

**15<sup>TH</sup> Annual Collections and Creditors' Rights Course**  
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**Procedure for Enforcing Foreign State,  
Federal and Foreign Country Judgments in Texas**

by

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## **PREFACE**

### **Scope of Article**

This paper discusses basic concepts and recent case law regarding mechanisms for and considerations about domesticating a judgment from a court in another US state, a U.S. federal court, and a judgment from a foreign country in sections I and II, respectively.

### **Matters Excluded**

This paper will not compare the procedure for enforcing foreign judgments before and after the amendments in the 1980s to the Uniform Enforcement of Foreign Judgments and the Uniform Foreign Country Money Judgment Recognition Act. This paper will not directly address issues of comity as that could be the subject of an entire paper or textbook and would unnecessarily confuse the reader seeking practical tips for domesticating foreign judgments. This paper will also not address judgment lien priority or bankruptcy issues. Finally, this paper will not directly or separately discuss child support or alimony collection procedures, as those are beyond the experience of the author and he fears his dabbling in that area might be counterproductive to the practitioner.

## **I.**

### **ENFORCEMENT OF FOREIGN STATE, FEDERAL AND FOREIGN COUNTRY JUDGMENTS**

#### **A. Introduction**

Often a judgment creditor will call upon a Texas practitioner specializing in collection

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<sup>1</sup> Another set of statutes, Texas Civil Practice and Remedies Code sections 36.001-.008, govern

litigation to “domesticate” a judgment in Texas. That means the attorney is asked to turn a judgment from a U.S. federal court, a judgment from a court in another state, or a judgment from another country into an enforceable Texas state judgment. In sections I and II of this paper, we will discuss the mechanics of doing this, and survey the statutes and current case law controlling various aspects of this process. The paper will generally approach the topic from the viewpoint of the attorney receiving a call about domesticating a judgment or defending against the domestication of a judgment.

#### **B. What is a foreign judgment?**

The term “foreign judgment” means a decree or order of a court of the United States or of any other court that is entitled to full faith and credit in Texas. Tex. Civ. Prac. & Rem. Code Ann. § 35.001 (West 2015). Chapter 35 is usually cited as the “Uniform Enforcement of Foreign Judgments Act” or UEFJA (hereinafter “UEFJA”). § 35.002. UEFJA sets out a process for taking a judgment from a U.S. federal court or another state’s court and turning it into a Texas judgment.<sup>1</sup> That is, it sets out a process for “domesticating” the judgment. However, this is not the only process for domesticating a foreign state’s judgment. UEFJA expressly permits a judgment creditor to bring a common law action to enforce a judgment instead of proceeding under UEFJA. § 35.008.

UEFJA is not intended to give holders of foreign judgments greater rights than holders of domestic judgments. *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 736 (Tex. App.—Houston [14th Dist.] 2008, pet denied). Instead, UEFJA is intended primarily to allow a party with a favorable judgment an opportunity to obtain prompt

domestication in Texas of a judgment from another country.

relief. *Id* at 737.

### **C. Why domesticate a foreign judgment in Texas?**

When a creditor obtains a judgment in another state or in a federal court,<sup>2</sup> he or she may pick up the phone and call a Texas attorney to have the judgment domesticated in Texas. Why? The answer is that domesticating a judgment in Texas allows the judgment creditor access to all of the remedies in aid of judgment under Texas law. In order to abstract the judgment, record the judgment, obtain writs in aid of collection, etc., one must have a valid Texas judgment.

### **D. OK, I have a foreign judgment and I need to make it a Texas judgment. What do I do?**

Once you get hired to domesticate the foreign judgment, you have to decide whether to proceed under UEFJA or via a common law action to enforce a judgment. The common law action and its benefits and drawbacks are discussed in section I(K), *infra*, of this paper. Let us assume you start with UEFJA.<sup>3</sup> What is UEFJA? UEFJA codifies the Full Faith and Credit Clause of the United States Constitution.<sup>4</sup> Prior to UEFJA, a judgment would be filed in a new lawsuit, the purpose of which was to prove that the judgment was obtained properly. UEFJA somewhat simplifies the process by mandating the

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<sup>2</sup> Texas Civil Practice and Remedies Code section 35.001 defines a “foreign” judgment as a “judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state.” The act applies to all federal court judgments just as it applies to foreign state judgments. *Tanner v. McCarthy*, 274 S.W.3d 311, 320 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2008, no pet.); see *Navigant Consulting, Inc. v. Taulman*, No. 05-10-00775-CV, 2012 WL 219338, at \*3 (Tex. App.—Dallas Jan. 25, 2012, no pet.) (holding that the party opposing enforcement of the federal judgment did not present a prima facie case that the trial court lacked jurisdiction

adherence to certain technical steps. After following the proper steps, the judgment is “domesticated” and is treated as any other Texas judgment. It can then be abstracted and executed upon.

At least forty-four states, the District of Columbia, and the Virgin Islands have adopted UEFJA, which provides a speedy and economical method of complying with the U.S. Constitution’s requirement of giving full faith and credit to the judgments of other state courts. UNIF. FOREIGN JUDGMENTS ACT, prefatory note, 13 U.L.A. 150 (1986). When another state’s judgment or the judgment of a U.S. federal court is filed in Texas in compliance with UEFJA, the foreign judgment becomes enforceable as a Texas judgment. *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285, 286 (Tex.1996); *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 712 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1998, pet. denied).

### **1. Change in statute in 1985.**

It is important for the practitioner to review cases primarily from after 1985, as the current UEFJA was codified in Texas with an effective date of September 1, 1985. The old statute, Tex. Rev. Civ. Stat. Ann. arts. 2328b-5 and 2328b-6, was repealed by Acts 1985, 69th Leg., ch. 959, § 9(1), eff. Sept. 1, 1985. The differences in procedure prior to and after this effective date are beyond the scope

over the federal judgment). For a further discussion of federal judgments, see section I(L) of this paper, *infra*.

<sup>3</sup> Tex. Civ. Prac. & Rem. Code § 35.001 et seq. (West 2015).

<sup>4</sup> U.S. CONST. art. IV, § 1 (“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.”).

of this paper, though they are not tremendous.

## 2. How much time do I have to file?

When the attorney gets the assignment to domesticate a foreign judgment, he or she should first ask the client or referring attorney how old the judgment is. Under Texas Civil Practice and Remedies Code section 16.066(b) (West 2015), an action against a person who resides in this state for ten years prior to the action may not be brought on a foreign judgment rendered more than ten years before the commencement of the action in this state.<sup>5</sup> See also *McCoy v. Knobler*, 260 S.W.3d 179, 185-86 (Tex. App.—Dallas 2008, no pet.) (determining when a Tennessee judgment was rendered for the purposes of application of section 16.066(b)). In addition, an action on a foreign judgment is also barred in Texas if it is barred under the laws of the jurisdiction in which it was rendered. § 16.066(a).<sup>6</sup> That limitations section applies to all foreign judgments, including judgments from foreign states as well as foreign countries. § 16.066(c).

Thus, the attorney seeking to domesticate the judgment in Texas must first determine if they can file the judgment in Texas within 10 years of either (1) the date the judgment was “rendered” in the other state, or (2) the date

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<sup>5</sup> This limitation applies to both UEFJA actions and common law actions to enforce a judgment. *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 206 (Tex. App.—Amarillo 1994, writ denied) (citing *Collin Cty. Nat’l Bank v. Hughes*, 220 S.W. 767 (Tex. 1920) and *Ferguson-McKinney Dry Goods Co. v. Garrett*, 252 S.W. 738 (Tex. Comm’n App. 1923, judgm’t adopted)). For a discussion of the common law action to enforce a judgment, see section I(K) of this paper, *infra*.

<sup>6</sup> See *Omick v. Hoerchler*, 809 S.W.2d 758, 759 (Tex. App.—San Antonio 1991, writ denied) (noting that Texas Civil Practice and Remedies Code section 16.066(a) provides that an action on a foreign

on which the debtor began residing in Texas. See *Carter v. Jimerson*, 974 S.W.2d 415, 417 (Tex. App.—Dallas, 1998, no pet.). Further, the judgment creditor must determine if the action is barred by limitations in the jurisdiction where it was rendered. § 16.066(a). As for the latter determination, the practitioner would need to look at the individual state or country in which the judgment was rendered to find the analogous statute of limitations dealing with enforcement of judgments in that jurisdiction.

## 3. When is a judgment “rendered” for purposes of UEFJA and Texas Civil Practice and Remedies Code section 16.066 et seq.’s 10-year limitations period?

For purposes of applying the Texas statute of limitations to a foreign judgment sought to be enforced in Texas, the rendition date of the foreign judgment is a question of law for Texas courts. *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 209 (Tex. App.—Amarillo 1994, writ denied).

The ten year statute of limitations on actions to enforce foreign judgments applies equally to proceedings under UEFJA as it does to common-law actions for enforcement of

judgment is barred in this state if the action is barred under the laws of the jurisdiction where rendered). In *Omick*, the divorce decree was rendered in Missouri in October, 1979, and wife filed her action to enforce the foreign judgment in Texas on July 30, 1987, less than 10 years later. *Id.* Had the action been filed in Missouri instead of Texas, the action would not have been barred by any Missouri statute of limitation. If the action had been time-barred under Missouri law, the Texas court would not have the power to enforce that judgment. *Id.* The effect of section 16.066(a) is to make the limitation statute of the foreign state applicable to the Texas judgment. *Id.* (citing *Gould v. Awapara*, 365 S.W.2d 671, 673 (Tex. Civ. App.—Houston 1963, no writ)).

foreign judgments. That is, the filing of a foreign judgment under UEFJA is an enforcement “action” within the meaning of the limitations statute. *Id.* at 208. In this regard, *Lawrence Sys., Inc.* was a case of first impression, deciding for the first time that section 16.066(b) applied to actions brought under UEFJA. *Id.* at 206.

