STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
)
INVESTMENT ASSOCIATES,)
) C. A. No. 2014-CP-23-00515
Plaintiff,)
)
vs.) **ORDER**
)
JOSEPH D. LANCIA)
)
Defendant.)
)

FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL B. ... 2014 AUG 6 AM 9 24

I. Introduction

On May 17, 1994, the State of Connecticut Superior Court entered a judgment ("the Judgment") against Defendant Joseph D. Lancia ("Lancia") in favor of Investment Associates ("IA"). Lancia moved from Connecticut to South Carolina in 1992 and has been a resident of Greenville County, South Carolina since August 1992.

In 2007, IA filed an action with the Connecticut Superior Court seeking a "new" judgment based on the Judgment. *See Investment Associates v. Lancia*, CV074028746S, 2008 WL 2168983, 2008 Conn. Super Lexis 1112 (Conn. Super. Ct. May 5, 2008). Lancia moved to dismiss for lack of personal jurisdiction on the grounds that he had been a resident of South Carolina since 1992, had worked in South Carolina exclusively during that time, and lacked sufficient contacts with Connecticut. The Connecticut Superior Court granted Lancia's motion, finding Connecticut lacked personal jurisdiction over Lancia. *Id.* IA did not appeal that decision, and the time period for doing so has expired.

In 2009, the Connecticut legislature passed General Statutes § 52-598(c), which provides:

> With respect to a judgment for money damages rendered in any court of this state, including, but not limited to, a small claims session, a motion to

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> revive such judgment may be filed with the Superior Court prior to the expiration of any applicable period of time to enforce such judgment as set forth in this section. The court may grant the motion to revive the judgment if the court finds that the applicable time period to enforce the judgment under this section has not expired. No order to revive a judgment may extend the time period to enforce a judgment beyond the applicable time period set forth in this section.

In October 2009, IA filed a "Motion to Revive" the Judgment in the Connecticut Superior Court pursuant to this statute. Lancia moved to dismiss for lack of personal jurisdiction. The court simultaneously granted the motion to revive and denied the motion to dismiss, finding that the motion to revive was merely a continuation of the original action and not a "new" action that would require Connecticut to obtain personal jurisdiction. *See Investment Associates v. Lancia*, CV91-0309954-S, 2010 Conn. Super. LEXIS 548 (Conn. Super. Ct. March 4, 2010).

Lancia appealed this decision and on August 27, 2013 the Supreme Court of Connecticut affirmed the Superior Court. *Investment Assocs. v. Summit Assocs.*, 74 A.3d 1192 (Conn. 2013). The Court explained that "a motion to revive under § 52-598 (c) is effectively a continuation of the original proceeding rather than a new action." *Id.* at 1201. As such, Connecticut had personal jurisdiction over Lancia for purposes of the motion to revive. *See id.* at 1211.

On January 28, 2014, IA filed the Judgment in South Carolina for the first time. Lancia moves for relief, which this Court grants for the reasons that follow.

II. Law/Analysis

A. S.C. Code Ann. § 15-3-600

South Carolina Code Section 15-3-600 establishes a ten-year statute of limitations that applies to the enforcement of foreign judgments. *See Abba Equipment, Inc. v. Thomason*, 335 S.C. 477, 483, 517 S.E.2d 235, 238 (Ct. App. 1999) ("the catch-all limitation period of § 15-3-

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600 applies to the time in which a foreign judgment must be filed . . . "). The ten-year clock begins to run when the debtor moves to South Carolina and the courts of this state become empowered to adjudicate between the parties, regardless of when the creditor discovered that the debtor was a South Carolina resident. *Id.* at 482, 517 S.E.2d at 237 ("the limitation period does not begin to run until the judgment debtor moves to South Carolina and the courts of this state become empowered to adjudicate between the parties upon the particular cause of action."); *id.* at 485-86, 517 S.E.2d at 239 ("We hold the ten year limitations period of § 15-3-600, for enforcement of [creditor's] foreign judgment under the UEFJA, began to run when [debtor] became a resident of South Carolina, not when [creditor] discovered [debtor] was a South Carolina resident."). There is no discovery rule. *Id.* at 485-86, 517 S.E.2d at 239.

