

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2014-001917

RECEIVED
MAR 16 2015
SC Court of Appeals

Investment Associates, Appellant,

v.

Joseph D. Lancia, Respondent.

APPELLANT'S INITIAL REPLY BRIEF

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REPLY TO STATEMENT OF THE CASE

Investment Associates brought an action under the Uniform Enforcement of Foreign Judgments Act, S.C. Code Ann. § 15-35-920, to enforce a judgment against the Respondent Lancia entered in the State of Connecticut. Respondent Lancia contested the judgment. The Circuit Court refused to enforce the judgment. Investment Associates appeals.

Respondent Lancia contends that Investment Associates “makes false statements” in its Statement of the Case (Brief of Respondent, p. 2, n. 2). Lancia further contends that factual statements in the Investment Associates Statement of the Case “are simply not in the record.” *Id.*

First, the factual statements are in the record. Investment Associates referenced the page and lines of the transcript that support its statement of facts. Specifically, at the hearing on April 2, 2014, the Circuit Court Judge asked, “What was the judgment based on?” Counsel for Investment Associates responded as follows:

The – back in 1994, Mr. Lancia was a tenant in a commercial building in Connecticut. There was a dispute over the lease. The building caught fire. It destroyed the building. The judgment is based on that – on the damages there.

Mr. Lancia pled no contest to a criminal action there. But, in any event, the judgment was based on the fair market value of that building at the time in 1994. And it’s accrued interest through all this time. And we’re nearly at \$1 million.

Transcript of Record dated April 2, 2014, p. 10, ll. 9-20.

The Court thanked counsel for Investment Associates for the explanation. Immediately thereafter, counsel for Lancia spoke, but did not say anything to contradict or correct anything about the factual basis for the judgment that counsel for Investment Associates had explained to the Court. Until Lancia filed his Initial Brief, he had not

suggested that the facts were any different from what Plaintiff's counsel had represented to the Circuit Court, quoted above.

Now, Lancia appears to contend that he burned the Appellant's building **after** he signed a promissory note, and that the unpaid promissory note is the factual basis for Investment Associates' Connecticut judgment against him (Initial Brief of Respondent, p. 2, n. 2). Even if Lancia were correct, it seems that if Lancia burned a building **after** he defaulted on a promissory note, those facts would be even worse for Lancia than if he signed a promissory note **because** he burned a building. Regardless of the order of events, Investment Associates has an unpaid judgment against Lancia, and that judgment, with interest, now approaches one million dollars. It remains unpaid, and Investment Associates is trying to collect on it. That much is undisputed.

Second, Lancia takes issue with the characterization that he had "fled Connecticut." *Id.* The facts demonstrate that he left Connecticut, having been sued there and facing a large judgment in civil court, and that he was facing arson charges in criminal court, to which he pled no contest. The arson charges arose from the burning of the building of Investment Associates, the judgment creditor. Lancia moved several hundred miles away to South Carolina, he says, "to pursue a new opportunity." Nevertheless, that he "fled Connecticut" seems to be an apt description.

Third, Lancia contends that all these facts "are irrelevant to this appeal." *Id.* Investment Associates suggests that the factual background and basis for the judgment gives context to the legal issues.

ARGUMENT IN REPLY

I. LANCIA'S BRIEF MAKES MANY CONCESSIONS OR ADMISSIONS.

In the Circuit Court and in Respondent's brief, Lancia makes many admissions that are important to this Court in deciding this case. Investment Associates would like to point them out.

1. In the Circuit Court, Lancia admitted that the 10 year period for the validity of the judgment in South Carolina starts when the foreign judgment is enrolled in South Carolina:

If anything, 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 10 years, at which point **the foreign judgment would 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. § 15-39-30 begins to run when the creditor enrolls the judgment in South Carolina rather than when it obtained the judgment). Thus, **a foreign judgment could continue to be valid in South Carolina for far longer than a South Carolina judgment.**

Defendant's Memorandum in Support of Motion for Relief from Foreign Judgment, filed March 27, 2014, p. 8 (emphasis added). In the Circuit Court, Lancia rightly cited *Commercial Credit Loans, Inc. v Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999) for this point. (Judge Hearn wrote the opinion in *Commercial Credit*, which Judge Huff **joined**. Later that same year, Judge Huff wrote the majority opinion in *Abba*, and Judge Hearn dissented, relying on this Court's prior reasoning and analysis in *Commercial Credit*.) Accordingly, this Court should follow the reasoning of Judge Hearn, which is consistent through *Commercial Credit Loans, Inc.* and her dissent in *Abba*. Furthermore, Investment Associates has demonstrated that Judge Hearn's viewpoint has become the majority opinion in South Carolina on this issue. Appellant's Initial Brief, pp. 5-10.

