

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2020 CA 0204

KJMONTE INVESTMENTS, LLC

VERSUS

ACADIAN PROPERTIES AUSTIN, LLC

Judgment Rendered: DEC 30 2020

On Appeal from the Twenty Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket No. 2019-14504
The Honorable William H. Burris, Judge Presiding

Robert C. Stern
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Acadian Properties Austin, LLC

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KJMonte Investments, LLC

BEFORE: HIGGINBOTHAM, THERIOT AND WOLFE, JJ.

EW
MT.
TMH

WOLFE, J.

Defendant-appellant, Acadian Properties Austin, LLC (“Acadian”), appeals the October 10, 2019 judgment of the trial court rendered in favor of plaintiff-appellee, KJMonte Investments, LLC (“KJMonte”), ordering that a Texas judgment be made executory in Louisiana. For the following reasons, we affirm the October 10, 2019 judgment of the trial court.

FACTS AND PROCEDURAL BACKGROUND

KJMonte filed suit against Acadian in the 423rd Judicial District Court, County of Bastrop, State of Texas, which bore case no. 423-6368 and was entitled “KJMonte Investments, LLC v. Acadian Properties Austin, LLC” (the “Texas Litigation”). Acadian did not answer or appear in the Texas Litigation, and on July 18, 2019, a default “Final Judgment” was signed in the Texas Litigation in favor of KJMonte and against Acadian in the amount of \$615,724.83, plus post-judgment interest at the rate of 5.5% per annum from the date of judgment until paid (the “Texas Judgment”).

On August 27, 2019, KJMonte filed an *Ex Parte* Petition to Make Foreign Judgment Executory in the Twenty-Second Judicial District Court, Parish of St. Tammany, State of Louisiana, pursuant to the Enforcement of Foreign Judgments Act (the “EFJA”), La. R.S. 13:4241-47 (the “Louisiana Litigation”). KJMonte named Acadian as a judgment debtor defendant and prayed for a judgment making the Texas Judgment executory in Louisiana by entering judgment in favor of KJMonte and against Acadian in the amount of \$615,724.83, plus post-judgment interest at the rate of 5.5% per annum from the date of judgment until paid.

Attached to the *ex parte* petition were the Texas Judgment and an attachment thereto, an Exemplified Certificate, and the affidavit of KJMonte’s counsel, Michael D. Rubenstein. The Exemplified Certificate was signed by Sarah Loucks, the District Clerk of the County of Bastrop, State of Texas, who certified

that the Texas Judgment was a true and correct copy of the judgment on file with her office, and by the Honorable Christopher Duggan, judge presiding, who certified that Sarah Loucks was the proper custodian of the files and records referred to in the certificate, could make exemplified copies of same, and her signature on the certificate was genuine. Mr. Rubenstein attested that Acadian's registered office and agent were located at 133 Oleander Court, Mandeville, Louisiana 70471; upon information and belief, Acadian's last known address may be 212 Oleander Court, Mandeville, Louisiana 70471, 1049 Creek Court, Mandeville, Louisiana 70448, P.O. Box 470, Mandeville, Louisiana 70470, or 1302 Rue Beauvais, Mandeville, Louisiana 70471; KJMonte's last known address is P.O. Box 301143, Austin, Texas 78703; and Acadian had no counsel of record in the Texas Litigation.

On September 6, 2019, the trial court ordered the Clerk of Court to send notice of the proceedings *via* certified mail to Acadian at its last known addresses of 133 Oleander Court, Mandeville, Louisiana 70471, 212 Oleander Court, Mandeville, Louisiana 70471, 1049 Creek Court, Mandeville, Louisiana 70448, P.O. Box 470, Mandeville, Louisiana 70470, and 1302 Rue Beauvais, Mandeville, Louisiana 70471 and to make a note of that mailing in the record of the proceeding. The Clerk of Court mailed Notices of Enforcement of Judgment *via* certified mail to the five addresses referenced-above. The notices were directed to Acadian, provided KJMonte's name and address, and stated KJMonte had "filed a petition in this Court pursuant to La. R.S. 13:4241 et. seq. to make a judgment executory against the judgment debtor(s) named above" and notice was given "pursuant to the provisions of La. R.S. 13:4243." The notices contained the certified mail receipt numbers and were filed in the Louisiana Litigation.

