STATE OF MICHIGAN

COURT OF APPEALS

STOTSKY HOLDINGS, L.L.C., Plaintiff-Appellant,	UNPUBLISHED October 21, 2008
v	No. 278947 Macomb Circuit Court
WAYNE GIBSON, Defendant-Appellee.	LC No. 2006-004985-CZ

Before: Schuette, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order denying its motion for appointment of a receiver in a supplementary proceeding. We affirm.

This case originally arises out of a consent judgment entered in the Oakland Circuit Court (Michigan) on February 14, 1996, against defendant and in favor of plaintiff in the amount of $250,000. Plaintiff domesticated this judgment in Florida, in accordance with the Florida Enforcement of Foreign Judgments Act (FEFJA), Fla Stat 55.501 *et seq*., on April 3, 2003. On February 14, 2006, plaintiff's original judgment expired pursuant to the ten-year period of limitations on an action founded upon a judgment. MCL 600.5809(3); *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 458; 674 NW2d 731 (2003). On March 28, 2006, plaintiff filed a motion to renew the judgment in the Oakland Circuit Court, but it was denied.[1] Plaintiff then filed an affidavit and notice of entry of foreign judgment in the Macomb Circuit Court (Michigan) on November 22, 2006, in an attempt to enforce the judgment, domesticated in Florida as of April 3, 2003, in Michigan according to the Uniform Enforcement of Foreign Judgments Act (UEFJA), MCL 691.1711 *et seq*. Finally, in March 2007, plaintiff sought to enforce this new purported domesticated Florida judgment against defendant by filing a motion with the trial court to appoint a receiver for the estate of defendant's deceased mother in order to "complete the probate, sell the . . . assets, and . . . apply that to the judgment."

[1] MCL 600.5809(3) provides, "Within the applicable period of limitations prescribed by this subsection, an action may be brought upon the judgment or decree for a new judgment or decree. The new judgment or decree is subject to this subsection."

Defendant answered the motion by claiming that plaintiff was not attempting to enforce a foreign Florida judgment as represented; rather, it was attempting to enforce the 1996 Michigan judgment that had simply been domesticated per order by a Florida court. Defendant, pointing out that the Oakland Circuit Court had denied the motion to renew the judgment, argued that res judicata barred plaintiff's motion for appointment of a receiver. Moreover, the original judgment had expired pursuant to the 10-year period of limitations and was no longer enforceable. Plaintiff filed a brief in opposition to defendant's position on the matter, arguing that the "Florida judgment" was enforceable under the UEFJA. And defendant then filed a brief in opposition to the motion for appointment of a receiver, again raising the issues presented in his answer and also claiming that the Florida order did not toll the Michigan statute of limitations. An initial hearing on the motion was held, and the court decided to have the parties further brief the issues. Supplementary briefs were submitted and a second hearing held, at which time the trial court took the matter under advisement. The court subsequently issued a written opinion and order denying or dismissing the motion for appointment of a receiver. Relying on Florida case law, the trial court ruled that, because plaintiff's "action in Florida was pursuant to the FEFJA, the limitations period of the Oakland County Judgment governs, and it may not be extended by the FEFJA or the applicable Florida Statute of Limitations." The court found that the period of limitations had expired on the original Michigan judgment; therefore, the domesticated judgment in Florida had also expired because it was derivative of the action in Oakland County. The trial court dismissed the motion under MCR 2.116(I)(2), which is a rule governing summary disposition, and which provides that, "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." There was no actual motion for summary disposition.

Plaintiff first raises some meritless procedural arguments on appeal, contending that dismissal was improper because there was no motion for summary disposition before the court and that the proper procedure would have been a motion for relief from judgment under MCR 2.612, given the earlier filed affidavit and notice of entry of foreign judgment. Plaintiff maintains that none of the grounds for relief under MCR 2.612 are implicated.

