IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF TRANSAMERICA AIRLINES, INC.	)	
	)	Civil Action No. 1039-VCP
HARRY A. AKANDE,	)	
Petitioner/Plaintiff,	)	
v.	)	
TRANSAMERICA AIRLINES, INC., a Delaware corporation, f/k/a, TRANS-INTERNATIONAL AIRLINES, INC., a Delaware corporation, BURTON E. BROOME, SHIRLEY H. BUCCIERI, EDGAR H. GRUBB, and TRANSAMERICA CORPORATION, a Delaware Corporation.	)	
Respondents/Defendants.	)	

MEMORANDUM OPINION

Submitted: February 2, 2007
Decided: May 25, 2007

James S. Green, Esquire, George H. Seitz, III, Patricia P. McGonigle, Esquire, SEITZ, VAN OGTROP & GREEN, P.A., Wilmington, Delaware, *Attorneys for Petitioner/Plaintiff*

John G. Harris, Esquire, RILEY RIPER HOLLIN & COLAGRECO, Wilmington, Delaware; Bernard P. Simons, Esquire, REED SMITH LLP, Los Angeles, California, *Attorneys for Defendants*

PARSONS, Vice Chancellor.

Plaintiff, Harry A. Akande, has petitioned this Court to recognize and enforce a money judgment rendered in Nigeria in 1999. The judgment is a final judgment rendered on a suit for breach of contract brought by Akande in 1976. One of the defendants in the Nigerian action and this action is TIA. Throughout the Nigerian proceedings until TIA's dissolution in 1998, TIA was a wholly owned subsidiary of another defendant in this action, Transamerica Corporation ("Transamerica").

After nearly 23 years of litigation, which included numerous delays, postponements and two complete trials on the merits, Akande received a final money judgment that, with pre and post-judgment interest, he claims now totals approximately $17 million. Defendants in this action vigorously have opposed Akande's attempt to have the judgment recognized.

The parties have cross-moved for summary judgment and, pursuant to Court of Chancery Rule 56(h), the case is ripe for decision on the merits on the record submitted in connection with those motions. This opinion contains the Court's findings of facts and conclusions law. For the reasons set forth herein, I find that Delaware law provides for recognition of Akande's judgment for breach of a commission agreement for 1976 and that the various defenses raised by Defendants do not bar the judgment's recognition in this state.

I. BACKGROUND AND FACTS

A. The Parties

Plaintiff, Harry A. Akande, is a citizen of the Federal Republic of Nigeria. He was at all relevant times a principal and 50% shareholder of the New Africa Technical and

Electrical Company, Ltd. ("NAFTECH"), a Nigerian company incorporated on May 5, 1973.[1]

Defendant Transamerica Airlines, Inc., formerly known as Trans-International Airlines, Inc. (referred to throughout this opinion as "TIA"), was incorporated in Delaware on November 13, 1967 and dissolved on December 14, 1998.[2] TIA was at all times relevant to these proceedings a wholly owned subsidiary of Defendant Transamerica Corporation, a Delaware corporation. Transamerica is the successor in interest to TIA.[3]

Defendants Burton E. Broome, Shirley H. Buccieri and Edgar H. Grubb were, at all times relevant to these proceedings, directors and officers of TIA (collectively, the "Individual Defendants").[4]

B. Facts

1. The Nigerian proceedings

Most of the facts pertinent to this case are recounted in this Section B. The Court discusses some disputed details, however, in later sections where their relevance to the parties' arguments is more immediate.

---

1 Opening Br. in Supp. of Pl.'s Mot. for Summ. J. ("POB") App. A1, A110.

2 Third Am. Compl. ("Compl.") ¶ 29; POB App. A331-37.

3 Compl. ¶ 6; Defs.' Answer and Aff. Defenses ("Answer") ¶ 6.

4 Compl. ¶¶ 3-5; Answer ¶¶ 3-5; Opening Br. in Supp. of Defs.' Suppl. Mot. for Summ. J. ("DOB") at 7.

In 1975, the Nigerian Pilgrims Board, a governmental agency, awarded a contract to TIA to transport pilgrims between Kano, Nigeria and Jeddah, Saudi Arabia for the Hadji Movement (the "Charter Agreement").[5] During the period that TIA conducted these operations, it housed its employees at the Bagauda Lake and Daula Hotels in the state of Kano, Nigeria.[6] During 1975 and 1976, TIA retained NAFTECH as its agent for securing pilgrims for transport, and in 1975 TIA paid NAFTECH a 5% commission for the services it rendered (the "Commission Agreement").[7] In 1976, NAFTECH's other 50% shareholder, Michael A. Omisade, falsely represented to TIA that NAFTECH was being dissolved.[8] Omisade then contracted to have his newly formed company, New Africa Development Company ("NADCO"), perform the services NAFTECH had been performing for TIA.[9]

---

5 POB App. A372.

6 *Id*. at A316. Affidavit of Walter J. McCauley ¶ 7. Pursuant to Ct. Ch. R. 56(e), Defendants moved to strike several paragraphs in the McCauley affidavit, as well as paragraphs in the affidavits of Malam Mohammed Isyaku and Malam Nisidi Abubakar, on the grounds that the challenged averments are not based on the personal knowledge of the affiants and are therefore inadmissible. Because the Court has not relied upon any of the contested paragraphs of the McCauley and Isyaku affidavits, Defendants' motions to strike those affidavits are denied as moot. As to the Abubakar affidavit, Defendants object to paragraphs 7 and 8. The Court agrees that paragraph 7 and the opening phrase of paragraph 8, "[t]hat upon this service on the Assistant Manager," are inadmissible hearsay. Thus, I hereby strike those portions of the Abubakar affidavit, but otherwise deny Defendants' motion.

7 POB App. A372.

8 *Id.* at A367-69.

9 *Id*.

When confronted with Akande's allegations of deception by Omisade, TIA responded by informing Akande that they would continue to use and pay commissions to Omisade and NADCO and that Akande and Omisade would have to settle the dispute between themselves.[10] On October 13, 1976, Akande filed suit in the High Court of Lagos State against Omisade, NADCO, TIA and NAFTECH (as a nominal defendant) for breach of contract, among other claims.[11] On January 18, 1977, the Honorable L.J. Dosunmu issued a decision denying Akande's claims against Omisade and NADCO, but granting them with regard to TIA.[12] Judge Dosunmu awarded Akande 10,000 Naira (the Nigerian currency) in damages. Akande then appealed to the Federal Court of Appeal the lower court's finding in favor of Omisade and NADCO. On March 28, 1978, TIA cross-appealed on the following grounds:

> 1. That the learned Trial Judge erred in Law and on the facts in entering judgment against the 3rd Defendant [TIA] for the sum of N10,000 or at all when there was no Contract between Plaintiff and the 3rd Defendant.
>
> 2. That the learned Trial Judge erred in the Law by not dismissing Plaintiff's claims insofar as the claim was one for the benefit of the Incorporated Company and Plaintiff would not and had not been authorized to sue on behalf of the Company.

---

10 *Id.* at A369.

11 Compl. ¶ 24; Answer ¶ 24.

12 POB App. A1-8.

> 3. That the learned Trial Judge misdirected himself in Law and the facts as to the ground for entering judgment against the 3rd Defendant.[13]

On May 4, 1983, the Federal Court of Appeal affirmed the lower court's judgment that Akande properly brought suit on behalf of NAFTECH and reversed the dismissal of Akande's claims against Omisade and NADCO.[14] The Federal Court of Appeal also found that TIA had failed to pursue, and hence abandoned, its cross-appeal.[15]

On June 3, 1983, Omisade and NADCO appealed to the Supreme Court of Nigeria.[16] On April 10, 1987, the Supreme Court held that the original action should have been brought in the Federal High Court of Lagos, rather than the High Court of Lagos State, and ordered the action remanded to the Federal High Court Holden at Lagos for trial *de novo*.

The Nigerian litigation then experienced numerous delays and adjournments for a variety of reasons and ultimately lasted 12 more years. Finally, on October 20, 1999, 23 years after Akande first filed suit, he obtained a judgment against all of the defendants, including TIA (the "Judgment" or the "Nigerian Judgment").[17]

---

13 *Id*. at A13; Compl. ¶ 32; Answer ¶ 32.

14 POB App. A15-30.

15 *Id*. at A18.

16 *Id*. at A31-32.

17 *Id*. at A110-23.

a. The Riley Affidavit

At all times relevant to the Nigerian proceedings, John F. Riley, Jr. was TIA's Vice President and General Counsel.[18] On April 10, 1984, Riley executed an affidavit in support of NADCO and Omisade's appeal to the Supreme Court of Nigeria (the "Riley Affidavit").[19] A draft of the Riley Affidavit was first prepared by Omisade's attorney and sent to Riley via Omisade. After editing paragraphs 13 and 14, Riley executed the document and sent it back to Omisade on February 9, 1984.[20] According to the Affidavit, Riley had the authority of the 3rd Defendant, TIA, to execute the document.[21] Both sides in this case rely on various portions of the Riley Affidavit as evidence that TIA did, or did not, submit to the personal jurisdiction of the Nigerian courts.

The following are among the averments most relevant to this case that Riley made in his Affidavit to the Supreme Court of Nigeria:

> That I verily believe that if the writ of Summons and the Statement of Claim were served on [TIA] we would have vigorously contested the jurisdiction of any Nigerian Court of Law over [TIA] and, if required, and without accepting, conceding or admitting such jurisdiction, would have filed a valid defense to the action;
>
> That [TIA is] willing and ready to contest the jurisdiction of any Nigerian Court of Law over [TIA] and, if required, to defend the action.

