STATE OF VERMONT

SUPERIOR COURT
Grand Isle Unit

CIVIL DIVISION
Docket No. 22-5-20 Gicv

US ACQUISITION PROPERTY XXXVI, LLC,
Plaintiff,

v.

MAYER SHIRAZIPOUR,
Defendant.

RULING ON US ACQUISITION'S MOTION FOR SUMMARY JUDGMENT
and MR. SHIRAZIPOUR'S MOTION TO DIMISS

Introduction

Plaintiff US Acquisition Property XXXVI LLC has filed this action seeking to domesticate a Florida judgment against Defendant Mr. Mayer Shirazipour such that it may be enforced in Vermont, where Mr. Shirazipour owns real property. US Acquisition has filed a summary judgment motion addressing its right to domestication, the only relief sought in the complaint, under the Full Faith and Credit Clause of the US Constitution. U.S. Const. art. IV § 1; 28 U.S.C. § 1738. The material facts are undisputed—Mr. Shirazipour does not attempt to collaterally attack the Florida judgment, and he expressly does not dispute that the Full Faith and Credit Clause requires this court to "recognize" the Florida judgment. However, he argues that this case nevertheless should be dismissed because this court lacks personal jurisdiction over him.

The aforesaid motions came before the court for a hearing on July 22, 2021. At the hearing, Evan O'Brien, Esq. represented Plaintiff; Shane Clark, Esq. represented Defendant. For the reasons summarized below, Plaintiff's motion is granted, and Defendant's motion is denied.

Background

Mr. Shirazipour is Florida resident. US Acquisition filed suit in Florida Circuit Court to collect on a loan, personally guaranteed by Mr. Shirazipour, to a Florida co-defendant. The parties settled that dispute, but the defendants promptly defaulted on their agreed payment obligations. As contemplated by the settlement agreement, the Florida court had retained jurisdiction and, upon the defendants' failure to make payments, entered a joint and several consent judgment in favor of US Acquisition for what, with

interest, had become well over $9 million.[1] The judgment debt remains unsatisfied. Mr. Shirazipour does not argue here that there was any jurisdictional shortcoming in the Florida court's entry of final judgment that reflects on the validity and enforceability of that judgment in Vermont.

In this case, while Mr. Shirazipour purports to not dispute that the Full Faith and Credit Clause requires this court to recognize the Florida judgment, he argues that this case should be dismissed because he does not have sufficient "minimum contacts" with Vermont to support this court's exercise of personal jurisdiction over him. He argues that he lacks such contacts because the residential real property he owns in Vermont is titled "by the entirety" with his wife, who is not a judgment debtor. He thus suggests that the enforcement action he anticipates from US Acquisition once the Florida judgment is domesticated will fail due to the nature of his title to the Vermont asset. He therefore surmises that this case, in which US Acquisition merely seeks domestication, should be dismissed. In other words, he argues that the anticipated merits of the eventual enforcement claim that US Acquisition will assert following domestication conclusively determines the issue of personal jurisdiction and domestication. There is no viable legal basis for this backward-looking extrapolation.

Analysis

"In our federal system, . . . the judgment of one state is not immediately enforceable by executive action in a sister state. Instead, the judgment must first be made a judgment in the state where it is to be enforced. This is done by bringing an action on the judgment in that state." Restatement (Second) of Judgments § 8 cmt. d; see generally, e.g., Hall v. McCormick, 154 Vt. 592 (1990) (deciding whether New York judgment is enforceable in Vermont). "Actions on judgments . . . shall be brought by filing a new and independent action on the judgment." 12 V.S.A. § 506 (emphasis added). Once the foreign judgment has been domesticated, "[t]he methods by which a sister State judgment is to be enforced are determined by the local law of the forum." Restatement (Second) of Conflict of Laws § 99; accord H & E Equipment Services, Inc. v. Cassani Electric, Inc., 2017 VT 17, ¶ 14, 204 Vt. 559.

This case is a Vermont action on a Florida judgment by which US Acquisition seeks to make the Florida judgment a Vermont judgment such that it may become able to enforce the judgment debt conclusively established in Florida in Vermont. That is the full scope of this case.

Mr. Shirazipour's argument regarding personal jurisdiction acknowledges the relevant passage from Shaffer v. Heitner, 433 U.S. 186 (1977), but substantially misunderstands it. In Shaffer, the Court extended the "fair play and substantial justice" inquiry of International Shoe Co. v. Washington, 326 U.S. 310 (1945), predicated on the defendant's qualitatively sufficient "minimum contacts" with the forum state, to *in rem* or *quasi in rem* cases in which personal jurisdiction had been predicated exclusively on the

[1] The court notes that the Florida final judgment is labeled a "consent final judgment upon default," meaning that it is a judgment on the merits by consent of the parties after a default of the payment obligations of the settlement agreement. It is not, however, a "default judgment." The amount of the judgment sought here is over $10 million due to the accrual of interest.

defendant's ownership of property within the forum *regardless of contacts sufficient under* International Shoe. In Shaffer itself, a Delaware court had issued an order temporarily seizing the defendant's forum-state property solely to force the out-of-state defendant to appear in Delaware to defend a case that had nothing to do with the disposition of the property seized.

