THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-5359

Sue Taylor Colson Widenhouse ..... Respondent,

v.

Tammy Batson Colson ..... Appellant.

INITIAL BRIEF OF RESPONDENT

Matthew D. Lincoln, Esquire
Scott M. Tyler, Esquire
Moore & Van Allen PLLC
100 North Tryon Street,
Suite 4700
Charlotte, NC 28202
Telephone: (704) 331-3562
Facsimile: (704) 339-5979

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUE ON APPEAL

Did the trial court properly rule in granting Respondent's Motion to Enforce Foreign Judgment and in denying Appellant's Motion for Relief from such judgment?

STATEMENT OF THE CASE

Appellant's Statement of the Case is correct and complete, with several exceptions. In the underlying North Carolina suit, Appellant did not defend the action, including at trial. In the October 27, 2011 hearing before Judge D. Garrison Hill, counsel for Appellant stated that Appellant "readily accepts the burden to challenge this particular enforcement." (Tr. 6:6-7.)

ARGUMENT

THE TRIAL COURT PROPERLY RULED BECAUSE SOUTH CAROLINA IS OBLIGATED TO RECOGNIZE AND ENFORCE THE NORTH CAROLINA JUDGMENT UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION, AND THE SOUTH CAROLINA STATUTE SETTING FORTH A PUBLIC POLICY EXCEPTION TO THAT MANDATE IS UNCONSTITUTIONAL.

I. THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION MANDATES THAT SOUTH CAROLINA ENFORCE THE NORTH CAROLINA JUDGMENT.

The foreign judgment at issue in this appeal (the "North Carolina Judgment") is entitled to full faith and credit in South Carolina. Article IV of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. A federal statute implements this requirement. 28 U.S.C. § 1738. The U.S. Supreme Court has stated that the overarching purpose of the Full Faith and Credit Clause was to replace the previously existing discretionary doctrine of comity with a constitutional command for the recognition of sister state judgments. See Sun Oil Co. v. Wortman, 486 U.S. 717, 723 n.1 (1988); Estin v. Estin, 334 U.S. 541, 546 (1948). "In order to fulfill this mandate[,] 'the judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced.'" Alladin Plastics, Inc. v. Wintenna, Inc., 301 S.C. 90, 91, 390 S.E.2d 370, 371 (Ct. App. 1990) (quoting Hampton v. McConnel, 16 U.S. (3 Wheat.) 234, 235, (1818) (Marshall, C.J.)).

Under this authority, which is binding on this Court, the North Carolina Judgment deserves the same credit, validity, and effect in South Carolina that it has in North Carolina.

A. Foreign Judgments Are Presumed To Be Valid And The Judgment Debtor Carries The Burden Of Proving That The Foreign Judgment Is Not Entitled To Full Faith And Credit.

The North Carolina Judgment is presumed to be valid under the Full Faith and Credit Clause, and Appellant carries the burden to prove otherwise. Judgments of sister states have a "presumption of . . . validity afforded . . . by the Full Faith and Credit Clause . . . ." Law Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 504, 681 S.E.2d 575, 579 (2009). Moreover, under the Full Faith and Credit Clause, "the burden of undermining the decree of a sister state 'rests heavily on the [judgment debtor].'" Id. (quoting Cook v. Cook, 342 U.S. 126, 128 (1951)). In fact, in 2009, the South Carolina Supreme Court struck—as violative of the U.S. Constitution—language from the South Carolina Code stating that "'[t]he judgment creditor has the burden of proving that the foreign judgment is entitled to full faith and credit.'" Id. at 504-05, 681 S.E.2d at 579-80 (quoting S.C. Code § 15-35-940(B)). Thus, it is Appellant's "heavy" burden to prove that the North Carolina Judgment is not entitled to full faith and credit in South Carolina, rather than Respondent's burden to prove that it is.

B. The Forum Court's Analysis Of A Foreign Judgment May Not Delve Into The Merits Of The Underlying Action, Or Base A Denial Of Enforcement On The Forum Court's Non-recognition Of The Claims For Relief In The Underlying Action.

Despite Appellant's urgings, the Court may not consider the causes of action underlying the North Carolina Judgment in assessing its validity. "'[T]he full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of

action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based.'" Alladin Plastics, 301 S.C. at 93 n.5, 390 S.E.2d at 372 n.5 (quoting Hamilton v. Patterson, 236 S.C. 487, 492, 115 S.E.2d 68, 70 (1960)); Security Credit Leasing, Inc. v. Armaly, 339 S.C. 533, 540, 529 S.E.2d 283, 287 (Ct. App. 2000) (same).[1]

Additionally, the unavailability of a cause of action in one state is not a basis for denying enforcement of a foreign judgment from a sister state based on that cause of action. Union Nat'l Bank v. Lamb, 337 U.S. 38, 42 (1949) ("[T]he State of the forum could not defeat the foreign judgment because it was obtained by a procedure hostile to or inconsistent with that of the forum or because it was based on a cause of action which the forum itself would not have recognized."); Kenney v. Supreme Lodge of The World, 252 U.S. 411, 415 (1920) ("[T]he fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment."). Courts have rationalized this principle by describing a suit to enforce a foreign judgment not as a suit on the underlying cause of action, but as a suit to collect money owed, with the cause of action merged into the judgment. See Milwaukee County v. M. E. White Co., 296 U.S. 268, 275 (1935) ("[T]he validity of the claim upon which [a foreign judgment] was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right which gave rise to it, the judgment is an obligation to pay money . . . ."); Titus v. Wallick, 306 U.S. 282, 291-92 (1939) (describing the judgment creditor as "standing upon a different footing").

