

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

D. Craig Brown, Circuit Court Judge

RECEIVED
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SC Court of Appeals

Case No. 2014-CP-40-5683
Appellate Case No.: 2016-001521

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

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,

*Of whom Paul V. Degenhart is theAppellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On December 22, 2006 Three Amigos Land Company, LLC (“Three Amigos”) borrowed One Million Eight Hundred Thousand and 00/100 Dollars (\$1,800,000.00) from First Savers Bank. (R. p. 53, p. 103). The Appellant Paul V. Degenhart (“Degenhart”) guaranteed performance on the loan by signing a Guarantee (the “Degenhart Guarantee”). (R. p. 54, p. 104).

On November 15, 2011, Plantation Federal Bank (“Plantation”)¹ filed a Complaint in the Circuit Court of the Fourth Judicial Circuit in and for Duval County Florida (“Florida Trial Court”) against Three Amigos, Degenhart, and others (the “Florida Action”). In the Complaint Plantation requested judgment on a promissory note against Three Amigos, foreclosure of a mortgage that secured the promissory note, and judgment on guarantees of the promissory note against two guarantors, one of whom is Degenhart. (R. pp. 44-45, pp.48-49).

Degenhart filed a pro se Motion to Dismiss dated April 20, 2012 alleging that Plantation failed to state a cause of action because it did not allege that Plantation owned the promissory note. (R. p. 90). The Florida Trial Court granted Degenhart’s Motion to Dismiss but allowed Plantation to file an Amended Complaint. (R. p. 2).

On July 9, 2012, Plantation filed its Amended Complaint setting forth the same causes of action as set forth in the Complaint and alleging that it owned the promissory note on which its claims were based. (R. pp. 51-67). In paragraph 1 of the Amended Complaint, Plantation alleged that

[t]his is an action for damages which exceed \$15,000, exclusive of interest and costs and to foreclose a mortgage on real property located in Duval County, Florida.

¹ On September 30, 2008, First Savers Bank merged into and subsequently operated as part of Plantation.

(R. p. 52).

In paragraph 9 of the Amended Complaint, Plantation alleged that

[Three Amigos], Lee and Degenhart executed a loan agreement conferring jurisdiction in this Court...

(R. p. 52).

Degenhart filed his pro se Answer to the Amended Complaint that is dated July 16, 2012.

In that Answer, Degenhart admitted the allegations set out in paragraphs 1 and 9 of Plantation's Amended Complaint. (R. pp. 69-70).

The Florida Trial Court issued its Partial Summary Final Judgment for Damages and Foreclosure in favor of First Federal Savings and Loan Association of Charleston ("First Federal")² and conducted a foreclosure sale pursuant to that Judgment. (R. pp. 25-30).

On January 6, 2014, the Florida Trial Court conducted a non-jury trial on the request for a deficiency judgment against Degenhart. Degenhart participated in the hearing and presented his defense pro se.

On February 27, 2014, the Florida Trial Court entered an Amended Final Judgment for Deficiency awarding SCBT, a South Carolina state-chartered banking corporation, d/b/a First Federal, a Division of SCBT ("SCBT")³ a judgment against Degenhart in the amount of Five

² On April 27, 2012 the Federal Deposit Insurance Corporation was appointed as the Receiver for Plantation and, in its capacity as Receiver for Plantation, assigned the loan documents described in the Amended Complaint to First Federal.

³ On July 26, 2013 First Federal merged with SCBT, a South Carolina state-chartered banking corporation. SCBT, a South Carolina state-chartered banking corporation, d/b/a First Federal, a Division of SCBT ("SCBT") continued to prosecute the claims set out in the Amended Complaint against Degenhart.

Hundred Thirteen Thousand Seven Hundred Forty-One and 43/100 Dollars (\$513,741.43). (R. pp. 32-35).

Degenhart filed a Motion for Rehearing or to Amend Amended Final Judgment for Deficiency dated March 13, 2014 with the Florida Trial Court. (R. pp. 92-97). That Motion for Rehearing was heard on May 2, 2015 and denied on June 27, 2014. (R. pp. 4-5).

Degenhart filed a Notice of Appeal to the First District Court of Appeals, State of Florida (“Florida Appellate Court”) dated July 18, 2014. (R. pp. 156-157).

On September 16, 2014 South State Bank (the “Bank,” which term shall also hereinafter refer to all of the lenders to which reference has been made in this Statement of the Case)⁴ filed a Notice of Filing Foreign Judgment, Amended Final Judgment for Deficiency, and an affidavit from an officer of the Bank, with the Clerk of Court for Richland County, South Carolina. (R. pp. 159-160, R. pp. 163-171⁵).

On December 17, 2014, Degenhart filed a Motion for Relief from Foreign Judgment in the Court of Common Pleas for Richland County, South Carolina (“South Carolina Trial Court”). (R. pp. 111-120).

