

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Equity Court

The Honorable Haigh Porter, Master-in-Equity

Case No. 2017-CP-21-1461

Cadles of West Virginia, LLC,Appellant,

v.

Melissa R. DemarsRespondent.

INITIAL BRIEF OF APPELLANT CADLES OF WEST VIRGINIA, LLC

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8 3

TABLE OF CONTENTS

Page

I. STATEMENT OF ISSUES ON APPEAL1

II. STATEMENT OF THE CASE1

III. STANDARD OF REVIEW3

IV. ARGUMENT3

 A. The trial court lacked the authority to essentially overrule a valid order of
 the Florida court.....3

 1. 1. Appellant enforced the judgment in the Florida Proceeding in accordance
 with Florida law.3

 2. 2. A trial court in South Carolina cannot overturn a filed order from another
 forum.....5

 B. Respondent, if she objected to the action taken by the Florida court, had to
 appear before that court to contest the Writ of Garnishment.....6

 C. The action taken by the Florida court in issuing the Writ of Garnishment
 does not constitute wage garnishment under S.C. Code Ann. § 15-39-410.7

V. CONCLUSION.....9

TABLE OF AUTHORITIES

Page(s)

Cases

Boeykens v. Slocum, 356 So.2d 1341 (Fla. 3rd DCA 1978)4

Champion International Corporation v. Ayars,
587 F. Supp. 1274 (D. Conn. 1984).....6

Commissioners of Public Works of the City of Laurens v. City of Fountain Inn,
423 S.C. 462, 815 S.E.2d 21 (Ct. App. 2018).....3

Cook v. Taylor, 272 S.C. 536, 252 S.E.2d 923 (1979)5

Digital Ally, Inc. v. Light-N-Up, LLC, 408 S.C. 101, 757 S.E.2d 732 (Ct. App. 2014)7

Enoree Baptist Church v. Fletcher, 287 S.C. 602, 340 S.E.2d 546 (1986)5

Frampton v. S.C. Dept. of Transportation, 406 S.C. 377, 752 S.E.2d 269 (Ct. App. 2013)5

Inlet Harbour v. S.C. Dept. of Parks, Recreation & Tourism,
377 S.C. 86, 659 S.E.2d 151 (2008)3

Johnson v. Service Management, Inc., 319 S.C. 165, 459 S.E.2d 900 (Ct. App. 1995).....8

Levis Strauss & Company v. Crocket Motor Sales, Inc.,
293 Ark. 502, 739 S.W.2d 157 (1987).....6

Payton v. Swanson, 175 So.2d 48 (Fla. 3rd DCA 1965).....4

Poston v. Poston, 161 Vt. 591, 657 A.2d 1076 (1993)6

Salinas v. Ramsey, 234 So.2d 569 (Fla. 2018).....4

Smith v. Lorillard, Inc., 945 F.2d 745, 746 (4th Cir. 1991).....6

State Department of Revenue v. Control Data Corporation,
300 Or. 417, 713 P.2d 30 (1986)6

Suntrust Bank v. Arrow, 199 So.2d 1026 (Fla. 4th DCA 2016)4

Tri-County Development, Inc. v. Pierce, 2015 WL 1741920 (Ct. App. 2015).....5

Statutes

South Carolina Code Annotated

 Section 15-39-4101, 7, 8

 Section 15-39-4208

Florida Code Annotated

 Section 48.193.....1

TABLE OF AUTHORITIES

	<i>Page(s)</i>
Section 77.01.....	3
Section 77.03.....	3
Section 77.041.....	3,4
Section 77.055.....	4
Section 55.081.....	4

I.

STATEMENT OF ISSUES ON APPEAL

1. Did the South Carolina trial court lack jurisdictional authority to interfere in the collection efforts initiated in a separate Florida proceeding?
2. Is the South Carolina Proceeding the proper venue for Respondent to appear and contest a Writ of Garnishment issued in the Florida Proceeding?
3. Does the freezing of funds by Wells Fargo constitute impermissible garnishment under S.C. Code Ann. § 15-39-410?

II.

