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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001486-MR

EIFLER TOWER CRANE CO., LLC AND
EIFLER CONSTRUCTION HOIST CO., LLC — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARY M. SHAW, JUDGE
ACTION NO. 12-CI-002586

ARDIS E. GREENAMYER — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: CLAYTON, DIXON, JONES, JUDGES.

JONES, JUDGE: This case arises out of an order of the Jefferson Circuit Court denying Appellant's request to register a judgment from the Louisiana Civil District Court. On appeal, we are asked to consider whether the Commonwealth must recognize the out-of-state judgment under the Full Faith and Credit Clause of

the United States Constitution. For the reasons more fully set forth below, we affirm.

I. Background and Procedural History

This case has a complex and tortured procedural history. The Louisiana Court of Appeals described it as a "procedural nightmare," a characterization with which we wholeheartedly agree.

Initially, the main issue in this case concerned the ownership of a Kroll Tower K-320 Crane, several hoists, and various other parts and accessories. On February 4, 2009, Appellant, the Eifler Companies ("Eifler"),[1] filed an action for replevin in the Jefferson County Circuit Court regarding the crane equipment, which was being held at a storage yard in Louisville belonging to Appellee, Ardis E. Greenamyer, II ("Greenamyer").[2] On February 13, 2009, Eifler obtained a writ of possession for the crane equipment, which was executed on February 18, 2009.

On June 8, 2009, Eifler filed a Complaint for Damages in Orleans Parish Civil District Court in Louisiana ("the New Orleans Action"). The complaint alleged that Greenamyer was wrongfully in possession of the crane equipment in Kentucky and therefore Eifler was entitled to damages for

[1] The Appellant Eifler Companies consist of Eifler Tower Crane Co., LLC and Eifler Construction Hoist Co., LLC, both are now dissolved limited liability companies organized and existing under the laws of the Commonwealth of Kentucky with their former principle places of business in Jefferson County, Kentucky.

[2] The ownership of the Eifler Companies as between Greenamyer and Thomas O. Eifler, Jr. is currently disputed. Greenamyer filed suit in Jefferson Circuit Court, Division 11, Case No. 09-CI-01166, in February 2009 alleging a 50% ownership interest in the Eifler Companies and regarding compensation for work performed on various projects. Eifler claims that Greenamyer was merely a vendor/contractor. That case is still pending and is set for a jury trial.

conversion.[3] Eifler also sought a Writ of Attachment concerning additional crane equipment purportedly owned by Greenamyer, but located on Eifler's property in New Orleans.[4]

Following the filing of the New Orleans Action and Greenamyer's Answer, Hi-Rise Equipment, LLC ("Hi-Rise"), a now defunct Kentucky corporation owned and operated by Greenamyer, filed a Petition for Intervention alleging that it was the actual owner of the crane equipment in Louisiana and asserting other claims against Eifler. When Eifler filed its Answer to Hi-Rise's Petition for Intervention, it also filed a Recoventional Demand against Hi-Rise and Greenamyer claiming damages relating to a former joint project in Las Vegas, Nevada.[5] Greenamyer claims that he was never served with Eifler's Reconventional Demand and neither Greenamyer nor Hi-Rise ever filed an answer to it.[6]

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[3] In its brief, Eifler states that it "initiated an action in Louisiana alleging that Greenamyer possessed crane equipment located in Louisiana that rightfully belonged to the Eifler Companies." However, the actual text of the complaint states that the crane equipment was wrongfully held in Kentucky. We also note that this crane equipment was apparently the same crane equipment already recovered from Greenamyer's storage yard by Writ of Possession executed by the Jefferson County Sheriff on February 18, 2009. Confusingly, it was separate and distinct crane equipment that Eifler repeatedly admitted was owned by Greenamyer that was located in Louisiana on Eifler's property.

[4] A Writ of Attachment is an emergency procedure for the purpose of preserving property to allow enforcement of a judgment against property to which a claimant may have a right. *See Southern State Lumber Co. v. Dickerson*, 106 So. 2d 513 (La. 1958).

[5] A Reconventional Demand is the procedural device by which a defendant asserts an action against a plaintiff. It is the functional equivalent of the counterclaim at common law and in federal procedure.

