that may be then 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.

Id. (quoting D.C. CODE § 15-101 (b).

Of course, a proceeding was pending for the enforcement of Holt Graphic Arts' judgment since 2006, stayed only by Decedent Wilson's declaration of homestead. Nonetheless, Holt Graphic Arts moved for revival prior to the twelve-year limitation on the domesticated judgment, regardless of the stay created by Wilson's homestead declaration. Such revival was not granted until February 12, 2019, yet none of the Appellants took any action to challenge those proceeding or appeal the order of revival. Now more than a year after entry of that judgment, it stands with finality, also acting as a lien upon the condominium.

3. Settled federal law directs the unambiguous construction of the District of Columbia domestication of judgment law. A domesticated judgment must be treated as a new judgment upon a judgment with a twelve year limitation running from domestication.

The Courts of the District of Columbia remain federal entities. These Courts are a creation of Congress to "constitute Tribunals inferior to the supreme Court" as provided in Article One, Section 8 of the United States Constitution, its judges appointed by the President of the United States and confirmed by the Senate, and the laws of the District of Columbia are promulgated by Congress in "exercise [of] exclusive Legislation in all Cases whatsoever." "The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty. . . ." *Second Employers' Liability Cases*, 223 U.S. 1, 57 (1912). "Our analysis is accordingly aided by authorities which have interpreted the federal rule." *Moore v. Moore*, 391 A.2d 762, 768 (D.C. 1978). See also *TRG Constr., Inc. v. D.C. Water & Sewer Auth.*, 70 A.3d 1164, 1167 (D.C. 2013) (citing *Puckrein v. Jenkins*, 884 A.2d 46, 56 n.11 (D.C. 2005) (federal cases interpreting rules identical to the local rules are persuasive authority); *Perry v. Gallaudet Univ.*, 738 A.2d 1222, 1226 (D.C. 1999) ("Interpretations of federal rules identical to our rules are accepted as persuasive authority.")));

Cormier v. D.C. Water & Sewer Auth., 959 A.2d 658, 664 (D.C. 2008) ("we think that Super. Ct. Civ. R. 56 should be construed consistently with its federal counterpart").

"[T]his court has adopted a rule of statutory construction which provides that when a local law is borrowed from a federal statute, it is presumed that judicial construction of the federal statute is borrowed as well." *McReady v. Department of Consumer & Regulatory Affairs*, 618 A.2d 609, 615 (D.C. 1992) (citing *Hughes v. District of Columbia Department of Employment Securities*, 498 A.2d 567, 571 n.8 (D.C. 1985)). Where federal and District of Columbia statutes have similar language, the Court of Appeals "has generally treated the two statutes in a similar fashion" and the federal courts' interpretation as "persuasive authority for our interpretation of the virtually identical language". *Brandon v. Hines*, 439 A.2d 496, 509 (D.C. 1981) (quoting *United States v. Harrod*, 428 A.2d 30, 31 (D.C. 1981)).

Rather than accept the federal courts of appeal's interpretation of 28 U.S.C. § 1963, a federal domestication law enacted by the same legislative body and for the same purposes as the District of Columbia law, the

Appellants demand that this court follow the interpretation of other states' courts regarding completely different limitation regimes.

Holt Graphic Arts holds a lien against Decedent Wilson's condominium property in the District of Columbia.

> [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.

Wilson, 981 A.2d at 619 (quoting D.C. CODE § 15-352).

Pushing aside this plain language, the Appellants inexplicably demand that the District of Columbia concede the legislative authority to set limitations on the enforcement of registered foreign judgments to the jurisdiction in which the judgment originated.

