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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER)	SIXTH JUDICIAL CIRCUIT
)	C/A #: 2023-CP-29-00022
NEXTGEAR CAPITAL, INC.,)	
)	
Plaintiff,)	
vs.)	
)	ORDER
EXPRESS AUTOMOTIVE SALES &)	DENYING DEFENDANTS' MOTION
RENTAL, LLC d/b/a EXPRESS)	FOR RELIEF, NOTICE OF DEFENSES
AUTOMOTIVE SALES & RENTALS and)	TO, AND MOTION FOR DISCOVERY
VONIS EMORAY WAITERS,)	
)	
Defendants.)	
_____)	

THIS MATTER came before the Court upon the Motion for Relief from Judgment, Notice of Defenses to Domestication of Foreign Judgment, and Motion for Discovery filed on March 3, 2023, and subsequent Memorandum in Support (together, the “Motions”) filed by Defendants Express Automotive Sales & Rental, LLC d/b/a Express Automotive Sales & Rentals (the “Defendant LLC”), and Vonis Emoray Waiters (the “Defendant Waiters”) “Defendants”). A hearing on the Motions was held before me on April 26, 2023. Present at the hearing were Benjamin E. Grimsley, attorney for the Plaintiff, and D. Bradley Jordan, attorney for the Defendants. For the following reasons, the Motions are denied and the Indiana judgment is confirmed as being enrolled in a like matter as judgments in the State of South Carolina.

Plaintiff filed its Notice of Intent to Domesticate Foreign Judgment and accompanying Affidavit on January 9, 2023. As set forth therein, Plaintiff obtained judgment against Defendants on May 5, 2014 in the Superior Court No. 3 of Hamilton County, Indiana, in that certain civil action styled *Nextgear Capital, Inc. v. Express Automotive Sales & Rental, LLC, d/b/a Express Automotive Sales & Rentals, and Vonis Emoray Waiters* in Docket No. 29D03-1401-CC-000735 in the amount of Seventeen Thousand Nine Hundred Sixty-Eight and 97/100s (\$17,968.97) Dollars, plus interest on

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the judgment at the Indiana statutory rate of Eight Per Cent (8%) per annum until paid, and post-judgment attorney fees and post-judgment court costs incurred in the collection of the judgment (the “Indiana Judgment”).

The Indiana Judgment was entered in connection with a Demand Promissory Note and Security Agreement (the “Agreement”) between Plaintiff and the Defendant LLC in the original principal sum of \$85,000.00 pursuant to which the Defendant LLC also granted Plaintiff a security interest in a variety of the Defendant LLC’s assets, including its vehicle inventory. The Indiana Judgment was also entered against the Defendant Waiters on an Individual Personal Guaranty given to Plaintiff in support of the Agreement. The Defendant LLC defaulted under the terms of the Agreement, which eventually resulted in the Indiana Judgment being entered against the Defendants.

Through their Motions, the Defendants objected to the entry of the Indiana Judgment in South Carolina based upon, *inter alia*, insufficient service of process and insufficiency of process under the Indiana Rules of Trial Procedure and argued the burden to prove the Indiana Judgment is entitled to full faith and credit falls upon the Plaintiff. Plaintiff filed a Response in Opposition to the Motions on April 24, 2023 (“Plaintiff’s Response”), addressing Defendants’ defenses and objections.

DISCUSSION

The Full Faith and Credit Clause of the U.S. Constitution “requires each State to recognize and give effect to valid judgments rendered by the courts of its sister States.” *V.L. v. E.L.*, 577 U.S. 404 (2016) (internal quotations omitted). The Full Faith and Credit Clause is “exacting.” *Id.* “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.” *Id.*

South Carolina, like most states, has adopted the Uniform Enforcement of Foreign Judgments Act. *See* S.C. Code Ann. § 15-35-900 *et seq.* A “foreign judgment” is defined as “a judgment, decree, or order of a court of the United States or a court of another state which is entitled to full faith and credit in this State.” Section 15-35-910(1). In determining the validity of a foreign judgment being challenged for lack of jurisdiction, the Court must look to the law of the issuing state. *Pitts v. Fink*, 389 S.C. 156, 698 S.E.2d 626 (Ct. App. 2010).

