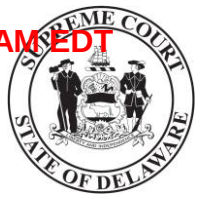

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE G. RYCKMAN,	)	
	)	
Judgment Debtor Below, Appellant,	)	
	)	
v.	)	No. 278, 2015
	)	
ALBERTA SECURITIES COMMISSION,	)	On Appeal from the Superior
	)	Court Judgment Docket
Judgment Creditor Below, Appellee.	)	No. N13J-02847

APPELLEE'S ANSWERING BRIEF

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August 17, 2015

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NATURE OF THE PROCEEDINGS

On July 31, 2013, Judgment-Creditor and Appellee, Alberta Securities Commission ("ASC") filed in Superior Court an Arizona judgment (the "Arizona Judgment") against Judgment-Debtor, Appellant, Lawrence G. Ryckman ("Mr. Ryckman") pursuant to the Delaware Uniform Enforcement of Foreign Judgments Act, 10 *Del. C.* § 4781 *et seq.* (the "Enforcement Act"). The Prothonotary accepted the filing and assigned the judgment a Delaware judgment number.

ASC pursued collection under the judgment in Delaware for seventeen months, at which point Mr. Ryckman filed a motion to vacate the judgment, arguing that its entry was a mistake and that the judgment is void. He alleged that by filing, under the Enforcement Act, the Arizona Judgment, which was based on a judgment entered in Alberta, Canada (the "Alberta Judgment") which was domesticated in Arizona, ASC had "unlawfully circumvented" Delaware's Uniform Foreign-Country Money Judgments Recognition Act, 10 *Del. C.* § 4801 *et seq.* (the "Foreign-Country Judgments Act"). The motion to vacate was briefed and the Superior Court heard argument on February 12, 2015. In an Opinion and Order dated May 5, 2015 ("Op."), the Superior Court denied Ryckman's motion on the ground that the Arizona judgment is entitled to full faith and credit in Delaware. This appeal followed.

Mr. Ryckman's argument below and on appeal is based on the undisputed claim that the original Canadian judgment could not have been domesticated in Delaware under the Foreign-Country Judgments Act, because (i) the statute of limitations under the Foreign-Country Judgments Act had run, and (ii) the Canadian judgment is a penalty that could not be domesticated under the Foreign-Country Judgments Act. He argues that, as a result, Delaware may recognize sister-state judgments that domesticated a foreign-country judgment only if that domestication was pursuant to the Foreign-Country Judgments Act, which Arizona has not adopted. (Appellant's Opening Brief "OB" at 14).

ASC's position, and the holding of the Superior Court, is that the Arizona judgment must be recognized in Delaware under the Enforcement Act because it is entitled to full faith and credit under Article IV, Section 1 of the United States Constitution and the corresponding Federal statute. Op. at 18-22.

SUMMARY OF ARGUMENT

I. ASC denies Mr. Ryckman's Summary of Argument.

The Superior Court was correct in recognizing the Arizona Judgment pursuant to the Enforcement Act and finding that it is entitled to full faith and credit in Delaware. The Foreign-Country Judgments Act is irrelevant to that recognition.

STATEMENT OF FACTS

ASC does not dispute Mr. Ryckman's Statement of Facts and only supplements that Statement as follows:

At the time that ASC filed the action in Arizona to domesticate the Canadian judgment, Mr. Ryckman was a resident of Arizona. Op. at 2; Arizona Complaint at 2 (A38); *Alberta Sec. Comm'n v. Ryckman*, 30 P.3d 121, 124 (Ariz. Ct. App. 2001) (A191).

The Arizona Court of Appeals "found that the Canadian judgment was final, on the merits, and not procured by prejudice, fraud, unfairness, or irregularities in the foreign-country proceedings. For purposes of [Ryckman's motion to vacate], the validity of the Arizona Judgment is not disputed." Op. at 4-5.

ARGUMENT

I. The Superior Court Was Correct in Holding that the Full Faith and Credit Clause of the United States Constitution and the Full Faith and Credit Act Require that the Arizona Judgment Be Accorded Full Faith and Credit and Is Enforceable in Delaware Under the Enforcement Act.

A. Question Presented.

Whether the Full Faith and Credit Clause, Article IV, Section 1 of the United States Constitution, and the Full Faith and Credit Act, 28 U.S.C. § 1738, require that the Arizona Judgment be accorded full faith and credit in Delaware and is enforceable in Delaware under the Enforcement Act.