A judgment is rendered in Texas by the judicial act by which the court settles and declares the decision of the law upon the matters at issue. *Id.* at 209. A judgment is rendered when the decision is officially announced either in open court or by memorandum filed with the clerk. *Id.* (citing *Knox v. Long*, 257S.W.2d 289, 292 (Tex. 1953), *overruled on other grounds by*, 285 S.W.2d 184 (Tex. 1955)).

In Texas, judgments may be rendered orally or in writing. *Lawrence Sys., Inc.*, 880 S.W.2d at 209 (citing *Reese v. Piperi*, 534 S.W.2d 329, 330 (Tex. 1976); *Comet Aluminum Co. v. Dibrell*, 450 S.W.2d 56, 58-59 (Tex. 1970); and *Bridgman v. Moore*, 183 S.W.2d 705, 708 (Tex. 1944)). In *Lawrence Sys., Inc.*, the question was when the foreign state judgment was “rendered,” and the court examined the foreign state proceeding in light of the Texas law principles discussed above. *Lawrence Sys., Inc.*, 880 S.W.2d at 209-11. Therefore, *Lawrence Sys., Inc.* appears to be good authority for the proposition that the foreign state judgment is rendered when it is officially announced orally in open court, or in a written memorandum to the clerk. If you find that there is a strong possibility that the judgment

was “rendered” in the foreign state more than 10 years ago (or under a possibly shorter period as dictated by section 16.066(a)) then proceed with caution in accepting the assignment.<sup>7</sup> At a minimum, it is logical to conclude that the party seeking to show that the foreign state’s law is different than Texas’s law regarding rendering of a judgment would need to plead and prove the foreign state’s law. *Cf. Stine v. Koga*, 790 S.W.2d 412, 414 (Tex. App.—Beaumont 1990, writ *dism’d by agr.*) (discussing, in the full faith and credit context, the presumption that the foreign state’s law is identical to Texas law in the absence of pleading and proof to the contrary).

#### **4. Where in Texas do I domesticate the judgment?**

The next determination for the attorney, after he or she has decided that domestication in Texas is not time-barred, is venue. Where in Texas do I file?

As a matter of first impression, a divided Houston 14<sup>th</sup> Court of Appeals decided that state venue statutes apply to UEFJA. *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 741-42 (Tex. App. Houston [14th Dist.] 2008, *pet. denied*). Thus, a defendant who is a natural person is entitled to be sued in the county of his or her residence if the defendant is a natural person. Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(2) (West 2002) (*pending the Texas Supreme Court’s take on the matter*). Apparently, for purposes of the venue statute, according to the *Cantu* court, a

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<sup>7</sup> The practitioner should be careful not to confuse the issue of when a foreign state “renders” a judgment for the purpose of applying Texas Civil Practice and Remedies Code section 16.066(b) with the issue of when a domesticated judgment is “rendered” in Texas. A Texas judgment resulting from a judgment creditor’s filing of a foreign judgment pursuant to UEFJA was “rendered,” within the meaning of the statute making

a judgment dormant if a writ of execution is not issued within ten years after rendition of judgment, section 34.001(a), on the date when the foreign judgment was properly filed in Texas, not on the subsequent date when the judgment debtor’s motion for new trial was overruled by operation of law. *Ware v. Everest Grp., LLC*, 238 S.W.3d 855, 863-64 (Tex. App.—Dallas 2007, *pet. denied*).

motion to transfer venue can be filed as soon as the foreign judgment is properly filed in a Texas court. *See Cantu*, 251 S.W.3d at 741. The *Cantu* court noted that in *Moncrief v. Harvey*, No. 05-90-01116-CV, 1991 WL 258684, at \*2 (Tex. App.—Dallas Nov. 26, 1991, writ denied), the Dallas Court of Appeals held that the judgment debtor waived any venue challenge by appearing in the foreign state’s court. *Cantu*, 251 S.W.3d at 740. The *Cantu* court disagreed, pointing out that it would be hard to imagine predicting the need to challenge Dallas venue in a foreign state’s court. *Id.* Nor could the *Cantu* court discern how the judgment debtor could preserve error under those circumstances. *Id.* The practitioner would likely be safest following the Texas venue statutes in determining where to file the domestication action.

#### **5. Filing the domestication action.**

Once the attorney has determined that the domestication action would be timely, and has determined where to file it, what is involved in actually filing the domestication action? The mechanics of this process—assuming the attorney is proceeding under UEFJA, as opposed to a common-law action to enforce a judgment—are governed by Texas Civil Practice and Remedies Code sections 35.003(a) and 35.004.

The first thing to do is to file the judgment. How do I do that?

A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state.

Tex. Civ. Prac. & Rem. Code Ann. § 35.003(a) (West 2015).

#### **a. What is an “authenticated judgment?”**

What does “authenticated” mean in the context of section 35.003(a)? Generally speaking, to be entitled to full faith and credit in another state under 28 U.S.C. § 1738 (2012), the judgment must be attested to by the clerk of the court rendering the judgment and the seal of the court, if a seal exists, must be affixed. In addition, a certificate of a judge of the court that the attestation is in the proper form must accompany the judgment. *Med. Adm’rs, Inc. v. Koger Props., Inc.*, 668 S.W.2d 719, 721 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1983, no writ); *Paschall v. Geib*, 405 S.W.2d 385, 387 (Tex. Civ. App.—Dallas 1966, writ ref’d n.r.e.). However, section 1738 is not the exclusive procedure for authenticating the judgment of a foreign state. *Med. Adm’rs, Inc.*, 668 S.W.2d at 721. Evidence of judicial proceedings of another state may be admissible even if less is shown than required by the federal statute, as long as it conforms to the rules of evidence of the forum state. *Id.* (citing *Donald v. Jones*, 445 F.2d 601, 606 (5th Cir.), *cert. denied*, 404 U.S. 992 (1971)). In *Medical Administrators*, the court stated that it was acceptable that the deputy clerk, rather than the clerk, attested to the judgment. *Med. Adm’rs, Inc.*, 668 S.W.2d at 722.

A judgment was properly authenticated, for purposes of a subsequent action to enforce the New York judgment in Texas, where the clerk of the Supreme Court of New York represented that the copy was a full and correct copy of the order and judgment; the justice of Supreme Court certified that the clerk who subscribed her name to the exemplification was duly elected and sworn and also certified that the seal affixed to the exemplification was the seal of the New York

Supreme Court; and the clerk then certified that the Justice was the presiding Justice of the New York Supreme Court. *Harbison-Fischer Mfg. Co. v. Mohawk Data Scis. Corp.*, 823 S.W.2d 679, 684-85 (Tex. App.—Fort Worth 1991), writ granted, set aside, 840 S.W.2d 383 (Tex. 1992). In another case, a foreign divorce judgment providing for alimony was properly authenticated and was entitled to full faith and credit in Texas in an action to recover unpaid alimony installments, where the divorce judgment was “properly authenticated” by the clerk of the court issuing the judgment. *Garrett v. Garrett*, 858 S.W.2d 639, 641 (Tex. App.—Tyler 1993, no writ).

Authentication can also be waived if there is no objection made. *Bryant v. Shields, Britton & Fraser*, 930 S.W.2d 836, 841 (Tex. App.—Dallas 1996, writ denied). A foreign state's liquidation order for an insurance company was properly before the trial court for full faith and credit consideration in an action against the company, whether authenticated or not, because a certified copy of order was admitted into evidence without objection. *Id.* Moreover, waiver can also occur if the judgment debtor objects in the underlying lawsuit but fails to obtain a ruling on that objection. *Ward v. Hawkins*, 418 S.W.3d 815, 824-25 n.7 (Tex. App.—Dallas 2013, no pet.).

According to Houston collection-specialist attorney Riecke Baumann, the simplest and most straightforward procedure for authentication is under Texas Rules of Evidence 901(a), 901(b)(7) and 902(11) (hereinafter “TRE”). Obtain a certified copy of the judgment from the court clerk, but remember to check the certification to insure that it is self-authenticating in compliance with TRE 902. See *Sanders v. State*, 787 S.W.2d 435, 438 (Tex. App.—Houston [1st Dist.] 1990, pet. ref'd).

Finally, a copy of a judgment entered in another state may be authenticated via the testimony of a witness who has compared the copy to be admitted with the original record entry of the judgment. The offered copy would be admissible as an “examined copy.” *Schwartz v. Vecchiotti*, 529 S.W.2d 603, 604-05 (Tex. Civ. App.—Houston [1st Dist.] 1975, writ ref'd n.r.e.).

**b. What is a court of competent jurisdiction in the state under section 35.003(a)?**

A “court of competent jurisdiction,” for purposes of UEFJA section 35.003(a) is one having authority over the defendant, authority over the subject matter, and the power to enter the particular judgment rendered. *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 735 (Tex. App. Houston [14th Dist.] 2008, pet. denied) (citing *State v. Hall*, 794 S.W.2d 916, 919 (Tex. App.—Houston [1st Dist.] 1990), *aff'd*, 829 S.W.2d 184 (Tex. Crim. App. 1992)). Thus, the court of competent jurisdiction provision of section 35.003(a) appears limited only by the holding in *Cantu* regarding the venue discussed in section I(D)(4) of this paper, *supra*.

**c. What else do I need to file besides the authenticated copy of the foreign judgment? Affidavit; notice.**

Pursuant to Texas Civil Practice and Remedies Code section 35.004(a) (West 2015) (See attached FORM 1), the attorney must also file an affidavit with the Texas clerk. The affidavit must show the name and last known post office address of both the judgment creditor and the judgment debtor. *Id.* Additionally, the affidavit must show that

the facts reflect the personal knowledge of the affiant. *Tayob v. Quarterspot, Inc.*, No. 05-15-00897-CV, 2016 WL 7163842, at \*3 (Tex. App.—Dallas Nov. 28, 2016, no pet.) (reversing the trial court because the affidavit was deficient in that it “does not even purport to state the facts it contains are based on her personal knowledge and does not show any basis for her knowledge of the facts”).