It is undisputed that Mr. Lancia has been a resident of South Carolina since 1992. *See also Investment Assocs.*, 74 A.3d at 1196 ("The following facts are undisputed. . . . In 1992, while the action was pending, the defendant moved from Connecticut to South Carolina."). As set forth in Mr. Lancia's affidavit filed in support of his motion, Lancia has resided at the same address continuously since 1992. The courts of South Carolina became empowered to adjudicate this dispute when the Judgment was entered in 1994 and the ten-year statutory period began to run at that time. The statutory period expired in 2004. This enforcement action was filed in 2014, almost ten years after the ten-year statutory period expired. Consequently, this action is barred.

B. Effect of Revival of the Judgment in Connecticut

IA's revival of the Judgment under Conn. Gen. Stat. 52-598(c) does not change the conclusion that this action is barred by South Carolina Code Section 15-3-600. A revived

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judgment under section 52-598(c) of the Connecticut General Statutes is nothing more than a continuation of the original judgment and is not a new judgment.[1] *See Investment Assoc.*, 74 A.3d at 1201. Thus, the revival goes only to the validity of the Judgment in Connecticut and does not impact South Carolina's statute of limitations. *See Owens v. McCloskey*, 161 U.S. 642, 646 (1896) (holding that a Pennsylvania judgment recovered in 1861 and revived in 1871 was barred in a 1880 Louisiana action by Louisiana's ten-year statute of limitations since "considered as in continuation of the prior action and a revival of the original judgment for purposes of execution . . . it operated merely to keep in force the local lien, and could not be availed of as removing the statutory bar of lex fori").

South Carolina Code Section 15-3-600 bars the enforcement of a foreign judgment after the statutory time period even where that judgment is still valid in the rendering state. In *Abba Equipment, Inc. v. Thomason*, 335 S.C. 477, 517 S.E.2d 235 (Ct. App. 1999), Plaintiff obtained a Florida judgment against the debtor in 1983. The debtor became a South Carolina resident by 1985. Plaintiff filed the judgment with the Greenville, South Carolina Clerk of Court on December 23, 1996. *Id.* at 480-81, 517 S.E.2d at 236-37. Under Florida law, the judgment was valid for 20 years from the date of entry. *See id.* at 480, 517 S.E.2d at 236 n. 2. The *Abba Equipment* Court held that S.C. Code § 15-3-600 barred the IA's enforcement of the judgment even though the Florida judgment was still valid under Florida law when it was filed in South Carolina in 1996 (and even in 1999 when the Court of Appeals issued its opinion). *See id.* at 483, 517 S.E.2d at 238.

[1] The revival in this case could not be a new judgment since, as set forth above, the Connecticut Superior Court had already found that it lacked personal jurisdiction over Mr. Lancia to issue a new judgment.

The revival of the Judgment was merely a continuation of the validity of the Judgment in Connecticut. Thus, it is no different than the Florida judgment in *Abba Equipment, Inc.*, which continued to be valid in Florida. As such, the Judgment is barred by the statute of limitations in South Carolina Code § 15-3-600, just like the judgment in *Abba Equipment, Inc.*

Nor does the Full Faith and Credit clause require that the 1994 Connecticut judgment be enforced in South Carolina at this late date. The Connecticut legislation that resulted in § 52-598(c)—and which appeared to be targeted directly at the judgment at issue in this case—accomplished practically little if anything. *See Investment Assoc.*, 74 A.3d at 1199. The Supreme Court has succinctly expressed the controlling principle: "Full faith and credit, however, does not mean that states must adopt the practices of other states regarding the time, manner and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgments as preclusive effects do; such measures remain subject to the even-handed control of forum law." *Baker v. General Motors Corp.*, 522 U.S. 222, 235 (1998). Thus, while states may not at any time refuse to give full faith and credit to the res judicata effect of a foreign state judgment, they may refuse to enforce a money judgment that is filed too late as determined by the forum state's neutral laws. *Adar v. Smith*, 639 F.3d 146, 159 (5th Cir. 2011) (requirement of Full Faith and Credit clause that judgments be enforced by "even-handed" control of forum law "means only that the state execute a sister state's judgment in the same way it would execute judgments in the forum court.")

