BUT IS IT A JUDGMENT?

Navigating Foreign Judgment Recognition Jurisprudence

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Working in a global city, we regularly encounter cross border issues. While certain fact patterns tend to repeat themselves (e.g., a payment dispute involving an ex-U.S. supplier or customer), occasionally we get the chance to work on something "new." We don't mean to suggest that enforcement of a foreign judgment is a new or novel concept. But this recent matter arising like a phoenix from the ashes, presented a unique opportunity to dig deep into foreign judgment recognition jurisprudence. And in doing so we were surprised to learn how few judicial opinions have been published evaluating this foundational issue: what is a final judgment under the Model Act?

The facts: your company is headquartered in the U.S. but certain aspects of your business operations cross country lines. In this case, you are a distributor based in Miami. You identify goods manufactured in Brazil and arrange to have them shipped in containers to your customer in Puerto Rico, but instead, the containers are delivered to a port in Mexico, where they're stolen. You ultimately track down the successor in interest to the shipping company, file a lawsuit in Louisiana, the shipping company files for bankruptcy, and you obtain a partial recovery through the bankruptcy estate.

Meanwhile, you come to learn that the supplier had filed a lawsuit against you in Brazil that was served on your former registered agent in Brazil (who may or may not have been on the take). Did I mention that he was your former registered agent in Brazil? He does not give you notice of the lawsuit. No defense is entered on your behalf. In 2004, on the supplier's motion, the Court enters an order "converting" the lawsuit to an enforcement action. You continue to go about your business.

Seventeen years later, you receive a notice. A petition has been filed in your local trial court seeking to domesticate a "Judgment" that had been entered against you in Brazil. The petition attaches two documents: (1) the 2004 Order and (2) a recent Brazilian notice from the clerk of court stating that you are indebted in the amount that had been sought in the Brazilian lawsuit, plus attorney's fees, costs, a 10% "penalty," and 17 years of interest. According to this clerk's notice, you are indebted for millions

of dollars. The petition seeks enforcement under the Uniform Enforcement of Foreign Judgments Act ("UEFJA") as enacted by the Florida legislature, Fla. Stat. §§ 55.601 – 55.607. What now?

THE MODEL ACT

At common law, a party seeking to enforce a foreign judgment was to bring an independent action on the judgment. For judgments of courts in foreign nations, this would typically be styled as a claim for the foreign judgment to be recognized under the doctrine of comity. Comity was equal parts flexible and unpredictable. The UEFJA sought to provide a more objective and predictable standard for the enforcement of foreign judgments.

The UEFJA has been enacted by 48 states, the District of Columbia, the Northern Mariana Islands, and the U.S. Virgin Islands. Per the Florida Supreme Court, the Recognition Act "replaced common law principles of comity relating to the recognition of [out of country] foreign judgments."[1] *Nadd v. Le Credit Lyonnais, S.A.,* 804 So. 2d 1226 (Fla. 2001). However, comity could still be employed to seek the recognition of certain non-final orders of foreign courts. *See Amezcua v. Cortez,* 314 So. 3d 666 (Fla. 3d DCA 2021).

The procedures for recognition of a foreign judgment are straightforward and intended to provide for a streamlined process.[2] First, the petitioner must file the foreign judgment with the clerk of court (of a court with *in personam* jurisdiction over the defendant) and mail it to the defendant. Fla. Stat. § 55.604(1)(a),(b). The defendant then has 30 days to file a notice of objection specifying the grounds for "nonrecognition" or "nonenforceability" under the Act. Fla. Stat. § 55.604(2). The petitioner has the initial burden of providing that the judgment that was filed is actually an "out-of-country foreign judgment" under the Act. If the petitioner meets its burden, then the defendant must prove a ground for non-recognition.

An "out-of-country foreign judgment" is "any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine, or other penalty." Fla. Stat. § 55.602(2). The judgment must be "final and conclusive and enforceable where rendered." Fla. Stat. § 55.603. A pending appeal in the foreign country does not stay or delay recognition proceedings. Id.