[6] The Reconventional Demand concerned a 2006 matter wherein Eifler engaged in business with a developer in Las Vegas to provide cranes for condominium construction. Greenamyer was affiliated with Eifler at that time. However, problems developed and Greenamyer deactivated the

After the Reconventional Demand was filed, nothing else occurred in the Louisiana case until January 13, 2011, when Eifler filed a Motion for Preliminary Default Judgment against Greenamyer, but not Hi-Rise, solely on the Reconventional Demand. The parties dispute whether Greenamyer was served with the notice of the Preliminary Default Judgment and informed of the hearing. On January 27, 2011, a hearing was conducted without Greenamyer or his counsel present and the Louisiana court granted the Default Judgment against Greenamyer in the amount of $1,171,737.53.[7]

Greenamyer thereafter filed a Motion to Set Aside and Annul the Default Judgment, Motion for New Trial, and Motion to Dismiss the Reconventional Demand. Greenamyer also filed his Answer and Exceptions to the Reconventional Demand. On May 20, 2011, a hearing was held on Greenamyer's motions and Exceptions. However, due to an apparent mistake, Greenamyer's counsel did not appear at the hearing and the motions and Exceptions were denied.

Greenamyer subsequently filed a Second Motion for a New Trial on the Exceptions and prior motions to set aside, etc. A hearing was held on September 9, 2011, with counsel for both parties present. After arguments

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cranes. The developer filed suit against Eifler and Greenamyer but ultimately the case was settled in November 2008. The basis of Eifler's Reconventional Demand is that Greenamyer deactivated the cranes without permission, thus causing damages to Eifler.

[7] Greenamyer asserts that Thomas O. Eifler, Jr. made material misrepresentations of fact during this hearing including several statements that directly contradict statements made during the Nevada case.

regarding jurisdiction and procedure, the Louisiana trial court set aside the default judgment and granted Greenmyer's motion for a new trial.

Eifler then filed an Application for Supervisory Writ with the Louisiana Fourth Circuit Court of Appeals alleging that the trial court erred by permitting Greenamyer to file and have a hearing on the second Motion for a New Trial. The Louisiana Court of Appeals granted the Writ on January 26, 2012, after concluding that the order denying the first Motion for a New Trial was interlocutory in nature and therefore the district court erred procedurally by permitting the filing of the second motion. This Writ had the practical effect of instantly reinstating the Default Judgment.[8] Thereafter, Greenamyer immediately filed a Petition for Nullity on January 27, 2012, seeking to have the Default Judgment annulled. At oral arguments, the parties advised the Court that the nullity action is currently stayed at Eifler's request.

On May 10, 2012, Eifler obtained a Registration Judgment from the Jefferson Circuit Court registering the Louisiana Default Judgment. On May 18, 2012, Greenamyer moved to vacate that judgment. On July 30, 2013, the circuit

[8] The Eifler Companies filed for Chapter 7 bankruptcy protection on January 13, 2012, with the United States Bankruptcy Court for the Western District of Kentucky. Neither of the Eifler Companies listed the Louisiana judgment as an asset in their respective bankruptcy estates. On May 3, 2012, the Bankruptcy court entered an Agreed Order to abandon the Louisiana judgment as to Eifler Tower Crane on the grounds that it was burdensome and of inconsequential value to the estate. On February 23, 2013, the Bankruptcy court entered an order which sold the portion of the Louisiana judgment as to Eifler Construction Hoist to Eifler for $4,000.00 based upon its "doubtful collectability."

court entered an order vacating the judgment for want of personal and subject matter jurisdiction of the Louisiana court. It is from that order that Eifler appeals.

II. ANALYSIS

Article IV, Section 1, of the United States Constitution states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Kentucky has also adopted the Uniform Enforcement of Judgment Acts ("UEFJA"), Kentucky Revised Statutes (KRS) 426.950, *et. seq*. The UEFJA essentially codifies the Full Faith and Credit Clause.

This does not mean, however, that Kentucky must automatically enforce every out-of-state judgment irrespective of the circumstances by which the party seeking enforcement procured the judgment. "The law in Kentucky is 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, 858 (Ky.App.1995) (emphasis added). Moreover, our courts have refused to recognized judgments obtained in the absence of jurisdiction. *Cox v. Cox*, 170 S.W.3d 389, 393 (Ky. 2005) ("Because the Texas court lacked personal jurisdiction over Appellant, it is irrelevant to us whether or not Appellant preserved this issue before the Texas court. Even if the state of Texas has a waiver provision regarding jurisdiction, this Court would not be bound by such a provision.").