There is an apparent exception which only the legal mind could conjure: if the issuing state "revives" the judgment and the effect of the revival is to create a "new" judgment rather

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than merely a "continuation" of the old, then the "new" judgment restarts the clock for enforcement in both the issuing state and all other states.[2]

By reviving its judgment pursuant to § 52-598(c) in 2010, IA did not obtain a "new" judgment. Indeed, the Connecticut Supreme Court repeatedly deems it a "continuation":

- A "motion to revive under § 52-598(c) is effectively a continuation of the original action rather than a new action." 74 A.3d at 1201.
- "As we continue to underscore, a proceeding to revive a judgment is a continuation of the original action." 74 A.3d at 1207.

To be sure, the Connecticut decision, far from a model of clarity, does state that "the manifest purpose of revival under § 52-598(c) is to create a new judgment for the purpose of meeting a foreign jurisdiction's time limit for enforcement." 74 A.3d at 1200. Yet in the very next paragraph and an accompanying footnote it notes that the nature of the revival "may" be important for full faith and credit purposes, and that "a proceeding to revive a judgment generally is viewed a continuation of the original action, and not a new action." 74 A.3d at 1200-1201 & n. 8. It is also telling that nowhere in § 52-598(c) does the word "new" appear.

It seems as though by passing § 52-598(c) the Connecticut legislature was attempting to thread a needle imagined by Comment (c) to § 118 of The Restatement (Second) of Conflict of Laws, which suggests that although a valid judgment rendered in a state may be denied enforcement in a sister state if suit on the judgment is barred by the sister state's statute of limitation applicable to judgments, a different result ensues under the Full Faith and Credit

[2] As the Connecticut Supreme Court discerned, the "revival" versus "new" distinction arose in states where judgments can go dormant. 74 A.3d at 1199 n. 6. The dormancy creates a presumption that the judgment was satisfied, which can be rebutted by revival. Connecticut, however, is not one of these states. This may explain the awkwardness of the Connecticut Supreme Court opinion, which attempts to fathom the legislative intent behind § 52-598(c)'s provision that a Connecticut judgment which has never expired or become dormant somehow can still be "revived."

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clause if the judgment is "revived": "If under the local law of the State of rendition the effect of this revival is to create a new judgment, then suit on this judgment may not be held barred under full faith and credit in the sister State. The contrary will be true, however, if the effect of the revival in the State of rendition is not to create a new judgment but rather to prolong the effective life of the original judgment." *Id.*[3]

Even if this conundrum were resolved by treating the expressly "revived" judgment as an entirely "new" judgment (a transformation customarily spun by the world of advertising rather than the annals of law), this court still finds it does not offend the Full Faith and Credit clause for South Carolina to bar enforcement based on its ten (10) year statute of limitations. The clear import of *Baker v. General Motors Corp., supra*, is that states may enforce judgments according to their own statute of limitations periods, so long as they are "even handed." This is highlighted by *Baker*'s reliance on § 99 of the Restatement (Second) of Conflicts of Laws ("The local law of the forum determines the methods by which the judgment of another state is enforced") and its own 1839 precedent that a "judgment may be enforced only as 'laws [of enforcing forum]' may

[3] The tension can be traced to two anomalous mid-20th century cases. In *Union Nat. Bank of Wichita v. Lamb*, 337 U.S. 38 (1949), Bank obtained a judgment against Lamb in Colorado in 1927, which was revived in 1945 in that state. Bank then brought an action in Missouri against Lamb in 1945 to enforce the judgment. The Missouri Supreme Court refused to enforce it, citing its statutory law that limited a judgment to 10 years from original rendition or 10 years after revival, but also provided that no judgment could be revived 10 years after its rendition. The United States Supreme Court in a 6-3 opinion reversed, holding that the 1945 revival constituted a "new" judgment according to Colorado law. 337 U.S. at 44-46.