---

18 Defs.' Answering Br. In Opp'n to Pl.'s Mot. for Summ. J. ("DAB") Ex. 1.D (Aff. of John F. Riley (cited as "Riley Aff. ¶ ___")).

19 DAB Ex. 1.D.

20 *Id*. Ex. 1.C.

21 Riley Aff. ¶ 2.

* * * *

> That it would be in the interest of justice if [TIA were] given the opportunity of being heard by ordering that the case should be sent back to the Lower Court for a rehearing wherein [TIA] will have the opportunity of stating our case ....[22]

The Riley Affidavit is discussed more fully in Section II.C which addresses Defendants' arguments that they did not receive timely notice of the Nigerian proceedings.

2. Akande's efforts to enforce the Nigerian Judgment

After finally obtaining the Judgment in 1999, Akande first tried to collect against the defendants remaining in Nigeria.[23] That group did not include TIA. Unsuccessful in Nigeria, Akande, through his attorney, contacted TIA in March 2002 and demanded payment of the Judgment.[24] Thereafter, Akande and Transamerica's counsel exchanged several letters regarding the Judgment, with Transamerica repeatedly asking for more information, including a certified copy of the Judgment, copies of the Commission Agreement, proofs of service, etc.[25] After these collection efforts failed, Akande hired a Michigan lawyer who filed suit in New York in October 2003 to enforce the Judgment. In the Spring of 2004, however, Akande voluntarily dismissed that suit because his new attorney could not practice in New York.[26]

---

22 *Id*. ¶¶ 13, 14, 16.

23 POB App. A134-35.

24 *Id*. at A195.

25 *Id*. at A195-200.

26 *Id*. at A155.

C. Procedural History of this Action

On January 21, 2005, Akande filed this Delaware action to have the Nigerian Judgment recognized and enforced. On February 17, 2005, he filed an Amended Petition and Complaint. In addition, before any defendant filed a responsive pleading, Akande filed a Second Amended Petition and Complaint on April 21, 2005.

On June 15, 2005, Defendants moved to dismiss the Second Amended Complaint. In response, Akande sought leave to file a further amendment. Defendants opposed that request. On February 28, 2006, the Court issued an opinion granting in part the motion to dismiss, but allowing Akande to amend his complaint. Among other things, the Court permitted Akande to take discovery on his claims for recognition and enforcement of the Judgment under Delaware's Uniform Foreign Money-Judgments Recognition Act ("UFMJRA" or the "Act").[27] Akande filed his Third Amended Complaint on April 17, 2006 (the "Complaint"). Defendants filed their Answer and Affirmative Defenses on May 12, 2006 ("Answer").

Several months later, the parties cross-moved for summary judgment. After extensive briefing, the Court heard argument on those motions on January 17, 2007. On February 2, 2007, the parties submitted limited supplemental briefing letters addressing certain concerns raised at argument.[28]

---

[27] 10 *Del. C.* §§ 4801-4808.

[28] Letter to the Court from George H. Seitz, Esq., dated February 2, 2007; Defendants' Supplemental Letter Brief dated February 2, 2007. Akande objected that Defendants' letter exceeded the scope of the Court's authorization of supplemental briefing and urged the Court to strike the Third, Fourth and Fifth

Regrettably, the combined litigation in this dispute, from Lagos, Nigeria in 1976 to Delaware in 2007 has spanned an entire generation. As the Nigerian court that rendered the Judgment stated early in its 1999 ruling, "[i]t is perhaps appropriate at this stage to make a few comments about the tortuous history of this case which started in the High Court of Lagos State since [sic] 1976."[29] When analyzing the parties' disputes, it is helpful to segment this tortured history into smaller intervals. Temporally, the first phase of the Nigerian proceedings began with the filing of the suit in the High Court of Lagos State in 1976 and ended with the judgment of the Supreme Court of Nigeria in 1987 ordering a trial *de novo* (the "State Proceedings"). The other major phase of the Nigerian proceedings extended from the filing of the second petition in the Federal High Court at

---

numbered items in it. Defendants' Third numbered item discusses issues that were within the scope of my instructions or of questions I raised at argument, so I deny the request to strike that item. Similarly, I find that the first paragraph of Defendants' Fourth item, standing alone, is a fair comment on questions the Court raised at argument, but my ruling on the merits is not inconsistent with Defendants' position in that paragraph. Otherwise, however, I agree that Defendants' Fourth and Fifth numbered items go beyond the limited scope of the leave given at argument, and therefore strike those items.

Moreover, in the Fourth and Fifth items, Defendants attempt to bolster their arguments by relying on the Revised Uniform Foreign-Country Money Judgments Recognition Act. Although the National Conference of Commissioners on Uniform State Laws ("NCCUSL") approved this Revised Uniform Act in July 2005, and Defendants did not file their pending motion for summary judgment until more than a year later, they never mentioned this Revised Act even once in the extensive briefing on the parties' cross motions or at argument. Moreover, it does not appear that Delaware has adopted the Revised Act. For these reasons, I hold that Defendants have waived any argument they might have made based on that document.

[29] POB App. A113.

Lagos in 1987 to the rendering of the Judgment in 1999 (the "Federal Proceedings"). In addition, for convenience, I refer to the period from the date of the 1999 Judgment to the commencement of these Delaware proceedings in 2005 as the "Interim Period."

II. ANALYSIS

A. Standard

Court of Chancery Rule 56(h) provides that:

> Where the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.

The usual standard of drawing reasonable inferences in favor of the nonmoving party does not apply when deciding a case under Rule 56(h).[30] The parties in this case essentially agreed that their cross-motions for summary judgment should be treated as a stipulation for decision on the record submitted.[31] In any event, they failed to present argument that there is an issue of fact material to the disposition of either motion, which supports adopting that approach.[32]

The UFMJRA provides for the recognition of "foreign judgments," meaning judgments granting or denying recovery of a sum of money rendered in a jurisdiction

---

30 *Am. Legacy Found. V. Lorillard Tobacco Co.*, 886 A.2d 1, 18 (Del. Ch. 2005).

31 Transcript of Argument held on January 17, 2007 ("Tr.") at 23-24, 69-70; *see* Letter to Court from John G. Harris dated Feb. 2, 2007, at 1.

32 *See* Ct. Ch. R. 56(h).

outside the United States and its territories.[33] The Act has been adopted in over 30 states.[34] As adopted in Delaware, the Act "applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal."[35] Section 4803 of the Act provides that:

> Except as provided in § 4804 of this title, a foreign judgment meeting the requirements of § 4802 of this title is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. *The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.*[36]

A properly authenticated judgment of another state is entitled to full faith and credit in Delaware to the same extent it would receive in the state in which it was entered.[37] Apart from Defendants' argument that the Nigerian proceedings are null and void due to a defect related to the original writ of summons, none of the parties in this action disputes that the Nigerian Judgment is final and grants a recovery of a sum of

---

33 10 *Del. C.* § 4801. The UFMJRA is a codification of common laws of comity. *See* Jay M. Zitter, *Construction and Application of Uniform Foreign Money-Judgments Recognition Act*, 88 A.L.R. 5th 545, at *2 (2001); *Enron (Thrace) Explor. & Prod. BV v. Clapp*, 874 A.2d 561, 564 (N.J. Super. Ct. App. Div. 2005).

34 Website of Uniform Law Commissioners, http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-ufmjra.asp (last visited May 25, 2007).

35 10 *Del. C.* § 4802.

36 10 *Del. C.* § 4803 (emphasis added).

37 U.S. Const. art. 4, § 1; *Guayaquil & Quito Ry. Co. v. Suydam Holding Corp.*, 132 A.2d 60, 66 (Del. 1957).

money, at least for the commissions that were due under the Commission Agreement for 1976.[38]

Section 4804(a) of the UFMJRA provides that a foreign judgment is not conclusive if:

> (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
>
> (2) The foreign court did not have personal jurisdiction over the defendant; or
>
> (3) The foreign court did not have jurisdiction over the subject matter.

In addition, Section 4804(b) sets forth discretionary reasons why a court may refuse to recognize a judgment. These include:

> (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend; [or]
>
> * * * *
>
> (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court ….

[38] Defendants argue that Akande is not entitled to the relief, including damages, he seeks for post-1976 commissions because the Nigerian courts did not fully determine the amount of damages to which Akande would be entitled for that period. This argument is addressed in Section II.G, *infra*.

In certain circumstances that plainly would satisfy a minimum contacts jurisdictional requirement,[39] the UFMJRA authorizes recognition of foreign judgments even if the foreign court technically may have lacked personal jurisdiction over the defendant according to its own law. Certainly, under the laws of Delaware, the existence of the circumstances identified in Section 4805 of the Act would support the exercise of personal jurisdiction over a defendant. Specifically, Section 4805 provides:

> (a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:
>
> (1) The defendant was served personally in the foreign state;
>
> (2) The defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;
>
> * * * *
>
> (5) The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state; or
>
> (6) The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of such operation.

"The purpose of the UFMJRA is to make it more likely that judgments rendered in a state that adopted the Act will be recognized abroad, since in a large number of civil-law

---

[39] *See Kam-Tech Sys. Ltd. v. Yardeni*, 774 A.2d 644, 652 (N.J. Super. Ct. App. Div. 2001).

countries, the granting of conclusive effect to money judgments from foreign courts is made dependent on reciprocity."[40]

B. The Parties' Contentions

Count I of Plaintiff's Complaint seeks *recognition* of the Nigerian Judgment. Count II asks the Court to *enforce* the Judgment. The enforcement of judgments is addressed only obliquely by the Act. For example, the official comment to Section 3 of the model UFMJRA, 10 *Del. C.* § 4803 as enacted in Delaware, says that "[t]he method of enforcement will be that of the Uniform Enforcement of Foreign Judgments Act of 1948 ("UEFJA") in a state having enacted that Act." Delaware has adopted the UEFJA to govern the enforcement of foreign judgments that are entitled to full faith and credit in this State.[41] The UEFJA provides that a judgment of a court of the United States or of a court entitled to full faith and credit may be filed with any prothonotary and should be treated the same as a judgment rendered by the Superior Court of this State.[42] Upon the filing of a qualifying foreign judgment, the UEFJA provides for notice to the judgment debtor and provides the judgment creditor with various means for collecting on the judgment, including the execution of a lien on real or personal property. Moreover,

---

40 Zitter, *supra* note 33, at *2.

41 10 *Del. C.* §§ 4781-4787.

42 10 *Del. C.* § 4782.

Section 4786 of the UEFJA makes clear that the act does not impair a judgment creditor's right to bring an action to enforce a judgment.[43]

Thus, although Akande's Complaint includes a distinct claim for enforcement, for purposes of this action, the critical questions relate to whether the Nigerian Judgment is "final and conclusive and enforceable where rendered" and whether the Judgment should be recognized in Delaware.[44] If the Court answers these questions in the affirmative, the Judgment will be enforceable under the UEFJA in the same manner as a judgment of the Superior Court.

Defendants advance several arguments for why this Court should not recognize the Judgment. They argue that Akande's petition for recognition and enforcement is time-barred by the applicable statute of limitations, or, alternatively, the equitable doctrine of laches. Defendants also contend that even if Akande's claims are not time-barred, the Judgment should not be recognized because it fails to meet the requirements of the UFMJRA. Pursuant to this line of defense, Defendants argue that TIA did not receive notice of, was not represented at and did not participate in, the Nigerian proceedings and that Akande failed to give TIA timely notice of the Judgment. Defendants also assert several other arguments for nonrecognition, including lack of personal jurisdiction and lack of subject matter jurisdiction. These defenses are

---

43 *Enron (Thrace) Explor. & Prod. BV v. Clapp*, 874 A.2d 561, 565-66 (N.J. Super. Ct. App. Div. 2005).

44 Delaware's version of the UFMJRA does not contain specific procedures for registering and recognizing judgments pursuant to the Act.

addressed in the sections that follow. I begin with Defendants' arguments that the Judgment should not be recognized because TIA did not have notice of the Nigerian proceedings and the Nigerian courts lacked personal jurisdiction over TIA.

C. Notice and Personal Jurisdiction

Defendants argue that they did not receive timely or sufficient notice of the Nigerian proceedings or copies of the complaint. They contend that the defects of process and service of process in the Nigerian proceedings render the Judgment unrecognizable because the proceedings failed to afford TIA due process of law. Similarly, Defendants urge this Court to decline to recognize the Judgment pursuant to Section 4804(b)(1) of the Act because TIA did not receive notice of the foreign claim in time to adequately defend itself. Additionally, Defendants argue that because Akande never properly effected service on TIA, the Nigerian courts lacked personal jurisdiction over TIA.

This Court knows of only one Delaware case interpreting the UFMJRA, *Abd Alwakhad v. Awad Amin*, a case that dealt, in part, with issues of notice.[45] In *Awad Amin*, the plaintiff sought to have the court recognize an Israeli judgment entered by default by a Jerusalem court against a co-defendant wife on a promissory note executed by the wife's co-defendant husband. There was no evidence that the wife signed or knew of the $130,000 promissory note.[46] The "service" that the wife received was an unofficial

---

[45] 2005 Del. Super. LEXIS 320 (Sept. 14, 2005).

[46] *Id*. at *7.

English translation of a Hebrew document, translated by the husband's domestic relations attorney and supposedly delivered by the couple's minor son. The document did not say that the wife was required to respond to the complaint or face a default judgment in the underlying action.[47] Moreover, the plaintiff in the Delaware action did not present any evidence of Israeli law on the issues of what constitutes appropriate service on a nonresident of Israel or whether a husband could obligate a wife in such circumstances.[48] The Delaware court declined to recognize the judgment because the "notice" the wife received did not comport with the requirements of due process or provide a sufficient basis for the Jerusalem court to exercise personal jurisdiction over the wife.

The court in *Awad Amin* also expressed concern that the Israeli judgment may have been obtained by fraud. Among many problems with the purported judgment, the court observed that the note was not signed by the wife and that the only evidence arguably connecting the wife to the note was a number on the loan documents which, according to the husband, was he and his wife's marriage identification number.[49] The court also expressed skepticism about the foreign court's apparent entry of judgment on the note at issue before it was fully due by its own terms. Moreover, the court found the husband "wholly unbelievable" when he testified that unbeknownst to customs officials,

---

47 *Id*. at *6-7.

48 *Id*. at *8.

49 *Id*. at *1-2.

airport security, and even his own wife, he had carried $130,000 to the United States in cash in a bag that he carried onto the plane.[50]

This case is distinguishable from *Awad Amin* in several respects. Defendants in this case have made no specific allegations of fraud. Nor have Defendants disputed the existence of the contract underlying the action for breach that led to the Nigerian Judgment. Furthermore, the putative service of process, although Defendants contest its adequacy, was made on TIA in Nigeria and in English.[51] And importantly, as discussed below and unlike the judgment debtor (wife) in *Awad Amin*, TIA had notice of the Nigerian proceedings.

1. Did TIA receive timely and sufficient notice of the Nigerian proceedings?

I first note that Defendants' due process argument mostly pertains to issues of service of process and notice; *i.e.*, they urge this Court to refuse to recognize the Judgment pursuant to § 4804(b)(1).[52] Defendants have not argued or briefed any challenge to recognition based on § 4804(a)(1) which involves the broader proposition that the Judgment "was rendered under a *system* which does not provide impartial tribunals or procedures compatible with the requirements of due process of law."[53] Thus,

---

50 *Id*. at *9-10.

51 POB App. A321-25.

52 Defendants' arguments that the Judgment should not be recognized pursuant to §§ 4804(a)(2) and (a)(3) are addressed in Sections II.C and II.E, respectively.

53 10 *Del. C.* § 4804(a)(1) (emphasis added); *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477-78 (7th Cir. 2000) (applying Illinois law) (Posner, J.) (discussing the distinction between arguing that a system of law does not afford due process

I take as undisputed that the Nigerian system does provide impartial tribunals and due process sufficient to meet the prescription of § 4804(a)(1). This conclusion is bolstered by the facts that Nigeria has an English common law system with reported precedent and that the State and Federal Proceedings against TIA in Nigeria, although long and exasperating, generally followed an orderly, logical, and reasonably well documented progression.[54]

In contrast, Defendants do contend that the Nigerian Judgment is not conclusive under § 4804(a)(2) because the Nigerian court did not have personal jurisdiction over TIA. In a related vein, Defendants also argue that the Judgment need not be recognized

---

and arguing that particular proceedings within a system of law did not afford due process).

[54] *Hilton v. Guyot*, 159 U.S. 113, 205-06 (1895); *Canadian Imperial Bank of Commerce v. Saxony Carpet Co.*, 899 F. Supp. 1248, 1252 (S.D.N.Y. 1995) ("New York case law dictates that the exceptions involving jurisdictional defects or procedural unfairness be construed especially narrowly when the alien jurisdiction is, like Canada, a sister common law jurisdiction with procedures akin to our own." (quotations omitted)) There is some lack of uniformity in case law from other jurisdictions regarding who has the burden of proof on the factors specified in § 4804(a)(1). This issue theoretically could be important in that the grounds for nonrecognition listed in § 4804(a) are mandatory, while those listed in § 4804(b) are discretionary. In *S.C. Chimexim S.A. v. Velco Enter. Ltd.*, 36 F. Supp. 2d 206 (S.D.N.Y. 1999), the Court held that the plaintiff judgment creditor bore the burden of proving each of §§ 4804(a)(1)-(a)(3). Most courts, however, treat § 4804(a)(1) as a defense for which defendants bear the burden of proof. I consider the latter view more persuasive. In *Kingsland Holdings Inc. v. Bracco*, 1996 Del. Ch. LEXIS 28, at *13-14 (Mar. 6, 1996), the fact that a judgment was rendered in a system of justice based upon the English common law system bolstered the court's presumption of validity for purposes of sequestering stock. Nevertheless, for purposes of this opinion, I need not decide this issue because, even if Akande did bear the burden of proof as to the applicability of § 4804(a)(1), I am convinced that he has met it in the circumstances of this case.

under § 4804(b)(1). The question that must be asked under §4804(b)(1) of the UFMJRA is whether TIA had notice of the Nigerian proceedings in sufficient time to allow it to defend itself. I find that it did.

The parties rely upon the affidavits of Nigerian lawyers to support their respective positions on Nigerian law. Plaintiff submitted the affidavits of retired Justice E.O. Sanyaolu.[55] Defendants submitted the affidavit of Uzoma Azikiwe, a lawyer and Senior Advocate of Nigeria, a title indicating his senior position within the Nigerian legal community.[56] Pursuant to Court of Chancery Rule 44.1, this Court "in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law."

