

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South State Bank f/k/a SCBT, a South Carolina state chartered banking corporation, d/b/a First Federal, a Division of SCBT,

PLAINTIFF,

v.

Three Amigos Land Co., LLC, a South Carolina limited liability company; River City Storage, LLC, a Florida limited liability company; Ramco River City, Inc., a Michigan corporation; Liberty River City Residential, LLC, a Florida limited liability company; Ramco Jacksonville, LLC, a Michigan limited liability company; George M. Lee, III, an individual; and Paul V. Degenhart, an individual,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-40-5683

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**ORDER DENYING THE DEFENDANT
PAUL V. DEGENHART'S
MOTION FOR RELIEF FROM
FOREIGN JUDGMENT**

AND

**ORDER FOR ENTRY OF JUDGMENT
AGAINST THE DEFENDANT
PAUL V. DEGENHART
ONLY**

2016 JUN 28 AM 11:40
JINETTE W. HOBRIDGE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter was before me on June 6, 2016,, to hear the Motion of the Defendant Paul V. Degenhart (the "Defendant") for Relief From Foreign Judgment. Present at the hearing were W. Cliff Moore, III, attorney for the Plaintiff, and the Defendant who appeared pro se. Mr. Degenhart is an attorney licensed to practice law in the State of South Carolina.

This is an action by South State Bank f/k/a SCBT, a South Carolina State Chartered Banking Corporation, d/b/a First Federal, a Division of SCBT (the "Bank") to domesticate an Amended Final Deficiency Judgment ("Judgment") entered against the Defendant in the State of Florida. In the underlying Florida action, the Bank foreclosed a mortgage on property located in Florida and owned by Three Amigos Land Co., LLC, a

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limited liability company of which Defendant is a member. The Bank also collected on a personal guaranty given by Defendant to secure the loan, and the Bank obtained the Judgment against Defendant for the deficiency remaining after the foreclosure sale.

The Bank filed the Judgment in Richland County, South Carolina, on September 16, 2014, along with the Affidavit of James Holden, in accordance with S.C. Code Ann. § 15-35-920. The Bank's Notice of Filing of Foreign Judgment was served on Defendant on November 24, 2014.

The Defendant filed a Motion for Relief from Foreign Judgment on December 17, 2014 ("Motion"). In the Motion the Defendant challenges the Bank's domestication of the Judgment on five grounds, contending that: (1) the Florida court lacked personal jurisdiction over Defendant; (2) the Florida court failed to interpret the Personal Guaranty under Florida law; (3) the copy of the Judgment recorded in Richland County was not authenticated; (4) the address for Plaintiff stated in the Notice of Filing is incorrect; and (5) Defendant's appeal is still pending.

The Defendant's Motion was before the Court in March of 2015, at which time the Defendant advised the Court of a pending appeal of the matter in the Florida Courts. On March 13, 2015, this Court entered an Order that stayed the domestication pending resolution of the matter pending in Florida. That stay was lifted by Court Order dated July 13, 2015. The Bank and the Defendant have attempted to resolve the matter, but those efforts have not been successful.

Based on the record before me and the arguments of counsel, I find and conclude that:

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1. "The burden of undermining the decree of a sister state rests heavily on the assailant, who can overcome the presumption of jurisdiction and validity afforded the judgment by the Full Faith and Credit Clause only by extrinsic evidence, or by the record itself." *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 504, 681 S.E.2d 575, 579 (2009).

2. In the underlying action litigated in the State of Florida, Defendant filed an Answer to the Bank's Amended Complaint and did not assert a defense based on lack of personal jurisdiction. In doing so, as a matter of law, Defendant submitted himself to the Florida court's jurisdiction and waived his right to assert a defense based on lack of personal jurisdiction. The Florida Rules of Civil Procedure, like the South Carolina Rules of Civil Procedure, provide that a party waives a defense based on personal jurisdiction by failing to present the defense in his responsive pleading. *See Fla. R. Civ. P. 1.140(h)(1); Solmo v. Friedman*, 909 So. 2d 560, 564 (Fla. Dist. Ct. App. 2005) ("It is well established that if a party takes some step in the proceedings which amounts to a submission to the court's jurisdiction, then it is deemed that the party waived his right to challenge the court's jurisdiction regardless of the party's intent not to concede jurisdiction. If a party does not challenge personal jurisdiction until after a general appearance in the case, the party has waived the right to contest personal jurisdiction.") (citations omitted).