> It would be strange, if in the now well understood rights of nations to organize their judicial tribunals according to their notions of policy, it should be conceded to them in every other respect than that of prescribing the time within which suits shall be litigated in their Courts. Prescription is a thing of policy, growing out of the experience of its necessity; and the time after which suits or actions shall be barred, has been, from a remote antiquity, fixed by every nation, in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction. This being the foundation of the right to pass statutes of prescription or limitation, may not our states, under our system, exercise this right in virtue of their sovereignty? Or is it to be conceded to them in every other particular, than that of barring the remedy upon judgments of other states by the lapse of time? The states use this right upon

> judgments rendered in their own Courts; and the common law raises the presumption of the payment of a judgment after the lapse of twenty years. May they not then limit the time for remedies upon the judgments of other states, and alter the common law by statute, fixing a less or larger time for such presumption, and altogether barring suits upon such judgments, if they shall not be brought within the time stated in the statute? It certainly will not be contended that judgment creditors of other states shall be put upon a better footing, in regard to a state's right to legislate in this particular, than the judgment creditors of the state in which the judgment was obtained. And if this right so exists, may it not be exercised by a state's restraining the remedy upon the judgment of another state, leaving those of its own Courts unaffected by a statute of limitations, but subject to the common law presumption of payment after the lapse of twenty years. In other words, may not the law of a state fix different times for barring the remedy in a suit upon a judgment of another state, and for those of its own tribunals? We use this mode of argument to show the unreasonableness of a contrary doctrine.

M'Elmoyle v. Cohen, 38 U.S. 312, 327-328 (1839).

A lien upon Decedent Wilson's real property came into existence upon Holt Graphic Arts' recordation of the domesticated foreign judgment on November 6, 2006.

> We have recognized that, "[u]nder the Full Faith and Credit Clause of the Constitution, a judgment properly authenticated and issued by a court having jurisdiction is entitled to the same degree of recognition in a sister state as would be afforded by the state of original rendition." [*Fehr v. McHugh*, 413 A.2d 1285, 1286 (D.C. 1980)] (citing, *e.g.*, *Johnson v. Muelberger*, 340 U.S. 581 (1951)). These principles are embodied in the codified law of the District of Columbia. In 1990, the District of Columbia adopted the Uniform Enforcement of Foreign Judgments Act ("UEFJ"), D.C. Law 8-173, D.C. Code § 15-351 *et seq*. (2001), which sets out the procedures and

> standards for enforcement of foreign judgments in the Superior Court of the District of Columbia.

Nader v. Serody, 43 A.3d 327, 332 (D.C. 2012) (parallel citations omitted).

> The Council of the District of Columbia explained that its purpose in adopting the Uniform Act was to "provide an expeditious and simple procedure to enforce foreign judgments in courts of the District of Columbia." Council of the District of Columbia, Committee on the Judiciary, Committee Report on Bill No. 8-56, The Uniform Enforcement of Foreign Judgments Act of 1990 (June 20, 1990), at 2. In adopting the UEFJ, the Council intended to create an efficient mechanism to enforce foreign judgments "upon the mere act of filing," without "the need for another trial," "as if the judgment were a domestic one." *Id*.

Nader, 43 A.3d at 333.

> A judgment in an action for the recovery of money . . . entered in any . . . district court . . . may be registered by filing a certified copy of the judgment in any other district .....A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

Wells Fargo Equipment Finance v. Asterbadi, 841 F.3d 237, 244 (4th Cir. 2016) (quoting 28 U.S.C. § 1963).

> The statute was enacted in 1948 as a device to streamline the more awkward prior practice of bringing suit on a foreign judgment and thereby obtaining a new judgment on the foreign judgment.

Id.