Defendants' expert, Azikiwe, opines that the deficiencies of service in this case have rendered all 23 years of the Nigerian proceedings a nullity. Sanyaolu disagrees with Azikiwe on most substantive points. For present purposes, however, the key issue is whether the Judgment is enforceable where rendered, *i.e.*, in Nigeria. Both Azikiwe and Sanyaolu seem to agree that the Judgment is enforceable in Nigeria, at least until it is re-

---

55 POB App. A231-311 (Affidavit of The Honorable Justice E.O. Sanyaolu (RTD) dated Mar. 27, 2006 (cited as "Sanyaolu Aff. 3/27/06 ¶ ___"), and Further Affidavit of the Honorable Justice E.O. Sanyaolu (RTD) dated Sept. 22, 2006 (cited as "Sanyaolu Aff. 9/22/06 ¶ ___")).

56 DOB Ex. 3 (Affidavit of Uzoma Azikiwe dated Aug. 22, 2006 (cited as "Azikiwe Aff. 8/22/06 ¶ ___")); DAB Ex. 3 (Affidavit of Uzoma Azikiwe dated Sept. 25, 2006 (cited as "Azikiwe Aff. 9/25/06 ¶ ___")), and Reply Affidavit of Uzoma Azikiwe dated Oct. 27, 2006 ("cited as Azikiwe Aff. 10/27/06 ¶ ___").

opened and reargued there.[57] Beyond that, Azikiwe's affidavits consist almost entirely of an extended argument that if the question were presented to a Nigerian court now, that court would invalidate the Nigerian Judgment because of various procedural irregularities.

In his affidavit, Azikiwe reasons that the Judgment is unenforceable in Nigeria because the entire action was void *ab initio* because Akande did not obtain leave of the court before serving the original writ of summons out of jurisdiction.[58] Sanyaolu, on the other hand, avers that the defects in the writ of summons render the Judgment voidable rather than void.[59] I find Sanyaolu's position more persuasive.

Azikiwe bases his opinion on a number of Nigerian cases he cites in, and provides as exhibits to, his affidavit. The Court concludes that those cases do not support Azikiwe's position. For example, to support his assertion that under Nigerian law a defect in a writ of summons renders the entire action void, Azikiwe relies upon *Jadcom Ltd. v. Oguns Electricals*, decided in the Court of Appeal (Abuja Division) on May 15, 2003.[60] In that case, the court says that failure to obtain the leave of a court or judge before serving process out of jurisdiction effects the jurisdiction of the court and that in

---

[57] Sanyaolu Aff. 9/22/06 ¶ 3; Azikiwe Aff. 8/22/06 ¶ 5. Azikiwe suggests that the Judgment could be nullified in further proceedings in Nigeria based on certain technical deficiencies that render the original writ of summons void in his view.

[58] Akande filed his first complaint in the High Court of Lagos State. The writ of summons was served on TIA in another state of the Nigerian Federation, Kano.

[59] Sanyaolu Aff. 9/22/06 ¶¶ 13-45.

[60] Azikiwe Aff. 9/25/06 Ex. UHA 6.

some older decisions such failure rendered the entire action null and void. Nevertheless, the court qualifies its statement by adding:

> This is only applicable in a situation where the defendant has timeously [sic] raised a protest against the manner of the issuance and or service of the writ of summons out of jurisdiction. But where, in spite of such glaring irregularities, the Defendant decided to waive his right of protest by taking steps in the proceedings after service, then he cannot be heard to complain of noncompliance.[61]

The court distinguished the older opinions which had held that such irregularities in service could render an action null and void, by noting that, unlike the situation in *Jadcom*, those older cases did not involve a waiver. Where there is a waiver, according to the court in *Jadcom*, such defects in the writ or service merely render the action voidable, not void.[62] The other cases provided by Azikiwe do not contradict the court's ruling in *Jadcom*.[63]

Furthermore, the evidence shows that TIA had notice of the State Proceedings at least as early as March 28, 1978, when TIA appealed the judgment of the High Court of

---

61 *Id*. at 172.

62 *Id*. at 173.

63 *See id.* Exs. UHA 5 and UHA 7. Azikiwe's predilection to draw questionable inferences in favor of Defendants is also evident in Azikiwe's statement that TIA was *never* at the Bagauda Hotel, Kano. He infers this because service could not be made on TIA at that hotel in 1988. Azikiwe Aff. 8/22/06 ¶12, Exs. UHA 11 and UHA 12. The fact that TIA could not be served at the Bagauda Hotel in 1988, however, does not support Azikiwe's claim that TIA was never at the hotel.

Lagos to the Federal Court of Appeal.[64] This shows actual notice of the Nigerian proceedings more than 21 years before the Judgment was rendered. TIA also had notice as of April 10, 1984, when its Vice President, John F. Riley, made out an affidavit on TIA's behalf for submission to the Supreme Court of Nigeria in the State Proceedings. Defendants admitted this during argument.[65] I also conclude that TIA, having appealed from the High Court of Lagos State in 1978 and participated in later proceedings via the Riley Affidavit, more likely than not had notice of the subsequent and resultant Federal Proceedings. Riley averred that TIA wanted a fair chance to be heard in a new trial.[66] On April 10, 1987, the Supreme Court granted Defendants, including TIA, a trial *de novo*. Based on my review of the evidence, I find that it is reasonable to infer, and I do infer, that TIA, whose agent Riley executed an affidavit in April, 1984 in support of a request for a new trial, was aware that the court had granted this request. TIA admits that its co-defendant Omisade kept them informed of the Nigerian proceedings, and I infer that TIA knew about the Federal Proceedings that began in September 1988.[67]

Defendants' primary arguments regarding notice focus more on the sufficiency of process and service of process than on denying that TIA had notice of the Nigerian proceedings. I find that Akande's difficulties in serving process on TIA were due in part

---

64 Defendants admit TIA's President may have received a courtesy copy of the Summons and Statement of Claim in or around the end of 1976. *See* Compl. ¶ 25; Answer ¶ 25.

65 Tr. at 37, 53-54.

66 Riley Aff. ¶ 16.

67 POB App. A113, A432.

to TIA's own actions. TIA did not inform Akande or the Nigerian courts that it was going to be dissolved by its parent, Transamerica, or that Transamerica would assume TIA's liabilities, nor did TIA give any of the parties involved in the Nigerian action notice that it was going to wind up its affairs or information on how to contact TIA. Thus, TIA did not inform Akande or the Nigerian courts that it no longer had a corporate address at the Oakland Airport, where Akande directed service to TIA via courier.[68] Having had notice of the proceedings, TIA appears to have strategically avoided service of process. In these circumstances, I find that TIA did receive notice of the Nigerian proceedings in sufficient time to enable it to defend itself. Thus, Defendants have not shown the requirements for discretionary nonrecognition of the Judgment under § 4804(b)(1). Nor do the facts of this case provide any other grounds for this Court, in the exercise of its discretion, to deny recognition of the Nigerian Judgment.

This conclusion comports with developing case law on the UFMJRA in other states. For example, in *Farrow Mortgage Services Proprietary Ltd. v. Singh*,[69] the plaintiff petitioned a Massachusetts court to recognize an Australian judgment. The defendant argued that the judgment should not be recognized because defects in the plaintiff's service of process deprived the defendant of sufficient notice to defend itself. The court held that "[t]he issue of whether service of process was defective is immaterial

---

68 POB App. A87-92; Sanyaolu Aff. 3/27/06 ¶ 24, Exs. G1-G5.

69 1995 Mass. Super. LEXIS 495 (Mar. 30, 1995), *aff'd*, 675 N.E.2d 445 (1997).

where defendant had sufficient notice to present a defense and did, in fact, do so."[70] The *Farrow* court found it important that, as in the present case, the defendant had sworn to an affidavit that clearly indicated that he was a defendant in the Australian action.[71]

The defendant in *Farrow* answered the plaintiff's complaint and appeared through counsel on several more occasions. Defendants in this action have argued repeatedly that they did not attend or otherwise participate in the Federal Proceedings. The question is what to make of their absence. A complete lack of participation could indicate that a defendant was unaware of a suit in a foreign jurisdiction. As the record shows, however, that was not the case with TIA. Rather, TIA had notice of both the State and Federal Proceedings. Under these circumstances, Defendants may not now use their choice not to appear in those proceedings as evidence that they were unaware of them. The fact that TIA chose not to participate in the Nigerian proceedings reflects a strategic decision, not ignorance of the action.

2. Did the Nigerian court have personal jurisdiction over TIA?

Defendants argue that the Nigerian Judgment is not conclusive because the Nigerian courts did not have personal jurisdiction over TIA. Section 4805 of the Act sets forth statutorily determined conditions that limit a Court's inquiry into issues of personal jurisdiction such that, if one of the six enumerated conditions is met, "[t]he foreign judgment shall not be refused recognition for lack of personal jurisdiction." Because I

---

70 *Id*. at *6-7.

71 *Id*. at *7.

have found that TIA was personally served at the Daula Hotel in Kano, Nigeria in 1976, the first such condition exists here. Thus, under 10 *Del. C.* § 4805(a)(1), the Court cannot now refuse to recognize the Judgment for lack of personal jurisdiction.[72]

Section 4805(a)(2) provides that another such condition exists if: "[t]he defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant." I find that TIA voluntarily appeared in the Nigerian proceedings for purposes other than to contest personal jurisdiction or protect seized property (or property threatened to be seized).