3. Even if Defendant had not submitted himself to the jurisdiction of the Florida court, the Florida court in Duval County had jurisdiction over Defendant. The Judgment against Defendant is for the deficiency remaining after the Bank foreclosed and sold real property located in Duval County, Florida. The Defendant is responsible for the

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deficiency because he guaranteed the mortgage debt on which the Plaintiff foreclosed. "A mortgage foreclosure action is a local action and must be brought in the county where the land lies." *Hudlett v. Sanderson*, 715 So. 2d 1050, 1052 (Fla. Dist. Ct. App. 1998). Moreover, the Defendant admits in his Motion that he signed an agreement containing a forum selection clause under which Defendant consented to the jurisdiction of the State of Florida. See *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 566, 683 S.E.2d 486, 492 (2009) (holding that guarantor "waived any argument about personal jurisdiction when he agreed to the venue and service clauses in the Guaranty"); *Auto. Fin. Corp. v. Aberdeen Auto Sales, Inc.*, 2007 WL 2349627 (S.D. Ind. Aug. 15, 2007) (affirming the Indiana court's jurisdiction over an out-of-state guarantor of a debt, based forum selection clause in guaranty agreement).

4. The Florida court had personal jurisdiction over Defendant, and Defendant is not entitled to relief from the Judgment on this basis.

5. The Defendant suggests that the Florida Court improperly imposed Florida law in the underlying matter and that the documents provided that the Laws of the State of South Carolina controlled the transaction. In fact the Defendant's Personal Guaranty states, "This Guaranty is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located." In the matter on which the deficiency was awarded, the property encumbered by the Mortgage is located in Duval County, Florida. Therefore, to the extent the Florida court interpreted the Personal Guaranty under Florida law, such interpretation is in accordance with the terms of the Personal Guaranty. As such the Defendant's challenge based on the alleged choice of law by the Florida Court should fail.

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6. The Defendant fails to identify any specific conclusions of law made by the Florida court which required an interpretation of his Personal Guaranty. Moreover, he does not identify which provisions of the Personal Guaranty he believes were misinterpreted by the Florida courts. As a result, it is unclear to this Court which part of the Florida court's ruling Defendant believes was unfair. Defendant also does not identify any particular conflict of laws—between the law of Florida and the law of South Carolina—that resulted in an unfair result for Defendant. Finally, Defendant provides no legal authority, and this Court is not aware of any authority, supporting the Defendant's position that the Florida court's interpretation of the Personal Guaranty constitutes a violation of the Fourteenth Amendment.

7. The Plaintiff recorded an authenticated copy of the Judgment. Proof of this authentication can be seen in the photocopy that was served on Defendant, which shows, on the fourth page of the Judgment, the Official Seal of Ronnie Fussell, the Clerk of Court for Duval County, Florida, along with an attestation of the validity of the Judgment. Rule 902(1), SCRE.

8. S.C. Code Ann. § 15-35-920 does not require that a filed foreign judgment provide an address for the judgment creditor. Defendant appears to conflate the requirements in S.C. Code Ann. § 15-35-920, which pertain to the filing of a foreign judgment, with the requirements in S.C. Code Ann. § 15-35-930(B), which pertain to the contents of the Notice of Filing—a document served by a judgment creditor on its judgment debtor but not filed with the court. S.C. Code Ann. § 15-35-930(B) requires that a judgment creditor's Notice of Filing set forth an address for the judgment creditor. The Notice of Filing served by the Bank on Defendant sets forth the undersigned

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counsel's address, because the undersigned counsel serves as the Bank's agent for the purposes of domesticating and collecting the Judgment. See *Chapman-Storm Lumber Corp. v. Minnesota-S. Carolina Land & Timber Co.*, 183 S.C. 31, 190 S.E. 117, 118 (1937) ("A corporation, being a fictitious person, can never act except through servants."). As such, the Notice of Filing is proper.


9. The Defendant's Motion for Relief from Foreign Judgment should be denied.

IT IS THEREFORE ORDERED THAT the Defendant's Motion for Relief from Foreign Judgment is denied and the Judgment shall be enforced in the State of South Carolina in the same manner as a judgment of the State of South Carolina.

IT IS FURTHER ORDERED THAT the Clerk of Court for Richland County, South Carolina enter the Judgment on its indexes against the Defendant Paul V. Degenhart.

AND IT IS SO ORDERED.

Dated: 6-20, 2016



D. Craig Brown, Circuit Court Judge

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