STATEMENT OF THE CASE

Appellant obtained a default judgment against Defendant in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida in Case Number 16-027457-CA (the “Florida Proceeding”). On December 17, 2017, Appellant filed a Notice of Intent to Domesticate Foreign Judgment, Civil Action No.: 2017-CP-21-1461, seeking to domesticate the judgment from the Florida Proceeding (the “South Carolina Proceeding”). Respondent filed a Motion for Relief from Foreign Judgment in the South Carolina Proceeding on January 17, 2018. Appellant filed a Memorandum in Support of Domestication of Plaintiff’s Foreign Judgment on April 11, 2018. Under Respondent’s Motion, she initially contested personal service in the Florida Proceeding; however, it was demonstrated to the trial court that personal service was obtained on Respondent, in accordance with the Florida Long-arm Statute, Fla. Stat. § 48.193(1)(a)(3) (2013). (Memorandum in Support of Domestication of Plaintiff’s Foreign Judgment). Respondent and Appellant entered into a Consent Entry of Foreign Judgment in the South Carolina

Proceeding on May 16, 2018, pursuant to which Respondent dropped her objection to the domestication.

On June 27, 2018, an Execution of Judgment was issued in the South Carolina Proceeding, which was served by the Sheriff of Florence County and returned *nulla bona* on August 14, 2018. The South Carolina Proceeding was then referred to the Master-in-Equity for Florence County by Order of Reference filed October 9, 2018. On October 25, 2018, Appellant filed a Petition in Supplemental Proceedings in the South Carolina Proceeding, seeking to discover the non-exempt assets of Respondent that were available for execution and levy. A Rule to Show Cause was issued in the South Carolina Proceeding on October 26, 2018, requiring Respondent to appear and show cause as to why her property should not be applied to satisfy the judgment in favor of Appellant.

Simultaneously with the South Carolina Proceeding, Appellant continued its collection efforts in the Florida Proceeding, in accordance with Florida law. On November 13, 2018, a Writ of Garnishment was issued in the Florida Proceeding. The Writ required Wells Fargo Bank, N.A. (Wells Fargo) to identify what personal property of Respondent it had in its possession or control. (Writ of Garnishment). In response to the Writ, Wells Fargo placed a hold on all accounts it held in the name of Respondent. (Answer of Garnishee). No funds were transferred to Appellant.

Respondent did not make an appearance in the Florida Proceeding to contest the Writ, but did seek an emergency hearing in front of the Master-in-Equity in the South Carolina Proceeding. The hearing was held on November 19, 2018. The Master-in-Equity ordered Appellant to instruct Wells Fargo to release the hold on any accounts held in the name of Respondent and that the funds therein be made available to Respondent. (Order).

Appellant filed a Motion to Alter or Amend on November 20, 2018, which was denied by order entered November 21, 2018. Appellant filed its Notice of Appeal on November 21, 2018.

III.

STANDARD OF REVIEW

Respondent is essentially seeking equitable relief against enforcement of the Writ of Garnishment. “In an action at equity, tried by a judge alone, an appellate court may find facts in accordance with its own view of the preponderance of the evidence.” *Commissioners of Public Works of the City of Laurens v. City of Fountain Inn*, 423 S.C. 462, 469, 815 S.E.2d 21, 25 (Ct. App. 2018), quoting *Inlet Harbour v. S.C. Dept. of Parks, Recreation & Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008).

IV.

ARGUMENT

A. The trial court lacked the authority to essentially overrule a valid order of the Florida court.

1. Appellant enforced the judgment in the Florida Proceeding in accordance with Florida law.

In Florida, “[e]very person or entity who has sued to recover a debt or has recovered judgment in any court against any person or entity has a right to a writ of garnishment . . .” Fla. Stat. § 77.01 (2001). Upon entry of judgment in the state of Florida, the party in whose favor it was entered may file a motion seeking such a writ. Fla. Stat. § 77.03 (2005). The writ is then served upon the garnishee, the party from whom the creditor is seeking to recover funds. The creditor is also required to provide the judgment debtor with a copy of the motion seeking the writ, the writ itself and a claim of exemption form within i) five days issuance of the writ, or ii) three days of service on the garnishee, whichever is later. Fla.