[1] To the extent the judgment-rendering court's jurisdiction is questioned, the court should apply the law of that state, rather than the law of the forum state. Boykin, 383 S.C. at 500 n.2, 681 S.E.2d at 577 n.2. It is undisputed that the North Carolina court had personal and subject matter jurisdiction in this case.

Under this authority, neither the fact that South Carolina has abolished the torts of criminal conversation and alienation of affections nor the fact that numerous other states have also done so, (Appellant's Br. at 3-6), impact the enforceability of the North Carolina Judgment, which is final, valid, and enforceable in North Carolina. Moreover, Appellant's challenge is based entirely on an inquiry into the merits of the underlying causes of action. The proper venue for challenging those causes of action was before the North Carolina trial court. Appellant chose not to do that. She now asks this Court to invalidate the judgment rendered upon unopposed claims. However, because the underlying claims have merged into the North Carolina Judgment, this case is nothing more than a collection action. As U.S. Supreme Court and South Carolina Supreme Court precedent has made clear, this Court may not consider South Carolina's position on the substantive law supporting the North Carolina Judgment, and should enforce the North Carolina Judgment as the Full Faith and Credit Clause requires.

II. THE UNITED STATES SUPREME COURT JURISPURDENCE DICTATES THAT THIS COURT SHOULD DECLINE TO RECOGNIZE A PUBLIC POLICY EXCEPTION TO THE FULL FAITH AND CREDIT CLAUSE, AND FIND S.C. CODE ANN. § 15-35-960 UNCONSTITUTIONAL.

No exception to the Full Faith and Credit Clause applies here. The U.S. Supreme Court is "the final arbiter of the extent of the exceptions [which] have been few and far between." Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 438 (1943) (citations omitted). In particular, the U.S. Supreme Court "has been reluctant to admit exceptions in case of judgments rendered by the courts of a sister state, since the 'very purpose' of Art. IV, § 1 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.'" Williams

v. North Carolina, 317 U.S. 287, 295 (1942) (quoting M. E. White Co., 296 U.S. at 276-77) (emphasis in original).

As Appellant notes, the U.S. Supreme Court has excepted from the general rule cases in which the court rendering the judgment lacked personal jurisdiction or subject matter jurisdiction, where the judgment was procured by fraud, or where there was a due process violation. (Appellant's Br. at 6-7 n.2.) Those exceptions have not been asserted by Appellant to apply here. Moreover, the exception asserted by Appellant, based on "public policy" and embodied in South Carolina in S.C. Code Ann. § 15-35-960, has been rejected by the U.S. Supreme Court, and an abundance of other courts. This Court should follow that precedent to affirm the trial court's holding, and in doing so should necessarily find S.C. Code Ann. § 15-35-960 unconstitutional.

A. U.S. Supreme Court Precedent Has Expressly Rejected The Existence Of A Public Policy Exception To The Full Faith And Credit Clause For Foreign Judgments.

The U.S. Supreme Court has addressed the precise issue before this Court, *i.e.*, whether there is a "public policy" exception to the Full Faith and Credit Clause in connection with foreign judgments, and has expressly rejected the notion. While "[a] court may be guided by the forum State's 'public policy' in determining the **law** applicable to a controversy[,] our decisions support no roving 'public policy exception' to the full faith and credit due **judgments**." Baker v. Gen. Motors Corp., 522 U.S. 222, 233 (1998) (emphasis in original). In deciding Baker, the Supreme Court first set forth several overriding principles, notably that "precedent differentiates the credit owed to laws (legislative measures and common law) and to judgments." Id. at 232. Additionally, "[r]egarding judgments, . . . 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." Id. at 233. The Court then expressly rejected the trial court's holding that enforcing the foreign judgment would be contrary to the forum state's public policy: "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 . . . misread our precedent." Id. at 234 (citations omitted). Indeed, the U.S. Supreme Court is "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." Id. (citing Magnolia Petroleum Co. v. Hunt, 320 U.S. 430, 438 (1943)).

The Court's position in Baker on the impact (or lack thereof) of a state's public policy on the viability of foreign judgments is consistent with a wealth of other U.S. Supreme Court precedent. See, e.g., Johnson v. Muelberger, 340 U.S. 581, 584 (1951) ("Local policy must at times be required to give way, such is part of the price of our federal system.") (citations omitted); Estin v. Estin, 334 U.S. 541, 546 (1948) (The 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."); Morris v. Jones, 329 U.S. 545, 553 (1947) ("The function of the Full Faith and Credit Clause is to resolve controversies where state policies differ. . . . [T]he enforcement of a judgment of one State in another State may run counter to the latter's policies. . . . If full faith and credit is not given in that situation, the Clause and the statute fail where their need is the greatest."); Milwaukee County v.