Once that is accomplished, the attorney shall promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address provided for the judgment debtor in subsection (a), *supra*. § 35.004(b)(1).<sup>8</sup> (See attached FORM 2). Thereafter, the attorney must file something called a “proof of mailing” with the clerk of the court. § 35.004(b)(2). (See attached FORM 3). This proof of mailing must include the name and post office address of the judgment creditor,

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<sup>8</sup> The Texas Legislature, in the 82<sup>nd</sup> Regular Session, passed S.B. 428 and the Governor signed it on May 17, 2011. The law became effective immediately. The bill did two things: First, it repealed Texas Civil Practice and Remedies Code section 35.005 et seq. in its entirety. Second, it amended section 35.004 to make sending the notice to the judgment debtor the sole responsibility of the attorney for the judgment creditor. It added section 35.004(d) to require the clerk to note the filing of a proof of mailing by the judgment creditor or its attorney on the docket. Previously, section 35.004 et seq. required the clerk to mail the notice to the judgment debtor, and section 35.005 et seq. provided an option for the attorney to do so. The bill analysis states that the change “eases the administrative workload of court clerks by requiring the creditor, rather than the clerk of the court, to mail notice to the judgment debtor.” *Legislation, TEXAS LEGISLATURE* ONLINE, <http://www.capitol.state.tx.us/tlodocs/82R/analysis/html/SB00428F.htm> (last visited Apr. 5, 2017).

<sup>9</sup> *In re Williams*, 378 S.W.3d 503 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2012) (orig. proceeding) is instructive here. The judgment debtor contested the judgment by claiming he did not receive the required notice despite a notation of mailing by the clerk. *Id.* at 506. Under UEFJA, the court of appeals held that the trial court was empowered to resolve this factual

as well as that of his or her attorney, if any. § 35.004(c). The clerk must, upon receipt of proof of mailing under subsection (b), note the mailing on the docket. § 35.004(d).<sup>9</sup> The notice sent by the attorney must include the name and address of the judgment creditor as well as for any Texas attorney of the judgment creditor. § 35.004(c).<sup>10</sup>

**d. What happens if I do not file the affidavit or give notice?**

What happens if I do not file the affidavit at the time I file the authenticated foreign state judgment? Failure to file the affidavit is not a jurisdictional defect. Although UEFJA specifically requires that an affidavit be filed at the time that an authenticated foreign judgment is filed for the enforcement, it does not follow that the failure to comply presents

dispute in favor of the notation on the docket. *Id.* The record on mandamus did NOT contain a certified copy of the court’s docket sheet, and thus relator (the judgment debtor) did not meet his burden to show entitlement to mandamus relief. *Id.*

<sup>10</sup> Before the change that made it mandatory for the judgment creditor or his or her attorney to send the notice, my friend Riecke Baumann had previously written, as a suggestion for this paper,

Always send the notice, unless you watch the clerk do it, and check the envelope, green card, etc., which is unlikely. Make sure the envelope says, ‘Address Correction Requested.’ The statute does not require certified mail, but most judges consider Tex. R. Civ. P. 21a to apply, and require certified mail. Serving, ‘both ways,’ i.e., certified and first class, keeps the judge on your side when the defendant claims lack of notice. If you rely upon some poor clerk to prepare the notice, the task will, invariably, fall upon someone with two days’ experience, it’ll be done wrong, and you’ll be sued for wrongful execution, garnishment, etc. (*cf.* Murphy’s Law, ad nauseum).

Now there is no longer an option; the judgment creditor or his or her attorney must send the notice.

a jurisdictional, rather than a procedural, bar to the domestication of a foreign judgment. *Tanner v. McCarthy*, 274 S.W.3d 311, 316 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2008, no pet.) (citing *Igal v. Brightstar Info. Tech. Grp., Inc.*, 250 S.W.3d 78, 83-84 (Tex. 2008), *superseded by statute on other grounds*, Act of May 12, 2009, 2009 Tex. Gen. Laws 21 (codified at Tex. Lab. Code. Ann. § 61.052(b-1) (West 2015))).

In another case, the court stated that the requirement of an affidavit showing the name and last known post office address of the judgment debtor and judgment creditor is an essential element of UEFJA, which, when successfully completed, transforms the judgment of a foreign state into a final Texas judgment for which enforcement will lie. *Wu v. Walnut Equip. Leasing Co.*, 909 S.W.2d 273, 278 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1995), *rev'd*, 920 S.W.2d 285 (Tex. 1996). However, a foreign judgment without this affidavit ceases to have the same effect as a judgment of the court in which it was filed. Thus, while the failure to file the affidavit together with the authenticated judgment under Texas Civil Practice and Remedies Code sections 35.003(a) and 35.004(a) is not jurisdictional, until it is fixed, the judgment is not considered filed or domesticated in Texas. Moreover, in *Tanner*, the court stated that the requirement for enforcing a foreign judgment under UEFJA that an affidavit containing specific information be filed at the same time as the authenticated foreign judgment is distinct from the requirement that notice be given to the judgment debtor. *Tanner*, 274 S.W.3d at 316. The judgment creditor must file the required *affidavit* at the same time as the authenticated foreign

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<sup>11</sup> See *supra* note 8.

<sup>12</sup> The Supreme Court reversed *Jack H. Brown & Co.* based upon Tex. R. Civ. P. 28, which is informally known as the “trade name rule.” Under the trade name

judgment in order to start the 30 day clock under UEFJA. *Id.*

Likewise, although failure to serve notice to debtors at their last known address was a technical violation of UEFJA, mailing of the notice was not a jurisdictional act, and the judgment debtor suffered no prejudice because, at the time notice was received, he had the same remedies available that he had at the time notice of filing was improperly served. *Tri-Steel Structures, Inc. v. Hackman*, 883 S.W.2d 391, 394-95 (Tex. App.—Fort Worth 1994, writ denied). Moreover, UEFJA does not require *proof* that the judgment debtor received the notice of filing of the foreign judgment, nor does it require that the judgment debtor *actually receive* notice, but only requires that notice be sent by regular mail in one of two ways. *Id.* at 394 (emphasis added). In *Tri-Steel*, the court held that the notice requirements of UEFJA were followed where both the clerk of the court and the judgment creditor filed proof of mailing of the notice of filing of foreign judgment to judgment debtor, notwithstanding the fact that notice was not received. *Id.* at 395-96. Remember, after the repeal of § 35.005 there is only one way to send notice; notice must be sent by the judgment creditor or his attorney.<sup>11</sup>

In *Jack H. Brown & Co. v. Nw. Sign Co.*, 665 S.W.2d 219, 221-22 (Tex. App.—Dallas 1984), *rev'd*, 680 S.W.2d 808 (Tex. 1984)<sup>12</sup> the court denied relief to the judgment creditor because the affidavit filed with the judgment mentioned the wrong judgment debtor and none other. The court stated:

although the statute provides that the

rule, the Supreme Court found factually that the defendants had been served under their trade name and thus, plaintiff’s filings were proper. However, the principle still holds that one must ensure the affidavit and judgment are consistent.

foreign judgment has the same effect as a judgment of the court in which it is filed, it has that effect only when the judgment complies with the statutory requirements of authentication and the filing of an affidavit naming the parties and giving their addresses. A judgment debtor cannot be expected to respond and take such measures as may be available to him to avoid enforcement of a foreign judgment unless the statutory requirements have been met.

*Id.* Thus, failure to file the section 35.004(a) affidavit at the time of filing will prevent enforcement of the judgment, but it may be corrected. Moreover, UEFJA only requires proof of mailing of the notice required in newly amended section 35.004 et seq.,<sup>13</sup> and not proof of receipt.

## **6. What is the effect of filing the judgment?**

Now, let us assume the attorney is at the clerk's office, ready to file the foreign judgment and affidavit; or, better yet, he or she is filing it electronically. The filing of a final,<sup>14</sup> valid, and subsisting foreign judgment not only initiates enforcement proceedings, but also automatically creates an enforceable Texas state judgment. *Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.—San Antonio 1996, writ denied). Other courts have described this principle in the following ways:

When a judgment creditor proceeds under UEFJA, the filing of a foreign judgment comprises both plaintiff's original petition and final judgment. *Clamon v. Delong*, 477 S.W.3d 823, 826 (Tex. App.—Fort Worth

2015, no pet.); *Walnut Equip. Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996). When a judgment creditor chooses to proceed under UEFJA, filing of the foreign judgment acts as though the plaintiff filed his or her original petition and final judgment simultaneously; the filing initiates the enforcement proceeding, but it also instantly creates an enforceable Texas judgment. *Wu*, 909 S.W.2d at 277 (citing 5 ROY W. McDONALD, TEXAS CIVIL PRACTICE § 32:8, at 463 (1992)), *rev'd*, *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285 (Tex. 1996). Filing a foreign judgment under UEFJA has the effect of initiating the enforcement proceeding and rendering a final Texas judgment simultaneously. *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 208 (Tex. App.—Amarillo 1994, writ denied) (citing *Moncrief v. Harvey*, 805 S.W.2d 20, 23 (Tex. App.—Dallas 1991, no writ)). Where a judgment creditor chooses to proceed under UEFJA, the filing of the properly authenticated foreign judgment comprises both a plaintiff's original petition and a final judgment. *Wolf v. Andreas*, 276 S.W.3d 23, 26 (Tex. App.—El Paso 2008, pet. withdrawn); *BancorpSouth Bank v. Prevot*, 256 S.W.3d 719, 722 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2008, no pet.) (same); *Ware v. Everest Grp., LLC*, 238 S.W.3d 855, 863 (Tex. App.—Dallas 2007, pet. denied) (same); *Brown's, Inc. v. Modern Welding Co.*, 54 S.W.3d 450, 453 (Tex. App.—Corpus Christi 2001, no pet.) (same); *Dear v. Russo*, 973 S.W.2d 445, 446 (Tex. App.—Dallas 1998, no pet.) (same).

## **7. How is the foreign judgment treated upon filing?**

Now that the attorney is about to file the

will be discussed in this paper in section I(D)(10), *infra*.

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<sup>13</sup> See *supra* note 8.

<sup>14</sup> The finality requirement of the foreign judgment

judgment and affidavit pursuant to UEFJA, how will the clerk treat the filing?

