

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Pia Fisher,

Plaintiff,

v.

Richard McKeller,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-06358.

ORDER

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SC Court of Appeals

THIS MATTER came before the Court on September 18, 2017, upon a Motion to Dismiss (“Motion”) filed by Defendant Richard McKeller (“Defendant McKeller”) along with his Answer to Plaintiff Pia Fisher’s (“Plaintiff Fisher”) Complaint.

After considering Plaintiff Fisher’s Complaint, Defendant McKeller’s Motion, the memoranda filed, case law submitted, a copy of the lease at issue, with respect to such Motion, and the arguments of counsel, this Court **GRANTS** Defendant McKeller’s Motion and **finds as follows:**

First, this foreign judgement cannot be enforced by this Court because Defendant McKeller was deprived his procedural due process of service. The United States District Court for the District of South Carolina spoke on the approach likely to be taken by South Carolina Courts when addressing the effect of foreign judgments. *South Carolina National Bank v. Westpac Banking Corp.*, 678 F. Supp. 596 (D.S.C. 1987):

The courts of South Carolina have apparently not considered the enforceability of foreign judgments, but the Court assumes South Carolina would adopt the principles of comity generally applied by courts in this country to determine the effect of foreign judgments. In *Hilton v. Guyot*, 159 U.S. 113, 202–03 (1895), the United States Supreme Court formulated the following test for recognition and enforcement of foreign judgments:

[W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting

the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.

The test enunciated in *Hilton* remains the standard applied by most American courts to determine the enforceability of foreign judgments.

Id at 597-98 (some citations omitted). Following these principles, courts will generally recognize and enforce the judgments of foreign courts if (1) the foreign court had personal and subject matter jurisdiction; (2) the defendant in the foreign action had notice and opportunity to be heard; (3) the judgment was not obtained by fraud; and (4) enforcement will not contravene important public policy. *Id.* at 403.

Here, Defendant McKeller was never served with the action as alleged. This denial of his procedural due process rights violates both Factor (1) and Factor (2) of the above *Hilton* test. Based on the violation of the *Hilton* test, the Court will not recognize or enforce the two judgments awarded to Plaintiff Fisher against Defendant McKeller in Germany at issue in this case.


Secondly, the parties to this action are not correct because it does not include the real party in interest. The judgment debtor, Plaintiff Fisher, is not on the lease that gives rise to liability in the German judgments. Defendant McKeller does not have a lease agreement with Plaintiff Fisher. The lease is between the Defendant in the action and Michael Brost, the landlord on the lease. The German judgments do not mention any connection between plaintiff Fisher and the landlord in the lease. Therefore, the Court finds the proper relief in this matter is to bring a new case in order to

establish liability for the real party in interest.

Signature page to follow

THEREFORE, IT IS ORDERED THAT Defendant McKeller's Motion is hereby
GRANTED.

SO ORDERED this 16 day of March 2017



The Honorable R. Knox McMahon