CHALLENGES ARE LIMITED

Limited grounds exist for nonrecognition. Mandatory nonrecognition is restricted to three scenarios: (1) the foreign country does not have impartial tribunals or procedures compatible with due process, (2) the court lacks personal jurisdiction, or (3) the court lacks subject matter jurisdiction. Fla. Stat. § 55.605(1)(a)-(c). That's all. Beyond that, a defendant can seek *permissive* nonrecognition, but again, only based on certain, limited scenarios. *See* Fla. Stat. § 55.605(2)(a)-(j). These include, *inter alia*, that the judgment was obtained by fraud, that the claim on which the judgment was based is repugnant to the forum state's public policy, or that the judgment conflicts with another final and conclusive order. Fla. Stat. § 55.605(2)(b),(c),(d). These are permissive bases for nonrecognition. So, a trial court correctly applying the model act can enforce an out-of-country judgment that is based on a claim. violates public policy, expressly conflicts with another final order, and was procured by fraud. What's a defendant to do?

SHOW ME THE JUDGMENT

In our case, we asserted that the petitioner could not meet its burden of proof to establish that the 2004 Order and the clerk's notice constituted an out-of-country foreign judgment. Both the trial court and the intermediate appellate court agreed. *F.V. de Araujo S.A. Madeira v. Dantzler Lumber,* –So. 3d –, 2024 WL 3351556 (Fla. 3rd DCA 2024).

Petitioner: but I have an order from a Brazilian court that says I win, and a notice from the clerk's office setting forth exactly how much money you owe me. How is that not a judgment?

It's not a judgment or enforceable because:

- The 2004 Order did not award a specific sum of money on its face. With limited exceptions, the specific sum of money must be set forth on the face of the judgment, without reference to any other documents. *Compare National Aluminum Co., Ltd. V.. Peak Chemical Corp., Inc.*, 132 F. Supp. 3d 990 (N.D. Ill. 2015) (enforcing an order from the High Court of India that affirmed a 22-page arbitration award that awarded specific damages and interest calculations) with N*icor Int'l Corp. v. El Paso Corp.*, 292 F. Supp. 2d 1357 (S.D. Fla. 2003) (declining enforcement under Florida Act); *Bianchi v. Savino Del Bene Int'l Freight Forwarders, Inc.,* 770 N.E. 2d 684 (Ill. App. 2002) (declining enforcement under Illinois Act).
- The 2004 Order contained a reference to a "10% penalty," but a "penalty" is not enforceable as a final judgment. *See* Fla. Stat. § 55.602(2).
- The 2004 Order could not be enforced through comity either, as comity had been preempted by the Act for final judgments, and the Florida court could not enforce this order "converting" the Brazilian lawsuit from a monitory (collection) action to an enforcement action[3] on an interlocutory basis. *Cf. Amezcua,* 314 So. 3d at 669 (enforcing injunction entered in Mexico prohibiting the transfer of a condominium unit in Florida).
- The clerk's notice purported to concern a judgment, but not be a judgment itself. Such a document, like a letter rogatory, is not enforceable as a judgment. *See, e.g., Osario v. Harza Engineering Co.*, 890 F. Supp. 750 (N.D. Ill. 1995) (applying Illinios law).

LESSONS LEARNED

A copy of a petition received in the mail purporting to enforce a foreign judgment may not look concerning at first glance. It is. Service standards are low, deadlines are firm and move quickly, and defenses are limited. You didn't know that the underlying lawsuit even existed. And it appears to have been procured through fraud. Great, now you have the right to ask the court to exercise its discretion in your favor, and elect not to recognize the judgment.

But all hope is not lost. Before you start to lose sleep, ask yourself (or your lawyer): is this actually, technically a judgment? You'll never know if you don't ask the question.

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1 While technically "foreign" judgments, judgments entered in sister states are entitled to full faith and credit per the U.S. constitution.

2 The UEFJA as enacted in Florida is discussed for exemplar purposes. As this concerns a model act, court will regularly look to opinions entered in other states applying the model act as enacted in that state for guidance. While case citations have been limited for this article, we also briefed and relied on model act opinions of courts sitting in Massachusetts, Delaware, and the District of Columbia.

3 Directly analogous procedures do not exist in Florida (or other states, to our knowledge). While we never had to litigate *that* issue to conclusion as we prevailed on our threshold argument, according to our counsel in Brazil a "monitory action" is an expedited process whereby a debt can be liquidated for enforcement against assets located in Brazil.