First, the judgment creditor must, at the time of filing, pay to the clerk of the court the amount as otherwise provided by law for filing suit in the courts of Texas. Tex. Civ. Prac. & Rem. Code Ann. § 35.007(a) & (b) (West 2015)). In addition, the judgment creditor must pay any other fees provided for by law for other enforcement proceedings as provided by law for judgments of the courts of Texas. § 35.007(c).

Thereafter, the clerk is required to treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed. § 35.003(b).

Moreover, the foreign state judgment has the same effect, and is subject to the same procedures, defenses and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed. *BancorpSouth Bank*, 256 S.W.3d at 723; *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 484 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2004, pet. denied). By complying with UEFJA, a judgment creditor could use the same procedures for enforcing or satisfying a foreign judgment as are available for enforcement or satisfaction of a judgment of a Texas court.<sup>15</sup> *Hennessy v. Marshall*, 682 S.W.2d 340, 343 (Tex. App.—Dallas 1984,

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<sup>15</sup> The section of UEFJA providing that a filed foreign judgment is subject to the same procedures, defenses, and proceedings for vacating a Texas judgment, Tex. Civ. Prac. & Rem. Code Ann § 35.003(c), refers to the procedural devices available to vacate a Texas judgment. It does not mean that the foreign judgment can be vacated for any reason merely sufficient to support a traditional motion for new trial. *Mindis Metals, Inc.*, 132 S.W.3d at 485-86; 48 TEX. JUR. 3D JUDGMENTS § 185 (2014) (noting that the trial court's only alternatives, when a duly authenticated foreign judgment is filed in Texas, are to enforce the judgment or declare it void for want of jurisdiction). For a

no writ) (discussing predecessor statute).

### **8. Who has the initial burden of proof upon filing? Does the burden shift?**

Now that the judgment is filed, what burden does the judgment creditor have? The judgment creditor has the initial burden of showing that the judgment appears to be a valid, final and subsisting judgment. *H. Heller & Co. v. Louisiana-Pacific Corp.*, 209 S.W.3d 844, 849 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2006, pet. denied) (citing *Mindis Metals*, 132 S.W.3d at 484).<sup>16</sup> Then the burden shifts to the judgment debtor to show that the foreign state lacked jurisdiction over the debtor or the judgment, or that the judgment is otherwise not entitled to full faith and credit. *H. Heller & Co.*, 209 S.W.3d at 849.

Where a foreign judgment appears to be a final, valid, and subsisting judgment, its filing makes a prima facie case for the party seeking to enforce it. The burden then shifts to the party resisting judgment to establish that the judgment is not final and subsisting. *Dear v. Russo*, 973 S.W.2d 445, 446 (Tex. App.—Dallas 1998, no pet.); *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 712 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1998, pet. denied); *Russo v. Dear*, 105 S.W.3d 43, 46-47 (Tex. App.—Dallas 2003, pet. denied); *BancorpSouth*, 256

discussion of setting aside a foreign judgment under jurisdictional or full faith and credit grounds, see sections I(E)(2) & (3) of this paper, *infra*.

<sup>16</sup> For example, in one case, a wife who sought to enforce a Florida divorce decree in Texas had the burden of showing that the decree was a final judgment, where it was apparent from the face of the decree that the Florida court had reserved jurisdiction over attorneys' fees and court costs. *Myers v. Ribble*, 796 S.W.2d 222, 223 (Tex. App.—Dallas 1990, no writ).

S.W.3d at 722-23. Once the judgment creditor makes the prima facie case, the judgment debtor has the burden of showing that the judgment is interlocutory or subject to modification under the law of the rendering state, that the rendering court lacked jurisdiction, or that the judgment was procured by fraud or is penal in nature. *Russo*, 105 S.W.3d at 46.

See also *Knighton v. Int'l Bus. Mach. Corp.*, 856 S.W.2d 206, 209 (Tex. App.—Houston [1st Dist.] 1993, writ denied); *State ex. rel. Clanton v. Clanton*, 807 S.W.2d 844, 846 (Tex. App.—Houston [14th Dist.] 1991, no writ); *Karstetter v. Voss*, 184 S.W.3d 396, 401 (Tex. App.—Dallas 2006, no pet.); *Jonsson v. Rand Racing, LLC*, 270 S.W.3d 320, 323-24 (Tex. App.—Dallas 2008, no pet.) (applying the same burden shifting rule even in the case of a default judgment in the foreign state); *Boyes v. Morris Polich & Purdy, LLP*, 169 S.W.3d 448, 455 (Tex. App.—El Paso 2005, no pet.).

Under the Full Faith and Credit Clause of the United States Constitution, the burden of showing the invalidity of a foreign judgment rests upon the one attacking that judgment. *Trinity Capital Corp. v. Briones*, 847 S.W.2d 324, 326 (Tex. App.—El Paso 1993, no writ). Due process mandates that the judgment debtor be given the opportunity to rebut the presumption that the foreign judgment is entitled to full faith and credit. *Tri-Steel Structures, Inc. v. Hackman*, 883 S.W.2d 391, 396 (Tex. App.—Fort Worth, 1994, writ denied). Pursuant to the full faith and credit doctrine, a Texas default judgment was presumptively valid for purposes of its domestication in Colorado. *Caldwell v. Barnes*, 941 S.W.2d 182, 188 (Tex. App.—Corpus Christi 1996), *rev'd*, 975 S.W.2d 535 (Tex. 1998). Under UEFJA, when a judgment creditor introduces a properly authenticated copy of a foreign judgment, the burden of establishing why it should not be given full

faith and credit shifts to the judgment debtor. *Ward*, 418 S.W.3d at 821; *Markham v. Diversified Land & Expl. Co.*, 973 S.W.2d 437, 439 (Tex. App.—Austin 1998, pet denied). The fact that a foreign judgment was taken by default does not defeat its presumption of validity. *Markham*, 973 S.W.2d at 439. See also *Ward*, 418 S.W.3d at 821; *Cash Register Sales & Servs. of Houston, Inc. v. Copelco Capital, Inc.*, 62 S.W.3d 278, 280-81 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (holding that judgments not rendered on the merits, such as default judgments, are entitled to full faith and credit). Recitals in a foreign judgment are presumed to be valid and the attacker has the burden to produce evidence showing a lack of jurisdiction. *Markham*, 973 S.W.2d at 439. See also *Ward*, 418 S.W.3d at 825.

## **9. Is the shifting burden constitutional?**

Yes. It has been held that this presumption of validity of the judgment, and the shift in the burden to the judgment debtor to prove that the judgment is not entitled to full faith and credit is constitutional. *Markham v. Diversified Land & Expl. Co.*, 973 S.W.2d 437, 440 (Tex. App.—Austin 1998, pet. denied) (citing *Walnut Equip. Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996)).

## **10. What constitutes a final, valid, and subsisting judgment?**

In order to be entitled to full faith and credit, the foreign state judgment must, at a minimum, be final, as opposed to interlocutory.

The Full Faith and Credit Clause of the United States Constitution, U.S. CONST. art. IV, § 1, requires that a court give full faith and credit to the public acts, records, and

judicial proceedings of every other state. *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791, 794 (Tex. 1992) . One exception to full faith and credit is where the foreign judgment is interlocutory in the foreign state. *Id.* The law of the foreign state determines whether it is final or interlocutory. *Id.*; *Mindis Metals, Inc.*, 132 S.W.3d at 484; *Dear*, 973 S.W.2d at 447 (stating that the Texas court examining the finality of the foreign state judgment cannot rely on Texas law as it relates to the requirement for final judgments or any presumption that Texas law is the same as the foreign state’s law);<sup>17</sup> *Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.—San Antonio 1996, writ denied); RESTATEMENT (SECOND) CONFLICTS OF LAW § 92 (1971). When a judgment creditor files an authenticated copy of a foreign judgment that appears to be a final, valid and subsisting judgment, the judgment creditor makes a prima facie case for the judgment’s enforcement that may only be overcome by **clear and convincing** evidence to the contrary. *Mindis Metals, Inc.*, 132 S.W.3d at 484.

In *Med. Adm’rs, Inc.*, 668 S.W.2d 719, 722 (Tex. App.—Houston [1st Dist.] 1983, no writ), the court stated the general rule that a judgment leaving any of the issues in the case open for later decision is not final, but interlocutory, and thus not appealable. Nevertheless, a judgment may be final even though further proceedings incidental to its proper execution are provided for on the judgment’s face. *Id.* For example, *Medical*

*Administrators* found the judgment at issue was final even though the Florida trial court reserved jurisdiction “to consider additional attorney’s fees incurred in supplementary proceedings to effectuate execution and collection.” *Id.* The finality of a judgment or order is controlled by its substance, not by its label, or title, or form. *Mindis Metals, Inc.*, 132 S.W.2d at 482.

Following the same logic but yielding a different result, a Hawaiian foreclosure deficiency judgment against condominium purchasers was not final, and thus was not entitled to full faith and credit in Texas. *Stine v. Koga*, 790 S.W.2d 412, 414-15 (Tex. App.—Beaumont 1990, writ dismissed by agr.). The judgment was not enforceable under UEFJA because the purchasers’ counterclaim against the vendor under the Hawaii Uniform Deceptive Trade Practice—Consumer Protection Act was not addressed in the vendor’s Hawaii motion for summary judgment. *Id.* Therefore, the court found, the matter presumably was not disposed of by summary judgment and was still pending. *Id.* (noting that to be entitled to full faith and credit, a judgment must be final, valid and subsisting in the state of rendition, and must be conclusive of the merits of the case) (citing RESTATEMENT (SECOND) CONFLICT OF LAWS § 107 (1971)).