On February 12, 2015, the Florida Appellate Court affirmed the February 27, 2014 decision of the Florida Trial Court. (R. p. 7).

Degenhart filed a Motion for Rehearing; Clarification; Certification dated February 23, 2015 with the Florida Appellate Court requesting a detailed written opinion as to the Florida

⁴ On June 30, 2014 SCBT changed its name to South State Bank.

⁵ Degenhart provided counsel for the Bank with a Supplement to Record on Appeal with a Certificate of Appellant dated December 30, 2016, that contains pages numbered 162 through 172. Counsel for the Bank has confirmed that as of the date of this Final Brief, the Supplement to Record on Appeal has not been filed.

Appellate Court's February 12, 2015 decision for purposes of an additional appeal to the Florida Supreme Court. (R. pp. 99-100).

On March 4, 2015 the South Carolina Trial Court heard Degenhart's Motion for Relief from Foreign Judgment and entered an Order that stayed enforcement of the Florida Judgment in South Carolina pending a final ruling by the Florida Appellate Court. (R. p. 13).

Degenhart filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction dated March 9, 2015 with the Florida Appellate Court. (R. pp. 102-106).

On March 18, 2015 the Florida Appellate Court issued its Order denying Degenhart's February 23, 2015 Motion for Rehearing and denying his March 9, 2015 Motion to Dismiss. (R. p. 9).

Degenhart filed a Motion for Rehearing; Clarification; Certification dated March 30, 2015 with the Florida Appellate Court requesting a detailed written opinion as to the Florida Appellate Court's March 18, 2015 decision for purposes of an additional appeal to the Florida Supreme Court. (R. pp. 108-109).

On April 24, 2015 the Florida Appellate Court issued its Order denying Degenhart's March 30, 2015 Motion for Rehearing. (R. p. 11).

On July 29, 2015, the South Carolina Trial Court granted the Bank's Motion to Lift the Stay entered on March 4, 2015. (R. p. 15).

On June 6, 2016 the South Carolina Trial Court heard Degenhart's Motion for Relief from Foreign Judgment. On June 20, 2016 the South Carolina Trial Court entered its Order Denying Degenhart's Motion for Relief from Foreign Judgment and Order for Entry of Judgment Against the Defendant Paul v. Degenhart Only. (R. pp. 17-23).

Degenhart appeals the June 20, 2016 Order of the South Carolina Trial Court.

STANDARD OF REVIEW

This is an action to enforce a foreign judgment, which is an action at law. *Digital Ally, Inc., v. Light-N-Up, LLC*, 408 S.C. 101, 757 S.E.2d 732 (Ct. App. 2014), citing *Minorplanet Sys. USA Ltd. v. Am. Aire, Inc.*, 368 S.C. 146, 628 S.E.2d 43 (2006). “In an action at law, tried by a judge without a jury, [the Appellate Court] accepts the findings of the trial court if there is any evidence to support the findings.” *Digital Ally, Inc.*, 757 S.E.2d at 734, citing *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

ARGUMENT

I. THE FLORIDA COURT HAD PERSONAL JURISDICTION OVER DEGENHART.

The South Carolina Trial Court determined that the Florida Trial Court enjoyed personal jurisdiction over Degenhart in the Florida Action. The decision of the South Carolina Trial Court should be affirmed because Mr. Degenhart admitted the personal jurisdiction of the Florida Court and specifically waived the right to raise personal jurisdiction in this matter.

In the Amended Complaint, the Bank specifically alleged that Degenhart was subject to the personal jurisdiction of the Florida Trial Court. In his Answer to the Amended Complaint, Degenhart admitted that the Florida Trial Court enjoyed jurisdiction over his person in this matter. As such, Degenhart waived the right to challenge the Florida Trial Court’s *in personam* jurisdiction by failing to assert that defense in his Answer. Rules 1.140(b)(2) and 1.140(h)(1), Fla. R. Civ. P.; *Solmo v. Friedman*, 909 So. 2d 560 (Fla. Dist. Ct. App. 2005).

If Degenhart wished to challenge the jurisdiction of the Florida Trial Court, he should have withheld his admission and asserted that challenge in his Answer. “The first step which a party takes in a case, whether it be the filing of a preliminary motion or a responsive pleading, must raise the issue of personal jurisdiction or that issue is waived.” *Cumberland Software, Inc. v. Great American Mortgage Corp.*, 507 So. 2d 794, 795 (Fla. 4th Dist. Ct. App. 1987), citing Rule 1.140(b), Fla. R. Civ. P.; *Miller v. Marriner*, 403 So. 2d 472 (Fla. 5th Dist. Ct. App. 1981); and *Consolidated Aluminum Corp. v. Weinroth*, 422 So. 2d 330 (Fla. 5th Dist. Ct. App. 1982), *petition for review denied*, 430 So. 2d 450 (Fla. 1983). It is too late to raise a personal jurisdictional challenge after the matter has been decided by the Florida Trial Court and affirmed by the Florida Appellate Court, regardless of Degenhart’s intention not to concede personal jurisdiction. *Cumberland Software, Inc.*, 507 So. 2d at 795.