> We are aware of no Supreme Court authority on point, and of very little pertinent jurisprudence from federal appellate or district courts. Still, we are not wholly without jurisprudential guidance. The

> landmark case in this area is *Stanford v. Utley*, authored by Judge (later Justice) Blackmun for the Eighth Circuit Court of Appeals. The *Stanford* court was called on to consider the enforceability, in a federal district court in Missouri, of a judgment that had been rendered by a federal district court in Mississippi, then registered the next day, pursuant to § 1963, in a federal district court in Missouri. Obviously, then, the judgment from Mississippi had been registered in Missouri at a time when that judgment was still enforceable in both Mississippi and Missouri. The kicker in *Stanford* is that, following registration pursuant to §1963, no proceedings to enforce the registered judgment from Mississippi were instituted in Missouri until more than seven years after that judgment had been rendered in Mississippi and registered in Missouri. In the meantime, Mississippi's seven-year statute of limitations for enforcing judgments in that state -- and thus in federal courts located there -- had expired; but Missouri's 10-year limitation period had not.
>
> [The *Stanford* court concluded] the post-registration expiration of the *rendering* state's statute of limitations for enforcement of judgments had no effect on enforcement proceedings commenced in the court of registration at a time when the *registration* state's statute of limitations for enforcement of judgments had not yet expired...

Home Port Rentals v. International Yachting Group, Inc., 252 F.3d 399, 404-405 (5th Cir. 2001) (citing *Stanford v. Utley*, 341 F.2d 265 (8th Cir. 1965) (emphasis *sic*)).

> If registration were merely a ministerial act to enforce the Virginia judgment in Maryland, there would be no need for the statute to have added the language that the registered judgment functions the same as a judgment entered in the registration court.
> ...
> It follows that with the registered judgment functioning as a new judgment, ***the limitations period for enforcement runs from the date of registration***.

Wells Fargo Equipment Finance, 841 F.3d at 245-246 (emphasis added).

> To restrict registration to a procedural and collection device for the foreign judgment itself, and to have it expire with the foreign judgment, would give the words of the statute a lesser status than their plain meaning and to make registration something far inferior to a judgment on a judgment.

Id. at 245 (quoting *Stanford*, 341 F.2d at 270).

> We thus construe § 1963 to provide for a new judgment in the district court where the judgment is registered, as if the new judgment had been entered in the district after filing an action for a judgment on a judgment. Accordingly, just as a new judgment obtained in an action on a previous judgment from another district would be enforceable as any judgment entered in the district court, so too is a registered judgment. The other courts of appeals that have construed § 1963 have reached the same conclusion.

Wells Fargo Equipment, 841 F.3d at 244 (quoting *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, 536 F.3d 980, 989 (9th Cir. 2008) ("[R]egistering a judgment under § 1963 is the functional equivalent of obtaining a new judgment of the registration court"); *Home Port Rentals*, 252 F.3d at 405 ("[R]egistration truly is the equivalent of a new judgment of the registration court"); *Stanford*, 341 F.2d at 268 ("We feel that registration provides, as far as enforcement is concerned, the equivalent of a new judgment of the registration court").

In

Regardless of the availability of a common law action to enforce a foreign judgment in the District of Columbia, the limitation runs in either instance for a "period of twelve years only from the date when an execution might be first issued thereon". The Appellants cannot point to any parallel statutory language in any other state in which they rely upon a contrary conclusion by those states' courts.

Initially, appellants sought to apply the statutory construction of Florida, to guide the DC Court's interpretation of DC UEFJA. However, to date they have not pointed to any parallel statutory language that supports their position. It might be helpful to review their difficulty by analysing the Florida statutory scheme.

The Florida statutory scheme is self-conflicting. It places limitations on judgment liens of twenty years, but has no meaningful limitations otherwise on the execution of judgment.

> A judgment, order, or decree becomes a lien on real property in any county when a certified copy of it is recorded in the official records or judgment lien record of the county... If the certified copy is first recorded in accordance with this subsection on or after July 1, 1994, then the judgment, order, or decree shall be a lien in that county for an initial period of 10 years from the date of the recording.

FLORIDA STATUTE 55.10 (1).

> The lien provided for in subsection (1) or an extension of that lien as provided by this subsection may be extended for an additional period of 10 years, subject to the limitation in subsection (3), by rerecording a certified copy of the judgment, order, or decree prior to the

> expiration of the lien...

Id. § (2).

