

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

FREDERICK F. BUECHEL, INDIVIDUALLY
AND AS TRUSTEE OF BIOMEDICAL
ENGINEERING TRUST, AND AS TRUSTEE
OF BUECHEL-PAPPAS TRUST, AND
CYNTHIA C. PAPPAS, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
MICHAEL J. PAPPAS, DECEASED,

Appellants,

v.

Case No. 5D19-3716

YOUNG BOCK SHIM AND CELLUMED
CO., LTD,

Appellees.

Opinion filed January 29, 2021

Nonfinal Appeal from the Circuit Court for
Orange County,
Luis F. Calderon, Judge.

Matthew B. Devisse, Edmond E. Koester, and
Richard D. Yovanovich, of Coleman, Yovanovich
& Koester, P.A., Naples, for Appellant Frederick F.
Buechel, Individually and as Trustee of
Biomedical Engineering Trust, and as Trustee of
Buechel-Pappas Trust.

Vello Veski, Law Office of Vello Veski, Palm City,
for Appellant Cynthia C. Pappas, as
Personal Representative of the Estate of Michael
J. Pappas.

John N. Bogdanoff and Christopher V. Carlyle, of
The Carlyle Appellate Law Firm, Orlando, for
Appellees.

EISNAUGLE, J.

Frederick F. Buechel, individually and as Trustee of Biomedical Engineering Trust and Buechel-Pappas Trust, and Cynthia C. Pappas, as Personal Representative of the Estate of Michael J. Pappas (the “Creditors”), appeal the denial of their motion filed post-judgment pursuant to section 56.29, Florida Statutes (2019), which sought an order compelling Young Bock Shim (the “Debtor”) to deliver a negotiable instrument located in Korea to satisfy a judgment. The trial court denied the motion, reasoning that it lacked jurisdiction over foreign property. We reverse because the trial court had authority based upon in personam jurisdiction and a plain reading of the statute.

Appellees, Mr. Shim and Cellumed, Co., Ltd., brought suit against the Creditors and fully litigated their claims surrounding a licensing agreement and the sale of a medical device company. The Creditors ultimately prevailed at trial, and the court entered a judgment for damages in their favor. As such, there is no dispute that the trial court has in personam jurisdiction over the parties.

During proceedings supplementary, the Creditors discovered that the Debtor is holding a negotiable instrument at his home in Korea. As a result, the Creditors filed a motion pursuant to section 56.29(6), Florida Statutes, seeking an order compelling the Debtor to deliver the instrument to the Creditors in Florida. The trial court denied the motion after concluding that it was without authority over foreign property, citing *inter alia* to our sister court’s holding in *Sargeant v. Al-Saleh*, 137 So. 3d 432 (Fla. 4th DCA 2014).

On appeal, the Creditors argue that the trial court erred for two reasons. First, the Creditors argue that a state court has in personam jurisdiction to order a party to act on foreign property. Second, given that there is no general impediment to such an order, the

Creditors argue that the trial court has specific authority to do so pursuant to section 56.29(6), Florida Statutes. We agree.

In Personam Jurisdiction and Foreign Property

“It has long been established . . . that a court which has obtained in personam jurisdiction over a defendant may order that defendant to act on property that is outside of the court’s jurisdiction, provided that the court does not *directly* affect the title to the property while it remains in the foreign jurisdiction.” *Gen. Elec. Cap. Corp. v. Advance Petroleum, Inc.*, 660 So. 2d 1139, 1142 (Fla. 3d DCA 1995) (holding trial court had authority to order a party to deliver an aircraft to Dade County “to proceed with the court’s order of foreclosure” (citing *inter alia Fall v. Eastin*, 215 U.S. 1 (1909))); *accord Schanck v. Gayhart*, 245 So. 3d 970, 973–74 (Fla. 1st DCA 2018); *Ciungu v. Bulea*, 162 So. 3d 290, 294 (Fla. 1st DCA 2015); *Hirchert v. Hirchert Fam. Tr.*, 988 So. 2d 63, 64–65 (Fla. 5th DCA 2008).

In other words, “although a court may not directly act upon real or personal property which lies beyond its borders, it may indirectly act on such property by its assertion of in personam jurisdiction over the defendant.” *Gen. Elec.*, 660 So. 2d at 1143. As the United States Supreme Court explained long ago in *Fall*:

In such case, the decree is not of itself legal title, nor does it transfer the legal title. It must be executed by the party, and obedience is compelled by proceedings in the nature of contempt, attachment, or sequestration.

Fall, 215 U.S. at 11; *see also Hirchert*, 988 So. 2d at 64 (“The court’s decree does not operate directly upon the property or affect its title, but is made effectual through coercion of the defendant.” (quoting *Groza-Vance v. Vance*, 834 N.E.2d 15 (Ohio Ct. App. 2005))).