Shaffer was addressing the *prejudgment* assertion of personal jurisdiction. In addressing one counterargument to the extension of International Shoe, the Court explained as follows:

> The primary rationale for treating the presence of property as a sufficient basis for jurisdiction to adjudicate claims over which the State would not have jurisdiction if International Shoe applied is that a wrongdoer "should not be able to avoid payment of his obligations by the expedient of removing his assets to a place where he is not subject to an in personam suit." This justification, however, does not explain why jurisdiction should be recognized without regard to whether the property is present in the State because of an effort to avoid the owner's obligations. Nor does it support jurisdiction to adjudicate the underlying claim. At most, it suggests that a State in which property is located should have jurisdiction to attach that property, by use of proper procedures, as security for a judgment being sought in a forum where the litigation can be maintained consistently with International Shoe. *Moreover, we know of nothing to justify the assumption that a debtor can avoid paying his obligations by removing his property to a State in which his creditor cannot obtain personal jurisdiction over him. The Full Faith and Credit Clause, after all, makes the valid in personam judgment of one State enforceable in all other States.*

Shaffer, 433 U.S. at 210 (citations and footnotes omitted; emphasis added). In other words, the minimum contacts analysis of International Shoe does not conflict with the enforcement of a foreign state judgment in a different state where property exists that might be reached to satisfy that judgment under the Full Faith and Credit Clause. Were there any confusion about that, the Court added in a footnote: "Once it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter." Id. n.36.

That fairness is demonstrated conclusively by the existence of the enforceable foreign judgment and the judgment debtor's property in the forum state and is commanded by the Full Faith and Credit Clause. Any principle to the contrary would go a long way towards unfairly insulating judgment debtors' interstate attempts at hiding assets in flagrant disregard of the Clause. Whether one views these circumstances as beyond personal jurisdiction or simply as a specialized application of the "minimum contacts" test is of little concern here. Either way, there is no lack of personal jurisdiction counseling in favor of dismissal of this case.

Virtually all courts that have addressed circumstances similar to this case since Shaffer, including the Vermont Supreme Court, have found no such jurisdictional defect.

See Berger v. Berger, 138 Vt. 367, 370 (1980); see also Lenchyshyn v. Pelko Elec., Inc., 723 N.Y.S.2d 285, 289–90 (2001) (collecting cases).

Mr. Shirazipour's further argument—that any attempt by US Acquisition to reach his Vermont property will fail due to the nature of his title (owned by the entirety with his wife), and thus there is no personal jurisdiction, and thus no basis for domestication—has no sound legal basis. Mr. Shirazipour is arguing that the merits of US Acquisition's enforcement claim (not asserted in this case) will fail because the Vermont property cannot be attached or otherwise reached to satisfy the judgment debt, and the anticipated future failure of that claim on the merits preemptively proves that there is no personal jurisdiction or basis for domestication now. This is simply wrong. The relative *merit* of a plaintiff's substantive claim has nothing to do with whether the court in which the claim is brought has subject matter or personal jurisdiction, both of which must exist *before* the merits ever should be addressed. Jurisdiction is "antecedent" to consideration of the merits, not the other way around. Kaplan v. Central Bank of the Islamic Republic of Iran, 896 F.3d 501, 510 (D.C. Cir. 2018) (quoting Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 101 (1998)).

Moreover, Mr. Shirazipour has come forward with no authority supporting his backward-looking argument in this specialized context, and the court is aware of none. Indeed, in Berger itself, "the only claim of 'minimum contacts' of the defendant with Vermont [was] his *undistributed* share in his mother's estate." Berger, 138 Vt. at 369 (emphasis added). Whether there eventually would have been any entitlement to a distribution, and thus anything to potentially satisfy the collateral judgment debt, did not factor into the analysis. It was irrelevant—the Berger Court never addressed the merits of any claim by the judgment creditor to such a distribution.

The court notes that, though neither party suggests that there is any risk of it here, if a foreign judgment were refused domestication simply because real property in the forum state could not *currently* be attached because it was owned by the entirety, then the judgment debtor could simply liquidate the property and abscond with the cash before the judgment creditor had any fair opportunity to *then* domesticate the foreign judgment and attempt to do anything about it. The court doubts that either the defendant's legitimate due process interests or the Full Faith and Credit Clause could properly be used to enable such a scenario.

Mr. Shirazipour raises no collateral attack on the Florida judgment that would present any impediment to domestication. As far as personal jurisdiction goes, it is enough that Mr. Shirazipour owns property in Vermont that US Acquisition may attempt to reach in satisfaction of the domesticated judgment.

There is no basis for dismissal on personal jurisdiction or domestication grounds. US Acquisition is entitled to summary judgment on the issue of domestication.

Order

For the foregoing reasons: (1) Mr. Shirazipour's motion to dismiss is *denied*, and (2) US Acquisition's motion for summary judgment is *granted*. Counsel for US Acquisition shall submit a form of judgment. V.R.C.P. 58(d).

SO ORDERED on this 13th day of August 2021.

Robert A. Mello,

Superior Judge