B. Standard and Scope of Review.

A trial court's interpretation of a statute is reviewed *de novo.*

C. Merits of the Argument.

The Full Faith and Credit Clause of the United States Constitution and the Full Faith and Credit Act require that the Arizona Judgment be accorded full faith and credit in Delaware and is enforceable in Delaware under the Enforcement Act. It is irrelevant that the Canadian judgment could not have been recognized under the Foreign-Country Judgments Act.

1. The Controlling Statute is the Enforcement Act, Not the Foreign-Judgments Act.

As the Superior Court opinion notes, Op. at 2, 5, ASC acknowledges that the Alberta judgment could not have been recognized in Delaware under the Foreign-Country Judgments Act because it was entered more than 15 years previously and it arguably was a penalty.

Mr. Ryckman insists that the Superior Court granted enforcement of the Canadian Judgment (it did not), and therefore the Foreign-Country Judgment Act controls (it does not). The Superior Court granted enforcement of the Arizona Judgment (A24-25), and therefore the Enforcement Act controls. Mr. Ryckman confuses the distinction that the case law and commentators make clear: *recognition* of a foreign country judgment differs from *enforcement* of the judgment of a sister state.

We agree with Mr. Ryckman that, by its terms, the Enforcement Act does not apply to foreign-country judgments. Again, the judgment at issue here is an Arizona judgment, which appears at A24-25.

Mr. Ryckman argues that "[r]eading the Enforcement Act as the Superior Court did in this case defeat's the General Assembly's intent," (OB at 14), because of the differing requirements of the Foreign-Country Judgments Act and the Enforcement Act, and the fact that Arizona has not adopted the Foreign-Country

Judgments Act. He argues that the two statutes should be interpreted together, to mean that "foreign-country judgments are to be recognized solely pursuant to the Foreign-Country Judgment Act; sister-state judgments are to be recognized pursuant to the Enforcement Act *unless* they were obtained by the domestication of [a] foreign-country judgment." (OB at 14).

Mr. Ryckman cites no authority for this argument, which is misleading, at best. By its terms, the Foreign-Country Judgments Act does not apply to a judgment of a court of another state of the United States. 10 *Del. C.* § 4801(1)b; Op. at 8. There is no question that ASC met the procedural requirements of the Enforcement Act, yet Mr. Ryckman assumes either that (i) the General Assembly intended something different from what it enacted in the Enforcement Act, or (ii) the General Assembly considered possible conflicts between the two acts, and assumed that the Foreign-Country Judgments Act would somehow restrict the operation of the Enforcement Act. There is no support for either assumption.

The only statute that applies is the Enforcement Act, and the General Assembly presumably had the intent reflected in the operation of that Act, which is that the State of Delaware grants full faith and credit to judgments rendered by other states.

2. Enforcement of the Arizona Judgment is Required by the Full Faith and Credit Clause of the United States Constitution and by the Full Faith and Credit Act.

Mr. Ryckman has not demonstrated that Delaware has an interest in refusing to domesticate an Arizona judgment under the Enforcement Act, when that judgment is based upon an Alberta, Canada judgment. However, even if he had, any such interest of a state must "yield to the stronger national interests that all state and federal courts have in respecting each other's judgments," *Pyott v. La. Mun. Police Emps.' Ret. Sys.*, 74 A.3d 612, 616 (Del. 2013), and the Full Faith and Credit Clause of the United States Constitution. Indeed, the Full Faith and Credit Clause has been consistently applied by the United States Supreme Court in a manner that controls the question before this Court.

The Full Faith and Credit Clause, Article IV, Section 1 of the United States Constitution, provides:

> 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.

Pursuant to that clause, Congress has prescribed, in the Full Faith and Credit Act, 28 U.S.C. § 1738:

> . . .
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by

the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

The United States Supreme Court most recently surveyed cases decided under the Full Faith and Credit Clause in *Baker by Thomas v. General Motors*, 522 U.S. 222, 231-233, 118 S.Ct. 657, 663-664 (1998) (footnotes omitted):

> The animating purpose of the full faith and credit command, as this Court explained in *Milwaukee County v. M.E. White Co.,* 296 U.S. 268, 56 S.Ct. 229, 80 L.Ed. 220 (1935),
>
> > "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Id.,* at 277, 56 S.Ct., at 234.
>
> See also *Estin v. Estin,* 334 U.S. 541, 546, 68 S.Ct. 1213, 1217, 92 L.Ed. 1561 (1948) (the Full Faith and Credit Clause "substituted a command for the earlier principles of comity and thus basically altered the status of the States as independent sovereigns").
>
> > Our precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments. "In numerous cases this Court has held that credit must be given to the judgment of another state although the forum would not be required to entertain the suit on which the judgment was founded." *Milwaukee County,* 296 U.S., at 277, 56 S.Ct., at 234. The Full Faith and Credit Clause does not compel "a state

> to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." [Citations omitted]. Regarding judgments, however, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. For claim and issue preclusion (res judicata) purposes, in other words, the judgment of the rendering State gains nationwide force. See, *e.g., Matsushita Elec. Industrial Co. v. Epstein,* 516 U.S. 367, 373, 116 S.Ct. 873, 878, 134 L.Ed.2d 6 (1996); *Kremer v. Chemical Constr. Corp.,* 456 U.S. 461, 485, 102 S.Ct. 1883, 1899, 72 L.Ed.2d 262 (1982); see also Reese & Johnson, The Scope of Full Faith and Credit to Judgments, 49 Colum. L.Rev. 153 (1949).

At pp. 16-19 of his Opening Brief on appeal, Mr. Ryckman conflates the issues of (1) *recognition* of the Arizona judgment and (2) Delaware procedures to collect on, or *enforce*, the judgment. The part of the Superior Court's Opinion and Order that addressed issues of enforcement of the judgment is not a subject of this appeal. ASC does not challenge the discussion in *Baker* that "[e]nforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law." 522 U.S. at 235. As an example, *Baker* notes that a sister State's decree concerning land ownership may be ineffective to transfer title in another state, although a decree may preclusively adjudicate the rights and obligations running between the parties to the foreign litigation. *Id.* at 235-36.

However, the *Baker* discussion of enforcement measures is irrelevant to the issue before this Court: Is the Delaware Superior Court required to recognize the Arizona judgment under the Full Faith and Credit Clause and the Full Faith and Credit Act, without considering the policy arguments that Mr. Ryckman raises? The answer, as *Baker* makes clear in the following part of the opinion that Mr. Ryckman ignores, is undoubtedly yes.

> A court may be guided by the forum State's "public policy" in determining the *law* applicable to a controversy. See *Nevada v. Hall,* 440 U.S. 410, 421–424, 99 S.Ct. 1182, 1188–1190, 59 L.Ed.2d 416 (1979). But our decisions support no roving "public policy exception" to the full faith and credit due *judgments.* See *Estin,* 334 U.S., at 546, 68 S.Ct., at 1217 (Full Faith and Credit Clause "ordered submission ... even to hostile policies reflected in the judgment of another State, because the practical operation of the federal system, which the Constitution designed, demanded it."); *Fauntleroy v. Lum,* 210 U.S. 230, 237, 28 S.Ct. 641, 643, 52 L.Ed. 1039 (1908) (judgment of Missouri court entitled to full faith and credit in Mississippi even if Missouri judgment rested on a misapprehension of Mississippi law). In assuming the existence of a ubiquitous "public policy exception" permitting one State to resist recognition of another State's judgment, the District Court in the Bakers' wrongful-death action, see *supra,* at 662, misread our precedent. "The full faith and credit clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation." *Sherrer v. Sherrer,* 334 U.S. 343, 355, 68 S.Ct. 1087, 1092–1093, 92 L.Ed. 1429 (1948). We are "aware of [no] considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to [a money] judgment outside the state of its rendition." *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430,

438, 64 S.Ct. 208, 213, 88 L.Ed. 149 (1943).

Id., 522 U.S. at 233-34, 118 S.Ct. at 664.

Likewise, this Court has addressed public policy issues as they relate to the application of the rule of full faith and credit, finding that Delaware's interests must yield to the national interest. In *Pyott v. La. Mun. Police Emps.' Ret. Sys.*, 74 A.3d 612 (Del. 2013), the Supreme Court reversed the Court of Chancery's refusal to dismiss a stockholder derivative action, after a California Federal Court had dismissed another such action because a demand upon the board of directors was not futile. *Id.* at 616. The Supreme Court held that the Court of Chancery erred in even analyzing the issue under Delaware corporation law:

> In the Court of Chancery, the motion to dismiss, based on collateral estoppel, was about federalism, comity, and finality. It should have been addressed exclusively on that basis. *Under this Court's precedents, the undisputed interest that Delaware has in governing the internal affairs of its corporations must yield to the stronger national interests that all state and federal courts have in respecting each other's judgments. The United States Supreme Court has held that the full faith and credit obligation is "exacting" and that there is "no roving 'public policy exception' to the full faith and credit due judgments.* [citing *Baker*]."

Id. (emphasis added, footnotes omitted).