The Debtor disputes this long-standing principle, relying on the fourth district’s

opinion in *Sargeant*. Indeed, *Sargeant* is directly on point and held that a trial court is without authority to order a judgment debtor to act on out-of-state property.

While *Sargeant* certainly supports the Debtor's position, we conclude that it was wrongly decided. *Sargeant* attempted to distinguish *General Electric*, reasoning that *General Electric* involved property subject to a perfected lien. But we fail to see any meaningful difference between property subject to a lien and property otherwise unencumbered for purposes of exercising in personam jurisdiction, and *Fall* made no such distinction. Perhaps most importantly, the Debtor fails to distinguish, or even acknowledge, our precedent in *Hirchert*.

Therefore, consistent with our decision in *Hirchert*, we once again align ourselves with the holdings in *Fall*, *General Electric*, and *Ciungu*, and conclude that there is no jurisdictional impediment to the trial court ordering the Debtor, over whom it has in personam jurisdiction, to act upon the negotiable instrument, even though the instrument is located outside of the court's territorial boundaries.

Authority Pursuant to Section 56.29(6), Florida Statutes

We now turn to the Creditors' argument that the plain language of section 56.29(6), Florida Statutes, authorizes the trial court to enter an order compelling a party to act upon out-of-state property. The Debtor disagrees, once again relying on *Sargeant*.

We review the interpretation of a statute de novo. *Ham v. Portfolio Recovery Assocs., LLC*, 46 Fla. L. Weekly S9 (Fla. Dec. 31, 2020). "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute

must be given its plain and obvious meaning.” *Citizens v. Brown*, 269 So. 3d 498, 504 (Fla. 2019) (citations omitted).

Section 56.29(6) provides:

The court may order any property of the judgment debtor, not exempt from execution, or any property, debt, or other obligation due to the judgment debtor, in the hands of or under the control of any person subject to the Notice to Appear, to be levied upon and applied toward the satisfaction of the judgment debt. **The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property or property rights of any judgment debtor to execution**, and including entry of money judgments as provided in ss. 56.16-56.19 against any person to whom a Notice to Appear has been directed and over whom the court obtained personal jurisdiction irrespective of whether such person has retained the property, subject to applicable principles of equity, and in accordance with chapters 76 and 77 and all applicable rules of civil procedure. Sections 56.16-56.20 apply to any order issued under this subsection.

§ 56.29(6), Fla. Stat. (2019) (emphasis added).

While *Sargeant* concluded that section 56.29(6) does not authorize a trial court to indirectly act on property located outside of its territorial jurisdiction, its interpretation is based on the court’s own policy determinations rather than the language of the statute. Notably, *Sargeant* concedes that “section 56.29 does not contain any express territorial limitation on the court’s ability to order a judgment debtor to transfer money or property into the State of Florida.” *Sargeant*, 137 So. 3d at 435. Nevertheless, our sister court expressed concern that there might be “competing claims to the foreign assets,” and decided that those competing claims should be resolved in a “single forum.” *Id.* (citation omitted).

Sargeant's public policy analysis is out of place. Any public policy considerations raised by section 56.29 are for the legislative branch, not a court. See Art. II, § 3, Fla. Const. (“The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”); *Avatar Dev. Corp. v. State*, 723 So. 2d 199, 201 (Fla. 1998) (“Article II, section 3 declares a strict separation of the three branches of government . . .”). As our supreme court has instructed:

If a Legislative enactment violates no constitutional provision or principle it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction. If it has been passed improvidently the responsibility is with the Legislature and not the courts.

Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 454 (Fla. 1992) (quoting *Van Pelt v. Hilliard*, 78 So. 693, 694–95 (Fla. 1918)).

By its terms, section 56.29(6) grants a trial court broad authority to enter “any” orders necessary to carry out the purpose of the statute, and in no way limits the court’s reach to its territorial boundaries. We are confident that Florida’s trial courts are well-equipped to resolve competing claims to an asset, foreign or otherwise. But even if we shared *Sargeant's* concern, this court is without constitutional authority to second-guess the legislature’s policy choices or to exercise power exclusively vested in the legislative branch by adding words to the statute.

In sum, given the long-established principle announced in *Fall*, and the statute’s plain language, we hold that a trial court may order a debtor, over whom the court has in personam jurisdiction, to act on assets located outside of the court’s territorial jurisdiction

pursuant to section 56.29(6). In so doing, we certify conflict with *Sargeant*. On remand, the trial court should reconsider the motion to compel.

REVERSED and REMANDED; CONFLICT CERTIFIED.

EVANDER, C.J., and ORFINGER, J., concur.