Plaintiff filed a motion for appointment of a receiver on the basis of a purportedly valid judgment, and ultimately the court needed to render a decision on that motion,[2] which necessarily entailed a determination on questions of law regarding the validity or enforceability of the judgment and the application of the statute of limitations. Regardless of labels used to frame the decision, the court rendered such a decision, unfavorable to plaintiff, and we have the task, on de novo review, to determine whether the trial court properly ruled relative to the questions of law pertaining to statutory interpretation and the applicability of the statute of limitations. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006); *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004). Moreover, a summary disposition motion is not necessary to enter an order of dismissal, where there are only issues of law and a party is entitled to a judgment of dismissal as a matter of law. *Sobiecki v Dep't of Corrections*, 271 Mich

[2] "When necessary to protect the rights of a judgment creditor, the court may appoint a receiver in a proceeding [to obtain relief supplementary to judgment.]" MCR 2.621(E), incorporating MCR 2.621(A)(2).

App 139, 141; 721 NW2d 229 (2006). Further, to the extent that MCR 2.612 is even implicated, we find, for reasons discussed below, that MCR 2.612(C)(1)(d) - (f) would serve as grounds to grant relief.

Finally, plaintiff argues that the trial court erred in concluding that its so-called domesticated Florida judgment was unenforceable under the statute of limitations.

The Michigan UEFJA provides:

> A copy of a foreign judgment authenticated in accordance with an act of congress or the laws of this state may be filed in the office of the clerk of the circuit court, the district court, or a municipal court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court, the district court, or a municipal court of this state. A judgment filed under this act has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the circuit court, the district court, or a municipal court of this state and may be enforced or satisfied in like manner. [MCL 691.1173.]

A "foreign judgment" is defined as "any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state." MCL 691.1172.

Plaintiff primarily argues that the Florida order recognizing or domesticating the original Michigan judgment created a separately enforceable Florida judgment, which could be later domesticated, once again, in Macomb County, subject to the ten-year period of limitations under Florida law, Fla Stat 55.10,[3] running from April 2003.

Fla Stat 55.503(1) provides:

> A copy of any foreign judgment certified in accordance with the laws of the United States or of this state may be recorded in the office of the clerk of the circuit court of any county. The clerk shall file, record, and index the foreign judgment in the same manner as a judgment of a circuit or county court of this state. A judgment so recorded shall have the same effect and shall be subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, and it may be enforced, released, or satisfied, as a judgment of a circuit or county court of this state.

However, Fla Stat 55.502, which addresses construction of the FEFJA, provides that "[n]othing contained in this act shall be construed to alter, modify, or extend the limitation period applicable for the enforcement of foreign judgments." Fla Stat 55.502(4). In *Haigh v*

[3] We note that the language relied on by plaintiff actually addresses liens on real property that arise when a certified copy of a judgment is recorded in county records. Fla Stat 55.10(1).

Planning Bd of the Town of Medfield, 940 So2d 1230, 1234 (Fla App, 2006), the Florida appellate court stated:

> Specifically, registration of and proceedings to enforce a foreign judgment are derivative of the original judgment and are therefore subject to the limitations period in the jurisdiction where the judgment was originally rendered. They are not subject to the five year limitations period in section 95.11(2)(a). At the same time, recording or enforcing a foreign judgment pursuant to the FEFJA cannot extend the original limitations period from the foreign jurisdiction.
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> In contrast, the effect of an "action upon a judgment" is to extend the statute of limitations on the prior judgment. Thus, once a creditor holding a foreign judgment successfully obtains a new Florida judgment, the creditor obtains a new 20 year limitations period under section 95.11(1) to enforce that judgment. The original limitations period in the foreign jurisdiction no longer applies. The only limitation is that the action upon the foreign judgment must be brought in Florida within five years of the date the foreign judgment was rendered.[4]

Here, plaintiff simply registered and sought to enforce the 1996 Michigan judgment in Florida; therefore, the ten-year limitations period in MCL 600.5809(3) still controlled. Moreover, plaintiff could not have even brought an "action upon a judgment" in Florida in 2003 because it was beyond the five-year limitations period to do so under Fla Stat 95.11(2)(a).