Here, Plaintiff filed a copy of the authenticated foreign judgment, issued in the State of Indiana, in the Court of Common Pleas for Lancaster County, South Carolina, the county where the judgment debtors reside. Plaintiff filed an affidavit with the clerk, stating that the foreign judgment is final, is unsatisfied, and that the judgment is not further contested.

As a preliminary matter, I find that the Indiana Judgment is final, is not under appeal, and is not further contested in the State of Indiana.

I. Plaintiff does not bear the burden of proof.

In the Motions, the Defendants assert that the Plaintiff bears the burden of proving that the Indiana Judgment is entitled to full faith and credit in South Carolina pursuant to Section 15-35-940(B), South Carolina Code of Laws. However, the South Carolina Supreme Court held that placing the burden set forth in Section 15-35-940(B) of proving that the judgment is entitled to full faith and credit on the domesticating judgment creditor “violates the federal constitution.” *Law Firm of Paul L. Erickson, P.A. v. James R. Boykin, et al.*, 383 S.C. 497, 681 S.E.2d 575 (2009). The court therefore severed the burden from the remainder of the statute. *Id.* Thus, Plaintiff, as the creditor, does not have the burden to prove the Indiana Judgment is entitled full faith and credit.

II. Defendants were duly served under the Indiana Rules of Trial Procedure.

Indiana Trial Rule 4.1(A) provides that service may be made upon an individual by “sending a copy of the summons and complaint by registered or certified mail to his

residence [] with return receipt requested and returned showing receipt of the letter [or] leaving a copy [] at his dwelling house” Ind. Trial Rule 4.1(A)(1) & (A)(3). The Indiana Trial Rules further provide that service on an Indiana domestic or foreign organization “shall be made on the proper person in the manner provided by these rules for service upon individuals.” Indiana Trial Rule 4.6(B).

Unlike South Carolina law, Indiana does not have a “restricted delivery” requirement, so the addressee on the certified mailing of the Summons and Complaint does not actually have to sign for the receipt. Rather, service must be “reasonably calculated to inform the person to be served that an action has been instituted against him.” Ind. Tr. Rule 4.15(F) (emphasis added). Further, Indiana Trial Rule 4.15(F) provides a savings clause to cure harmless defects in service: “No summons or the service thereof shall be set aside or be adjudged insufficient when either is reasonably calculated to inform the person to be served that an action has been instituted against him, the name of the court, and the time within which he is required to respond.”

Notably, the certified mailing of the Summons and Complaint to the Defendants was handled by the Hamilton County Clerk of Court, and not by the Plaintiff, pursuant to Indiana Trial Rule 4.11 and as evidenced by the Summons and electronic return receipt.

Here, the Hamilton County Clerk of Court mailed the Summons and Complaint by certified mail, return receipt requested, to the Defendant Waiters at the address of 2938 Flat Creek Road, Lancaster, South Carolina 29720 (the “Flat Creek Address”). The Flat Creek Address is the same location where the Lancaster County Sheriff’s Department personally served the Defendant Waiters with Notice of Intent to Domesticate Foreign Judgment in this matter. Plaintiff also attached as Exhibit D to its Response a copy of a certified mailing receipt from the U.S. Postal Service dated January 30, 2017, that evidences a mailing to the Defendant Waiters at the Flat Creek Address, which appears to have been received and signed for by the Defendant Waiters. Plaintiff

represented at the hearing that this certified mailing was issued by the Hamilton County Clerk of Court in 2017 for supplemental proceedings initiated in Indiana by the Plaintiff.

The Hamilton County Clerk of Court mailed the Summons and Complaint by certified mail, return receipt requested, to the Defendant LLC at the address of c/o Emoray R. Waiters, Its Registered Agent, 9424 Charlotte Highway, Indian Land, South Carolina 29707 (the "Registered Agent Address"). The Registered Agent Address is the same address listed for the Defendant LLC with the South Carolina Secretary of State's Office, the same address identified for the Defendant LLC in the Agreement, and the same location where the Lancaster County Sheriff's Department personally served Emoray Waiters as registered agent for the Defendant LLC with Notice of Intent to Domesticated Foreign Judgment in this matter.