Stat. § 77.041 (2013). The garnishee is required to file a response to the writ, informing the creditor whether or not it has any money that belongs to the judgment debtor. Within five days after service of the garnishee's answer, the creditor must provide a copy of that answer to the judgment debtor and inform the debtor they may move for dissolution of the garnishment. Fla. Stat. § 77.055 (2000).

Under Florida law, it is permissible for the holder of a judgment to initiate a garnishment proceeding against a bank account of a non-resident. *See Boeykens v. Slocum*, 356 So. 2d 1341 (Fla. 3rd DCA 1978) (Pre-judgment garnishment proceeding allowed for an *in rem* recovery); *Payton v. Swanson*, 175 So.2d 48 (Fla. 3rd DCA 1965) (Non-resident plaintiff filed garnishment proceeding against non-resident defendant and garnishee bank with branch in Florida). The garnishment proceeding is one that is *quasi in rem*. *Suntrust Bank v. Arrow Energy, Inc.*, 199 So.2d 1026 (Fla. 4th DCA 2016). "To have subject matter jurisdiction in an *in rem* proceeding, a court must have both the jurisdictional authority to adjudicate the class of cases to which the case belongs and jurisdictional authority over the property which is the subject matter of the controversy." *Id.* at 1028. "The court acquires jurisdiction over the garnishee to the extent of the property garnished, as the extent of the garnishee's liability is the amount that it owes to the judgment debtor." *Id.*

The judgment awarded to Appellant in the Florida Proceeding is a valid and effective judgment enforceable in Florida for a period of twenty years from the date of entry. Fla. Stat. § 55.081 (2004); *Salinas v. Ramsey*, 234 So.2d 569 (Fla. 2018). Appellant followed the requirements of the Florida statutory scheme and received a valid Writ, which it served upon both Wells Fargo and Respondent. Upon receipt of the Answer of Garnishee from Wells Fargo, Appellant served that Answer upon Respondent and informed her of her rights in

accordance with Florida law, including the right to assert any applicable exemptions. By domesticating the judgment in South Carolina, Appellant did not lose its ability to continue to enforce its judgment in Florida, so long as it did so in accordance with Florida law.

2. A trial court in South Carolina cannot overturn a filed order from another forum.

It is black letter law in the state of South Carolina that “[o]ne Circuit Court Judge does not have the authority to set aside the order of another.” *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). One trial court judge may not sit in review of a decision by another circuit judge in a matter, nor does that judge have the power to set aside those decisions. *See Cook v. Taylor*, 272 S.C. 536, 252 S.E.2d 923 (1979). *See also Frampton v. S.C. Dept. of Transp.*, 406 S.C. 377, 752 S.E.2d 269 (Ct. App. 2013); *Tri-County Development, Inc. v. Pierce*, 2015 WL 1741920 (Ct. App. 2015).

Through its Order, the trial court essentially set aside the Writ of Garnishment issued in the Florida Proceeding. By filing an order that required Appellant to instruct Wells Fargo to release any hold on Respondent’s account, the trial court vacated the Writ of Garnishment. Appellant would have to seek an order vacating the Writ in the Florida Proceeding, in effect reversing it. As in *Enoree*, the “effect of [the Order] was to reverse the earlier substantive order, clearly an impermissible act.” *Enoree*, 287 S.C. at 604, 340 S.E.2d at 547.¹ A judge in a South Carolina trial court has no more appellate authority over a Florida trial court than he does over his fellow circuit court jurists. The Order is impermissible under South Carolina law and should be reversed to deny Respondent’s request for an emergency order.

¹ In *Enoree*, an amended complaint had been allowed by the trial court; however, a second jurist denied the plaintiff the ability to amend the complaint. The Court ruled this was impermissible. Here, the trial court has done essentially the same thing. The Writ was issued in the Florida Proceeding and the trial court in the South Carolina Proceeding found that was impermissible. Under the holding in *Enoree*, that is against established South Carolina law.

B. Respondent, if she objected to the action taken by the Florida court, had to appear before that court to contest the Writ of Garnishment.