The record further reflects that, on or about August 28, 2019, KJMonte sent Notices of Filing of Foreign Judgment to Acadian *via* certified mail to 133

Oleander Court, Mandeville, Louisiana 70471, 212 Oleander Court, Mandeville, Louisiana 70471, and 1302 Rue Beauvais, Mandeville, Louisiana 70471.¹ KJMonte's Notices of Filing of Foreign Judgment to Acadian included a copy of the *ex parte* petition and the attachments thereto as well as the proposed order, directing the Clerk of Court to mail notice of the Louisiana Litigation to Acadian and make a note of that mailing in the record. On September 11, 2019, KJMonte filed its Notices of Filing of Foreign Judgment to Acadian with the Clerk of Court.² Thereafter, on September 11, 2019 and October 1, 2019, signed return receipts for four of the five addresses³ dated August 29, 2019, August 30, 2019, and September 16, 2019, respectively, were filed with the Clerk of Court.

On October 10, 2019, the trial court signed a judgment, stating in pertinent part as follows:

Based upon the Petition, the certified true and correct copy of the Judgment attached as Exhibit "A" to the Petition, and the Affidavit of Michael D. Rubenstein in Support of Ex Parte Petition to Make Foreign Judgment Executory attached as Exhibit "B" to the Petition (the "Affidavit"), the Court finds that (i) the Affidavit, having been filed at the time of the filing of the Petition and Judgment, set forth the name and last known addresses of KJMonte and Judgment Debtor, as required by La. Rev. Stat. § 13:4243.A., and stated that Judgment Debtor had no counsel of record in the Texas litigation in which the Judgment was rendered; (ii) proof was filed on September 11, 2019, and again on October 1, 2019, by KJMonte showing its mailing on August 28, 2019 of a Notice of the Filing of the Petition, the Judgment, and the Affidavit to Judgment Debtor as provided in and permitted by La. Rev. Stat. § 13:4243.B., and Judgment Debtor received said Notice, Petition, Judgment, and Affidavit from KJMonte

¹ KJMonte asserts it sent Notices of Filing of Foreign Judgment to the same five addresses as the Clerk of Court; however, the KJMonte's Notices of Filing of Foreign Judgment purportedly sent to Acadian at P.O. Box 470, Mandeville, Louisiana 70470 and 1049 Creek Court, Mandeville, Louisiana 70448 are not contained within the record lodged with this court and then supplemented. However, as will be addressed herein, Acadian does not assert that it did not receive notice in accordance with the provisions of the EFJA.

² KJMonte filed the Notices of Filing of Foreign Judgment sent to Acadian at 212 Oleander Court, Mandeville, Louisiana 70471, 1302 Rue Beauvais, Mandeville, Louisiana 70471, and 133 Oleander Court Mandeville, Louisiana 70471.

³ KJMonte asserts that the Clerk of Court's notice mailed to 1049 Creek Court, Mandeville, Louisiana 70448 was returned as undeliverable. The undeliverable mail notification was filed with the Clerk of Court on September 30, 2019.

on August 29, 2019, August 30, 2019, and September 16, 2019; (iii) more than thirty (30) days have elapsed since the mailing of the Notice, Petition, Judgment, and Affidavit by KJMonte to Judgment Debtor on August 28, 2019; (iv) Judgment Debtor, having taken no action, by the filing of a contradictory motion or otherwise, to challenge or oppose the Petition by KJMonte that the Judgment be made executory in this Court; and (v) the Court otherwise finding the law and evidence to be in favor of KJMonte and against Judgment Debtor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Judgment rendered July 18, 2019 in the 423rd Judicial District Court, County of Bastrop, State of Texas in the action entitled *KJMonte Investments, LLC v. Acadian Properties Austin, LLC*, Case No. 423-6368, a certified true and correct copy of which is attached as Exhibit “A” to the Petition, is hereby recognized and entered in this Court as a judgment as if rendered herein and hereby made executory in this 22nd Judicial District Court in and for the Parish of St. Tammany, State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is granted by this Court in favor of KJMonte and against Judgment Debtor, Acadian Properties Austin, LLC, in the amount of \$600,724.83 for principal, plus \$15,000 for attorney’s fees incurred by KJMonte up until the time of the judgment, for a total amount of \$615,724.83, and post judgment interest at the rate of 5.5% per annum on all sums awarded in the Judgment from the date of the Judgment until paid.

On December 16, 2019, Acadian filed a Motion and Order for Devolutive Appeal, seeking to appeal the October 10, 2019 judgment. In this appeal, Acadian assigns as error the trial court making the Texas Judgment executory in Louisiana in the absence of personal jurisdiction over Acadian in the Texas Litigation, in the absence of a *prima facie* showing in either Texas or Louisiana pleadings that the Texas court had personal jurisdiction over Acadian when it entered its judgment, and when the Texas Judgment was subject to collateral attack in Texas through a restricted appeal.