Mr. Ryckman's efforts, at OB 18-19, to distinguish *Pyott* are unavailing. He there states, *inter alia*, that *Pyott* "merely holds that the full faith and credit clause requires Delaware courts to give preclusive effect to the issues decided by a sister-

state judgment." That statement is true and conclusive. However, Mr. Ryckman's brief continues:

> The Arizona judgment did not address, let alone decide, how or under what circumstances a court in Delaware could recognize and enforce either the Canadian Judgment or the Arizona Judgment itself. Accordingly, *Pyott* does not require that the Superior Court register or enforce the Arizona Judgment pursuant to the Enforcement Act.

The second and third quoted sentences contradict the first. In this context, there is no difference between Delaware's interest in governing the internal affairs of its corporations and Delaware's interest in setting the criteria for recognition of judgments outside Delaware. Both must yield to the Full Faith and Credit Clause and the Full Faith and Credit Act.

In *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214 (Del. 1991), this Court held that, although Delaware had abandoned the requirement of mutuality as a prerequisite to the assertion of collateral estoppel, the principle of comity required that collateral estoppel would not apply between the parties in Delaware with respect to a Kansas jury's finding of fact, because the parties in the two cases were different, and Kansas required mutuality of estoppel:

> It is settled law in this jurisdiction that "the doctrines of res judicata and collateral estoppel require that the same effect be given a [foreign] judgment rendered upon adequate jurisdiction as [the foreign court] itself would accord such a judgment." *Bata v. Hill,* Del. Ch., 139 A.2d 159, 165 (1958), *modified sub nom., Bata v. Bata,* Del. Supr., 163 A.2d 493 (1960), *cert. denied,* 366 U.S. 964, 81 S.Ct. 1926,

> 6 L.Ed.2d 1255 (1961). *Bata* involved the collateral estoppel effect to be accorded a Dutch decision in a Delaware court. The Chancellor in *Bata,* applying principles of comity, determined that a judgment of a foreign court should be accorded the same preclusive effect that it would receive in the rendering jurisdiction. 139 A.2d at 174. On appeal, this Court noted with approval "the established rule" that the preclusive effect of a foreign judgment is measured by standards of the rendering forum. *Bata v. Bata,* 163 A.2d at 504.
>
> The principle enunciated in *Bata* controls the issue before us today. We find no distinction in the fact that *Bata's* holding was directed to a judgment rendered by a court in another country as contrasted with a judgment rendered through the application of state law in a federal forum. Although founded on comity, the *Bata* principle is now one of sound judicial policy and requires that a Delaware court must give the judgments of another state court the same preclusive effect as would a court in that state.

Id. at 1217.

Courts in other states have recently addressed the pending question, with varying results. In *Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros. Co.*, 99 A.3d 936 (Pa. Super. Ct. 2014), the Pennsylvania Superior Court was presented with a New York judgment which was the product of a domesticated Bahraini judgment. The Pennsylvania court did not even discuss the merits of the underlying foreign country domestication, finding "[s]tates must give full faith and credit to sister-state judgments 'even where the judgment violates the policy or law of the forum where enforcement is sought.'" *Id.* at 945.

In *Ahmad Hamad Al Gosaibi & Bros. Co. v. Standard Chartered Bank*, 98 A.3d 998 (D.C. 2014) the District of Columbia Court of Appeals was presented

with the same New York judgment at issue in *Standard Chartered Bank v. Ahmad Hamad Al Gosaibi & Bros.*, *supra*, but refused to give the judgment full faith and credit. The court noted that the New York court did not have personal jurisdiction over the parties when it domesticated the Bahraini judgment and decided to review the Bahraini judgment directly. The D.C. case is both distinguishable on its facts, and wrongly decided. It is undisputed that Arizona had personal jurisdiction over Ryckman at the time it domesticated the Canadian judgment because he had voluntarily established his residence there. Second, the notion that a court can review the judgment of a sister state and make its own determination was rejected by this Court in *Pyott*. For the same reason, the Court should reject the holding and rationale of *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702 (Tex. App. 1988), where the Texas Court of Appeals held that Louisiana's recognition of a Canadian judgment was not entitled to full faith and credit because it would involve "an improper interference with important interests of the state of Texas," *id.* at 714 and "is tantamount to ceding that right to our sister state." *Id.* at 715.