In *Watkins v. Conway*, the Court held that a Georgia statute that limited enforcement of foreign judgments to 5 years (a period shorter than that afforded to domestic Georgia judgments) did not violate either the Full Faith and Credit or the Equal Protection clauses because the judgment holder could have revived the judgment under Florida law for 20 years after its rendition. The Court did not cite *Lamb* or even discuss whether the revival constituted a new judgment or merely a continuation of the original.

Lamb and *Watkins* offer scant guidance. Arguably both cases assumed that the revival by the rendering state created a "new" judgment. Indeed, *Lamb* ends expressly with this assumption. *Lamb*, 337 U.S. at 45 (Missouri Supreme Court decision "cannot stand if, as assumed, the Colorado judgment had the force and effect of a new one."). But here, we have the guidance of the Connecticut Supreme Court that the revival was merely a continuation of the original judgment and not a new action. More importantly, we have the pronouncements of the United States Supreme Court in *Baker* and *Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988), which likely rendered *Lamb* and *Watkins* obsolete.

permit." *Baker*, 522 U.S. at 235 (quoting *McElmoyle ex rel. Bailey v. Cohen*, 13 Pet. 312, 325, 10 L.Ed. 177 (1839)); *See also Carter v. Carter*, 232 Va. 166, 349 S.E.2d 95 (1986) (1981 action filed in Virginia to enforce 1964 Florida judgment, which went dormant in 1967 but revived in 1977 by Florida law as "continuation", barred by Virginia's 10 year statute of limitations); *Mundaca Fin. Servs. LLC v. Casella*, 2011 WL 883506 (N.C. Ct. App. 2011) (unpublished) (cited by Connecticut Supreme Court).

The legislative history of § 52-598(c) illuminates the true objectives driving the legislation. The statute enacted a Bill entitled "An Act Concerning the Time Limit for Enforcing a State Court Judgment in a Foreign Jurisdiction." *See* 74 A.3d at 1199. Such a law must yield to the command in *Baker* that "[e]nforcement measures do not travel with sister state judgments..." but instead are decided by the law of the forum state. *Baker*, 522 U.S. at 235. Certainly statutes of limitations for enforcement of judgments are procedural rules which states may promulgate without fear of violating Full Faith and Credit. *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722 (1988) (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.'") (citation omitted). The Connecticut Supreme Court acknowledged as much in reverse, finding § 52-598(c) to be a procedural rule that "obviously does not alter the foreign jurisdiction's law with respect to the period of enforcement." 74 A.3d at 1210.

The application of South Carolina's statute of limitations on foreign judgments comports with the Full Faith and Credit clause since actions on foreign and South Carolina judgments alike must be maintained within ten (10) years. In South Carolina, proceedings to execute on a South Carolina judgment must be brought within ten (10) years. S.C. Code Ann. § 15-39-30; *see also Linda Mc Company, Inc. v. Shore*, 390 S.C. 543, 554-55, 703 S.E.2d 499, 505 (2010). South

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Carolina judgments "cannot be renewed" or revived. *See LaRosa v. Johnston*, 328 S.C. 293, 300, 493 S.E.2d 100, 103 (Ct. App. 1997) *overruled in part as stated in Linda Mc Company, Inc.*, 390 S.C. at 554-55 n. 8, 703 S.E.2d at 505 n. 8; *Home Port Rentals, Inc. v. International Yachting Group*, 95 F.Supp.2d 623, 624 (W.D. La. 2000) ("South Carolina courts interpret [S.C. Code § 15-39-30] to mean what it says: a judgment is utterly extinguished ten years from the date of entry. There is no procedure for renewal or revival.").