TIA participated in the first appeal in the State Proceedings, from the High Court of Lagos to the Federal Court of Appeal. Among the asserted grounds for TIA's appeal was that the trial court erred as a matter of fact and law in awarding damages because there was no contract between Akande and TIA.[73] TIA also argued that the trial court erred in not dismissing the suit because Akande was not authorized to sue on behalf of NAFTECH.[74] These grounds for appeal go to the *merits* of Akande's suit and his

---

[72] Defendants argue that the Court should not credit the 30-year old affidavit of service executed by Rabo Yabuku. Some of these objections go to the merits of the affidavit under Nigerian law. As to those objections, I rely upon Plaintiff's expert, Sanyaolu, who avers that the affidavit conforms to Nigerian law. Sanyaolu Aff. 9/22/06 ¶¶ 46-48. I consider the Defendants' other arguments against the affidavit of service without merit, and I credit it as showing that TIA was personally served in Nigeria.

[73] POB App. A13.

[74] *Id*.

standing to sue. Thus, under Section 4805(a)(2), this Court may not refuse to recognize the Judgment for lack of personal jurisdiction, which I understand to include challenges to the sufficiency of process and to service of process. Instead, the UFMJRA creates a conclusive presumption that the Nigerian courts validly exercised personal jurisdiction over TIA.

Section 4805(a)(5) provides another basis for this Court to refuse to entertain a challenge to the Nigerian courts' personal jurisdiction over TIA. That section applies whenever, "[t]he defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state." Although Defendants contend otherwise, I find that the evidence shows that TIA had a business office in the Daula Hotel in Kano, Nigeria in 1976 and for some time thereafter, perhaps into the early 1980's. During at least parts of this period, TIA housed a number of employees at the Daula Hotel. Defendants have emphasized, in their briefs and papers, that they never had a *permanent* business office in Nigeria. In so doing, Defendants seem to interpret § 4805(a)(5) as requiring that TIA have had a permanent business office in Nigeria in order to come within that provision or for the Nigerian courts to exercise personal jurisdiction over it. This misconstrues the Act. Although the statute does not define the term "business office," there is nothing in Section 4805(a)(5) that suggests that the defendant must have had a *permanent* place of business in the foreign state. The statute only requires that the defendant have had a business office in the country and that the cause of action have arisen out of business done by the defendant through that office.

Other courts have reached a similar conclusion. In *Canadian Imperial Bank of Commerce v. Saxony Carpet Co.*,[75] the defendant received notice of a Montreal complaint in New York. Saxony's counsel replied with a letter asserting that the defendant was not subject to personal or subject matter jurisdiction in the Canadian action, but Saxony took no further action in the Canadian proceedings. Saxony did not have an office in, or regularly go to, Canada. After obtaining a default judgment, the Canadian judgment creditor sought to enforce its judgment against the defendants in New York. The court applied common law principles of comity akin to those expressed in Section 4805(a)(5) of the UFMJRA and recognized the judgment. It held that the cause of action in the Canadian litigation, collection on an account receivable, arose from a contract for the delivery of carpet manufactured in Canada and shipped to New York. The court concluded that the contract between Canadian and New York businesses, involving significant performance in Canada in the form of the carpet manufacturing, along with the defendants' occasional visits to Quebec, were sufficient for the Canadian court to exercise personal jurisdiction over Saxony.

In the present case, TIA conducted air charter operations in Nigeria in 1976. It housed employees at the Daula Hotel in Kano and used that hotel as a base of operations. The Commission Agreement was executed and at least partly performed in Nigeria and concerned the business operation of transporting pilgrims between Kano, Nigeria and

---

[75] 899 F. Supp. 1248 (S.D.N.Y 1995), *aff'd*, 104 F.3d 352 (2d Cir. 1996) (applying New York law); *see also Farrow*, 1995 Mass. Super. LEXIS 495, at *5-6; *Kam-Tech Sys. Ltd. v. Yardeni*, 774 A.2d 644, 652-53 (N.J. Super. Ct. App. Div. 2001).

Jeddah, Saudi Arabia. TIA purposefully availed itself of business opportunities in Nigeria, executed a contract in Nigeria, and had what I find constituted a business office at the Daula Hotel. Therefore, under § 4805(a)(5), TIA cannot avoid recognition of the Judgment by challenging the personal jurisdiction of the Nigerian courts.

Many of these issues involving notice, appeals, foreign offices, and personal jurisdiction are similar to those in *S.C. Chimexim S.A. v. Velco Enterprises Ltd.*[76] In *Velco*, the plaintiff foreign company petitioned a New York Federal District Court to recognize a Romanian judgment stemming from a suit for breach of contract. The defendant, Velco, had conducted limited operations in Romania through a "representative office," similar to a small branch office. The plaintiff served Velco at its representative office by posting a summons to the office door. Velco denied that it had been properly served or that it had received the summons and did not appear before the tribunal.[77] The Romanian court entered judgment against Velco, and Velco appealed. Velco lost its first appeal, and while the second appeal was pending in Romania's Superior Court, the plaintiff filed suit in the Southern District of New York to have the Romanian judgment recognized. Applying New York law, the district court recognized the Romanian judgment, despite the pending appeal.

The court held that under New York's version of Section 4805(a)(2) of the UFMJRA, the court could not refuse to recognize the judgment on the ground of lack of

---

[76] 36 F. Supp. 2d 206 (S.D.N.Y. 1999).

[77] *Id*. at 210.

personal jurisdiction.[78] Similar to TIA in this case, Velco voluntarily appeared in the Romanian proceedings by appealing the judgment, and in its appeal raised arguments going to the merits of the underlying dispute. This was sufficient to preclude nonrecognition for lack of personal jurisdiction.[79]

In another parallel to this case, the *Velco* court held that personal jurisdiction was proper because Velco had an office in Romania and the cause of action, breach of a chemical supply contract, arose from business done by Velco through that office. Thus, under New York's version of Section 4805(a)(5), the court held the Romanian judgment could not be challenged for lack of personal jurisdiction.[80]

Additionally, the district court found unpersuasive Velco's arguments that it did not receive notice of the Romanian action in time to allow it to defend itself. The court held that even if Velco did not receive the initial summons, it had mounted a vigorous defense on appeal and had lost that appeal on the merits. This satisfied the district court that Velco had sufficient notice of the Romanian proceedings.[81]

In summary, in *Velco* as in this case, a foreign court found the defendant judgment debtor liable for breach of a contract stemming from business conducted through an office located in the foreign country. The defendant participated in the foreign proceedings by arguing the merits of the case on appeal but, as in this case, protested that

---

78 *Id*. at 215.

79 *Id*.

80 *Id*. at 215-16.

81 *Id*. at 216.

it had received inadequate notice of the proceedings. For reasons similar to those determinative in this case, the *Velco* court rejected the defendant's arguments relating to lack of notice and of personal jurisdiction and recognized the Romanian judgment.

D. Statute of Limitations and Laches Defenses

Defendants argue that the Nigerian Judgment is time-barred by the applicable statute of limitations and the equitable doctrine of laches. The UFMJRA does not contain a section providing a limitations period, and no Delaware case has addressed the issue of what limitations period, if any, applies to actions for recognition of a foreign judgment pursuant to the Act. Defendants urge application of the 3-year period set forth in 10 *Del. C.* § 8106. Akande argues that the applicable period for actions for recognition of a foreign judgment depends on the law of the country where the judgment was rendered. Once the judgment is recognized, Plaintiff argues, either there is no statute of limitations, or the 10-year limitations period set forth in 10 *Del. C.* § 4711 governs enforcement of the judgment.

1. The statute of limitations and UFMJRA

Courts in other jurisdictions have held that the statute of limitations applicable to actions for recognition under the Act is that specified under the law of the country where the judgment was rendered.[82] This conclusion follows from the fact that the Act, by its own terms, applies to "any foreign judgment that is final and conclusive and *enforceable*

[82] *Nadd v. Le Credit Lyonnais, S.A.*, 804 So. 2d 1226, 1231 (Fla. 2001); *Panilla v. Harza Eng'g Co.*, 755 N.E.2d 23, 27-28 (Ill. App. Ct. 2001).

where rendered."[83] In contrast, the statute of limitations applicable to enforcement of the foreign judgment is the law of the forum that recognizes it.[84] In Delaware, there is no statute of limitations as to judgments or actions on judgments. There is only a rebuttable, common law presumption of payment after 20 years.[85]

In other words, courts that have addressed the issue of the limitations period applicable to foreign judgments recognized under UFMJRA have looked first to the law of the country where the judgment was rendered. If the judgment is not time-barred by that country's limitations period, the forum applies its limitations period for enforcement of judgments, if it has one.[86]

In *Nadd*, the Florida Supreme Court held that the trial court should have recognized a French judgment. The court concluded that the judgment was final, conclusive, and enforceable where rendered and was not time-barred by the French 30-year statute of limitations for enforcement of judgments.[87] Once the judgment was recognized by the Florida court in accordance with Florida's version of the UFMJRA,

---

83 10 *Del. C.* § 4802 (emphasis added).

84 *Guayaquil & Quito Ry. Co. v. Suydam Holding Corp.*, 132 A.2d 60, 66 (Del. 1957); *Nadd*, 804 So. 2d at 1231-33; *cf.* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 118(2) (1971) ("A valid judgment rendered in a State of the United States may be denied enforcement in a sister State if suit on the judgment is barred by the sister State's statute of limitations applicable to judgments").

85 *Guayaquil*, 132 A.2d at 66.

86 *Nadd*, 804 So. 2d at 1231 (Fla. 2001); *Panilla v. Harza Eng'g Co.*, 755 N.E.2d 23, 27-28 (Ill. App. Ct. 2001); *see* Zitter, *supra* note 33, at *26.

87 *Nadd*, 804 So. 2d at 1231.

efforts to enforce that judgment were governed by Florida's 20-year statute of limitations for enforcement of judgments.[88]

Defendants attempt to distinguish *Nadd* on the basis that the *Nadd* court held that Florida's 5-year statute of limitations did not apply to the acts of filing and registering a foreign judgment pursuant to Florida's version of the UFMJRA. Defendants argue that because Delaware's version of the Act contains no such recordation procedures, *Nadd* is inapposite. I disagree.

The filing and registration requirements in Florida's version of the UFMJRA closely parallel Delaware's requirements for filing and recording a judgment under Delaware's UEFJA. Thus, Florida's statue makes explicit what this Court has inferred, namely, that the procedures set forth in the UEFJA govern the *enforcement* of foreign judgments. These details as to how Florida and Delaware implement the two statutes, the UFMJRA and UEFJA, are not central to the holding in *Nadd* or its application to this case. The court in *Nadd* appropriately focused on the limitations period applicable to recognition of foreign money judgments. In holding that the only limitation applicable to the recognition of a foreign money judgment is that the judgment be enforceable where rendered, the *Nadd* court stated:

> This interpretation gives full effect to the legislative intent to ensure reciprocal favorable treatment of Florida judgments in foreign countries. We do not believe the Legislature wished to subject foreign judgments under the UFMJRA to the enforcement limitations set forth in section 95.11(2)(a) [arguably applicable under the UEFJA], since to

[88] *Id*. at 1232.

> do so would severely impede similar recognition of Florida judgments.[89]

This Court's holdings as to Akande's claims give effect to the same presumed legislative intent.

Similarly, in *Panilla* the court held that no Illinois statute of limitations applies to recognition of foreign judgments under Illinois' version of the UFMJRA.[90] After recognition, Illinois' 7-year limitations period for enforcement of judgments applies.[91]

Defendants argue that this Court should apply the 3-year limitation period specified in 10 *Del. C.* § 8106 because Akande's action seeks to recover money based on a statute, namely, the Act. Yet, the 3-year limitation period set forth in Section 8106 is shorter, in some cases much shorter, than statutes of limitations commonly applicable to judgments.[92] I consider it highly unlikely that the Delaware Legislature would adopt the UFMJRA, with its strong language that judgments recognized under the Act are enforceable as judgments entitled to full faith and credit, while silently intending to subject threshold efforts to obtain recognition of such judgments to the relatively short 3-

---

89 *Nadd*, 804 So.2d at 1233.

90 *Panilla*, 755 N.E.2d at 28-29.

91 *Id*. at 28-30.

92 For example, Florida's statute of limitations period for its own judgments and judgments recognized pursuant to UFMJRA is 20 years. *Nadd*, 804 So. 2d at 1229-34. The Illinois limitations period for judgments is seven years with procedures for revival. *Panilla*, 755 N.E.2d at 27. The period for judgments in New York and Alabama is 20 years, while it is only ten years in California and North Carolina. *See* N.Y. C.P.L.R. § 211 (2007); ALA. CODE § 6-2-32 (LexisNexis 2007); Cal. Code Civ. Proc. § 337.5.2 (Deering 2007); N.C. GEN. STAT. § 1-47(1) (2006).

year limitations period of § 8106. Having such a short period of limitations is inconsistent with the language of the Act, *e.g.*, "enforceable where rendered," and would undermine the general purpose of the UFMJRA to foster reciprocity, for most jurisdictions have longer limitations periods.

Further, I would not characterize this action as being "based on a statute" as that phrase is used in § 8106. Akande's claims are based on a judgment. Whether the Judgment is recognizable in Delaware and therefore entitled to full faith and credit depends on a statute, but unlike the multiple causes of action listed in § 8106, the UFMJRA does not provide a basis for a claim independent of the Judgment. Rather, it is a codification of common laws of comity and provides for the recognition of a foreign judgment that has been rendered on some underlying cause of action.

Although Plaintiff argues that the 10-year period provided for in 10 *Del. C.* § 4711 might be applicable to the recognition of foreign judgments, I do not find that argument persuasive. Section 4711 specifies the limitations period during which a judgment lien may continue upon real property. It does not appear to be a general limitations period for judgments nor has Akande cited any authority suggesting that it is. As previously discussed, Delaware has no general statute of limitations applicable to judgments, and this Court will not graft one onto the Act. If the Nigerian Judgment is enforceable where rendered, *e.g.*, not time-barred in Nigeria, and recognized in Delaware, there is a

rebuttable, common law presumption of payment after 20 years.[93] Thus, the important question is whether the Judgment is time-barred in Nigeria.

Based on the submissions of the parties, I find that the Judgment is not time-barred by any Nigerian statute of limitations. As evidence of Nigerian law on the limitations period applicable to judgments, Akande relies on the Sanyaolu affidavits. Sanyaolu asserts that the Judgment is valid and binding until set aside by the court that rendered the judgment, or by a higher court, and that, in his opinion, the Judgment would not be set aside.[94] He further opines that the Judgment is governed by a 6-year limitations period.[95] Hence, Akande's expert concludes, the present action for recognition is not time-barred

---

93 The parties have not briefed, and I express no opinion on, the issue of when the limitations period would begin to run, *e.g.*, when the judgment is rendered in the foreign jurisdiction or when the foreign judgment is recognized in the forum state. Although this issue may be important in some contexts, it will not make a substantive difference in the resolution of this case.

94 Sanyaolu Aff. 9/22/06 ¶ 3 *et seq*.

95 *Id*. ¶¶ 55-60. Azikiwe disagrees with Sanyaolu's assertion because it seems that Sanyaolu based his opinion on the limitations period that governs the recognition of foreign judgments in Nigeria. Azikiwe Aff. 10/27/06 ¶ 17(d). In other words, Sanyaolu seems to apply the limitations period contained in Nigeria's counterpart to the UFMJRA. Under that law, Nigerian courts will recognize a foreign judgment for up to six years after it is rendered. In my opinion, a more appropriate period to consider is the limitations period, if there is one, applicable to Akande's judgment in Nigeria. None of the parties, however, presented evidence directly addressing that issue. Nonetheless, I find Sanyaolu's answer relevant. Although Azikiwe notes the same perceived flaw in Sanyaolu's answer as the Court has, Azikiwe does not argue that Nigeria's statute of limitations for judgments is shorter than six years. I think it highly unlikely that Nigeria would extend recognition to foreign judgments for up to six years, yet apply a shorter limitations period for judgments rendered by its own courts. Given the absence of evidence to the contrary, I therefore infer that Nigeria's limitations period for Nigerian judgments is at least six years.

because the Judgment was rendered on October 20, 1999, and this suit was filed January 21, 2005, less than six years later.

Defendants' affiant on Nigerian law, Azikiwe, did not express an opinion on whether the Nigerian Judgment is time-barred in Nigeria. Azikiwe did agree, however, that in Nigeria the Judgment is presumed valid until set aside by the court that rendered it or a higher court.[96] Based on the evidence of record, I find that the Judgment is not time-barred by any Nigerian statute of limitations, and that in terms of the timeliness of Akande's Complaint in Delaware, the Judgment was "enforceable where rendered" when the Complaint was filed.

2. Laches

Defendants argue that even if the statute of limitations does not bar recognition of the Nigerian Judgment, this Court should apply the equitable doctrine of laches to bar such recognition. Laches may apply if a defendant has knowledge of a claim and prejudices the defendant by unreasonably delaying in bringing the claim.[97] I conclude that the circumstances of this case do not warrant the application of laches to preclude Akande's claims.

The State Proceedings in Nigeria lasted 11 years, but this period of time, although very long, is not unheard of in the United States. Furthermore, Defendants have not

---

96 Azikiwe Aff. 8/22/06 ¶ 5. Azikiwe avers that, for other reasons, the Judgment ultimately would be unenforceable in Nigeria.

97 *Hudak v. Procek*, 806 A.2d 140, 153 (Del. 2002) (citing *Fike v. Ruger*, 752 A.2d 112, 114 (Del. 2000)).

shown that Akande was primarily responsible for the delay the case experienced during this period. Akande received his first judgment against TIA for 10,000 Naira in January 1978, less than two years after he filed suit. Because he did not prevail against all of the defendants in that action, Akande appealed part of the 1978 judgment, and TIA cross-appealed. TIA eventually abandoned its cross appeal, and the proceedings dragged along until the Supreme Court ordered the trial *de novo*. Defendants, however, have not shown that Akande was especially torpid in the pursuit of his claims or otherwise caused any unreasonable delay during the State Proceedings.

As to the Federal Proceedings, the opposing parties appear to have been equally responsible for the delays. Akande contributed, in part, to the length of the Federal Proceedings. As the Federal High Court put it, "the case could not proceed normally as it was struck out on one or two occasions for want of diligent prosecution. It subsequently turned out that the plaintiff was ill and he did not fully recover until about April 3, 1996."[98] Defendants have not shown, however, that any delays by Akande during the Federal Proceedings due to being sick were unreasonable. To the contrary, the Nigerian court appears to have found the delays excusable on that basis.