In contrast, a domestication order directing the clerk of court to issue all writs or processes requested by a wife to enforce a Florida divorce decree, as if it were the same as a judgment of a Texas court, did not

apparently no pleading or proof of the foreign state’s law. *Id.* See also *Stine v. Koga*, 790 S.W.2d 412, 414 (Tex. App.—Beaumont, 1990, writ dismissed) (stating that in the absence of pleading and proof of the law of the foreign state, it is presumed that the law of the foreign state is identical to Texas). Thus, despite the language of *Dear*, if the foreign state’s law is better than Texas law, the attorney should be sure to plead and prove it, lest a presumption arise that it is identical to Texas law for full faith and credit purposes.

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<sup>17</sup> But see *Mindis Metals, Inc.*, 132 S.W.3d at 487. Contrary to the rule stated in *Dear*, the *Mindis* court presumed that Georgia law was the same as Texas law in determining whether a Georgia judgment was final. The *Mindis* court reasoned that the judgment must be final because, as in Texas, an interlocutory judgment could not be enforced by execution, and an appealing party would not be ordered to file a supersedeas bond for an interlocutory judgment. *Mindis* may be distinguishable from *Dear*, however, in that there was

establish that the Florida decree was a final judgment. *Myers v. Ribble*, 796 S.W.2d 222, 224 (Tex. App.—Dallas 1990, no writ). Unlike the facts in *Medical Administrators*, here, the foreign court reserved jurisdiction “over attorneys’ fees and costs incurred in connection with the primary dispute.” *Id.* Thus, it appears the key distinction is whether jurisdiction is reserved for incidental matters or matters connected to the primary dispute. Because the matter was connected to the primary dispute in *Ribble*, it merely transformed a non-final Florida judgment into a non-final Texas judgment. *Id.* at 224-25.

Another case involved an Arkansas judgment against a defendant. *State First Nat’l Bank of Texarkana, Texarkana, Ark. v. Mollenhour*, 817 S.W.2d 59, 59 (Tex. 1991). In the underlying Arkansas proceeding, a second defendant was discharged in bankruptcy. *Id.* From what the author can tell, the bankrupt defendant did not appear for trial, but was apparently not expressly dismissed from the lawsuit. The non-bankrupt defendant appealed the judgment and it was affirmed by the Arkansas Court of Appeals. *Id.* The Texas Supreme Court held that the judgment was “final” under Arkansas law, and thus, final for purposes of UEFJA. *Id.*<sup>18</sup>

#### **11. It also has to be a “judgment” and it has to actually be filed.**

The foreign state judgment also has to be an actual judgment, as opposed to something that is not a judgment. For example, a transcript filed by a foreign judgment creditor with the clerk of court in an attempt to domesticate a judgment was not a “judgment” for purposes of UEFJA. *Love v. Moreland*, 280 S.W.3d 334, 337 (Tex.

App.—Amarillo 2008, no pet.). In order to gain the same recognition and effect as a judgment issued by a Texas court, an authenticated foreign judgment had to be filed with the clerk of the Texas court, and the transcript merely contained a description of some items that most likely would be included in a judgment, such as name of parties and amount owed. *Id.* The transcript omitted many elemental items of a judgment, such as the name or signature of the judge who executed the decree and verbiage manifesting the adjudication of rights involved. *Id.* In another case, an authenticated copy of an abstract of a foreign alimony judgment did not meet the requirements of UEFJA that a “copy” of the foreign judgment be filed in a court of competent jurisdiction in the state. *Wolfram v. Wolfram*, 165 S.W.3d 755, 759 (Tex. App.—San Antonio 2005, no pet.). The abstract of the judgment was not identical to the original judgment and was not even signed by the judge of the rendering court. *Id.*

Similarly, in *Res. Health Servs., Inc. v. Acucare Health Strategies, Inc.*, No. 14-06-00849-CV, 2007 WL 4200587, at \*1-2 (Tex. App.—Houston [14<sup>th</sup> Dist.] Nov. 29, 2007, no pet.), the court held that because the judgment creditor only filed the affidavit and did not actually file a judgment, the domestication proceeding had not commenced. Therefore, the court of appeals was required to dismiss the appeal for lack of jurisdiction. *Id.* That is, because the UEFJA proceeding had not actually *commenced* in the trial court yet, the thirty day clock for perfecting the appeal had not started to run, so there was no appellate jurisdiction yet.

#### **E. Defending against a domesticated judgment in Texas.**

with myriad arguments by the judgment debtor as to why the Oklahoma “order of separate maintenance” in a divorce proceeding was not final).

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<sup>18</sup> *But see In re Marriage of Dalton*, 348 S.W.3d 290, 296-98 (Tex. App.—Tyler 2011, no pet.) (dispensing

In this section of the paper, we will assume that a facially final, valid, and subsisting judgment has been filed in Texas. As the attorney hired to defend against the judgment, what are some areas of attack? How should you approach the assignment?<sup>19</sup>

### **1. Personal jurisdiction in Texas is not an avenue of attack.**

Before we discuss the principal lines of assault—that the foreign court lacked jurisdiction to render the judgment, and that the judgment is not otherwise entitled to full faith and credit in Texas—let us discuss at least one avenue that appears *not* to exist. One might think that if your client has no connection with Texas, you could file a special appearance challenging personal jurisdiction in Texas. More than likely, you cannot. There appears to be no requirement of personal jurisdiction in Texas under UEFJA. In a case of first impression, the Fourteenth Court of Appeals so held, under the Uniform Foreign Country Money-Judgment Recognition Act, in *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476, 479-80 (Tex. App.—Houston [14th Dist.] 2008, pet. denied). The court principally relied upon a U.S. Supreme Court case, *Shaffer v. Heitner*, 433 U.S. 186, 210, n. 36 (1977), which dealt with recognition of a judgment from one state to another, but found its reasoning equally applicable to the

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<sup>19</sup> See section I(G), *infra*, for a discussion of the procedural mechanism for challenging the domesticated judgment: the “motion to vacate.”

<sup>20</sup> As an aside, in speaking with the Harris County, Texas trial court judge on the *Haaksman* case, he informed the author that the court of appeals required him to draft findings of fact and conclusions of law on his special appearance ruling over his protest in light of his own conclusion that personal jurisdiction was not an issue under the foreign judgment collection proceeding before him. He was, of course, proven

foreign country money judgment at issue in *Haaksman*. *Haaksman*, 260 S.W.3d at 480.<sup>20</sup> See also *Beluga Chartering B.V. v. Timber S.A.*, 294 S.W.3d 300, 305 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2009, no pet.) (affirming *Haaksman*’s holding that personal jurisdiction in Texas is not a basis for contesting recognition of a foreign country judgment). Moreover, in *Haaksman*, the court also held that under the foreign country money judgment statute, there was no requirement that the judgment debtor even maintain property in Texas. *Haaksman*, 260 S.W.3d at 481. The court went on to hold that the judgment creditor could domesticate the judgment in Texas and wait until the judgment debtor appeared to be maintaining assets in Texas. *Id.* It seems that another court looking at the jurisdictional issue will reach the same conclusion—that a special appearance motion in the Texas court is a nullity in contesting a statutory UEFJA proceeding.<sup>21</sup>

### **2. Subject matter or personal jurisdiction of the foreign state’s court.**

We have just seen in the preceding section that the failure of the Texas court to have personal jurisdiction over the judgment debtor does not impede the domestication process in the Texas court. That is a different issue than whether or not the foreign state had jurisdiction over the judgment debtor or the

right, but only after having done the work. See also *Harbison-Fischer Mfg. Co. v. Mohawk Data Scis. Corp.*, 823 S.W.2d 679, 686 (Tex. App.—Fort Worth 1991), *set aside*, 840 S.W.2d 383 (Tex. 1992) (holding that there was no requirement for the trial court to make findings of fact and conclusions of law in a domestication proceeding).

<sup>21</sup> It is not clear whether full faith and credit would make personal jurisdiction of the Texas court over the judgment debtor in a common-law enforcement action irrelevant as well.

subject matter of the dispute. The failure of the foreign state's court to have jurisdiction over the *judgment debtor* or the *subject matter* of the dispute is one of the two main avenues for attacking the domestication of a judgment in Texas, and is discussed in this section. The other avenue is the contention that the judgment is not entitled to full faith and credit in Texas, but the two attacks are different.

Texas courts can make reasonable inquiry into the judgment of a foreign state and jurisdiction over the subject matter or parties. *Ward*, 418 S.W.3d at 824; *Karstetter v. Voss*, 184 S.W.3d 396, 401 (Tex. App.—Dallas 2006, no pet.); 34 TEX. JUR. 3d, ENFORCEMENT OF JUDGMENTS § 228 (2010).

Judgment without jurisdiction is void. It is not entitled to recognition in any state, and it is subject to collateral attack. *Wu v. Walnut Equip. Leasing Co.*, 909 S.W.2d 273, 281 (Tex. App.—Houston [14th Dist.] 1995), *rev'd*, *Walnut Equip. Leasing Co, Inc. v. Wu*, 920 S.W.2d 285 (Tex. 1996). A collateral attack on a judgment is only successful where the judgment is established as void. *Karstetter*, 184 S.W.3d at 402. A judgment is void where the rendering court “lacked (1) jurisdiction over the parties or property, (2) jurisdiction over the subject matter, (3) jurisdiction to enter the particular judgment, or (4) the capacity to act as a court.” *Id.* (citing *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985)).

There is not much law on the issue of the foreign state court's lack of jurisdiction over the **subject matter** of the lawsuit in the UEFJA context. In *Moncrief*, the court stated that the parties opposing domestication of the

judgment in Texas bore “the burden of attacking the judgment and establishing any reason why it should not be given full faith and credit.”<sup>22</sup> *Moncrief*, 1991 WL 258684, at \*3 (citing *Minuteman Press Int'l, Inc. v. Sparks*, 782 S.W.2d 339, 340 (Tex. App.—Fort Worth 1989, no writ). In that case, the plaintiff was attempting to domesticate a Wyoming judgment. *Id.* The court noted that “Wyoming courts have the duty to consider whether subject matter jurisdiction exists even where parties have not raised the jurisdictional question.” *Id.* However, the court concluded, because the Wyoming Supreme Court in the underlying lawsuit had not denied review for lack of subject matter jurisdiction, the Texas court was required to presume that the Wyoming court had properly exercised subject matter jurisdiction. *Id.*

The practitioner defending against domesticating a foreign state's judgment should determine if there was a defect in the subject matter jurisdiction of the foreign state's court. Perhaps there was an issue with the amount in controversy in the trial court which would have deprived that court of subject matter jurisdiction, such as something analogous to a judgment in a Texas county court at law with an upper jurisdictional limit of \$200,000.

