

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001938-MR

ROBERT R. ADDINGTON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 12-CI-03108

VIRGIN GREEN FUND I, L.P.

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; MOORE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Robert R. Addington brings this appeal from an October 2, 2012, Order of the Fayette Circuit Court granting the motion to domesticate a foreign judgment and to execute thereupon filed by Virgin Green Fund I, L.P. We affirm.

Addington executed a personal guaranty (Amended and Restated Guaranty Agreement) of a promissory note in favor of Virgin Green Fund I, L.P.

(Virgin Green). The promissory note was for the principal amount of \$15,000,000, and the primary debtor was DTX Oil, LLC (DTX). Addington was the principal officer of DTX.

Eventually, DTX defaulted upon the terms of the promissory note and entered into bankruptcy proceedings. Virgin Green filed an action against Addington upon the personal guaranty in Superior Court of the State of Delaware (Action No. 12C-02-264). Despite being properly served, Addington neither responded nor appeared in the Delaware action. As a consequence, a default judgment was entered against Addington on April 19, 2012, in the amount of \$20,276,052.50 plus 5.75 percent post-judgment interest.

Virgin Green then filed a Notice and Affidavit of Foreign Judgment Registration in the Fayette Circuit Court in Kentucky pursuant to Kentucky Revised Statutes (KRS) 426.955. Virgin Green sought to domesticate the Delaware default judgment and execute thereupon in Kentucky. Addington filed an “answer” and subsequently filed motions to dismiss or quash domestication of the Delaware default judgment.

By order entered October 2, 2012, the circuit court held that the Delaware default judgment was valid and domesticated the judgment in Kentucky. The court also granted Virgin Green’s motion to execute upon the default judgment in Kentucky. This appeal follows.

Addington contends that the circuit court erred by domesticating the Delaware default judgment and permitting execution upon the judgment in

Kentucky. Addington raises various defenses to Virgin Green's entitlement to collect under the personal guaranty.

The Kentucky Legislature adopted the Uniform Enforcement of Foreign Judgments Act codified in KRS 426.950-990. A foreign judgment is defined as "any judgment, decree, or order of a court of the United States or any other court which is entitled to full faith and credit in this Commonwealth." KRS 426.950. The procedure for the domestication of a foreign judgment is set forth in KRS 426.955:

A copy of any foreign judgment authenticated in accordance with the Act of Congress or the statutes of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of any court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a court of this state and may be enforced or satisfied in like manner.

And, our Court has recognized that "a sister state's judgment is entitled to full faith and credit and to registration if the judgment is valid under that state's own laws."

Sunrise Turquoise, Inc. v. Chemical Design Co., Inc., 899 S.W.2d 856, 857-58 (Ky. App. 1995).

In the case at hand, Addington does not argue that the Delaware default judgment is invalid under Delaware law. And, Addington does not argue that the default judgment should be set aside under Kentucky Rules of Civil Procedure (CR) 55.02 or CR 60.02. Instead, Addington asserts that Virgin Green

is not entitled to collect upon the personal guaranty and sets forth various “defenses” upon the merits. However, a default judgment is not granted upon the merits of a claim under either Delaware law (Rule 55) or Kentucky law (CR 55.01). But, a default judgment is granted based upon a party’s failure to enter an appearance. It is undisputed that Addington received proper notice of the Delaware proceeding and failed to enter an appearance therein. Addington does not dispute these facts. Consequently, Addington has failed to demonstrate that the default judgment was invalid under Delaware law (Rule 55). *See Sunrise Turquoise*, 899 S.W.2d 856.

Accordingly, we hold that the circuit court properly domesticated the Delaware default judgment and permitted enforcement thereof in Kentucky.

For the foregoing reasons, the Order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Sam P. Burchett
Lexington, Kentucky

BRIEF FOR APPELLEE:

Palmer G. Vance II
Matthew R. Parsons
Lexington, Kentucky