“It is well-settled that garnishment is an ancillary proceeding ‘growing out of, and dependent upon, another original or primary action or proceeding.’ *Smith v. Lorillard, Inc.*, 945 F.2d 745, 746 (4th Cir. 1991) (Kentucky court’s jurisdiction over judgment debtor “continued from the original assertion of jurisdiction and did not have to be established anew and the time the judgment creditors sought their orders of garnishment.”). In *Smith*, the garnishment orders stemmed from actions brought against the judgment debtor when he still resided in Kentucky. At the time of entry of the garnishment orders, the debtor was a resident of North Carolina. *See also Levi Strauss & Company v. Crockett Motor Sales, Inc.*, 293 Ark. 502, 507, 739 S.W.2d 157, 159 (1987) (although judgment debtor had moved away from state that originally entered judgment, court ruled that due process does not require a renewal of basis for personal jurisdiction before a state can issue garnishment to aid in the collection of the judgment it had rendered); *Champion International Corporation v. Ayars*, 587 F. Supp. 1274, 1275 (D. Conn.1984)(state that entered divorce decree and order for child support payments garnished former husband's wages by serving his employer at its principal place of business in that state, even though husband had moved to Ohio and no longer earned wages in Connecticut; court noted that it clearly had personal jurisdiction over the husband as well as the garnishee); *State Department of Revenue v. Control Data Corporation*, 300 Or. 471, 476, 713 P.2d 30, 32 (1986) (Oregon courts that had previously entered judgment for unpaid Oregon taxes could garnish taxpayer's wages due from a national corporation even after the taxpayer relocated to, and worked in, another state); *Poston v. Poston*, 161 Vt. 591, 593, 657 A.2d 1076, 1078 (1993) (once court obtains

personal jurisdiction over a defendant, the jurisdiction persists in subsequent ancillary proceedings).

The domestication of the judgment in the South Carolina Proceeding did not result in the Florida court losing jurisdiction in the Florida Proceeding, nor did it eliminate the Florida court's ability to issue the Writ of Garnishment in the Florida Proceeding.² Instead of closing off one avenue, domestication of a judgment to another state opens up an additional route for collection.³ If Respondent wanted to contest Appellant's action to enforce the judgment in the Florida Proceeding, then Respondent had to make an appearance in that Proceeding. If the domestication of a judgment in one state cut off the creditor's right to continue to pursue its remedies under the original judgment, that would frustrate the ends of justice. Respondent has the right to contest the Writ; however she must do it in the proper forum – the Florida Proceeding. The Order should be reversed to deny Respondent's request for an emergency order.

C. The action taken by the Florida court in issuing the Writ of Garnishment does not constitute wage garnishment under S.C. Code Ann. § 15-39-410.

The Writ of Garnishment is not wage garnishment under S.C. Code Ann. § 15-39-410. Under that statute, a judge may not order earnings of a judgment debtor to be applied to satisfy a judgment. S.C. Code Ann. § 15-39-410. That necessarily implies an order has been

² Given that the statute of limitations on a judgment in Florida is twice that in South Carolina, Appellant's remedies in Florida will long exceed those available in South Carolina. Appellant will continue to have the ability to seek a writ of garnishment against bank accounts in the Florida Proceeding long after the domesticated judgment in South Carolina has expired.

³ By entering into the Consent Entry of Foreign Judgment in the South Carolina Proceeding, Respondent waived her argument as to personal jurisdiction in the Florida Proceeding. In doing so, she lost her right to collaterally attack such jurisdiction in the South Carolina Proceeding. *See Digital Ally, Inc. v. Light-N-Up, LLC*, 408 S.C. 101, 757 S.E.2d 732 (Ct. App. 2014) (By raising the personal jurisdiction through a motion for relief from judgment, debtor was allowed to raise the issue of personal jurisdiction in the South Carolina proceeding.).

entered requiring an employer to make payment of wages directly to the judgment creditor. *See also* S.C. Code Ann. § 15-39-420.