As for **personal jurisdiction**, a foreign state's law governs the validity of service of process in that foreign jurisdiction. *Mayfield v. Dean Witter Fin. Servs., Inc.*, 894 S.W.2d 502, 506 (Tex. App.—Austin 1995, writ denied). The judgment debtor may challenge the jurisdiction of the foreign state by demonstrating that: (1) service of process was inadequate under the rules of the foreign

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<sup>22</sup> Unfortunately, and confusingly, courts tend to refer to challenges to the foreign state court's jurisdiction as challenges to the full faith and credit to be accorded

that state's judgment. As shown below in section I(E)(3) of this paper, jurisdictional challenges are a mere subset of full faith and credit challenges.

state, or (2) the foreign state's exercise of *in personam* jurisdiction offends due process of law. *Markham v. Diversified Land & Expl. Co.*, 973 S.W.2d 437, 439 (Tex. App.—Austin 1998, pet. denied). *See also H. Heller & Co.*, 209 S.W.3d at 849.

However, upon such an attack, whether it is an attack on the subject matter or personal jurisdiction of the foreign state court, a Texas court has no authority to vacate a foreign default judgment. The trial court's only alternatives, when a duly authenticated foreign judgment is filed in Texas, are to enforce the judgment or to declare the judgment void for want of jurisdiction. *Corporate Leasing Int'l, Inc. v. Bridewell*, 896 S.W.2d 419, 422 (Tex. App.—Waco 1995, no writ.). The court may not grant a new trial which puts the parties back where they were before trial in the foreign state. *Trinity Capital Corp. v. Briones*, 847 S.W.2d 324, 327-28 (Tex. App.—El Paso, 1993, no writ).

For example, a Texas court found that a Nevada court had personal jurisdiction over the defendant which would support the judgment creditor's attempt to enforce the foreign judgment in Texas. The defendant filed an answer in Nevada and the defendant waived a jurisdictional challenge to the denial of the motion to quash service by failing to file an immediate appeal. *Boyes v. Morris Polich & Purdy, LLP*, 169 S.W.3d 448, 454 (Tex. App.—El Paso 2005, no pet.). *See also Reading & Bates Constr. Co.*, 976 S.W.2d at 714-15.

*Ward v. Hawkins* presents a more recent analysis of personal jurisdiction. *Ward*, 418 S.W.3d at 815. In *Ward*, an attorney challenged a Kansas default judgment against him filed on behalf of a former client. *Id.* The attorney alleged that the Kansas court lacked personal jurisdiction because he had never been to Kansas, he did not own property in

Kansas, and he did not maintain a bank account in Kansas or have an office there. *Id.* at 827. The court, however, found that the Texas attorney had sufficient minimum contacts with Kansas, where the lawyer provided advice and legal services to the client in connection with the client's Kansas dispute. *Id.* at 829. Moreover, the attorney communicated with opposing counsel on behalf of the client, drafted a response to the Kansas lawsuit filed against his client and requested and was granted a continuance in the client's Kansas lawsuit. *Id.* Thus, a lawyer's affirmative actions in the forum state on behalf of a client's case may establish sufficient minimum contacts with the forum state for purposes of personal jurisdiction.

In *Studebaker Worthington Leasing Corp. v. Tex. Shutters Corp.*, 243 S.W.3d 737, 740 (Tex. App.—Houston [14th Dist.] 2007, no pet.), the court restated the rule that it was required to apply the law of the foreign state in determining the validity of the foreign judgment. The court found that the foreign state's law upheld contractual forum selection clauses like the one at issue, and found it to be a valid waiver of due process jurisdictional requirements. *Id.* The court in *Studebaker* held that because the foreign state's assertion of personal jurisdiction did not clearly violate federal due process requirements, the Texas court should enforce the judgment. *Id.* at 740-41. *See also Caldwell v. Barnes*, 941 S.W.2d 182, 188 (Tex. App.—Corpus Christi 1996), *rev'd*, 975 S.W.2d 535 (Tex. 1998) (holding that when a foreign judgment is domesticated in Texas, the judgment debtor may challenge the foreign state's exercise of jurisdiction over him).

Along the same lines, a default judgment entered in Washington State confirming an arbitration award was void and not enforceable in Texas where the judgment debtor showed that they did not receive

personal service of notice of the confirmation hearing as required by Washington law. *Brown's, Inc.*, 54 S.W.3d at 454.

The author expects there to be more litigation in Texas over whether there was personal jurisdiction in the forum state due to *Daimler AG v. Bauman* limiting the grounds for asserting general jurisdiction. 134 S. Ct. 746, 761 (2014) (rejecting the expansive approach of the Ninth Circuit which found general jurisdiction under an agency theory based on the contacts of Daimler's subsidiary with the forum state).

### 3. Full faith and credit challenge by judgment debtor.

A judgment debtor can mount a challenge to the full faith and credit presumption given to a foreign state's judgment based upon certain exceptions to the full faith and credit clause beyond the lack of subject matter or personal jurisdiction (discussed in the previous section). Due process mandates that the debtor be given opportunity to rebut the presumption that the foreign judgment is entitled to full faith and credit. *Tri-Steel Structures, Inc. v. Hackman*, 883 S.W.2d 391, 396 (Tex. App.—Fort Worth 1994, writ denied);<sup>23</sup> *Schwartz v. F.M.I. Props. Corp.*, 714 S.W.2d 97, 100 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1986, writ ref'd n.r.e.).

<sup>23</sup> This case also discusses the requirements of mailing notice of the filing of the foreign judgment in Texas under Texas Civil Practice and Remedies Code sections 35.004(b) & (c) and 35.005 (a) & (b), analyzed in section I(D)(5)(c) of this paper, *supra*. Note that section 35.005 was repealed in its entirety and section 34.004 et seq. was amended to require that the judgment creditor or his or her attorney, only, send the notice. The clerk no longer does. *See supra*, note 8.

<sup>24</sup> *See, e.g., In re Guardianship of Parker*, 329 S.W.3d 97, 102-03 (Tex. App.—Amarillo 2010, pet. denied) (holding that enforcing Oklahoma court's appointment of a certain guardian, which is ordinarily something that both Oklahoma and Texas courts can and do

The judgment debtor's right to present defenses to the enforcement of a foreign judgment is implied. There is no express provision or procedural mechanism for such a challenge. *Schwartz*, 714 S.W.2d at 100.

The burden is on the judgment debtor opposing enforcement of the foreign state judgment in Texas to establish a recognized exception to full faith and credit **by clear and convincing evidence**. *Knighon*, 856 S.W.2d at 209; *Enviropower, LLC v. Bear, Stearns & Co.*, 265 S.W.3d 16, 20 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2008, no pet.).

As the idea of an “exception” to full faith and credit discussed in *Knighon* suggests, the full faith and credit clause is not “iron clad.” *Reading & Bates Constr. Co.*, 976 S.W.2d at 713 (quoting *Milwaukee Cty. v. M.E. White Co.*, 296 U.S. 268 (1935)). The following exceptions to full faith and credit are well established: (1) when a decree is interlocutory; (2) when a decree is subject to modification under the law of the rendering state;<sup>24</sup> (3) when the rendering court lacks jurisdiction;<sup>25</sup> (4) when the judgment was procured by fraud; (5) when limitations has expired. *Id.*<sup>26</sup> These are fact questions, not questions of law. *Id.* Further:

[a] judgment rendered in one State of

modify, would involve improper interference with an important interest of Texas and was not entitled to full faith and credit). That is, the UEFJA did not trump the statutory provision governing the acceptance of a foreign guardianship. *Id.* at 102 (citing Tex. Prob. Code Ann. § 761 (Vernon Supp. 2010)).

<sup>25</sup> *See* section I(E)(2) of this paper, *supra*.

<sup>26</sup> *See Enviropower, LLC v. Bear, Stearns & Co.*, 265 S.W.3d 16, 20 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2008, no pet.) (noting that the “statute of limitations” exception refers to Texas Civil Practice & Remedies Code section 16.066 (West 2015), which is discussed in section I(D)(2) of this paper, *supra*).

the United States need not be recognized or enforced in a sister State if such recognition or enforcement is not required by the national policy of full faith and credit because it would involve an improper interference with important interests of the sister State.

*Id.* (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 103 reporter’s note (1971) & cmt. a (1989)). This last exception is a question of law, not a question of fact. *Id.*

Another basis for non-entitlement to full faith and credit seems to be where a statute of one state is “penal” in nature. *See Enviorpower*, 265 S.W.3d at 20. In that case, the court of appeals held, in a case of first impression, that “death penalty sanctions” are not the sort of “criminal or quasi-criminal statutes [which] are the only types of penal statutes that fall under the exception to the Full Faith & Credit Clause.” *Id.* at 21 (discussing *Huntington v. Attrill*, 146 U.S. 657 (1892)).<sup>27</sup> This decision appears to be a question of law, not fact, for the trial court.