In light of Mr. Ryckman's Arizona residency and the attention that the Arizona courts gave to his arguments, it is ironic that he relies, at OB 15, on one

law review article that decries "tort tourism"[1] and a second that criticizes the current state of the law because a creditor of a foreign country judgment can obtain enforcement of a judgment "first domesticated by a sister-state that automatically recognizes foreign-country judgments."[2] As is discussed at pp. 18-19, *infra*, the record shows that is not this case. Mr. Ryckman's suggested rule, at OB 14 – "foreign-country judgments are to be recognized solely pursuant to the Foreign-Country Judgment Act; sister-state judgments are to be recognized pursuant to the Enforcement Act *unless* they were obtained by the domestication of [a] foreign country judgment" – is an interesting legislative proposal, as are quite different legislative proposals in the two law review articles he cites. However, as explained in more detail below, while those law review articles acknowledge what the law is today, Mr. Ryckman refuses to do so.

The judgment at issue before this Court is not a foreign country judgment; it is a judgment of the State of Arizona, which resulted from a litigated case that was begun by a petition to enforce a judgment of the province of Alberta, Canada.

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[1] John B. Bellinger, III & R. Reeves Anderson, *Tort Tourism: The Case for a Federal Law on Foreign Judgment Recognition*, 54 Va. J. Int'l L. 501 (2014) ("Bellinger").

[2] George H. Shill, *Ending Judgment Arbitrage: Jurisdictional Competition and the Enforcement of Foreign Money Judgments in the United States*, 54 Harv. Int'l L.J. 459 (2013) ("Shill").

Bellinger and Shill criticize the current state of American law on the recognition and enforcement of foreign country judgments and each proposes a different federal statute to govern the process of state recognition of foreign country judgments. However, both are unequivocal with respect to what the law is now. According to Shill:

> A creditor to a foreign judgment must initiate actions for recognition and enforcement in order to import the judgment into the American legal system. In a recognition proceeding, an American court decides whether the foreign judgment should be extended credit in the United States. This imprimatur is all-important: recognition is a necessary precondition to enforcement, and once granted it is binding on all other American courts. This means that a recognition judgment can be enforced in any American court with jurisdiction over the debtor's assets.[3]

Bellinger states the same conclusion:

> Variation in state laws invites other structural problems, including forum shopping among states. A judgment creditor can choose to seek recognition in the jurisdiction where the law is most favorable to its interests – usually the state with the narrowest grounds for non-recognition. Once the foreign-country judgment has been properly domesticated in a U.S. state under the applicable recognition procedures, the foreign-country judgment becomes a judgment of that U.S. state. Then, with that newly-minted state-court judgment in hand, the creditor will be able to enforce it nationwide pursuant to the Enforcement Act as a "sister-state" judgment under the Full Faith and Credit Clause. In practice, this means that the most permissive state-law recognition regime *de facto* governs the whole country. Judgment recognition at present is, therefore, a race to the bottom.[4]

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[3] Shill at 475-76 (footnote omitted).

[4] Bellinger at 520 (footnotes omitted).

3. Mr. Ryckman Was Given a Full and Fair Hearing in Arizona.

ASC emphasizes that the Full Faith and Credit Clause and this Court's decision in *Pyott* do not permit, much less require, review by Delaware courts of the proceedings in a sister state that produced the judgment being enforced under the Enforcement Act. However, it is also true that, if the Court were to reject that conclusion and feel compelled to conduct such a review, the record reflects that Mr. Ryckman was a resident of Arizona at the time and fully litigated the Arizona case in which ASC sought recognition of the Alberta judgment. Indeed, the Arizona Court of Appeals modified the judgment on appeal. At OB 5, Mr. Ryckman acknowledges that he fully litigated the issues in Arizona, arguing there that "the ASC proceedings were unfair and fraught with fraud and prejudice and denied him due process."

As the Superior Court noted at p. 20 of its opinion, "Ryckman voluntarily moved his residence from Canada to Arizona. Thus, Arizona was a forum chosen by Ryckman – not the ASC. Therefore, there is no evidence that the ASC engaged in any improper forum-shopping."

The Arizona Superior Court granted summary judgment in favor of ASC. A24. In a comprehensive opinion, the Arizona Court of Appeals considered and rejected each of Ryckman's arguments with respect to the judgment against him,

but modified the judgment to clarify that it could not be satisfied from the separate property of his wife, Elaine Ryckman. *Alberta Sec. Comm'n v. Ryckman*, 30 P.3d 121 (Ariz. Ct. App. 2001) (A191, A198). Mr. Ryckman makes no claim that the Arizona proceeding was unfair.

CONCLUSION

For the reasons stated above, this Court should affirm the holding of the Superior Court that the Arizona Judgment has been lawfully domesticated in Delaware.

Date: August 17, 2015

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 17th day of August 2015, copies of the APPELLEE'S ANSWERING BRIEF were served on all Delaware counsel of record via File & ServeExpress.

/s/ Robert J. Katzenstein
Robert J. Katzenstein (No. 378)