LAW

The Full Faith and Credit Clause, Article IV, Section 1, of the Constitution of the United States, mandates that a judgment of a state court should have the same credit, validity, and effect in every other court of the United States that it has

in the state where it is pronounced. **Schultz v. Doyle**, 2000-0926 (La. 1/17/01), 776 So.2d 1158, 1164. However, a state may deny full faith and credit to a judgment rendered by a court of another state when it is shown that the court which rendered the judgment lacked jurisdiction over the parties or the subject matter. **Ault v. Bradley**, 564 So.2d 374, 377 (La. App. 1st Cir.), *writ denied*, 569 So.2d 967 (La. 1990); *see also* **Schultz**, 776 So.2d at 1164. Nevertheless, there is a general presumption that a court of a sister state had jurisdiction to render the judgment in the case before it, and it is incumbent upon the person attacking the judgment to show by clear and positive proof that the rendering court was without jurisdiction. **Ault**, 564 So.2d at 377.

A state also may deny full faith and credit to a judgment rendered by a court of another state when a collateral attack on the foreign judgment would have been permitted in the state that rendered the judgment. **Summers v. Pray**, 2002-1840 (La. App. 1st Cir. 6/27/03), 850 So.2d 46, 50, *writ denied*, 2003-2593 (La. 12/12/03), 860 So.2d 1155. Nonetheless, a litigant who seeks to deny a foreign judgment full faith and credit based on a collateral attack where rendered has the burden of proving the basis of availability of the collateral attack. **Id.**

In Louisiana, a foreign judgment may be made executory against a judgment debtor in Louisiana either through an ordinary proceeding, with citation and service to the debtor, or through special proceedings provided in the EFJA, La. R.S. 13:4241, *et seq.*, which allows notice of the filing of the petition to be given to the debtor by certified mail. **Cajun Beverage, Inc. v. American National Can Co.**, 577 So.2d 172 (La. App. 1st Cir. 1991) (*citing* La. Code Civ. P. art. 2541; La. R.S. 13:4241 *et seq.*) (remaining citation omitted). KJMonte opted to proceed under the provisions of the EFJA.

Louisiana Revised Statutes 13:4242 states as follows:

A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be annexed to and filed with an ex parte petition complying with Code of Civil Procedure Article 891 and praying that the judgment be made executory in a court of this state. The foreign judgment shall be treated in the same manner as a judgment of a court of this state. It shall have the same effect and be subject to the same procedures, and defenses, for reopening, vacating, or staying as a judgment of a court of this state and may be enforced in the same manner.

Additionally, La. R.S. 13:4243 requires that the judgment debtor be given notice of the aforementioned filing as follows:

A. At the time of the filing of the petition and foreign judgment, the judgment creditor shall file with the court an affidavit setting forth the name and last known address of the judgment debtor and the judgment creditor.

B. Promptly upon the filing of the petition, the foreign judgment, and the affidavit, the clerk shall send a notice by certified mail to the judgment debtor at the address given and shall make a note of the mailing in the record. The notice shall include the name and address of the judgment creditor and his attorney, if any. In addition, the judgment creditor may mail a notice of the filing to the judgment debtor and may file proof of mailing with the clerk. Failure to mail notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

C. No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until thirty days after the mailing of the notice of the filing of the foreign judgment.

The defenses available to a judgment debtor are set forth as follows in La.

R.S. 13:4244:

A. If the judgment debtor proves on contradictory motion that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

B. If the judgment debtor proves on contradictory motion any ground upon which the execution of a judgment of a court of this state would be stayed, the court shall stay enforcement of the foreign judgment upon requiring security for satisfaction of the judgment as is required in this state.

ANALYSIS

In its first and second assignments of error, Acadian argues the trial court erred in making the Texas Judgment executory, where service of process in the Texas Litigation was deficient and the Texas court, thus, did not acquire personal jurisdiction over Acadian.⁴ Similarly, in its third assignment of error, Acadian argues the Texas Judgment was subject to collateral attack in Texas *via* a restricted appeal, due to lack of personal jurisdiction, and should not have been made executory in Louisiana. KJMonte asserts these arguments should not be considered, as they were raised for the first time on appeal.

Louisiana Revised Statutes 13:4243(C) provides a judgment debtor with a thirty day period from the mailing of the notice of the filing of a foreign judgment within which to file a defense to the petition for enforcement of a foreign judgment. **Ellis v. Professional Management Providers, Inc.**, 2004-1507 (La. App. 1st Cir. 7/27/05), 923 So.2d 1, 7, *writ denied*, 2005-2231 (La. 2/17/06), 924 So.2d 1018; *see also Harrah's Club v. Mijalis*, 557 So.2d 1142, 1143 (La. App. 2d Cir.), *writ denied*, 559 So.2d 1387 (La. 1990) (notice of the action to make a foreign judgment executory in Louisiana “allows the Louisiana debtor 30 days to proceed by ‘contradictory motion’ against the foreign creditor to stay further enforcement of the judgment”). In particular, the judgment debtor is granted thirty days from the time the notice of the filing of the petition is mailed to him to seek a stay of enforcement by proving, “on contradictory motion,” that an appeal has been or will be taken, that a stay of execution has been granted, or that there exists “any ground upon which the execution of a judgment of a court of this state would be stayed.” See La. R.S. 13:4244(B); **Harrah's Club**, 557 So.2d at 1146.