Our holding is further supported by *In re Tranter*, 245 BR 419, 421-422 (2000), in which the United States Bankruptcy Court for the Southern District of Florida, citing Fla Stat 55.502(4), held that a Kentucky court judgment was subject to a 15-year statute of limitations imposed by Kentucky law for purposes of enforcement, not the 20-year period available under Florida law, despite the fact that the judgment had been domesticated in Florida under the FEFJA. Because the 15-year period under Kentucky law had expired, the judgment was uncollectible. *Id.* at 422. See also *Muka v Horizon Financial Corp*, 766 So2d 239, 240-241 (Fla App, 2000).

Plaintiff's reliance on *New York State Comm'r of Taxation & Finance v Friona*, 902 So2d 864, 866-867 (Fla App, 2005), is entirely misplaced, wherein the court stated:

> The only limitation on recording a judgment under Florida law "is that a judgment **must be recorded prior to the expiration of that judgment under the laws of the forum rendering that judgment.**" Once domesticated, a foreign judgment will be effective for a period no longer than the original forum's statute

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[4] Fla Stat 95.11(1) provides for a 20-year limitations period relative to an action on a judgment of a Florida court of record. An action on a judgment issued by a foreign state court is subject to a five-year limitations period. Fla Stat 95.11(2)(a).

> of limitations or twenty years, whichever comes first. [Citations omitted; emphasis in original.][5]

There is no issue here that plaintiff had the right to domesticate the 1996 Michigan judgment in Florida, as it was recorded in Florida in 2003, within ten years of original entry. But once domesticated, it expired under Michigan's ten-year statute of limitations, which continued running, before any new filings were made by plaintiff in Michigan.

Finally, plaintiff relies on *Schumacher v Tidswell*, 138 Mich App 708; 360 NW2d 915 (1984), for the proposition that, because *Schumacher* involved the domestication in Michigan of a Florida judgment and indicated that Michigan's ten-year limitations period commenced running from the time of the domestication and not the date of the original Florida judgment, the ten-year limitations period here commenced running when the "Florida judgment" was recorded in Michigan in November 2006. *Schumacher* is wholly inapplicable, inapposite, and distinguishable from the facts in the case at bar. When Florida domesticates a judgment from another jurisdiction, its law requires continuing recognition of the statute of limitations set forth in the other jurisdiction. And this case, contrary to *Schumacher*, entails an original judgment being entered in Michigan, followed by timely domestication in Florida, and then an attempt to take the domesticated judgment and have it re-domesticated, if you will, in Michigan. It is simply illogical to conclude that *Schumacher* supports a conclusion that Michigan's ten-year limitations period started afresh when plaintiff had the judgment entered in November 2006 in a Michigan court. Plaintiff makes no claim that language in Michigan's statutory scheme suggests that a Michigan judgment, once domesticated in a foreign jurisdiction, is no longer subject to our statute of limitations on enforceability or that the foreign jurisdiction's statute of limitations becomes applicable.

Accordingly, because the 1996 Michigan judgment expired in February 2006 under the ten-year limitations period set forth in MCL 600.5809(3), because domesticating the judgment in Florida in 2003 did not affect the running of our ten-year limitations period, and because plaintiff's subsequent efforts in Michigan, starting with the motion to renew the judgment in March 2006, fell beyond the ten-year window, there was no enforceable judgment and thus no basis to appoint a receiver.

Affirmed.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

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[5] *Friona* involved a New York tax judgment that was domesticated under the FEFJA after the taxpayer debtor moved to Florida. The Florida court held that, because the time period to enforce the judgment under New York law had not expired, the plaintiff was entitled to domesticate the judgment in Florida. *Friona, supra* at 867. The court stated that the five-year limitation period under Fla Stat 95.11(2)(a) was not applicable to the plaintiff because it merely sought to domesticate the New York judgment and was not filing an action on a judgment. *Id.* at 866.