M. E. White Co., 296 U.S. 268, 276-77 (1935) ("The very purpose of the full faith and credit clause . . . ought not lightly to be set aside out of deference to a local policy which, if it exists, would seem to be too trivial to merit serious consideration when weighed against the policy of the constitutional provision and the interest of the state whose judgment is challenged. . . . [C]onsiderations of policy of the forum which would defeat a suit upon the original cause of action are not involved in a suit upon the judgment and are insufficient to defeat it."); Roche v. McDonald, 275 U.S. 449, 452 (1928) (A foreign judgment, if valid where rendered, must be enforced in other states even if the judgment is "repugnant to its own statutes."); Fauntleroy v. Lum, 210 U.S. 230, 239-40 (1908) (White, J., dissenting) (lamenting the majority's decision, "since the effect will be to endow each State with authority to overthrow the public policy . . . of the others").

Justice Rutledge has aptly explained the rationale of the rule:

> The very function of the clause is to compel the states to give effect to the contrary policies of other states when these have been validly embodied in judgment. To this extent the Constitution has foreclosed the freedom of the states to apply their own local policies. The foreclosure was not intended only for slight differences or for unimportant matters. It was also for the most important ones. The Constitution was not dealing with puny matters or inconsequential limitations. If the impairment of the power of the states is large, it is one the Constitution itself has made. Neither the states nor we are free to disregard it. The "local public policy" exception is not an exception, properly speaking.

Williams v. North Carolina, 325 U.S. 226, 254-55 (1945) (Rutledge, J., dissenting).[2] Even Justice Kennedy's concurrence[3] in Baker acknowledges the principle: "We have often recognized the second State's obligation to give effect to another State's judgments even when the law underlying those judgments contravenes the public policy of the

[2] The majority in Williams held that the foreign judgment could be challenged on what it interpreted to be jurisdictional grounds. 325 U.S. at 238-39.

[3] Justices O'Connor and Thomas joined in this opinion.

second State." 522 U.S. at 243 (Kennedy, J., concurring) (citing Estin, 334 U.S. at 544-546; Sherrer v. Sherrer, 334 U.S. 343, 354-355 (1948); Magnolia Petroleum, 320 U.S. at 438; Williams v. North Carolina, 317 U.S. 287, 294-295 (1942); Fauntleroy, 210 U.S. at 237).

Appellant attempts to downplay Baker by labeling the statements in the opinion regarding the Full Faith and Credit Clause as dicta because the Court ultimately refused to enforce the foreign judgment. (Appellant's Br. at 8.) This Court should disregard this tactic. The Supreme Court rejected the foreign judgment in Baker not based on any public policy exception, but only because the Court found that doing so would not violate the Full Faith and Credit Clause.[4] In so holding, the Court made sure to reiterate its position on the purported public policy exception: "This conclusion creates no general exception to the full faith and credit command, and surely does not permit a State to refuse to honor a sister state judgment based on the forum's choice of law or policy preferences." Id. at 239.

In sum, Baker and other U.S. Supreme Court cases reveal that Appellant seeks to invoke an exception to the Full Faith and Credit Clause that does not exist.

B. Appellant Cites To Inapposite U.S. Supreme Court Case Law.

Appellant cites U.S. Supreme Court case law that addresses an issue not before this Court. Specifically, Appellant cites Nevada v. Hall, 440 U.S. 410 (1979), for the proposition that "the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy." (Appellant's Br. at 8

[4] Specifically, Michigan's judgment could not dictate to a court in another jurisdiction, in a different action, with different parties, what evidence is inadmissible. Baker, 522 U.S. at 239-41.

n.3 (quoting Nevada, 440 U.S. at 422).) As discussed in Section II.A, supra, in the context of the Full Faith and Credit Clause, a court's application of a sister state's laws is different than the court's enforcement of a sister state's judgments. Nevada addressed the former.

In Nevada, a California court entered a judgment against the state of Nevada that Nevada's own courts could not have entered due to a Nevada statute placing a limit of $25,000 on any award in a tort action against the state pursuant to its statutory waiver of sovereign immunity. 440 U.S. at 411-13. At no time did the judgment creditor seek to domesticate the judgment in another state. Rather, the relevant issue in Nevada was whether the California court was obligated to apply Nevada's statute in rendering the judgment. Id. at 421. In discussing the impact of the Full Faith and Credit Clause on the issue, the court noted that "[a] judgment entered in one State must be respected in another provided that the first State had jurisdiction over the parties and the subject matter." Id. But the court then distinguished that principle, and held that California was not obligated to apply Nevada's law, because doing so would be "obnoxious to its [own] statutorily based policies . . . ." Id. at 424. Nevada is inapposite and does not bear on the issue before this Court.

III. SOUTH CAROLINA CASE LAW HAS NOT RECOGNIZED A PUBLIC POLICY EXCEPTION TO THE FULL FAITH AND CREDIT CLAUSE FOR FOREIGN JUDGMENTS.

A. This Court Has Previously Found Provisions Of The South Carolina Uniform Enforcement Of Judgments Act To Be Unconstitutional In The Context Of Foreign Judgments.

The Full Faith and Credit Clause (*i.e.*, the United States Constitution) clearly supersedes S.C. Code Ann. § 15-35-960. Appellant's argument relies entirely on Section 15-35-960, which states that "[t]he provisions of [the Uniform Enforcement of Foreign

Judgments Act] do not apply to foreign judgments based on claims which are contrary to the public policies of this State." Importantly, this provision has not been cited in any reported opinion by any court.