⁴ To the extent Acadian asks this court to vacate or set aside the Texas Judgment, it is well-established that a Louisiana court has no authority to nullify or vacate the judgment of another state. **Holiday Hospitality Franchising, Inc. v. Grant**, 36,035 (La. App. 2d Cir. 5/8/02), 817 So.2d 449, 453.

In the present case, notice of the filing of a foreign judgment was mailed to Acadian at the latest on September 9, 2019. Nevertheless, Acadian did not raise any defense as to the petition for enforcement of the foreign judgment in the trial court within the thirty day period referenced in La. R.S. 13:4243(C) or thereafter. Instead, for the first time on appeal, Acadian raises its arguments regarding improper service and lack of personal jurisdiction in the Texas Litigation.

“[A]s a general rule, appellate courts will not consider issues that were not raised in the pleadings, *were not addressed by the trial court*, or are raised for the first time on appeal.” **Burniac v. Costner**, 2018-1709 (La. App. 1st Cir. 5/31/19), 277 So.3d 1204, 1210 (emphasis in original). For example, in **Dodge & Ringer v. Salazar**, 556 So.2d 1357, 1358 (La. App. 5th Cir. 1990), a default judgment was rendered in Texas in favor of plaintiff-appellee, Dodge & Ringer, a Professional Corporation, and against defendants-appellants, Luis Salazar, Luis Foreign Cars, Inc. and Salazar Motorsports, Inc. Appellants filed a motion to stay the enforcement of the Texas judgment in Louisiana on the basis that they never received notice of the Texas suit. The Louisiana trial court denied the motion and granted the enforcement of the Texas judgment.

On appeal, in addition to its other arguments, appellants raised for the first time the issue of whether there was sufficient minimum contact between the appellants and the state of Texas to satisfy due process. **Id.** at 1360. In declining to consider appellants’ argument, the Louisiana Fifth Circuit Court of Appeal adopted the reasoning of the court in **Buhler v. Villec**, 117 So.2d 286, 289-90 (La. App. Orl. 1960) wherein the court stated:

... this claim is also without merit. It was not even asserted by the defendant in the lower court and in consequence thereof, no facts pertaining thereto were offered in evidence in the court of original jurisdiction. Therefore, we are unable to consider this matter on appeal.

Dodge & Ringer, 556 So.2d at 1360 (*quoting Buhler*, 117 So.2d at 289-90).

To support its arguments raised for the first time on appeal, Acadian references portions of the record in the Texas Litigation and asserts that an appeal of the Texas Judgment presently is pending in Texas. However, Acadian did not introduce the record of the Texas Litigation or any other evidence into the trial court record.

Appellate courts are courts of record and may not review evidence that is not in the appellate record, or receive new evidence. **Denoux v. Vessel Management Services, Inc.**, 2007-2143 (La. 5/21/08), 983 So.2d 84, 88; **Burniac**, 277 So.3d at 1208, n. 6 (“An appellate court cannot review evidence that is not in the record on appeal and cannot receive new evidence. As an appellate court, we have no jurisdiction to receive new evidence.”). Evidence not properly and officially offered and introduced cannot be considered. **Denoux**, 983 So.2d at 88. Moreover, while a court may take judicial notice of its own proceedings, La. Code Evid. art. 202 does not allow, nor has it ever been interpreted to allow, courts to take judicial notice of suit records in other courts. **Burniac**, 277 So.3d at 1208, n. 6. Documentation of other courts’ proceedings must be offered into evidence in the usual manner. **Id.** Thus, where it was not introduced into evidence in the trial court, this court cannot consider the record of the Texas Litigation.

As KJMonte argues, Acadian does not challenge KJMonte’s compliance with the procedures set forth in the EFJA. Acadian neither asserts that notice of the Louisiana Litigation was improper nor offers any explanation for its failure to timely object to the *ex parte* petition. Accordingly, where Acadian failed to file with the trial court any type of contradictory motion within the thirty-day period set forth in La. R.S. 13:4243(C) or at any point in this proceeding, we find the trial court did not err in making the Texas Judgment executory in this state.

CONCLUSION

For the foregoing reasons, the trial court's October 10, 2019 judgment is affirmed. Costs of this appeal are assessed to defendant-appellant, Acadian Properties Austin, LLC.

AFFIRMED.