TIA likewise contributed, in part, to the delays in the Federal Proceedings. It had notice of the trial *de novo* in the Federal High Court of Lagos, yet based on the evidence appears to have chosen not to participate in that action. The case was adjourned, more than once, because the defendants, including TIA, were not represented by counsel and

[98] POB App. A113.

apparently refused to participate.[99] As the Federal High Court put it, "[a]ll the 2nd, 3rd and 4th defendants gave no evidence at all even though they are fully aware of the present proceedings. In fact as can be observed from the tone of Exhibit G, the attitude of the 4th defendant [TIA] is one of utter indifference."[100]

The most important questions on the issue of laches are whether Plaintiff unreasonably delayed in bringing these Delaware proceedings and whether any such delay prejudiced Defendants. On that point, Defendants argue Akande's five-year delay during the Interim Period from entry of the Judgment to the filing of this action severely prejudiced their ability to defend themselves.

Under the circumstances, I do not find Akande's delay during the Interim Period to be unreasonable. Although equity looks at the facts and circumstances when evaluating the possibility of laches, analogous statutes of limitations provide a presumption of what is reasonable.[101] If the Judgment had been a Delaware judgment, Akande would have at least 20 years to collect on it. This factor counsels against imposing a much shorter time period of only a few years for purposes of laches analysis.

---

99 POB App. A116-17, A122-23.

100 *Id*. at A122-23. The court's reference to Exhibit G is to a letter dated Sept. 3, 1976 between Akande and TIA's then-president, H.P. Huff. Huff informed Akande, on behalf of TIA, that TIA would continue to use Omisade's company, NADCO, to help with Charter operations in Nigeria, and that Akande and Omisade would have to work out their differences between themselves. *See* POB App. A369 for a copy of the letter.

101 *Franklin Balance Sheet Inv. Fund v. Crowley*, 2006 Del. Ch. LEXIS 188, at *22-23 (Oct. 19, 2006); *United States Cellular Inv. Co. v. Bell Atl. Mobil Sys., Inc.*, 677 A.2d 497, 502 (Del. 1996); *Wright v. Scotton*, 121 A. 69, 73 (Del. Ch. 1923).

Akande needed to wait for the Federal High Court to issue a certified copy of the Judgment, which takes several months in Nigeria.[102] After receiving the certified copy, Akande understandably sought to enforce the Judgment against his former Nigerian business partner, Omisade. When this approach failed, he hired an American lawyer to help him collect against TIA. Beginning in March, 2002, Akande exchanged several letters with TIA, through counsel, and virtually every time Defendants asked for additional documentation. Akande supplied at least some of that documentation. These efforts, however, took time. When Akande's attempts to collect on the Judgment without litigation failed, he hired a second lawyer who filed suit in New York, a jurisdiction in which the lawyer was not admitted. Akande ultimately withdrew that action. Considering these difficulties and the fact that TIA and Transamerica had notice of Akande's collection efforts since at least March 2002, I am not convinced that Akande's taking five years to file these proceedings constituted unreasonable delay.

Moreover, I find that Transamerica is partly responsible for Akande's delay in bringing these Delaware proceedings. TIA was dissolved in December 1998. Transamerica knew that and entered into an agreement with TIA dated December 14, 1998, under which it assumed TIA's liabilities (the "Assumption Agreement").[103] In a letter dated July 12, 2002, Transamerica told Akande that TIA "was legally dissolved on December 23, 1998 as a Delaware Corporation, under the laws of Delaware. Under

---

[102] POB App. A165-70.

[103] POB App. A329-30.

Delaware law, [TIA] is not subject to any lawsuit, since it no longer exists."[104] Indeed, one of the last statements Transamerica made to Akande during this exchange of letters is, "there is no entity for your client to pursue on any October 20, 1999 Judgment."[105] Transamerica did not, however, tell Akande about the Assumption Agreement or otherwise inform him that Transamerica had assumed TIA's liabilities. Indeed, Defendants did not produce the Assumption Agreement to Akande until almost the end of discovery in this action. If Transamerica had informed Akande of the Assumption Agreement in 2002 and otherwise been more forthcoming, Akande probably could have commenced these proceedings earlier and prosecuted them more expeditiously. Thus, some of Akande's delay in bringing this action is attributable to Transamerica's delay in informing Akande of the Assumption Agreement. For these reasons, I find that Akande did not unreasonably delay in bringing this action.

Nor do I find that TIA or TransAmerica has been substantially prejudiced by Akande's delay in bringing these Delaware proceedings. Defendants argue that the "seal of death has closed the lips" of vital defense witnesses Omisade, Yakubu and Riley, but I am not persuaded that the absence of these witnesses is especially prejudicial to Defendants.

---

104 DOB Ex. J.

105 *Id*. Ex. L.

Defendants assert that Omisade is "believed to have passed away" during the Interim Period.[106] Assuming that is true, Defendants have not convinced me that his live testimony materially would have helped their case. Defendants argue that Omisade's absence is important because "[h]e played a prominent role in the Nigerian Action and was TIA's primary -- if not only -- point of contact with regard to those proceedings."[107] This is credible. Omisade's attorney prepared the initial draft of the Riley Affidavit, and Omisade kept TIA informed of some of the proceedings taking place in Nigeria. To my mind, however, this evidence simply confirms that TIA had notice of the Nigerian proceedings. TIA could have defended in Nigeria, including pressing its challenges to personal and subject matter jurisdiction there, and perhaps prevented some of the tortured history of this case. Omisade may well have had information particularly relevant to Akande's underlying cause of action for breach of contract, but that is not the issue before this Court. Thus, Defendants have not shown that Omisade's unavailability will substantially prejudice their ability to defend against Akande's claims in this Court for recognition and enforcement of the Judgment.

Rabo Yakubu (deceased) was the bailiff who served TIA in Kano in 1976.[108] As with Omisade, Defendants merely suspect (perhaps hope) that Yakubu died during the

---

106 DOB at 38. The record does not provide a precise date of death for Omisade. He apparently died before or shortly after the time the Judgment was entered. *See* DOB Ex. C at 18. The Court does not consider Akande's failure to bring suit within such a short period of time to be unreasonable.

107 Reply Br. in Further Supp. of Defs.' Mot. for Summ. J. ("DRB") at 20.

108 POB App. A324-25.

Interim Period. Again, however, Defendants have failed to show why this Court should expect that Yakubu's live testimony would have been substantially different from what he said in the affidavit of service he executed as part of his duties as a bailiff almost 30 years before the commencement of this action.[109] Defendants adduced no evidence to suggest that Yakubu would have recanted or otherwise substantially altered his affirmations that he in fact served process on TIA in Kano in 1976. Moreover, for the reasons discussed in Section II.C, *supra*, the materiality of any additional testimony of Yakubu is questionable because, in the circumstances of this case, the UFMJRA precludes this Court from denying recognition of the Judgment for lack of personal jurisdiction.

Unlike the situation with Omisade and Yakubu, the evidence clearly shows that Riley died during the Interim Period on November 11, 2001. Moreover, the Riley Affidavit is unquestionably important in this litigation, for the parties all have cited to various portions of it as supporting their respective arguments. Based on the evidence, however, I find that it is highly unlikely that Riley would have denied having notice of, at least, the Supreme Court proceedings and the Federal Proceedings. Thus, although the facts of this case might be clearer if Riley were present and able to testify, I am not convinced that his absence is materially prejudicial to Defendants.

---

[109] *Id*. at A321-25.

Defendants have not shown that Akande's delay in bringing this case prejudiced them in any other way.[110] I therefore conclude that Akande's claims are not barred by laches.

E. Subject Matter Jurisdiction

1. Defendants' arbitration defense

Defendants make a strained argument that the Nigerian courts lacked subject matter jurisdiction over Akande's claims. If those courts did lack subject matter jurisdiction, then according to Section 4804(a)(3) of the UFMJRA, the Judgment would not be conclusive and could not be recognized pursuant to the Act. The Charter Agreement between the Nigerian Pilgrims Board and TIA included an arbitration provision specifying that disputes arising from that agreement were to be arbitrated by the International Chamber of Commerce in Paris.[111] Defendants assert that the Commission Agreement, *i.e.*, the agreement between Akande and TIA, was part of, and subject to, the Charter Agreement because the commissions due to Akande stemmed from the Charter Agreement. But the Commission Agreement itself makes no reference to the Charter Agreement and contains no indication that it was meant to be subject to the terms of that agreement. All of Defendants' citations to the obligation to arbitrate refer to the Charter Agreement, yet nothing in that agreement indicates that Akande and

---

110 Based on the Court's rulings as to Counts III-V of the Complaint (*see* Section II.F, *infra*), I reject as unfounded Defendants' allegations that they are seriously prejudiced by the loss of their attorneys' documents covering TIA's dissolution and winding-up.

111 DOB Ex. E ¶ 22.

NAFTECH submitted to its terms. Thus, the Court finds unpersuasive Defendants' contention that the Nigerian courts lacked subject matter jurisdiction due to the Commission Agreement, on which Akande based his claims, being subject to the Charter Agreement.