> Subject to the provisions of s. 55.10, no judgment, order, or decree of any court shall be a lien upon real or personal property within the state

> after the expiration of 20 years from the date of the entry of such judgment, order, or decree.

FLORIDA STATUTE 55.081.

> The Third District Court of Appeal also erred in 2001 when it decided *Marsh v. Patchett*, 788 So. 2d 353 (Fla. 3d DCA 2001). In attempting to determine the life of the execution option, it used the life of the creation option (F.S. §95.11(1)) and cited a 1950 Florida Supreme Court decision that was based on a statute now repealed. Section 95.11(1) does not limit executions because executions are not "actions." Executions in Florida have been specifically described as the act of carrying into effect the final judgment or decree of the court and as the remedy afforded by law for the enforcement of a judgment. *It is not an action* but, rather, a process in an action and is more accurately defined as a writ issued to an officer that directs and authorizes the officer to carry into effect the judgment of the court. [emphasis added]

The Life of a Money Judgment in Florida Is Limited—For Only Some Purposes, 79 FL. BAR J. 20 (2005) (footnotes omitted).

> Between 1844 and 1967 Florida had a statute that provided the plaintiff shall be entitled to his execution at any time within three years after the rendition of any judgment or decree, and upon the issue of [his] execution, shall be entitled to renew the same, upon his return to the Clerk's office, of the original execution from time to time for 20 years, unless the same be sooner satisfied.
>
> That statute was construed by the Florida Supreme Court in 1950 and found to limit the life of an execution to 20 years. The court opined that "the life span of an execution is not more than 20 years, for it may be revived or reanimated from time to time only within that period. There is no provision for lengthening it, but only for shortening it if it be sooner satisfied."

> That statute was repealed in 1967, and no statute or rule has replaced it. The legislature must have known that the statute it was repealing had been interpreted to place a 20-year lifetime on executions. It repealed that statute and to this day has not replaced it with a statute or court rule limiting the time within which the execution option must be exercised. The courts are not permitted to judicially enact a statute about which the legislature has clearly spoken, even by its inaction.

Id. (footnotes omitted).

There exists no analogous provision in Florida, Montana, Idaho or North Carolina law which sets the clock running *from the time the judgment could be executed upon*. All of these states provide that the limitation period runs from the date of entry of judgment. See MONT. CODE § 27-2-201 (2); IDAHO STAT. § 10-1110; N.C. STAT. § 1-306. It is self-evident that no foreign judgment may be executed upon in the District of Columbia until the foreign judgment is domesticated, either by recording or by independent action.

Beyond this, the conclusion that the Appellants then demanded was direct conflict with the District of Columbia court's straightforward application of the plain language of the statute. *Thomas v. Buckley*, 176 A.3d 1277, 1281 (D.C. 2017) ("We begin by looking at the plain language of the statute and, if the plain meaning is clear, we will look no further.")

> Pursuant to D.C. Code § 15-352 (a), a final judgment is "enforceable, by execution issued thereon, for the period of twelve years *only from the date when an execution might be first issued thereon*." (emphasis added). Plaintiff domesticated the judgment in the Superior Court of the District of Columbia n November 6, 2006. Accordingly, it follows that November 6, 2006, was the date when an execution might first be issued thereon in the District of Columbia, and the twelve year period begins to run from that time. Plaintiff filed a Motion to Update Judgment on July 10, 2017, requesting that the Court revive the judgment. Therefore, Plaintiff's lien is valid and Defendant's Motion to Dismiss is denied.

Order at 3.

In the present case, the time such execution was first possible was even more attenuated from the original judgment, given that the recordation process was immediately challenged by Decedent Wilson, and that Wilson made a homestead claim thereafter. Under District of Columbia law, no execution could be had whatsoever until Wilson's claim was adjudicated and the Writ of Execution issued in 2007. Starting the limitation time from the date the foreign judgment could be first executed upon is not "repugnant to the laws" of the District of Columbia, ***it is the law of the District of Columbia.***

Wilson's homestead claim only served to <u>stay</u> such execution until his death.