The South Carolina Supreme Court recently addressed the constitutionality of a different provision in South Carolina's modified version of the Uniform Enforcement of Foreign Judgments Act, S.C. Code Ann. §§ 15-35-900 through -960. Specifically, as discussed in Section I.A., supra, the final sentence of S.C. Code Ann. § 15-35-940(B) violates the federal Constitution because it improperly "extend[s] greater protection to South Carolina citizens in the enforcement of foreign judgments and impacts the earlier presumption of validity . . . ." Law Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 501-02, 681 S.E.2d 575, 578 (2009). In the context of proving the foreign court's jurisdiction, the burden is properly placed on the judgment debtor, rather than the judgment creditor. Id. at 505, 681 S.E.2d at 580.

Section 15-35-960 similarly violates the Full Faith and Credit Clause. By its very terms, the provision seeks to shield the citizens of South Carolina from what the South Carolina legislature deems to be inappropriate (*i.e.*, "contrary to the public policies of this State") legal claims embodied in a foreign judgment. If it is improper to contravene a foreign judgment's presumption of validity as to jurisdiction (as in Boykin), it is also improper to improper to contravene a foreign judgment's presumption of validity as to the underlying claim for relief. The Court should follow the mandate of the U.S. Supreme Court, the final arbiter on the Full Faith and Credit Clause, and rule consistently with Boykin to find S.C. Code Ann. § 15-35-960 unconstitutional and enforce the North Carolina Judgment.

B. Appellant Cites to Inapposite South Carolina Case Law.

Appellant asserts that South Carolina appellate courts have recognized that judgments of another state are not to be enforced in South Carolina when they are contrary to South Carolina's public policy. (Appellant's Br. at 6-7.) The case law cited does not support this position. For example, Newberry v. Georgia Department of Industry & Trade, 283 S.C. 312, 322 S.E.2d 212 (Ct. App. 1984), quashed, 286 S.C. 574, 336 S.E.2d 464 (1985), did not involve a foreign judgment rendered by a sister state. Rather, in that case, the court of appeals—and later this Court—addressed the issue of whether an agency of another state sued in the courts of South Carolina for a tort committed in South Carolina could avail itself of the doctrine of sovereign immunity from liability. The language in the court of appeal's opinion quoted by Appellant, that "[f]orum states are not bound to apply the law of a sister state if that law violates the forum state's own public policy[,]" refers not to a foreign judgment, but to "Georgia's doctrine of sovereign immunity which is firmly embedded in its decisional law and now constitutes a part of its constitution." Id. at 314-15, 322 S.E.2d at 213-14. The case is thus distinguishable on its face. Moreover, Newberry was quashed by this Court, 286 S.C. at 575, 336 S.E.2d at 464, and expressly overruled by McCall v. Batson, 285 S.C. 243, 247-52, 329 S.E.2d 741, 743-46 (1985).

Appellant next asserts that this Court "implicitly recognized a public policy exception to the Full Faith and Credit Clause" by noting that "Georgia courts could choose to ignore a South Carolina judgment that violates Georgia's sovereign immunity." (Appellant's Br. at 7 (citing Newberry, 286 S.C. at 576, 336 S.E.2d at 465).) However, the language from Newberry merely posed a hypothetical, much like that offered in the dissent by Justice Rehnquist to which the Court cited, Newberry, 286 S.C. at 576, 336

S.E.2d at 465: "Can Nevada refuse to give the California judgment 'full faith and credit' because it is against state policy?" Nevada v. Hall, 440 U.S. 410, 443 (1979) (Rehnquist, J., dissenting). This does not constitute a recognition of a public policy exception to the Full Faith and Credit Clause, implicit or otherwise.

Finally, Appellant cites to Abba Equipment, Inc. v. Thomason, 335 S.C. 477, 517 S.E.2d 235 (Ct. App. 1999). (Appellant's Br. at 7-8.) There, the court of appeals addressed the issue of whether the ten-year statute of limitations period set forth in S.C. Code Ann. § 15-3-600 applied to the filing of a foreign judgment pursuant to South Carolina's Uniform Enforcement of Foreign Judgments Act, which contains no express limitations period. Abba Equipment, 335 S.C. at 481, 517 S.E.2d at 237. At no point does the opinion address or contemplate a public policy exception to the Full Faith and Credit Clause. Rather, the court held that "the catch-all limitations period of § 15-3-600 applies to the time in which a foreign judgment must be filed pursuant to the" Uniform Enforcement of Foreign Judgments Act. Id. at 483, 517 S.E.2d at 238. It was in this context that the court made the statement cited by Appellant—that the Uniform Enforcement of Foreign Judgments Act "is not to endow foreign creditors with substantive rights not otherwise available in the forum state." (Appellant's Br. at 8 (citing Abba Equipment, 335 S.C. at 483, 517 S.E.2d at 238).) The court was not barring enforcement of a foreign judgment because the underlying cause of action was unavailable in South Carolina or contrary to South Carolina's public policy. The court simply would not allow the foreign judgment creditor to avail itself of a limitations period greater than that existing prior to South Carolina's enactment of the Uniform

Enforcement of Foreign Judgments Act. Appellant's citation to Abba Equipment is therefore inapposite.