Even if there were technical defects in service, Indiana case law and the Indiana Trial Rules support Plaintiff's position that service was reasonably calculated to inform Defendants that an action was instituted against them. "Trial Rule 4.15(F) will prevent service of process which is technically deficient from defeating the personal jurisdiction of a court." *Maust v. Estate of Bair*, 859 N.E.2d 779, 783 (Ind. Ct. App. 2007); *see also Thomison v. IK Indy, Inc.*, 858 N.E.2d 1052,1058 (Ind. Ct. App. 2006) ("although actual notice alone will not cure defective service, it may be considered in determining whether the notice was reasonably calculated to inform an organization of the action"); *see also Homer v. Jones-Bey*, 415 F.3d 748, 757 (7th Cir. 2005) (applying Indiana state law, noting that "technical shortcomings in service may be excusable (especially where the party to be served has actual notice of the lawsuit)" and discussed that the purpose of Rule 4.15(F) was preventing defendants from ignoring reasonably calculated service based on harmless technical defects).

Thus, under Indiana law, service of the Summons upon the Defendants was reasonably calculated to provide notice of the suit to them, and I find no grounds upon which to grant Defendants' Motions based upon insufficient service of process.

III. The Rendering Court had jurisdiction over Defendants.

Defendants also assert that the Indiana Court lacked "jurisdiction over the person." In Indiana, courts uphold parties' contractual submission to personal jurisdiction. *See, e.g., Jallali v. Nat'l Bd. of Osteopathic*, 908 N.E.2d 1168 (Ind. Ct. App. 2009) ("Parties may consent by contract to the exercise of personal jurisdiction by courts that otherwise might not have such jurisdiction."). Indiana courts have held that due process permits the exercise of personal jurisdiction over a nonresident defendant when the defendant consents to jurisdiction. *See Pollas v. Hardware Wholesalers, Inc.*, 663 N.E.2d 1188 (Ind. Ct. App. 1996) (parties to a contract frequently agree in advance to have any controversies litigated in a particular forum) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

Here, Defendants submitted to the personal jurisdiction and venue of the state and federal courts of Hamilton County, Indiana as evidenced both by the Agreement and by the Personal Guaranty. Thus, the Hamilton County, Indiana Court had personal jurisdiction over Defendants.

IV. Release of certain collateral insufficient to deem judgment satisfied.

Defendants argue that, because Plaintiff allegedly released titles to three vehicles serving as collateral for the Agreement, that the debt owed to Plaintiff under the Agreement and Personal Guaranty has been satisfied. From the evidence, it appears Defendants granted Plaintiff a continuing security interest in a broad variety of collateral – not just vehicle inventory – including all amounts in Defendants' Reserve; deposit accounts; accounts receivables; manufacturer rebates; and all cash reserves. I find the alleged release of vehicle titles alone to be insufficient to establish

that the debt owed under the Indiana Judgment has been satisfied or to otherwise serve as a basis to grant the Motions.

NOW, THEREFORE, having reviewed the filings in the matter, and considering the arguments of counsel,

IT IS ORDERED, ADJUDGED AND DECREED that the Motions are **DENIED** as it fails to present any grounds for relief under S.C. Code Ann. § 15-35-940 or Rule 60, SCRPC. The Indiana Judgment is entitled to this State's full faith and credit, and the Indiana Judgment is confirmed as a judgment in the County of Lancaster, State of South Carolina. Plaintiff is entitled to enforce the judgment in like manner as any judgment rendered in the State of South Carolina. The Clerk of Court is directed to enroll the judgment against Defendants Express Automotive Sales & Rental, LLC d/b/a Express Automotive Sales & Rentals, and Vonis Emoray Waiters in the public indices for Lancaster County, South Carolina effective as of its initial filing, January 9, 2023.

AND IT IS SO ORDERED.

(JUDGE'S SIGNATURE PAGE TO FOLLOW)



Lancaster Common Pleas

Case Caption: Nextgear Capital, Inc. VS Express Automotive Sales & Rental, Llc ,
defendant, et al
Case Number: 2023CP2900022
Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge