

May 11 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
HERBERT BIDDLE,)	
)	
Judgment Creditor,)	
)	AMENDED ORDER GRANTING
v.)	PLAINTIFF’S MOTION TO
)	ENFORCE FOREIGN JUDGMENT
ROBERT IAN NELMS,)	
)	No. 2020-CP-42-00685
Judgment Debtor.)	
)	
)	

This matter comes before the Court on Defendant Robert Ian Nelms’s Motion to Reconsider the Order Granting Plaintiff Herbert Biddle’s Motion to Enforce Foreign Judgment. This order amends the prior order granting Plaintiff’s Motion to Enforce Foreign Judgment. After review of the parties’ submissions and applicable legal authority, the Court **DENIES** Defendant’s Motion to Reconsider, clarifies its findings of fact and conclusions of law and **GRANTS** Plaintiff’s Motion to Enforce Foreign Judgment with the judgment amount amended as set forth herein.

FACTUAL AND PROCEDURAL BACKGROUND

This is a matter to enforce a foreign judgment. Herbert Biddle (“Plaintiff”) initiated a lawsuit in Tarrant County, Texas (Case No 096-306220-19, “Texas Lawsuit”) alleging Robert Ian Nelms (“Defendant”) breached a loan agreement as well as an employment agreement. Plaintiff alleged he provided Defendant with a personal loan and despite Defendant’s promise to repay, he failed to do so. Plaintiff further alleged Defendant recruited Plaintiff to serve as the Chief Executive Officer of Defendant’s company and promised to pay him a weekly salary as well as reimbursement for expenses and that Defendant failed to comply with this agreement. Plaintiff alleged that he and Defendant corresponded by telephone, text messages, and emails during the

course of their dealings. During all of their communications and correspondence, Plaintiff alleged he resided in Texas.

Defendant was served via personal service with the petition initiating the Texas Lawsuit and failed to respond or appear. Plaintiff subsequently moved for default judgment, which the Texas state court granted. In its order granting default judgment, the Texas court deemed all allegations in Plaintiff's petition to have been admitted, including that the Texas court maintained personal jurisdiction over Defendant. The Texas court entered judgment in the amount of Forty-Two Thousand Five Hundred Sixty-Nine Dollars and Seventy-Two Cents (\$46,569.72), plus post-judgment interest at the rate of 5.5 percent compounded annually accruing from August 1, 2019 until satisfied in full.

On February 15, 2020, Plaintiff filed a Notice of Filing of Foreign Judgment in this Court due to Defendant's residency in South Carolina. On March 13, 2020, Defendant filed a Notice of Defense pursuant to S.C. Code Ann. § 15-35-940, arguing that the judgment had been satisfied and that Texas had no personal jurisdiction over Defendant. On April 9, 2020, Plaintiff filed a Motion to Enforce Foreign Judgment pursuant to S.C. Code Ann. § 15-35-940(B).

On July 15, 2020, Plaintiff submitted a Memorandum in Support of its Motion to enforce the Foreign Judgment, which included an Affidavit of Herbert Biddle along with the filings from the Texas Lawsuit which included: (1) the Petition; (2) the Motion for Default Judgment; (3) the Affidavit of Herbert D. Biddle; the Affidavit of Ryan Valdez, attorney for Plaintiff; (4) the Amended Petition; (5) the Affidavit of Service of Process; (6) the Order Granting Plaintiff's Motion for Default Judgment; (7) A certificate of last-known address of Defendant; (8) the Affidavit from Attorney Allison Carroll; and (8) and correspondence between the parties.

On July 15, 2020, Defendant submitted its Memorandum in Support of its Notice of Defenses, which included Texas case-law as exhibits as well as the Affidavit of Defendant Robert Ian Nelms. On July 28, 2020, Plaintiff filed a Reply to Defendant's Memorandum. On July 30, 2020, Defendant filed a Reply to Plaintiff's memorandum in opposition to Defendant's defenses. After a full hearing on the matter, on October 13, 2021, this Court granted Plaintiff's Motion to Enforce Foreign Judgment.

On October 21, 2021, Defendant moved pursuant to South Carolina Rules of Civil Procedure 52 and 59 to reconsider its order granting the foreign judgment. Defendant's motion consisted of two primary components. First, Defendant requested a reduction in the proposed judgment amount to reflect a partial post-judgment payment made by Defendant to Plaintiff. Second, Defendant requested that this Court "clarify its findings of fact and conclusions of law" with regard to his jurisdiction defense.

Having considered the record and all submitted documents which are contained therein, including the respective affidavits presented by both parties, Plaintiff's Motion to Enforce Foreign Judgment, Defendant's Motion to Reconsider, the respective responses and memoranda of both parties, as well as the arguments of counsel for both parties, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. At all relevant times, Plaintiff was a resident of the State of Texas.
2. At all relevant times, Defendant was a resident of the State of South Carolina.
3. Defendant purposefully made contact with Plaintiff and solicited a personal loan from Plaintiff, a Texas resident, all the while knowing that he was a Texas resident.