2. Lancia concedes that *Commercial Credit Loans* ruled that S.C. Code Ann. § 15-39-30 “does not apply to foreign judgments until they are docketed and indexed as South Carolina judgments.” Respondent’s Initial Brief, p. 15, *citing Commercial Credit Loans*, 334 S.C. 176, 181-82, 512 S.E. 2d 123, 126 (Ct. App. 1999). Accordingly, S.C. Code Ann. § 15-39-30 begins to run when Investment Associates docketed and indexed its judgment against Lancia, and the 10 years extends from that point until the year 2024.

3. Lancia admitted that the holding of *Commercial Credit Loans Inc. v Riddle* is contrary to the position that he is asserting in this case, because Lancia is arguing that the 10 year period starts when the judgment is entered in the “rendering state,” rather than when it is enrolled in South Carolina as *Commercial Credit Loans Inc. v Riddle* holds. Respondent’s Initial Brief, p. 16, n. 10: (“This Court has found that South Carolina Code section 15-39-30 applies to South Carolina judgments and **does not apply to foreign judgments until they are docketed and indexed** as to South Carolina judgments. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 181-82, 512 S.E.2d 123, 126 (Ct. App. 1999)” (emphasis added)). Likewise, the Supreme Court of South Carolina ruled that a judgment became effective when it was entered in South Carolina in *Home Port Rentals Inc. v Moore*, 369 S.C. 493, 495-96, 632 S.E.2d 862, 863 (2006). Accordingly, because Lancia’s position is contrary to the holding of *Commercial Credit Loans*, this Court should reject Lancia’s argument that the 10 year period starts when the judgment was entered in the rendering state.

4. Lancia admitted that *Commercial Credit Loans, Inc. v. Riddle* held that under § 15-3-600, “the foreign judgment would then be valid for an additional ten (10) years after

enrollment in South Carolina. *See id.* at 182, 512 S.E.2d at 126.” Respondent’s Initial Brief, pp. 17-18. Accordingly, the judgment in this case is valid until 2024.

5. On appeal, Lancia admits that *Home Port Rentals* holds, “the right to execute on a judgment **does not constitute a cause of action**. Indeed execution is **not** initiated by **bringing an action**.” Respondent’s Initial Brief, p. 15, *quoting Home Port Rentals*, 369 S.C. 493, 497, 632 SE.2d 862, 864 (2006) (emphasis added). If domesticating a judgment does not constitute a “cause of action,” then a statute of limitations which governs “causes of action” (S.C. Code Ann. § 15-3-600) does not govern it.

6. Lancia concedes that *Home Port Rentals* holds that “a foreign judgment **must be enrolled in the state** in order to be effective as a South Carolina judgment.” Respondent’s Initial Brief, p. 15, *quoting Home Port Rentals*, 369 S.C. 493, 495-496, 632 SE.2d 862, 863 (2006) (emphasis added). Accordingly, the 10 year period for judgment in South Carolina begins when the judgment is enrolled in South Carolina, in this case, 2014.

II. LANCIA FAILS TO ADDRESS SEVERAL POINTS IN THE APPELLANT’S BRIEF.

Lancia fails to address or dispute many points made by Investment Associates in the Appellant’s Brief.

1. Lancia does not dispute that the Supreme Court of Connecticut addressed each of his affirmative defenses at great length and ruled against him.
2. Lancia does not dispute that the affirmative defenses he sought to raise in the Circuit Court in South Carolina are the same ones the Supreme Court of Connecticut rejected.
3. Lancia does not dispute that the Supreme Court of Connecticut, having rejected all of Lancia’s arguments to the contrary, validated the judgment of Investment Associates against him.
4. Lancia does not appear to dispute the reasoning and analysis of the Supreme Court of Connecticut addressing the purpose of the Connecticut judgment revival statute, General Statutes § 52-598(a):

[U]nder the original 1994 judgment, the plaintiff had until 2014 to execute the judgment and until 2019 to initiate an independent action to enforce the judgment. Under the 2010 revived judgment, the plaintiff is subject to those same limits.

* * *

[T]he bill’s purpose was to ensure that satisfaction of a valid Connecticut judgment was not avoided simply because the judgment debtor (or the debtor’s assets) resided in a foreign jurisdiction having a shorter period for enforcement.

* * *

Thus, 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 limits for enforcement.

* * *

The order to revive does no more than reinvest the plaintiff with the right to have execution of his original judgment. His cause of action against the defendant is the original judgment, not the order to revive. The order merely confers upon the plaintiff the statutory right to issue executions on the judgment after it had become dormant for that purpose.

* * *

The object of the proceeding is NOT to obtain a new judgment for a debt, but to enable the judgment creditor to enforce by execution the judgment he has already obtained . . .

Investment Associates v. Summit Associates, Inc., 309 Conn. 840, 850-851, 74 A.3d 1192, 1199-1200 (2013). Investment Associates is exercising its rights under the Connecticut revival statute. The Supreme Court of Connecticut reiterated this analysis.

[T]he sole purpose of § 52-598(c) is to advance the enforcement of Connecticut judgments in foreign jurisdictions. Foreign jurisdictions constitutionally are bound to give full faith and credit to Connecticut judgments, but only insofar as such judgments are *valid*. See *Baker v. General Motors Corp.*, 522 U.S. 222, 233, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998) (“Regarding judgments ... the full faith and credit obligation is exacting. A final judgment in one [s]tate, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.”)

Investment Associates v. Summit Associates, Inc., 309 Conn. 840, 857, 74 A.3d 1192, 1203 (2013).

5. Lancia does not appear to dispute the fact that S.C. Code Ann. § 15-3-600 governs “causes of action;” it does not govern the filing of foreign judgments under the Uniform Enforcement of Foreign Judgments Act. Investment Associates addressed this issue on pages 8-10 of its brief, relying on Judge Hearn’s opinion in the *Abba* case, and on *Home Port Rentals, Inc. v. Moore*, and *Commercial Credit Loans Inc. v. Riddle*, all of which held that the 10 year judgment lien begins when the judgment is filed in South Carolina. (At the Court of Appeals, the opinion in *Home Port Rentals* was written by Judge Kittredge, with Judge Hearn concurring. The Supreme Court affirmed.) All those cases distinguished

the accrual of a “cause of action” from the time in which the judgment already obtained may be enrolled in South Carolina.

Because Lancia does not contest these points in his brief, he has abandoned them. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (failure to provide arguments or supporting authority for an issue renders it abandoned); *State v. Wakefield*, 323 S.C. 189, 191, 473 S.E.2d 831, 832 (Ct.App.1996) (to be considered on appeal, all issues must be argued in brief).

III. INVESTMENT ASSOCIATES' ARGUMENT WAS PRESENTED TO THE CIRCUIT COURT, WHICH DECLINED TO FOLLOW IT.

Lancia argues, "Investment Associates did not preserve its argument that South Carolina Code section 15-3-600 does not apply." Respondent's brief, p. 10. This argument misses the point. Investment Associates instead argued, "The 10 year judgment lien in South Carolina Code Annotated § 15-3-600 begins when the judgment is filed in South Carolina, not when the judgment was initially issued in Connecticut." Appellant's Initial Brief, p. 3. The issue is when the 10 years begins to run. This issue was discussed at great length in *Abba Equipment, Inc. v. Thomason*, 335 S.C. 477, 517 S.E.2d 235 (Ct. App. 1999).

The *Abba* Court issued two opinions: the majority opinion by Judge Huff, and the dissenting opinion by Judge Hearn. Judge Hearn's opinion articulates the argument that the Investment Associates makes on appeal. Her opinion in *Abba* is consistent with her prior opinion for this Court in *Commercial Credit, Inc. v. Riddle*, which Judge Huff joined.

Lancia, Investment Associates, and the Circuit Court all referenced and discussed *Abba* in the Circuit Court. Investment Associates cited *Abba* on page 2 of its Objection to Motion for Relief in Reply to Notice of Defenses to Foreign Judgment, filed April 1, 2014. Lancia cited *Abba* several times in his Memorandum in Support of Motion for Relief from Foreign Judgment, filed March 27, 2014, pp. 3-4, 6, 10. Lancia also cited *Abba* in his Motion to Dismiss and/or Motion for Relief from Foreign Judgment, filed on or about June 13, 2014, pp. 2, 4.

In the hearing on April 2, 2014, counsel for Lancia cited the *Abba* case on pages 6 and 13 of the Transcript. In opposition, in referencing a judgment, counsel for Investment

Associates argued, “It’s good for 10 years, period, in South Carolina.” Transcript of Record dated April 2, 2014, p. 9, ll. 12-13.

The Court recognized the importance of the *Abba* case, saying, “I haven’t had a chance to read this *Abba* case.” Transcript of Record dated April 2, 2014, p. 14, ll. 15-16.

Both parties continued to argue the *Abba* case, and then the argument turned to when the clock starts to run on a judgment. Lancia contended that the 10 year period starts to run “when the parties are subject to jurisdiction of the courts in South Carolina.” Transcript of Record dated April 2, 2014, p. 16, ll. 3-6. Investment Associates argued that the full faith and credit clause should govern the judgment, and that the judgment should be enforced.

Finally, the Circuit Court judge said, “I’m going to have to go back and read the cases in this memo.” Transcript of Record dated April 2, 2014, p. 16, ll. 22-23, and in summary, counsel for Lancia again cited the *Abba* case on page 17 of the transcript.

In her opinion in *Abba*, Judge Hearn reasoned that § 15-3-600 did **not** apply to the registration procedure for judgments under the Uniform Enforcement of Foreign Judgments Act (UEFJA). 335 S.C. 477, 487, 517 S.E.2d 235, 240. Judge Hearn explained, “The registration procedure under the Act is not like a common law proceeding.” *Id.* She elaborated:

By contrast, our statute of limitations at issue, Code section 15-3-600, applies only to a “**cause of action.**” In my view, this specifically **limits its applicability to causes of action,** a term that contemplates a proceeding between adverse parties, **not a unilateral act such as registration under the UEFJA.**

335 S.C. 477, 488, 517 S.E.2d 235, 240 (emphasis added).

Judge Hearn further explained the effect of the full faith and credit clause for judgments under the UEFJA.

Under the protections of **full faith and credit**, foreign judgments that are valid, final, unsatisfied, and uncontested may be registered under our UEFJA. S.C.Code Ann. § 15–35–920(A) (Supp.1998). Once the judgment is registered properly, **it must be docketed and indexed like a South Carolina judgment**. S.C.Code Ann. § 15–35–920(B) (Supp.1998). After the foreign judgment has become a South Carolina judgment under the UEFJA, the judgment debtor may then challenge the now South Carolina judgment on “any . . . ground for which relief from a judgment of this state is allowed.” S.C.Code Ann. § 15–35–940 (Supp.1998). Although at that point a statute limiting the enforcement period may be implicated, **a general statute of limitations should not be applied**.

335 S.C. 477, 488, 517 S.E.2d 235, 241 (emphasis added).

Then, Judge Hearn addressed the point that Investment Associates makes on appeal: the ten year limitation on the validity of a foreign judgment does not begin to run until that foreign judgment is domesticated.

Moreover, a judgment registered under the UEFJA would also be subject to South Carolina Code section 15–39–30. *See Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (1999). *Riddle* addressed the time for enforcement of a foreign judgment domesticated by a common-law action and held that **Code section 15-39-30 does not begin to run until that foreign judgment is domesticated**. *See Id.* at 182, 512 S.E.2d at 126 (“[T]he Illinois judgment was transmuted into a South Carolina judgment **when it was domesticated** [T]he ten year period for enforcement of the judgment, began on that date.”). **Likewise, the ten year enforcement period would not start to run until a foreign judgment is properly registered under the UEFJA**.

Similarly, the result in *Commercial Credit* harmonizes with the full faith and credit protections evoked by this case. **South Carolina limitations periods should not apply to a foreign judgment until that foreign judgment becomes a valid South Carolina judgment**. Therefore, if a foreign judgment is valid and enforceable in that foreign jurisdiction, South Carolina should give that judgment full faith and credit under the UEFJA, which was designed to facilitate such acceptance.

335 S.C. 477, 489, 517 S.E.2d 235, 240 (emphasis added).

Judge Hearn then explained the additional rationale for the conclusion she reached:

[L]egislation enacted for a specific purpose like the UEFJA supplants the general law that previously applied in the area, particularly a general statute of limitations which was held to apply only “indirectly” to

actions brought under prior law. *See Witzig v. Witzig*, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct.App.1996) (“It is a well settled principle of statutory construction that ‘specific laws prevail over general laws, and later legislation takes precedence over earlier legislation.’” (quoting *Langley v. Pierce*, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993))).