2. Is the Judgment void because TIA was dissolved?

Defendants argue that the Nigerian Judgment is void because TIA was dissolved before the Judgment was rendered, and supposedly, Nigerian law does not recognize the validity of a judgment rendered against a nonexisting legal entity. In support of their position, Defendants rely upon Azikiwe's affidavits.[112] Azikiwe asserts that "when a company against which a proceeding in Court is pending loses its legal personality by dissolution, the action against it would automatically abate."[113] According to Akande's expert, Sanyaolu, "on the dissolution of a Company the liquidator is joined as a party to a pending action."[114] He also avers that the cases cited by Azikiwe are factually distinguishable from this case.[115]

I find Sanyaolu's position more persuasive and agree that the two cases cited by Azikiwe are inapposite. The first involved a writ of summons issued in 1973 against a person who died in 1949.[116] The deceased person in that case did not die during the

---

112 Azikiwe Aff. 8/22/06 ¶¶ 15-16.

113 *Id*. ¶ 15.

114 Sanyaolu Aff. 9/22/06 ¶¶ 52-54.

115 *Id*.

116 Azikiwe Aff. 8/22/06 Ex. UHA 16.

proceedings, so the purported analogy to the dissolution of TIA is strained, at best. The other case cited by Azikiwe involved the passage of a statute whose retroactive effect voided the existence of a trade union, and by that fact alone voided a judgment in favor of that trade union.[117] Again, the current case is distinguishable because TIA's dissolution did not represent the act of a government exercising its plenary powers, but rather the voluntary act of the judgment debtor itself. Moreover, if Nigerian law were as Azikiwe posits, a judgment-creditor corporation being sued in Nigeria could avoid an adverse judgment merely by dissolving. This runs counter to the corporation law of most jurisdictions, including Delaware. Indeed, as a legal matter, this result seems spurious. I therefore adopt Sanyaolu's position on this issue as being more credible and comporting better with commonly accepted legal principles.

Most importantly, the existence or nonexistence of a Delaware corporation is governed by Delaware law. According to Section 278 of the Delaware General Corporation Law, a dissolved Delaware corporation continues its existence for three years after the date of dissolution to allow the company, among other things, gradually to wind up litigation.[118] Furthermore, "an implicit corporate existence, of indefinite duration, is imparted by the statutory directive that no action for or against the corporation shall abate by reason of the dissolution of the corporation, the corporation's existence being extended until the execution of all judgments or decrees affecting the

---

117 *Id*. Ex. UHA 17.

118 8 *Del. C.* § 278.

corporation."[119] Thus, under Delaware law, TIA continued in existence for at least three years after its dissolution, or until December 14, 2001. Consequently, the Judgment, rendered on October 20, 1999, was not rendered against a nonexistent entity. For these reasons, I conclude that TIA's corporate dissolution did not deprive the Nigerian courts of subject matter jurisdiction or otherwise render the Nigerian Judgment void.

F. The Assumption Agreement and Breach of Fiduciary Duty Claim

Count III of Plaintiff's Complaint alleges that the Individual Defendants are liable to Akande for breach of fiduciary duty. Akande contends that when the Individual Defendants dissolved TIA, they owed fiduciary duties to TIA's creditors, including him, and that they breached those duties by not adequately providing for the satisfaction of creditors' valid claims. Akande also alleges in Count V that Transamerica is liable on the Nigerian Judgment because, when TIA was dissolved, Transamerica assumed TIA's liabilities pursuant to the Assumption Agreement. At argument, Akande agreed that if the Assumption Agreement adequately provides for TIA's liabilities under Delaware law, his claims for breach of fiduciary duty (Count III) and for a constructive trust (Count IV) are unnecessary.[120]

Under the plain language of the Assumption Agreement, Transamerica did assume responsibility for TIA's valid liabilities, including the claims of judgment creditors. Defendants presented no evidence or argument supporting a different conclusion. As

---

119 *Rosenbloom v. Esso V.I., Inc.*, 766 A.2d 451, 458 (Del. 2000); *City Invest. Co. Liquidating Trust v. Continental Cas. Co.*, 624 A.2d 1191, 1195 (Del. 1993).

120 Tr. at 4, 15-16.

Defendants themselves put it: "the record establishes, and Plaintiff does not dispute, that Transamerica assumed all of TIA's known liabilities at the time of its dissolution. And there is no evidence to suggest -- nor does Plaintiff even claim -- that Transamerica would not be able to satisfy the Judgment if required."[121] In opposing Count V of the Complaint, seeking to hold Transamerica liable on the Judgment, Defendants rely entirely on Transamerica's various arguments that the judgment is unenforceable and should not be recognized. As previously discussed, this Court has rejected those arguments. Thus, to the extent the Court recognizes the Judgment against TIA, it will constitute a liability of Transamerica as well.

In terms of the claims Akande has asserted, therefore, the Assumption Agreement adequately provides for satisfaction of valid claims of creditors of TIA. There being no evidence that the Individual Defendants otherwise breached any fiduciary duties they may have owed to Akande, the Court will grant Defendants' motion for summary judgment on Count III. In addition, Count IV for a constructive trust is dismissed without prejudice as moot.[122]

G. Akande's Request for Additional Damages

The Judgment awards Akande eight million Naira for TIA's breach of the Commission Agreement for 1976. The Judgment also awards Akande unspecified

---

121 DOB at 47-48.

122 Having ruled in Defendants favor on the merits of Count III and dismissed Count IV, the Court has no need to address Defendants' further argument that those claims are time-barred. *See* DRB at 12-15.

damages for TIA's breach of the Commission Agreement for 1977 and subsequent years. As part of his request for recognition and enforcement of the Judgment, Akande has urged this Court to find that he is entitled to take additional discovery to allow him to determine the amount of damages for the post-1976 breaches of the Commission Agreement. Defendants oppose this request on several grounds, including that Akande failed to raise this request for relief in his Complaint.[123] But the request is clearly raised in subparagraph (f) of the Complaint's request for relief, where Akande asks for an Order requiring Transamerica "to produce the information required by the Judgment to calculate full and complete damages for 1976, 1977 and 1978, and thereafter." The question remains, however, whether the Court can recognize a foreign judgment for damages or other costs that are not reduced to a specific sum of money.

A judgment is conclusive under the UFMJRA "to the extent that it grants or denies recovery of a sum of money."[124] In other words, the uniform act concerns the recognition of foreign *money-judgments*. The Act does not apply to a judgment to the extent that it grants undetermined costs or damages.[125] The Judgment states that Akande

---

123 DAB at 39-40.

124 10 *Del. C.* § 4803.

125 *Nicor Int'l Corp. v. El Paso Corp.*, 292 F. Supp. 2d 1357, 1365 (S.D. Fla. 2003) (refusing to recognize a Dominican Republic sentence that did not award specific amount of money); *Bianchi v. Savino Del Bene Int'l Freight Forward., Inc.*, 329 Ill. App. 3d 908, 924-25 (Ill. App. Ct. 2002) (refusing to recognize Italian judgment awarding unspecified damages for breach of employment contract); *Farrow Mortgage Serv. Pty. Ltd. v. Singh*, 1995 Mass. Super. LEXIS 495, at *12 (Mar. 30, 1995), *aff'd*, 675 N.E.2d 445 (1997) (refusing to recognize Australian judgment to the extent it awarded undetermined costs stemming from the

is entitled to relief for any breach of the Commission Agreement for "1977 and at various dates thereafter."[126] It does not, however, reduce any such amounts to a specific sum. Hence, that portion of the Judgment is not conclusive or recognizable under the UFMJRA. Akande's request for authorization from this Court to pursue discovery on those parts of the Judgment that do not award money, or only award unspecified sums, is therefore denied.

Akande further argues that this portion of the Judgment is not specific because TIA refused to participate in the Nigerian proceedings, and the resultant lack of production made calculation of the damages impossible when the Judgment was rendered. Akande has not explained, however, why he could not have obtained a default judgment for an estimated amount of the requested damages or some other appropriate sanction in Nigeria, nor why he did not pursue discovery on these damage claims in post-Judgment proceedings in Nigeria or in this Court. At this late stage of the proceedings with their long and tortured history, Akande would, at a minimum, need to conduct further discovery on when TIA terminated operations under the Charter Agreement, the extent of any such operations between 1976 and that date, and the amount of damages NAFTECH suffered as a result of TIA's breach. Long ago and far away were the time

---

Australian litigation); *cf.* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 108 (1971) ("A judgment for the payment of money will not be enforced in other states unless the amount to be paid has been finally determined under the local law of the state of rendition").

126 POB App. A113.

and place to determine those issues. I will not re-open this Judgment to re-litigate these long stale matters.

Akande asserts that the sum due under the Judgment for TIA's breach of the Commission Agreement for 1976 was $16,727,072.30 as of July 22, 2006.[127] In connection with the pending cross-motions for summary judgment, Defendants have not questioned whether this number accurately reflects the specific sum of damages awarded in the Judgment. Whatever the correct number is at this time, the only award of damages under the Nigerian Judgment that this Court recognizes is the amount for the breach of the Commission Agreement for 1976.

III. CONCLUSION

For the reasons stated, the Court grants Akande's motion for summary judgment as to Count I (seeking recognition of the Judgment) and Count II (for enforcement) to the extent those Counts relate to the portion of the Judgment pertaining to the breach of the Commission Agreement for 1976, and denies the motion as to Counts I and II in all other respects. In furtherance of this conclusion, the Court also grants summary judgment in Akande's favor on his claim in Count V that Transamerica assumed TIA's liabilities. The Court grants Defendants' motion for summary judgment on Count III of the Complaint for breach of fiduciary duties, and dismisses Count IV (seeking a constructive trust) as moot.

---

[127] POB at 12 n.7.

Plaintiff shall prepare and promptly file an appropriate form of final judgment, after notice and consultation with opposing counsel as to its form.