In sum, Appellant cites no binding precedent supporting her argument that there is a public policy exception to the Full Faith and Credit Clause in connection with a state's enforcement of foreign judgments. Appellant cites authority holding that a state may not be obligated to apply the laws of a sister state when it would be contrary to the forum state's public policy. But this distinction is integral. Respondent does not seek to have a South Carolina court apply the laws of North Carolina, but rather to have the a South Carolina court enforce a final judgment of North Carolina.

IV. OTHER LEGAL AUTHORITIES CONSISTENTLY REJECT THE EXISTENCE OF A PUBLIC POLICY EXCEPTION TO THE FULL FAITH AND CREDIT CLAUSE FOR FOREIGN JUDGMENTS.

A. Other Courts And Legal Commentators Have Refused To Recognize A Public Policy Exception.

Numerous other courts around the country have followed the lead of the U.S. Supreme Court, declining to recognize a public policy exception to the Full Faith and Credit Clause, and instead enforcing judgments of sister states despite those judgments being based on claims contrary to the forum states' public policy. E.g., Jaffe v. Accredited Sur. & Cas. Co., 294 F.3d 584, 592 (4th Cir. 2002) ("[N]either a state nor a federal court can refuse to give full faith and credit to the judgment of a state court because of disagreement with the public policy basis for that decision."); Kelly v. First Astri Corp., 72 Cal. App. 4th 462, 476-77 (1999); Craven v. S. Farm Bureau Cas. Ins. Co., 117 P.3d 11, 14 (Colo. Ct. App. 2004); Trauger v. A.J. Spagnol Lumber Co., 442 So. 2d 182, 183-84 (Fla. 1983); Boyer v. Korsunsky, Frank, Erickson Architects, Inc., 382 S.E.2d 362, 363-64 (Ga. Ct. App. 1989); Pelcznyski v. Dolatowski, 721 N.E.2d 196, 199-

200 (Ill. Ct. App. 1999); Hankin v. Graphic Tech., Inc., 222 P.3d 523, 531-32 (Kan. Ct. App. 2010); Int'l Recovery Sys. v. Gabler, 210 Mich. App. 422, 424 (1995); Desert Palace v. Weiss, 17 Pa. D. & C.4th 51, 52-53 (1992); Coghill v. Boardwalk Regency Corp., 396 S.E.2d 838, 838-40 (Va. 1990); Conquistador Hotel Corp. v. Fortino, 298 N.W.2d 236, 238-39 (Wis. Ct. App. 1980).

Courts have even found foreign judgments based on the very claims at issue in the North Carolina Judgment, alienation of affections and criminal conversation, to be entitled to Full Faith and Credit despite being expressly contrary to that state's public policy. For example, in Burdick v. Nicholson, 680 P.2d 589 (Nev. 1984), the Supreme Court of Nevada reversed the trial court which had refused—on public policy grounds—to enforce a North Carolina foreign judgment based on an alienation of affections claim. The Supreme Court of Nevada held that "the action to enforce the judgment is an action to enforce a debt, not the underlying cause of action." Id. at 589. Thus, despite a Nevada statute describing the abolishment of alienation of affections and criminal conversation as serving "the public policy of the state," Nev. Rev. Stat. Ann. § 41.370, enforcement of the foreign judgment would not violate the state's public policy. Id. at 589-90. Similarly, in Parker v. Hoefer, 142 N.E.2d 194 (N.Y. 1957), the Court of Appeals of New York (New York's highest court) held that a Vermont judgment based on alienation of affections and criminal conversation claims, claims abolished in New York, was enforceable because the foreign judgment was "a debt which the defendant was under obligation to pay," and the action to enforce it in New York was "upon an entirely different cause of action from that merged in the judgment." Id. at 197. The court ruled in this fashion even though article 2-A of New York's Civil Practice Act abolished the

claims as contrary to the state's public policy. Id.; see also Neporany v. Kir, 173 N.Y.S.2d 146, 147 (App. Div. 1958).

Numerous legal commentators and secondary authorities have also stated that no public policy exception to the Full Faith and Credit Clause exists. E.g., RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 117 (1971) ("A valid judgment rendered in one State of the United States will be recognized and enforced in a sister State even though the strong public policy of the latter State would have precluded recovery in its courts on the original claim."); Emily J. Sack, *Civil Unions and the Meaning of the Public Policy Exception at the Boundaries of Domestic Relations Law*, 3 Ave Maria L. Rev. 497, 500 (2005) ("It is clear that use of a public policy exception to refuse recognition to out-of-state judgments is not permitted.") (citing Fauntleroy v. Lum, 210 U.S. 230, 237 (1908)); Mark Strasser, *Baker and Some Recipes for Disaster: On Doma, Covenant Marriages, and Full Faith and Credit Jurisprudence*, 64 Brooklyn L. Rev. 307, 318-23 (1998) (discussing the absence of a public policy exception to the application of full faith and credit to sister states' judgments).

The Court should follow the overwhelming majority of courts, decline to recognize a public policy exception to the Full Faith and Credit Clause, find S.C. Code Ann. § 15-35-960 unconstitutional, and enforce the North Carolina Judgment.