4. Defendant recruited Plaintiff, a Texas resident, and ultimately hired Plaintiff to serve as the Chief Executive Officer (“CEO”) of his company. Defendant knew that Plaintiff would perform any duties and responsibilities as CEO from Texas.
5. Defendant contracted with Plaintiff and promised that he would pay him a weekly salary. Defendant knew that Plaintiff would earn his salary from Texas.
6. At all relevant times, Defendant was aware and cognizant of the fact that Plaintiff resided in Texas. Defendant contacted Plaintiff in Texas. Plaintiff conducted work for Defendant’s company in Texas. At all times during their interactions, Plaintiff resided in Texas, and Defendant knew at all relevant times that Plaintiff resided in Texas. As such, Defendant knew that Plaintiff intended to perform any contracts in Texas.
7. Defendant and Plaintiff corresponded and communicated pursuant to telephone calls, emails, and text messages throughout the course of their dealings. At all times, Plaintiff resided in Texas, and at all relevant times, Defendant knew he did so.
8. In light of the foregoing, Defendant knowingly contracted by mail or otherwise with Plaintiff, a Texas resident, with respect to both the loan and the employment as CEO.
9. Defendant failed to repay the personal loan. Defendant failed to pay Plaintiff’s salary for his work as Chief Executive Officer of Defendant’s company.
10. Plaintiff brought an action in Texas, and Defendant was properly served with the petition. Defendant did not file a special appearance or other respond to the petition.
11. In the Texas Lawsuit, Plaintiff filed a motion for default judgment due to Defendant’s failure to answer or otherwise appear in that action. The Texas court ultimately granted default judgment, and in doing so, it deemed all of Plaintiff’s allegations in the petition as true and admitted, including that Texas had personal jurisdiction over Defendant. The

Texas court entered judgment for Plaintiff in the amount of Forty-Two Thousand Five Hundred Sixty Nine Dollars and Seventy Two Cents (\$46,569.72), plus post-judgment interest at the rate of 5.5 percent compounded annually accruing from August 1, 2019 until satisfied in full.

12. Subsequent to the entry of the Texas Lawsuit judgment, Defendant made a payment in the amount of Nineteen Thousand Two Hundred Thirty-Seven and Nineteen Cents (\$19,237.19) on or about February 19, 2020.

CONCLUSIONS OF LAW

1. S.C. Code Ann. § 15-35-940 provides that a judgment debtor may raise “notice of defense to the foreign judgment on . . . any other ground for which relief from a judgment of this State is allowed.” Rule 60(b)(4) provides relief from a judgment if the judgment is void. A judgment may be considered void if the issuing court had no personal jurisdiction over the parties.
2. In determining whether Texas had personal jurisdiction over Defendant, this Court considers Texas law. *Pitts v. Frank*, 389 S.C. 156, 162-63, 698 S.E.2d 626, 629 (2010). In Texas, “courts may assert *in personam* jurisdiction over a nonresident if (1) the Texas long-arm statute authorizes the exercise of jurisdiction, and (2) the exercise of jurisdiction is consistent with federal and state constitutional due process guarantees.” *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 560, 574 (Tex. 2007).
3. The Texas long-arm statute authorizes jurisdiction over a nonresident if they do business in Texas and a nonresident does business if he or she: “(1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state; (2) commits a tort in whole or in part in this state; or (3) recruits Texas residents,

directly or through an intermediary located in this state, for employment inside or outside this state.” TEX. CIV. PRAC. & REM. CODE § 17.042.

4. Based on Texas law, Defendant purposely availed himself of the jurisdiction of Texas and was conducting business in Texas. Defendant knowingly contracted with Plaintiff, a Texas resident, and Plaintiff performed the contracts at issue in Texas. Defendant recruited and solicited Plaintiff pursuant to email communications, telephone calls, and text message exchanges. As such, Texas properly asserted personal jurisdiction over Defendant. Therefore, the Texas judgment was properly adjudicated, and Defendant has no grounds to challenge the assertion of personal jurisdiction over him in the Texas action.
5. Plaintiff has properly complied with the provisions of the Uniform Enforcement of Foreign Judgments Act as set forth in S.C. Code Ann. § 15-35-900 *et seq.* Accordingly, judgment in the amount of Forty Two Thousand Five Hundred Sixty Nine Dollars and Seventy Two Cents (\$46,569.72) has been properly authenticated, but due to a post-judgment payment in the amount of Nineteen Thousand Two Hundred Thirty-Seven and Nineteen Cents (\$19,237.19), judgment shall be amended and entered in the amount of Twenty Thousand Three Hundred and Thirty-Two and Fifty-Three Cents (\$23,332.53).
6. Plaintiff has properly adjudicated that Foreign Judgment and the Court, therefore GRANTS Plaintiff’s Motion to Enforce Foreign Judgment. For the same reasons, this Court DENIES Defendant’s Motion to Reconsider the Order Granting Plaintiff Herbert Biddle’s Motion to Enforce Foreign Judgment.

CONCLUSION

It is ORDERED AND ADJUDGED that the properly authenticated judgment of the State of Texas shall be treated in the same manner as a judgment of this Court as provided in S.C. Code

Ann. § 15-35-930. Plaintiff's Motion to Enforce Foreign Judgment is GRANTED. Defendant's Motion to Reconsider is DENIED. The judgment amount is the sum of Twenty Thousand Three Hundred and Thirty-Two and Fifty-Three Cents (\$23,332.53), plus post-judgment interest at the rate of 5.5 percent compounded annually which shall continue to accrue from the original date of the foreign judgment, August 1, 2019, until satisfied in full. As such, the Clerk of Court is directed to docket the judgment.

This the _____ day of April 2022.

Honorable J. Derham Cole
Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Herbert Biddle VS Robert Ian Nelms

Case Number: 2020CP4200685

Type: Order/Other

IT IS SO ORDERED!

s/J. Derham Cole 2053