Eifler argues that that the Louisiana courts have already resolved the jurisdictional issues in its favor, and therefore, the circuit court erred by allowing Greenamyer to attack those issues in Kentucky. We disagree. A careful review of the record shows that no Louisiana court has ever made a final, substantive determination on the jurisdictional issues asserted by Greenamyer. In fact, by way of his Petition for Nullity, Greenamyer is still properly attempting to challenge those issues before the Louisiana trial court.

Pursuant to the Louisiana Code of Civil Procedure:

> **Article 2002. Annulment for vices of form; time for action**
> A. A final judgment shall be annulled if it is rendered:
> (1) Against an incompetent person not represented as required by law.
> (2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid judgment by default has not been taken.
> (3) By a court which does not have jurisdiction over the subject matter of the suit.
> B. Except as otherwise provided in Article 2003, an action to annul a judgment on the grounds listed in this Article may be brought at any time.
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> **Article 2004. Annulment for vices of substance; peremption of action**
> A. A final judgment obtained by fraud or ill practices may be annulled.
> B. An action to annul a judgment on these grounds must be brought within one year of the discovery by the plaintiff in the nullity action of the fraud or ill practices.
> C. The court may award reasonable attorney fees incurred by the prevailing party in an action to annul a judgment on these grounds.

Unlike a traditional appeal, a petition for nullity is actually an independent action filed with the trial court. Such circumstances often arise when there is a need for the introduction of additional evidence that would be prohibited on appeal, such as during a default judgment. *Home Distribution, Inc. v. Dollar Amusement, Inc.*, 754 So.2d 1057 (La.Ct.App. 1 Cir. 1999). Louisiana courts have consistently held that the proper procedure for attacking the validity of a default judgment based on the factors listed above in Article 2002 or 2004 is through a petition for nullity rather than a direct appeal. In *Hughes v. Sanders*, 847 So2d 165, 167 (La.Ct.App. 2 Cir. 2003), the court held that "[w]here a judgment has been entered against a defendant, the question of sufficiency of service of process may not be raised for the first time on appeal. Rather, the issue should be raised in a suit to annul the judgment." *See also Sharff v. Tanner*, 486 So.2d 1047 (La.Ct.App. 2d Cir.1986); *Decca Leasing Corp. v. Torres*, 465 So.2d 910 (La.Ct.App. 2d Cir.1985).

Therefore, having reviewed the applicable law and the procedural history of this matter, we are confident that the Kentucky circuit court was not collaterally barred from considering Greenamyer's jurisdiction arguments. Those issues have not been conclusively determined by any court of competent jurisdiction.

Therefore, we must consider whether the Louisiana default judgment was valid under Louisiana law. Since our analysis involves the issue of

jurisdiction, we will review this matter *de novo*. *Roberts v. Bedard*, 357 S.W.3d 554, 556 (Ky. App. 2011).

The default judgment arose out of Eifler's Reconventional Demand. Greenamyer contends that he was not properly served with the Reconventional Demand. The Louisiana Court of Appeals stated in *JP Morgan Chase Bank v. Smith*, 984 So.2d 209, (La. App. 3 Cir. 2008), that "a reconventional demand must be served in accordance with Article 1314, which specifically requires service by the sheriff and not Article 1313, which allows service via mail, delivery, or facsimile. It is equally clear that Smith did not have the sheriff serve JP Morgan in the case before us. Thus, Smith's contention that she perfected service upon JP Morgan via sending a facsimile of the reconventional demand to JP Morgan's counsel of record is without merit."

Having reviewed the record, we find no evidence that Eifler properly served Greenamyer with the Reconventional Demand prior to entry of the default judgment. As Greenamyer was not properly served with the Reconventional Demand, he was under no obligation to answer it and entry of the default was in error and contrary to the law.

Accordingly, we believe that the Jefferson Circuit Court properly dismissed Eifler's motion to domesticate that judgment in Kentucky.

III. Conclusion

For the reasons discussed above, we must AFFIRM the decision of the Jefferson Circuit Court.

ALL CONCUR.

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