B. Appellant Cites To Case Law From Other Jurisdictions Which Is Neither Binding Nor Persuasive.

Appellant cites an array of case law from other jurisdictions for the proposition that a public policy exception to the Full Faith and Credit Clause exists. (Appellant's Br. at 8-11.) However, nearly all of the authority cited by Appellant is dicta, and none is persuasive. For example, in Seiller & Handmaker, L.L.P. v. Finnell, 165 S.W.3d 273

(Tenn. Ct. App. 2004), the court found that the enrollment of the foreign judgment at issue in that case did not violate Tennessee public policy. The court distinguished cases that involved aspects of fraud or lack of due process and stated that "a state court must give full faith and credit to a monetary judgment rendered in a court of another state, even though the enforcing forum might not recognize the underlying cause of action." Id. at 279.

Similarly, in Four Seasons Gardening & Landscaping, Inc. v. Crouch, 688 S.W.2d 439 (Tenn. Ct. App. 1984), also cited by Appellant, the court found that the foreign judgment at issue did not violate Tennessee public policy. The language in Four Seasons quoted by Appellant is followed by citations to two cases, neither of which establish an exception to the Full Faith and Credit Clause based on the state's public policy.[5] (Appellant's Br. at 9 (quoting Four Seasons, 688 S.W.2d at 445).) To the contrary, the Four Seasons court stated that "the judgment of the court of another state does not necessarily violate the public policy of this State merely because the law upon which it is based is different from our law." 688 S.W.2d at 445. Further, "[t]he more well-reasoned rule, embodied in the Restatement (Second) of Conflicts of Law § 117 . . . is that a valid judgment rendered in one state should be recognized and enforced in another state even though the latter state's strong public policy would have precluded recovery if the action had been filed originally in the courts of that state." Id. n.16 (citing, among other cases, Fauntleroy v. Lum, 210 U.S. 230, 237 (1908)).

---

[5] In Hyde v. Hyde, 562 S.W.2d 194 (Tenn. 1978), the court held that a divorce decree from the Dominican Republic was valid and enforceable. In In re Riggs, 612 S.W.2d 461 (Tenn. Ct. App. 1980), the court held that a Georgia adoption decree, in which the father had had no notice and no right to hearing before his parental rights were terminated, denied the father due process of laws, and was thus "repugnant to the Federal Constitution and the public policy of Tennessee." Id. at 469.

Every case in Appellant's string citation similarly falls short. (Appellant's Br. at 9-11.) Appellant's cases (i) pre-date Baker, (ii) address a public policy exception as to a sister state's laws rather than judgments, (iii) set forth the point cited by Appellant in mere dictum, and/or (iv) are otherwise distinguishable, as follows:

- Hannah v. Gen. Motors Corp., 969 F. Supp. 554 (D. Ariz. 1996): The foreign judgment at issue was the same Michigan injunction as in Baker. The Hannah court declined to enforce the injunction because the plaintiffs were not parties to the Michigan action, and such broad exclusion of evidence would "'undermine the fundamental integrity of [the] judicial system.'" Id. at 559-60. The case is thus distinguishable.

- Wilson v. Ake, No. 8:04-CV-1680-T-30TBM, 2004 WL 3142528 (M.D. Fla. July 20, 2004): In this case, the plaintiffs were a lesbian couple who obtained a marriage license in Massachusetts. After failing to get the license recognized in Florida, the plaintiffs sued the Clerk of the Circuit Court in Hillsborough County, Florida and United States Attorney General John Ashcroft, seeking a declaratory judgment that the Federal Defense of Marriage Act (1 U.S.C. § 7; 28 U.S.C. § 1738C) and Florida Statutes § 741.212 are unconstitutional. Id. at *1. First, a marriage license is distinct from a judgment. Second, as discussed above, the Full Faith and Credit analysis is different for a sister state's laws, as opposed to a sister state's judgment. In Wilson, the plaintiffs' sought to strike the former. The case is distinguishable.

- Berger v. Hollander, 391 So. 2d 716 (Fla. Ct. App. 1980): The court held that a New Jersey judgment awarding child support did not violate Florida public policy and was therefore entitled to full faith and credit. Id. at 718-19. The court's reference to a public policy exception is thus mere dictum.

- Williams v. Gen. Motors Corp., 147 F.R.D. 270 (S.D. Ga. 1993): This case addressed the same Michigan injunction as Baker and Hannah, discussed above. As in Hannah, because the foreign judgment stemmed from an action involving different parties, and would impede the presentation of even non-privileged evidence, the Williams court declined to enforce the injunction. Id. at 272-73. Also, because Michigan courts may modify equitable decrees, including permanent injunctions, the Georgia court could do so without violating the Full Faith and Credit Clause. Id. at 272. The case is distinguishable.

- Struebin v. Illinois, 383 N.W.2d 516 (Iowa 1986): The Supreme Court of Iowa required the plaintiffs to attempt to collect on their money judgments against the state of Illinois in the courts of Illinois before doing so in Iowa.

Id. at 520. The statement that Illinois would not be required to enforce the plaintiffs' judgments if they were contrary to that state's fundamental public policies is not essential to the Struebin court's holding, and is, at most, dictum. Id. Indeed, the court noted the absence of such a policy in Illinois. Id.

- Johnson v. Johnson, 849 N.E.2d 1176 (Ind. Ct. App. 2006): In this case, the plaintiff domesticated a Washington judgment for child support arrearage which included interest at 12%. The defendant objected to the interest rate as contrary to that in Indiana. The court held that the interest rate was "part and parcel" of the judgment, which should be enforced as written. Id. at 1179-80. Thus, the court's statement regarding a public policy exception to the Full Faith and Credit Clause was, at most, dictum. Moreover, the language quoted by Appellant refers to application of a sister state's **laws** (*e.g.*, a statutorily prescribed interest rate), rather than **judgments**.[6] Id. at 1179.