A review of the Florida Proceeding makes it clear that is not what is at issue here. Instead, the garnishment procedure in the Florida Proceeding has followed a similar path to statutory supplemental proceedings under S.C. Code Ann. § 15-39-410. The process of reaching funds in a judgment debtor's bank account has been reviewed and approved by this Court in *Johnson v. Service Management, Inc.*, 319 S.C. 165, 459 S.E.2d 900 (Ct. App. 1995). In *Johnson*, this Court held that money in a judgment debtor's bank account could be reached by a judgment creditor through supplemental proceedings. *Id.* at 168, 459 S.E.2d at 902. The Court outlined the proceeding as follows.

After the issuing or return of an execution against the property of a judgment debtor, the judgment creditor may file an affidavit with the court stating that a third party has property of the judgment debtor or that a third party is indebted to the judgment debtor. The court then may order the third party to appear and answer questions concerning the property or indebtedness, and may require notice of the proceedings be given to any additional party it deems necessary. *Id.* After conducting supplementary proceedings, the trial court may order non-exempt property of the judgment debtor in the hands of a third party or owed to the judgment debtor to be applied toward satisfaction of the judgment.

Id. (Citations omitted). If a judgment creditor follows this procedure, under South Carolina law, that creditor may receive an order requiring the bank holding the judgment debtor's bank account to remit non-exempt funds to the creditor to apply to the judgment.

While in Florida this procedure is called "garnishment", the underlying process is the same, as outlined in Section III(A)(1) *supra*. The Florida Proceeding required a third party holding assets of Respondent, Wells Fargo, to appear and disclose those assets. Respondent was given the opportunity to appear in the Florida Proceeding and assert any exemptions

applicable to the funds held by Wells Fargo. No funds would be transferred to Appellant until entry of a court order requiring Wells Fargo to pay such funds.

The trial court is incorrect that this procedure was an impermissible garnishment of Respondent's wages and against the laws of the state of South Carolina. To the contrary, the Florida Proceeding was very much in line with statutory post-judgment collection procedures in the state of South Carolina, which allow a creditor to levy against funds in a judgment debtor's bank account. The Order should be reversed to deny Respondent's request for an emergency order.

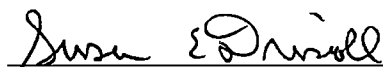
V.

CONCLUSION

For the reasons stated above, the Court should overturn the trial court order and require Respondent to assert any and all defenses to the enforcement of the Writ of Garnishment in the Florida Proceeding.

Respectfully submitted,

Date: February 11, 2019



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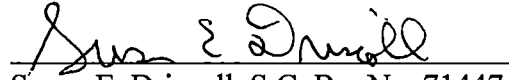
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for Respondent with a copy of the *Initial Brief of Appellant Cadles of West Virginia, LLC and Designation of Matter to be Included in the Record on Appeal* by mailing a copy of the same via First Class, U.S. Mail, postage-paid on the date set forth below.

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Via Federal Express

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Dear Ms. Kitchings:

Enclosed please find the original and two (2) copies of the Initial Brief of Appellant Cadles of West Virginia, LLC, Designation of Matter to be Included in the Record on Appeal and a Certificate of Service in the above captioned matter. Please return filed copies to me in the enclosed envelope.

By copy of this letter, I have served copies of these documents on counsel of record.

With kindest regards, I remain

Respectfully,

DRISCOLL SHEEDY, P.A.



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February 11, 2019

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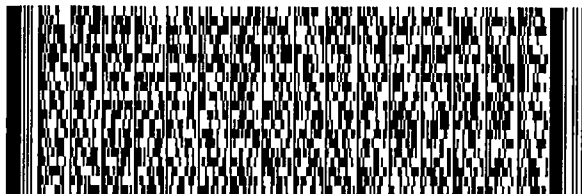
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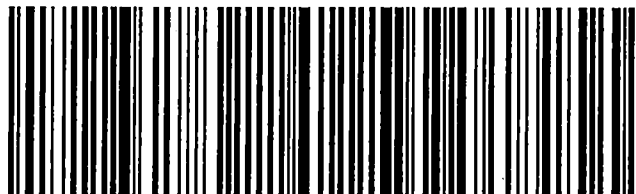
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