> The purpose of the law is to allow the debtor to have his homestead--his home--free from sale under final process, as prescribed, for the benefit of himself and his family. It is not contemplated or intended that he shall arbitrarily destroy its value, by unnecessarily cutting the timber trees that may be on it, or by pulling down and destroying the buildings on it, so as to disappoint the just rights and expectations of the creditor having a judgment lien upon it. The latter, when the exemption from sale is over, should find the property--not exhausted and rendered valueless--but substantially as it was when the exemption began...
>
> As it cannot be enforced while the exemption of the property from sale lasts, the property will be properly protected during that time, so that the creditor may, in the end, have the benefit of his lien...

Jones v. Britton, 9 S.E. 554, 555 (N.C. 1889).

> But where a homestead exemption is provided, it is declared to be exempt only from *sale* -- not also from *execution* or *attachment.* Thus in the usual case of a levy of execution by a judgment creditor upon property of a debtor which the latter occupies in whole or in part as a homestead, the debtor, as long as he owns and occupies it as a homestead, holds the legal title and also, in effect, enjoys a stay of sale so long as he owns the property and occupies it as a homestead. If the debtor sells the property (subject of course to the judgment creditor's lien), or ceases to occupy it as a homestead, the "stay" is lifted and the judgment creditor may proceed to foreclose his lien. Since neither he nor his family will live forever, the judgment creditor, his heirs or assigns, will eventually realize upon the judgment lien.

In re Lynch, 187 B.R. 536, 542-543 (Bankr. E.D. Ky. 1995) (quoting

Friebolin, *Peculiar Nature of Homestead Exemptions: Their Disposition in*

Bankruptcy, 23 J. NAT'L ASS'N REF. BANKR. 106, 107 (July 1949)) (emphasis *sic*).

Poignantly, none of this esoteric argument about other states' domestication law came about until the filing of the Defendants' supplemental memorandum on November 21, 2018, nearly two months after the Superior Court granted summary judgment against Kean and Blatnik. The original Defendants expressly stated their October 8, 2018 post-judgment motion was a Rule 60 (b) motion, not a Rule 59 (e) motion.

> [I]f the movant is requesting consideration of additional circumstances... the motion is properly considered under Rule 60 (b), but if the movant is seeking relief from the adverse consequences of the original order on the basis of error of law, the motion is properly considered under Rule 59 (e).

Frain v. District Of Columbia, 572 A.2d 447, 449 (D.C. 1990) (quoting *Wallace v. Warehouse Employees Union No. 730*, 482 A.2d 801, 804 (D.C. 1984)).

A "Rule 59 (e) motion does not permit alteration of the judgment or order because of an improper factual basis." *Id*. (citing *Cohen v. Holmes*, 106 A.2d 147, 148 (D.C. 1954)). While a "[t]he nature of a motion is determined by the relief sought, not by its label or caption", *id*. at 450, there is little difficulty in distinguishing the Appellants' motion as a Rule 60 (b),

by its express characterization as such by the Appellants and the relief sought.

In their July 16, 2018 opposition to summary judgment, Kean and Blatnik expended barely a sentence challenging the twelve year limitation running from the date of domestication. The opposition offered no authorities for this proposition and instead devoted the entirety of argument to the false proposition, again repeated on appeal, that the judgment indexed against Decedent Wilson's name was insufficient notice.

Kean and Blatnik's October 8, 2018 Motion for Relief from Judgment was repeatedly identified as a Rule 60 (b) motion and not a motion with a basis of relief as an error of law. Their new attorneys attempted to file a backhanded and untimely Rule 59 (e) Motion for the first time on November 21, 2018, offering a litany of argument about the legal conclusions of the Superior Court for the first time since the entry of judgment. No such motion was ever filed within the 28 days permitted by the Rule. The Appellants' November 21, 2018 memorandum was nothing more than a Rule 59 (e) Motion trying to ride in on the coattails of the their failed Rule 60 (b) Motion.