- Ballard v. Bd. of Trustees, 452 N.E.2d 1023 (Ind. Ct. App. 1983): The Arizona (foreign) court, pursuant to an Arizona statute, set aside Ballard's criminal conviction and restored his civil rights after his sentence was served. *Id.* at 1024. The Arizona court did not order Ballard's pension benefits restored, as Appellant states. (Appellant's Br. at 10.) That decision was embodied in an Indiana trial court judgment. Id. Then, the Indiana Court of Appeals opted not to apply an Arizona **statute** in the manner requested by Ballard, which would have had the effect of violating Indiana's public policy of terminating pension benefits of felons. Id. at 1026. Appellant's citation to Ballard confuses a public policy exception as to **laws**, which the court applied, with one as to **judgments**, which does not exist.

- Bonura v. United Bankers Life Ins. Co., 552 So. 2d 1248 (La. Ct. App. 1989): In Bonura, the plaintiffs had an insurance policy with an insurer that was placed in receivership. Id. at 1249. The foreign order at issue was a Texas injunction barring all persons from asserting any claim against the insurer except in the receivership proceedings. Id. at 1250. The Court of Appeal of Louisiana declined to enforce the injunction. The case is distinguishable in that the foreign judgment at issue was an injunction, rather than a money judgment, and it purported to affect non-parties to the Texas action.

- Minnesota v. Schmidt, 712 N.W.2d 530 (Minn. 2006): First, this was a criminal case. Second, the context in which the foreign judgments arose minimizes any persuasiveness of the opinion. The defendant sought to prevent consideration of his three prior convictions in South Dakota to

[6] This distinction was discussed in Section II., supra.

enhance a similar offense in Minnesota. The Supreme Court of Minnesota found it "unnecessary" to determine whether a public policy exception would apply, and held that the foreign convictions should be considered to effectuate Minnesota law. Id. at 537-39. The point for which Appellant cites the case is thus mere dictum.

- Ake v. Gen. Motors Corp., 942 F. Supp. 869 (W.D.N.Y. 1996): This case involved the same foreign injunction at issue in Baker, Hannah, and Williams, discussed above, and is thus distinguishable.

- Blits v. Renaissance Cruise Lines, 633 N.Y.S.2d 933 (Sup. Ct. 1995): In this case, although it was addressing the viability of a foreign judgment, the court analyzed the plaintiff's public policy argument in the context of the judgment-rendering state's statutes.[7] Id. at 935-36. Additionally, the plaintiff's argument the foreign judgment was contrary to public policy of the forum state failed. Id. at 935. The case is thus distinguishable and the point for which Appellant cites it is dictum.

- Wolfe v. Wolfe, 407 N.Y.S.2d 568 (App. Div. 1978): The court in this case ruled to enforce the foreign divorce decree, not to disregard it as falling within a public policy exception. Id. at 569. The language quoted by Appellant is thus mere dictum. Additionally, the court held that the "judgment should be enforced, even though New York might have entertained a different view of the matter." Id. (citing Parker v. Hoefer, 2 N.Y.2d 612, 616 (1957)).

- Somportex, Ltd. v. Phila. Chewing Gum Corp., 318 F. Supp. 161 (E.D. Penn. 1970), aff'd, 453 F.2d 435 (3d Cir. 1971): This case dealt with a judgment rendered by a court in England, not a sister state. The district court ruled to enforce the foreign judgment, and its basis for doing so was "comity, not full faith and credit." Id. at 164, 169.[8] The case is thus inapposite.

- Rodgers v. Williamson, 489 S.W.2d 558 (Tex. 1973): The Texas court found "no compelling reason of public policy to deny effect to the Illinois decree" regarding the petitioner's child visitation rights. Id. at 561. The case is thus inapposite.

- Sangiovanni Hernandez v. Dominicana de Aviacion, C. Por A., 556 F.2d 611 (1st Cir. 1977): The District Court in Puerto Rico declined to give res

---

[7] This distinction was discussed in Section II., supra.

[8] On appeal, the Third Circuit noted that "'the full faith and credit required by [Article IV, Section 1] is not involved, since neither of the courts was a state court.'" Somportex, 453 F.2d at 441 n.9 (quoting Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522, 524 (1931)).

judicata effect to a settlement approved by a Dominican court's order. Id. at 614. In addition to the case dealing with a foreign country's order and a U.S. District Court's ruling, the First Circuit held that the order did not violate the public policy of Puerto Rico and should be recognized. Id. at 615-16. The case is thus inapposite.