II. THE TRIAL COURT WAS CORRECT NOT TO ADDRESS SUBJECT MATTER JURISDICTION.

Degenhart conflates personal jurisdiction with subject matter jurisdiction. Aside from the notion that subject matter jurisdiction can be raised at any time, a position with which the Bank concurs, the cases Degenhart cites and the arguments he makes address *in personam* jurisdiction, not subject matter jurisdiction.

Unlike personal jurisdiction, a court’s subject matter jurisdiction cannot be waived and may be raised at any time. Rule 1.140(h)(2), Fla. R. Civ. P. The problem with Degenhart’s subject matter jurisdiction claim is not the timeliness of the defense; it is the substance of his argument. In effect, he argues that the Court lacks subject matter jurisdiction because it lacks personal jurisdiction. That is not the standard for determining subject matter jurisdiction.

“A court has subject matter jurisdiction when it has the authority to hear and decide the case.” *In re Adoption of D.P.P.*, 158 So. 3d 633, 636 (Fla. 2014), citing *The Fla. Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla.1988). “An examination of subject matter jurisdiction requires special focus on the authority of the court over a general class of cases, rather than on the particular facts of an individual case.” *In re Adoption of D.P.P.*, 158 So. 3d at 636.

Florida Circuit Courts are “superior courts of general jurisdiction, and nothing is intended to be outside their jurisdiction except that which *clearly* and *specially* appears to be.” *In re Adoption of D.P.P.*, 158 So. 3d at 636, quoting *Mandico v. Taos Constr., Inc.*, 605 So. 2d 850, 854 (Fla. 1992), quoting *English v. McCrary*, 348 So. 2d 293, 297 (Fla. 1977). The Circuit Courts of the State of Florida have original jurisdiction in all matters not vested in the County Courts. Art. V, § 5, Fla. Const. Florida County Courts have jurisdiction of civil matters involving amounts under \$15,000.00. § 34.01, Fla. Stat.

The Bank alleged, and Degenhart admitted, that the amount in controversy in this action exceeded \$15,000.00. (R. p. 52; R. p. 69). This admitted allegation combined with the authority of the cited provisions of the Florida Constitution and the Florida Statutes established the subject matter jurisdiction of the Florida Circuit Court. Degenhart’s challenge should not stand.

III. THE TRIAL COURT DID NOT ERR BY NOT ADDRESSING DEGENHART’S CHOICE OF LAW ARGUMENT.

Degenhart describes his third issue on appeal as a challenge to the Florida Trial Court’s decision because the Florida Trial Court failed to apply South Carolina law. Actually, his argument is an attempt to have this Court review the Florida Trial Court’s failure to limit the extent of his liability under the Degenhart Guarantee. He disguises his real argument as one addressing the proper choice of laws.

Degenhart frames this issue by arguing that the Florida Trial Court imposed Florida Law to ignore alleged limitations on his guarantee contained in the loan commitment letter. This argument was not advanced in Degenhart's Answer to the Amended Complaint. It was first presented after trial and after the Florida Trial Court had entered its decision on the matter in Degenhart's Motion for Rehearing or to Amend Final Judgment for Deficiency. That motion was heard and denied. Degenhart appealed the Florida Trial Court decision and that decision was affirmed by the Florida Appellate Court. Now and again, Degenhart attempts to litigate this resolved issue.

In his argument to the Florida Trial Court and to this Court, Degenhart does not identify any provision of the underlying decision that involves the application of any state's law. The South Carolina Trial Court noted this and also found that Degenhart failed to identify the South Carolina law that should have been applied and the analysis of how application of that unidentified law would have compelled a different result.

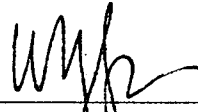
This is not a choice of laws question; it is an improper attempt to have this Court address facts properly decided by the Florida Trial Court.

CONCLUSION

The Florida State Constitution and Florida Statutes provided the Florida Trial Court with subject matter jurisdiction of the guarantee claims against Mr. Degenhart, and Mr. Degenhart waived the right to contest the Florida Trial Court's jurisdiction over his person. Degenhart's claim that the Florida Courts improperly imposed the Laws of the State of Florida is hollow. The claim lacks any specificity as to the wrongly applied law, the preferred South Carolina statute, and the different result that South Carolina law would have produced. Degenhart's campaign to

hide from responsibility for his debt is at an end. The South Carolina Trial Court's decision should be affirmed.

Respectfully submitted,



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Of whom Paul V. Degenhart is theAppellant.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

January 9, 2017



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