"This kind of motion is properly brought pursuant to Rule 59 (e), and cannot be converted into a Rule 60 (b)(1) motion in order to avoid the 10-day [now 28] filing requirement of Rule 59 (e)." *Frain*, 572 A.2d at 450 (citing *D.D. v. M.T.*, 550 A.2d 37, 42 & n.5 (D.C. 1988)). None of the present legal argument was preserved in the Superior Court proceedings and cannot be considered on appeal.

To survive summary judgment on factual issues, "[o]nce the moving party makes the requisite initial showing, the burden shifts to the non-moving party to come forward with specific evidence showing, to the contrary, that genuine issues of material fact do exist." *Johnson v. District of Columbia*, 144 A.3d 1120, 1125 (D.C. 2016) (quoting *Wallace v. Eckert, Seamans, Cherin & Mellott, LLC*, 57 A.3d 943, 949 (D.C. 2012) (citation and internal quotation marks omitted)). "The non-moving party 'may not rest upon the mere allegations or denials of [its] pleading,' but must submit, by affidavits or other evidence, 'specific facts showing that there is a genuine issue for trial.'" *Johnson*, *supra* (quoting D.C. SUP. CT. CIV. R. 56 (e)). "The non-moving party may not avoid summary judgment merely with conclusory allegations; rather he or she 'must produce at least enough evidence to make out a *prima facie* case in support of his [or her] position.'"

Bruno v. Western Union Financial Services., 973 A.2d 713, 717 (D.C. 2009) (quoting *Joeckel v. Disabled Am. Veterans*, 793 A.2d 1279, 1281-82 (D.C. 2002), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). The Defendants did no such thing at summary judgment and further failed to make any meaningful response to Holt Graphic Arts *legal* argument. "We need not address claims that are barely mentioned in a party's brief." *Bowie v. Maddox*, 642 F.3d 1122, 1137 (D.C. Cir. 2011) (quoting *United States ex rel. Miller v. Bill Harbert Int'l Constr., Inc.*, 608 F.3d 871, 879 (D.C. Cir. 2010) ("A litigant does not properly raise an issue by addressing it in a cursory fashion with only bare-bones arguments." (quoting *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 869 (D.C. Cir. 2001)))).

"Rule 59 (e) 'does not provide a vehicle for a party to undo its own procedural failures...'" *Nuyen v. Luna*, 884 A.2d 650, 655 (D.C. 2005) (quoting *Aybar v. Crispin-Reyes*, 118 f.3d 10, 16 (1st Cir. 1997)); 12 James Wm. Moore *et al.*, MOORE'S FEDERAL PRACTICE p60.03[4] at 60-25 (3d ed. 2005) ("Even if filed within the time limit for a motion under Fed. R. Civ. P. 59 (e), a motion seeking relief on grounds of excusable neglect will be treated as a Rule 60 (b)(l) motion, since Rule 59 (e) does not provide a

vehicle for a party to undo its own procedural failures.”). These arguments did not exist prior to judgment and cannot be considered on appeal.

4. Consistent with DC Courts Rulings, the Trial Court and the Panel Opinion affirmed the 12 year DC Statute of Limitations . The Appellants and their Title company could not act otherwise – especially before this en banc review is decided.

Appellants suggest that interpretation of the 12 year statute of limitations overcomes the significant background of this 22 year old saga. It does not. First, the argument was not preserved by appellant. Second, the wealth of case law does not support their interpretation. And there is that significant background. There was a valid foreign judgement. It was domesticated in a timely manner. It was pursued in accordance with the law of the District of Columbia as properly informed by the federal law.