C. Appellant's Invocation of North Carolina Law Is Equally Ineffective.

Appellant concludes her argument by citing to North Carolina legal authority, including a North Carolina statute, that purports to except from that state's mandatory enforcement of foreign judgments those "'based on claims which are contrary to the public policies of North Carolina.'" (Appellant's Br. at 12 (quoting N.C. Gen. Stat. § 1C-1708).) Just one month ago the North Carolina Court of Appeals ruled in direct contravention of that statute. Prof'l Solutions Fin. Servs. v. Richard Yeager & Assocs., D.D.S., P.A., No. COA11-578, 2012 N.C. App. LEXIS 339, *7 (Mar. 6, 2012) ("The trial court concluded that the Iowa judgment was contrary to North Carolina public policy. Even taken as true, this is not a valid basis for not giving full faith and credit to the Iowa judgment."); see also MGM Desert Inn, Inc. v. Holz, 104 N.C. App. 717, 723, 411 S.E.2d 399, 402 (1991) ("[W]e hold that notwithstanding language in the anti-gambling statutes and uniform act suggesting otherwise, no exception to the full faith and credit clause exists to prohibit enforcement in North Carolina of the Nevada judgment against defendant."); FMS Mgmt. Sys., Inc. v. Thomas, 65 N.C. App. 561, 563, 309 S.E.2d 697, 699 (1983) ("Although we have so asserted, it is rare that we will disregard a sister state judgment on public policy grounds. The Fauntleroy decision . . . 'narrows almost to the vanishing point the area of state public policy relief from the mandate of the Full Faith and Credit Clause -- at least so far as the judgments of sister states are concerned.'") (quoting Seymour W. Wurfel, *Recognition of Foreign Judgments*, 50 N.C. L. Rev. 21, 43 (1971)).

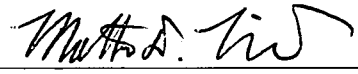
Moreover, the North Carolina cases cited by Appellant, (Appellant's Br. at 12), are distinguishable. In Gardner v. Tallmadge (In re Registration of an Ohio Judgment), 700 S.E.2d 755 (N.C. Ct. App. 2010), aff'd, 365 N.C. 102 (2011), the Court of Appeals reversed the trial court's order denying the defendant relief from the foreign judgment not based on a public policy exception, but because the rendering state court did not have subject matter jurisdiction. Id. at 758. Thus, the Court of Appeals' statement regarding North Carolina's public policy is mere dictum. Likewise, in B. Kelley Enterprises, Inc. v. Vitacost.com, Inc., 710 S.E.2d 334 (N.C. Ct. App. 2011), the court ruled that because service of process in the Florida court was not executed properly, that court did not have jurisdiction, and therefore, the doctrines of *res judicata* and collateral estoppel did not make the Florida judgment a bar to the plaintiff's complaint in North Carolina. Id. at 339. Again, the court's statement regarding public policy is mere dictum.

In summary, Appellant's authority from other jurisdictions is neither binding nor persuasive to this Court with respect to the issue before it. The Court should therefore refuse to recognize a public policy exception to the Full Faith and Credit Clause for foreign judgments and deem S.C. Code Ann. § 15-35-960 unconstitutional.

CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's order denying Appellant's Motion for Relief and granting Respondent's Motion to Enforce Foreign Judgment.

Respectfully submitted,



Matthew D. Lincoln, Esquire
Scott M. Tyler, Esquire
Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202
Telephone: (704) 331-3562
Facsimile: (704) 339-5979

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APR 11 2012

S.C. Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No. 2011-CP-23-5359

Sue Taylor Colson Widenhouse ..... **Respondent,**

v.

Tammy Batson Colson ..... **Appellant.**

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

---

(1) Judgment entered by Joseph N. Crosswhite, Superior Court Judge Presiding in the General Court of Justice, Superior Court Division, Case Number 09-CVS-3281, in Cabarrus County, North Carolina, dated July 5, 2010, filed July 8, 2010, and filed in the Greenville County Court of Common Pleas August 10, 2011.

(2) Respondent's Notice of Filing Foreign Judgment in the Greenville County Court of Common Pleas dated July 26, 2011, filed August 10, 2011; the Affidavit of Scott M. Tyler dated July 26, 2011, filed August 10, 2011; and the June 30, 2011 Exemplification from the General Court of Justice, Cabarrus County, North Carolina.

(3) Appellant's Motion for Relief, with Exhibits A through B-7, filed September 8, 2011.

(4) Respondent's Motion to Enforce Foreign Judgment dated October 12, 2011, filed October 14, 2011.

(5) Respondent's Memorandum of Law in Support of Motion to Enforce Foreign Judgment and in Opposition to Appellant's Motion for Relief dated October 21, 2011, filed October 24, 2011.

(6) Judgment in a Civil Case entered by Judge D. Garrison Hill, filed November 2, 2011.

(7) Judgment in a Civil Case entered by Judge D. Garrison Hill, filed November 10, 2011.

(8) Order entered by Judge D. Garrison Hill dated November 9, 2011, filed November 10, 2011.

(9) David D. Armstrong's December 8, 2011 letter to the Clerk of the Supreme Court.

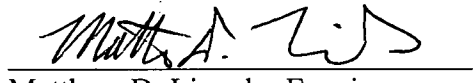
(10) The Clerk of the Supreme Court's December 13, 2011 letter to David D. Armstrong.

(11) David D. Armstrong's December 19, 2011 letter to the Clerk of the Supreme Court.

(12) Transcript of Record of proceedings before Judge D. Garrison Hill on October 27, 2011.

I certify that this designation contains no matter that is irrelevant to this appeal.

April 9, 2012



Matthew D. Lincoln, Esquire
Scott M. Tyler, Esquire
Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202
Telephone: (704) 331-3562
Facsimile: (704) 339-5979

Attorneys for Respondent