To avoid the presumption of full faith and credit by alleging fraud in the procurement of the foreign state judgment, the proof must be clear, specific, and tending to establish the

fraud. *Navarro v. San Remo Mfg., Inc.*, No. 05-04-01511-CV, 2006 WL 10093, at \*2 (Tex. App.—Dallas Jan. 3, 2006, no pet.). The foreign state’s judgment is entitled to the presumption of validity in the absence of clear and convincing proof to the contrary. *Id.* For example, in *Navarro* a judgment obtained by a foreign corporation was not shown to have been obtained by fraud. *Id.* at \*3. In that case the judgment debtor argued that the corporation committed fraud by pleading that it did business in Wisconsin, when it lacked a certificate of authority to transact business in Wisconsin as required by law. *Id.* at \*2. In reviewing the Wisconsin statute, the Texas court found that “transact business” was narrowly defined by statute and that some business activities did not fall under the definition. *Id.* at \*3. Because the judgment debtor failed to show that the corporation’s activities fell within the definition as to require a certificate, the evidence fell short of the clear and convincing standard. *Id.*

The issue, then, is not establishing a meritorious defense to the subject matter of the underlying lawsuit, but to the foreign state judgment’s claim to full faith and credit under UEFJA. *Markham*, 973 S.W.2d at 441.<sup>28</sup> In a collateral attack on a foreign state’s judgment which is sought to be enforced

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<sup>27</sup> *Huntington v. Attrill* lays out the test for determining whether a law is penal in nature. *Id.* Although “penal” has a broad definition, only the narrower definition of that which is labeled a crime or misdemeanor applies here. *Id.* Thus, the key distinction is whether the purpose of a law “is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act.” *Id.* The former are considered crimes and misdemeanors and constitute an exception to the Full Faith and Credit Clause, the latter do not. *Id.* In applying *Huntington* to death penalty sanctions, *Enviorpower* found that “while death penalty sanctions serve a public purpose of deterrence, they are not, therefore, “penal” in nature because they do not punish ‘a breach and violation of public rights and duties.’” *Id.* at 21.

<sup>28</sup> Thus, the motion for new trial analysis of *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124, 126 (Tex. 1939), the “*Craddock*” standard, is not a permissible avenue for challenging the sister state court’s judgment’s entitlement to full faith and credit in Texas. *Counsel Fin. Servs., LLC v. David McQuade Leibowitz, P.C.*, 311 S.W.3d 45, 54 (Tex. App.—San Antonio 2010, pet. denied). This is because, among other issues, a “*Craddock*” challenge attacks the underlying judgment by asserting the existence of a meritorious defense to the original lawsuit. *Id.* Under UEFJA, a foreign state judgment cannot be vacated on simply any basis that would support a traditional motion for new trial. *Id.* Rather, the judgment debtor must show that by clear and convincing evidence, the judgment is not entitled to full faith and credit in Texas. *Id.* (citing *Mindis Metals*, 132 S.W.3d at 485).

pursuant to the Full Faith and Credit Clause, no defense may be set up that goes to the merits of the original controversy. *Russo*, 105 S.W.3d at 46-47. Thus, in that case, the client's attacks against the private investigator's facially final and valid foreign judgment on claims of libel, slander, and interference with business, in the form of allegations that collateral estoppel and *res judicata* barred the judgment and that the judgment was based on insufficient evidence, did not fall within one of the exceptions to the Full Faith and Credit Clause. Instead, it impermissibly attempted to collaterally attack the merits of the judgment. *Id.* at 46. Therefore, Texas was required to give the judgment full faith and credit. *Id.*

When a party is attempting to enforce a foreign judgment, the trial court's scope of inquiry into the foreign court's jurisdiction is limited to whether questions of jurisdiction were fully and fairly litigated and finally decided. *Id.* at 47. Thus, because the foreign state court already ruled on the judgment debtor's special appearance in that court, the matter was not available to be litigated in the Texas court. *Id.*<sup>29</sup>

Under the Full Faith and Credit Clause, a valid judgment from one state is to be enforced in other states regardless of the laws or public policy of the other states. *Reading & Bates Constr. Co.*, 976 S.W.2d at 712. As a result, the well-established public policy in Texas of not recognizing or enforcing rights arising from gambling transactions could not form a basis to permanently enjoin a Nevada corporation from enforcing a Nevada judgment against a Texas resident. *GNLV Corp. v. Jackson*, 736 S.W.2d 893, 894 (Tex. App.—Waco 1987, writ denied). Texas cannot deny full faith and credit to another state's judgment solely on the ground that it

offends Texas public policy where a judgment is sought to be enforced. *Id.*

#### 4. No relitigation of issues.

The filing of a foreign state judgment in Texas under UEFJA does not give the judgment debtor a second bite at the apple. He or she may not relitigate matters that were previously decided by the foreign state court. UEFJA section 35.003(c), the section of UEFJA providing that a filed foreign judgment is subject to the same procedures, defenses, and proceedings for vacating a Texas judgment, refers to the procedural devices available to vacate a Texas judgment. It does not mean that the foreign judgment can be vacated for any reason sufficient to support a traditional motion for new trial. *Mindis Metals*, 132 S.W.3d at 485-86 & n.7; *Counsel Fin. Servs.*, 311 S.W.3d at 54. The attack via a motion to vacate is a collateral attack, and the merits of the original controversy cannot be challenged. *Mindis Metals*, 132 S.W.3d at 486 n.7.

UEFJA cannot be read so as to allow any of the panoply of relief twice; thus, any relief sought and denied in the foreign state cannot again be sought in Texas when the foreign judgment was tendered for local filing and execution. *Merritt v. Harless*, 685 S.W.2d 708, 710-11 (Tex. App.—Dallas 1984, no writ). See also *Russo*, 105 S.W.3d at 47 (holding that because the issue of personal jurisdiction had been fully litigated in the foreign state court by way of the judgment debtor's special appearance in that foreign state's court, it could not be relitigated in the Texas court).

#### 5. Effect of domesticated judgment on strangers to judgment? Does the misnomer

inability to relitigate matters, see section I(E)(4) of this paper, *infra*.

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<sup>29</sup> For a further discussion of the Texas court's

### **doctrine apply?**

Once the judgment is domesticated, who is bound by it? The answer is that only those who were defendants in the foreign state suit, who are parties to the judgment, are bound by the domesticated judgment.

For example, a domesticated judgment is not binding on a non-party in Texas who was not a party to the underlying litigation in the foreign state. *Tenn. ex. rel. Sizemore v. Sur. Bank*, 200 F.3d 373, 381 (5<sup>th</sup> Cir. 2000) (holding that full faith and credit does not compel a Texas court to defer to a foreign state's exercise of jurisdiction where the jurisdictional issue was neither fully and fairly litigated, and did not involve the same parties as the Texas litigation).

In *Wolfram v. Wolfram*, 165 S.W.3d 755, 759-60 (Tex. App.—San Antonio 2005, no pet.), the court held that the judgment creditor may only proceed against the original judgment debtor in a UEFJA domestication proceeding. In that case, the court held that the ex-wife could not seek to enforce the amount of a judgment in a direct suit under the Uniform Fraudulent Transfer Act against her ex-husband's surviving spouse who was trustee of a revocable living trust created after the ex-wife obtained a foreign judgment. *Id.* The ex-husband was the only party defendant to the foreign suit and, therefore, the only judgment debtor to the ex-wife. *Id.* Thus, enforcement of the judgment could not have been executed against the surviving spouse. *Id.*

However, while the domesticated judgment only applies to a judgment debtor from the underlying foreign state judgment, the misnomer doctrine will apply to the UEFJA domestication process. *Charles Brown, LLP v. Lanier Worldwide, Inc.*, 124 S.W.3d 883, 895 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2004, no pet.) (misnomer doctrine is applicable

when dealing with enforcement of a foreign judgment where the issue was naming a judgment debtor as “P.L.L.P.” instead of “L.L.P.”); *Hill Country Spring Water of Tex., Inc. v. Krug*, 773 S.W.2d 637, 640-41 (Tex. App.—San Antonio 1989, writ denied) .

### **F. Judgment lien from domesticated judgment created as with any other Texas judgment.**

Under UEFJA, a domesticated foreign judgment is treated in the same manner and given the same effect as a Texas judgment. The act does not provide for the creation or the enforcement of liens, except to state in section 35.003(c) that it is subject to the same procedures as a Texas judgment. So, to create a valid judgment lien, the judgment creditor must have the clerk issue a judgment abstract that complies with relevant statutes. *Citicorp Real Estate, Inc. v. Banque Arabe Internationale D'Investissement*, 747 S.W.2d 926, 930 (Tex. App.—Dallas 1988, writ denied).

### **G. Time for challenging domestication under UEFJA.**

Once the judgment creditor has filed the final, valid, and subsisting judgment, what procedure does the judgment debtor employ to raise jurisdictional and full faith and credit challenges? He or she files a motion contesting enforcement of a foreign judgment, usually referred to as a “motion to vacate.” This device operates much like a motion for new trial. *Jonsson v. Rand Racing, LLC*, 270 S.W.3d 320, 324 (Tex. App.—Dallas 2008, no pet.); *Mindis Metals, Inc.*, 132 S.W.3d at 483; *Moncrief*, 805 S.W.2d at 23. There are sound policy reasons for treating the motion to contest enforcement as a motion for new trial. First, if no new trial motion could be filed, then the appeal would have to be perfected within 30 days. *Id.* at 23-24. Yet, the judgment debtor must also, prior

to appeal, present any complaints about the foreign court's judgment with the trial court or risk having waived those complaints on appeal. *Id.* 30 days is a very short window to file a contest to enforcement, get it ruled on, and perfect an appeal.<sup>30</sup> Thus, the court will treat the contest to enforcement as a motion for new trial, extending the court's plenary power and the appellate timetable.

A motion to contest the enforcement of a foreign judgment under UEFJA—a “motion to vacate”—must be filed within 30 days or the court loses its plenary power. *Malone v. Emmert Indus. Corp.*, 858 S.W.2d 547, 548 (Tex. App.—Houston [14th Dist.] 1993, writ denied) (citing Tex. Civ. Prac. & Rem. Code Ann. § 35.003(c)); Tex. R. Civ. P. 329b. *See also Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.—San Antonio 1996, writ denied) (holding that the same timetable for a default judgment and a motion for new trial applies to a domesticated judgment under UEFJA). When a foreign judgment is acted on outside of the 30 day window of plenary power of the trial court, the action is a nullity. *Bahr*, 928 S.W.2d at 100.<sup>31</sup> In *BancorpSouth Bank*, a foreign judgment that was final and valid, and which was filed in the state about four months before it was attacked was outside of the trial court's plenary power, and therefore the trial court improperly addressed the foreign judgment and the appellate court lacked jurisdiction to address the merits of the judgment. *BancorpSouth Bank*, 256 S.W.3d at 724.