The Superior Court ordered the judicial sale of the real property securing Holt Graphic Arts' judgment. As set forth by the Court's September 25, 2018 Order, this Judgment is not a monetary judgment, but a judgment against the property itself. See *Van Pierson v. Peirce*, 42 Wash. 164, 169 (1906) (“the judgment is an order against a third party to deliver a specific deposit in his possession, it must be treated as a judgment for the delivery of specific personal property”).

“By definition, a supersedeas bond is '[a]n appellant's bond to stay

execution on a judgment during the pendency of the appeal.'" *Purcell v. Thomas*, 28 A.3d 1138, 1144 (D.C. 2011) (quoting BLACK'S LAW DICTIONARY 190 (8th ed. 2004). In no way does the tender of a supersedeas bond relinquish the Court's seizure of the property or the Plaintiff's lien upon it. It only stands to stay execution. *Id*.

As already recited by Kean and Blatnik themselves, "[t]he supersedeas bond serves to 'preserve the status quo while protecting the non-

appealing party's rights pending appeal.'" The supersedeas bond serves to "preserve the status quo while protecting the non-appealing party's rights pending appeal." *Id.* at 1145 (quoting *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5th Cir. 1979)). The maintenance of the status quo claimed by Kean and Blatnik in their motion requesting a bond is impossible to harmonize with the subsequent secretive sale of the property to a third person in obvious collusion with their attorneys.

Holt Graphic Arts demonstrated that it is not fully secured by the amount of the bond tendered. There has been no showing why this amount was reduced, other than to divide the baby in some sort of equitable compromise not otherwise permitted by law. Kean and Blatnik, the persons who knowingly tendered money to Wilson's Personal Representative with a recorded judgment lien remaining upon the property and greatly injured Holt Graphic Arts, were excused from this proceeding in favor of appellant. Both purchasers were and are represented by the same counsel. Their actions cloud the title and undermine the execution of judgment proceedings now stayed by bond.

Holt has asked the Courts to investigate the circumstances of these transactions and the buyer's relationship to the existing parties, and any attempt to circumvent Holt Graphic Arts' attachment to the property. Appellee previously queried i f there was indeed a nefarious intent by the Appellants and their attorneys.

Appellants unabashedly claim that the title company operated under an assumption that the Statute of Limitations was not 12 years. How could they assume a different Statute of Limitations as the history of this case , and other District of Columbia Court ,informed by the Federal Legislation, have not ruled otherwise.

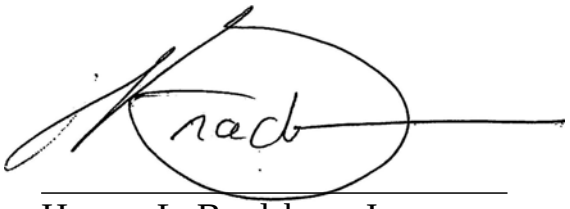
Even today we await the instant en banc review of the panels' affirmance. At best the appellants and their counsel were inflicted with wishful thinking. At worst they knew what they were doing. 12 years is the plain reading of the legislation and District of Columbia Courts have not ruled otherwise. It was not reasonable or appropriate to act on their own, unsupported interpretation of this law. The actors should be summarily punished, their appeal dismissed and sanctions awarded.

IV. Conclusion:

For these reasons, and for such other reasons as the court finds to be good and sufficient cause, the En Banc Review should mirror the decision of the Panel Opinion and this matter remanded to the Superior Court for further

post-judgment proceedings.

Respectfully submitted, this 20th day of July, 2023



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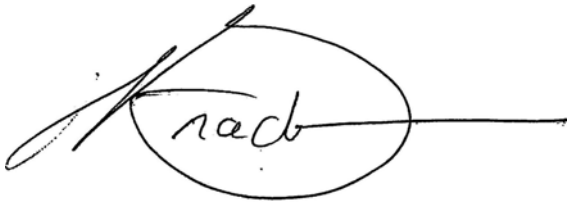
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 2023 a copy of the referenced Appellee Opposition Brief was electronically mailed to David Cox, attorney for appellants.



HORACE L. BRADSHAW, JR.