South Carolina already affords foreign judgments greater rights than South Carolina judgments since a foreign creditor could file the foreign judgment in South Carolina within ten years, at which point the foreign judgment would then be valid for ten (10) years after enrollment in South Carolina. *See Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999) (holding that the 10-year period in S.C. Code § 15-39-30 begins to run when the creditor enrolls the judgment in South Carolina rather than when it obtained the judgment).[4] As a result a foreign judgment could continue to be valid in South Carolina for longer than a judgment actually rendered in South Carolina. Consequently, the application of South Carolina Code § 15-3-600 to bar this action is in line with the Full Faith and Credit Clause. *See Great Western Tel. Co. v. Purdy*, 162 U.S. 329, 338 (1896) (holding that Iowa statute of limitations was proper since "[n]either the statutes nor the decisions of the State of Iowa upon this subject have made any discrimination against the citizens, the contracts or the judgments of other States, or against any right asserted under the Constitution or laws of the United States."); *Suter v. Suter*, 37 S.E.2d 474 (W. Va. 1946) ("we do not think that, under the full faith and credit clause of our Federal Constitution, a court of any state is required to give to the decree of a court of a foreign state, a higher degree of force or effect than that accorded to the decrees of its own courts.").

[4] IA did not file the Connecticut judgment in South Carolina before its purportedly alchemic 2010 "revival."

Statutes of limitations are scrupulously applied in this State. They perform an essential role in the administration of justice by providing finality and closure. *See Ariail v. Ariail*, 29 S.C. 84, 93, 7 S.E. 35, 40 (1888) ("The statute of limitations may sometimes work a great hardship in special cases; but under the principle that litigation and contention must have an ending, and that the repose and quiet of the many compensates for the loss of the few, such statutes have been adopted and strictly enforced in most countries, as wise, and as contributing to the best interests of society. Such is the doctrine in this state."). *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) delineated the public policy considerations that statutes of limitations embody: "they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Statutes of limitations serve to achieve "the laudable goal of law to promote and achieve finality in litigation." *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548 (Ct. App 2005). They provide defendants with certainty of when they can no longer be haled into court and discourage parties from sitting on their rights, and thus, "are, indeed, fundamental to our judicial system." *Id.*

If South Carolina were to consider revived judgments from the date of revival, then a creditor could potentially "revive" a judgment in the rendering state continuously, in which case there would effectively be no statute of limitations in South Carolina on foreign judgments. As set forth above, this is not the law and creditors cannot sit on their rights as IA did here. Even though no discovery rule applies in this case, IA knew, or should have known, that Lancia was living in South Carolina by 1993 at the latest. Lancia was receiving legal documents addressed to him in South Carolina in 1993, including in actions to which IA was a party. Yet IA waited until nearly twenty (20) years after obtaining its Judgment to file it in South Carolina. Its action on the Judgment is consequently barred by the statute of limitations.

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IT IS THEREFORE ORDERED that this action be dismissed, that the foreign judgment at issue is unenforceable in South Carolina, that the foreign judgment be stricken from the Rolls and index, and that any attempts to enforce the foreign judgment in South Carolina be terminated. Furthermore, in accordance with the Consent Order Merging Cases entered July 29, 2014 by Judge G. Edward Welmaker, this Order shall apply to bar enforcement of the Judgment in civil action number 2014-CP-23-02705.

IT IS SO ORDERED.

D. Garrison Hill
Circuit Judge

August 5, 2014
Greenville, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2300515

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 6 AM 9 24

RECEIVED
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SC Court of Appeals

Investment Associates	Joseph D Lancia
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: ____________

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: ____________

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: ____________

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date: 8/6/2014

For Clerk of Court Office Use Only

This judgment was entered on **6th day of August, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **6th day of August, 2014**, to attorneys of record or to parties (when appearing pro se) as follows.

Jason Michael Ward PO Box 1208 Simpsonville, SC 29681-1208

ATTORNEY(S) FOR THE PLAINTIFF(S)

Denny Parker Major Haynsworth Sinkler Boyd, P.A. P.O. Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.