335 S.C. 477, 490, 517 S.E.2d 235, 241 (emphasis added).

Judge Hearn concluded her analysis with the following opinion:

In my view, **our state’s law should keep pace with developing policy considerations such as those behind the UEFJA**. As reflected in the Full Faith and Credit Clause of the Constitution, **courts of one state must give such force and effect to a judgment of a sister state as that judgment would have in the sister state**. *See NationsBank of N.C. v. Parsons*, 324 S.C. 506, 512, 477 S.E.2d 735, 738 (Ct.App.1996). The validity and effect of a foreign judgment must be determined by the laws of the state that rendered the judgment, not by the laws of this state. *Id.*; *PYA/Monarch, Inc. v. Sowell’s Meats & Servs., Inc.*, 327 S.C. 469, 478, 486 S.E.2d 766, 771 (Ct.App.1997).

335 S.C. 477, 490, 517 S.E.2d 235, 241 (emphasis added).

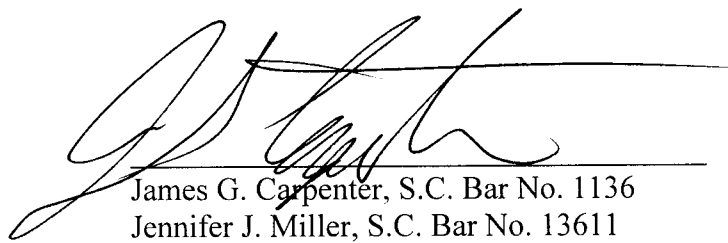
All of these concepts, legal principles, and arguments were presented to the Circuit Court in Judge Hearn’s opinion in the *Abba* case, and the *Abba* case was cited repeatedly by both parties and specifically referenced by the Circuit Court. As demonstrated in the Appellant’s Initial Brief, the analysis in Judge Hearn’s opinion has become the controlling opinion in South Carolina. Investment Associates respectfully argues that the analysis articulated by Judge Hearn (now Justice Hearn) is binding on this Court. Appellant’s Initial Brief, pp. 5-10. The Circuit Court in this matter followed the other opinion, which has not gained wide acceptance.

CONCLUSION

Investment Associates obtained a judgment against Lancia in Connecticut and brought it to South Carolina to enter it on the judgment rolls. Connecticut deems the Investment Associates judgment to be valid, and has rejected all of Lancia's collateral attacks against the judgment. The Full Faith and Credit Clause requires South Carolina to grant the Connecticut judgment the same validity as a South Carolina judgment. The South Carolina 10-year judgment lien begins when the judgment is enrolled in South Carolina.

This Court should follow the reasoning of Judge Hearn in *Commercial Credit, Inc. v. Riddle*, and in the dissent in *Abba*, and in the opinions of the Court of Appeals and the Supreme Court in *Home Port Rentals*, and reverse the judgment of the Circuit Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. G. Carpenter', is written over a horizontal line. The signature is fluid and cursive.

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March 11, 2015

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

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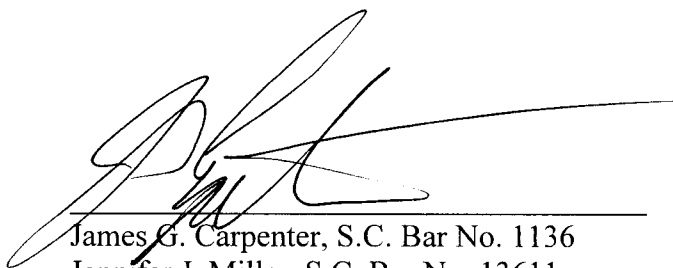
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Certificate of Service

The undersigned attorney hereby certifies that he served a copy of the foregoing Appellant's Initial Reply Brief on counsel for Respondent by US Mail, postage prepaid on Wednesday, March 11, 2015 addressed as follows:

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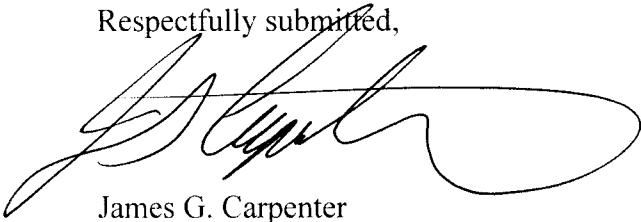
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Re: *Investment Associates. vs. Lancia*
Appellate Case No. 2014-001917

Dear Ms. Kitchings:

We enclose our Initial Reply Brief.

Respectfully submitted,



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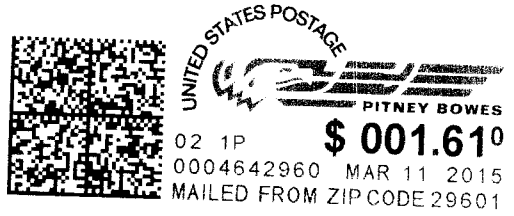
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