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<sup>30</sup> In *Tracy v. Top Drawer Med. Art, Inc.*, No. 08-02-00273-CV, 2003 WL 22361477, at \*3 (Tex. App.—El Paso, Oct. 16, 2003, no pet.), the judgment debtor complained that treating a foreign judgment filed in Texas like a motion for new trial violated his due process rights. The court disagreed, holding that the procedure did not deprive the debtor of his right to challenge the validity of the foreign judgment, but rather, merely set forth the appellate timetable for doing so. *Id.*

However, just as with any other final judgment in Texas, the trial court had jurisdiction to enforce the foreign judgment that a judgment creditor filed in Texas pursuant to UEFJA, though the trial court's plenary power over the judgment had expired, because no party filed a post-judgment motion attacking the judgment. *Id.* at 729. Nor did anyone file a bill of review. *Id.* Thus, the trial court retained statutory and inherent authority to enforce the judgment. *Id.* at 724, 729. As a result, “the trial court ha[d] no alternative but to enforce the judgment . . .” *Id.* at 729.

In contrast, if the foreign judgment is not properly filed, the 30 day clock will not start. For example, where a foreign judgment, originally filed, did not comply with UEFJA requirements pertaining to authentication and filing of the affidavit naming parties and giving their addresses, the second filing of the same judgment was the original filing and the time limits for appeal and writ of error were counted from date of the second filing. *Jack H. Brown & Co.*, 665 S.W.2d at 222.<sup>32</sup>

Further, where the trial court's orders vacating the foreign judgment creditor's original notices of filing of foreign judgment had the effect of rendering those filings nullities, the judgment debtor's motions to contest the enforcement of the judgments filed prior to the amended notices of judgment were premature, and the trial court did not have to rule on them to start the appellate clock. *Moncrief*, 805 S.W.2d at 24-

<sup>31</sup> Similarly, with respect to appellate timetables, in *Watel v. Dumann Realty, LLC*, No. 05-12-00938-CV, 2012 WL 5458204, at \*1 (Tex. App.—Dallas Nov. 8, 2012, pet. denied), the court held that a notice of appeal filed more than eight months after judgment was not timely and deprived the appellate court of jurisdiction.

<sup>32</sup> *See supra* note 12.

25. That clock started running upon the filing of the amended notices of judgment. *Id.* Be careful what you ask for and when you get it as the attorney for a judgment debtor in a UEFJA matter.

An order vacating a domesticated foreign judgment was a final and appealable order disposing of all claims and parties. *Mindis Metals, Inc.*, 132 S.W.3d at 482. Therefore, an appeal, rather than a mandamus proceeding, was the appropriate vehicle for reviewing the order. *Id.* The trial court in *Mindis Metals, Inc.* ruled that the judgment was not entitled to full faith and credit. *Id.* at 483. That judgment was not enforceable in Texas, and that filing of judgment was of no consequence or effect, and once the court ruled that the judgment was not enforceable in Texas, it terminated the outstanding claims and rights of all parties to the proceeding

under UEFJA. *Id.* That is, the granting of a motion to contest enforcement is not like a motion for new trial in the sense that the granting of a motion for new trial is interlocutory (because the parties essentially start over with nothing resolved). *Id.* Here, upon ruling that the judgment could not be enforced in Texas, there remained nothing for the court to adjudicate. *Id.* There was no “new” trial to be had because there was no prior trial—just the filing of the foreign judgment. *Id.* In *Mindis Metals, Inc.*, because the denial of the contest to enforcement left nothing to be done, it had the effect of being a final, appealable order.<sup>33</sup>

A judgment creditor may appeal an adverse ruling on a motion to contest enforcement. *Id.* at 484. Likewise, a judgment debtor may appeal an adverse ruling on a motion to contest enforcement as well. *Id.* However, in

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<sup>33</sup> In another way, it may be important to know whether the motion to vacate is like a motion for new trial or not. That is the issue of whether it is necessary to pay the same *fee* as for a motion for new trial. Tex. Gov’t Code Ann. § 51.317(b)(2) (West 2013) states that a fee is to be collected for the filing of a “motion for new trial.” The author recently considered whether such a fee should have been paid for a defendant’s motion to vacate. The author could not find any authority on point. However, the defendant in that case quickly paid the fee during the time when the author’s court retained plenary power over the matter and before the motion was overruled by operation of law, so the issue was, in the court’s view, mooted. *Cf. Tate v. E.I. DuPont de Nemours & Co.*, 934 S.W.2d 83, 84 (Tex. 1996) (holding that the appellate time table was extended where the movant failed to pay the filing fee until after the motion for new trial was overruled by operation of law but before the trial court lost plenary jurisdiction). Out of curiosity, though, the author called a knowledgeable person at the Harris County District Clerk’s office, and that person indicated that in her considerable experience, that office did not collect the motion for new trial fee for filings titled “Motion to Vacate.” Prudent practitioners may seek to pay this fee out of an abundance of caution, or, conversely, challenge the ability of the court to hear the motion if no fee is timely paid if they want to be

more aggressive. There is no indication what the court of appeals would say if no such fee was ever paid and it was challenged for the first time after the motion was overruled by operation of law or otherwise, or after the trial court lost plenary power.

Likewise, it is not clear whether a motion to vacate hearing would allow for live testimony. Texas Civil Practice & Remedies Code section 36.0044(e), dealing with the recognition or nonrecognition of foreign *country* judgments, allows for an evidentiary hearing at the trial court’s discretion. The UEFJA scheme, however, is silent on the nature of the hearing. In *Browning v. Paiz*, 586 S.W.2d 670, 679 (Tex. Civ. App.—Corpus Christi 1979, writ ref’d n.r.e.), a non-UEFJA case, the court held that “[e]vidence offered on motion for new trial which was offered or available during the course of the trial will not be received or considered in the granting of a new trial.” In the UEFJA context, of course, the motion to vacate hearing is the defendant’s first opportunity to offer any evidence on whether the judgment should be given full faith and credit. The issues relevant to demonstrating that a judgment is not entitled to full faith and credit are mostly fact questions. *Reading & Bates Constr. Co.*, 976 S.W.2d at 713. In the author’s view, as long as live testimony is relevant to a basis for challenging the foreign state judgment, the trial court should have discretion to entertain it.

the latter case, the judgment will stay in place during the appeal. *Id.*

Finally, a judgment debtor who does not avail himself of any of the rules and procedures available to attack the domesticated judgment at the trial level, will not be saved by filing a formal bill of exception. *Clamon*, 477 S.W.3d at 827. A formal bill of exception allows the complaining party to put forth evidence excluded from the record so that the appellate court can assess whether the trial court “erred in excluding it or erred in ruling in some way materially related to the evidence.” *Id.* at 826. A formal bill of exception must be presented to the trial court for approval and signature. *Id.* In *Clamon*, the appellate court reviewed the trial court’s refusal to sign the judgment debtor’s formal bill of exception where he sought to introduce the pleadings of the foreign forum. *Id.* at 826-27. The court found that the ruling was proper because the judgment debtor never put forth any evidence at trial nor took advantage of any of the procedures available to attack the judgment. *Id.* at 827. Rather, he sought to admit the foreign state’s pleadings into the record as a means of attacking personal jurisdiction. *Id.* Thus, a formal bill of exception will not save a judgment debtor who has failed to raise an attack on the judgment by other means.

#### **H. Staying enforcement of the foreign judgment.**

Once the foreign judgment is domesticated—filed with the affidavit and notice in Texas, and mailed to the judgment debtor—the judgment debtor may respond and seek to stay enforcement of the foreign judgment in Texas pursuant to Texas Civil Practice and Remedies Code section 35.006 (West 2015).

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<sup>34</sup> Tex. Civ. Prac. & Rem. Code Ann. § 52.006 (West 2015) (dealing with supersedeas bonds).

Section 35.006(a) states:

If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, that the time for taking an appeal has not expired, or that a stay of execution has been granted, has been requested, or will be requested, and proves that the judgment debtor has furnished or will furnish the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

Section 35.006(b) states:

If the judgment debtor shows the court a ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period and require the same security for suspending enforcement of the judgment that is required in this state in accordance with Section 52.006.<sup>34</sup>

It is important, though, that the debtor cite the statute (§ 35.006) governing the stay of enforcement in Texas. *Counsel Fin. Servs.*, 311 S.W.3d at 57 (holding that the failure to cite section 35.006 when seeking to stop enforcement of the foreign judgment in the trial court was fatal to judgment debtor’s request for remand to seek a stay).<sup>35</sup> More importantly, of course, is that in seeking a stay, the judgment debtor must demonstrate that it has furnished or will furnish the security for the satisfaction of the foreign state judgment as required by the foreign

<sup>35</sup> This result seems ever so slightly harsh.

state's law. *Id.* (noting that the judgment debtor had testified in the Texas trial court that he had not sought to post a supersedeas bond in either the New York or Texas courts).

Under section 35.006(b), one approach that hasn't worked is for the attorney defending the judgment debtor to pursue a counterclaim and injunctive relief in the Texas court. In *Mathis v. Nathanson*, No. 03-03-00123-CV, 2004 WL 162965, at \*1 (Tex. App.—Austin Jan. 29, 2004, pet. denied)<sup>36</sup>, the judgment debtor filed a declaratory judgment counterclaim seeking to show that he was entitled to an offset of the foreign judgment amount. He further sought a stay under Texas Civil Practice and Remedies Code section 35.006(b) which allows a stay if the judgment debtor can show a ground on which enforcement of a judgment of this state would be stayed. *Id.* His theory was that he was entitled to an injunction under section 65.011 and that an injunction is a ground on which enforcement of a judgment in this state would be stayed. *Id.* That is, he attempted to show “he would be entitled to a stay if the judgment had been entered in Texas, rather than in Colorado.” *Id.*

The court denied the stay and the injunction. *Id.* at \*3. It reasoned that because there was no evidence that the debtor ever raised the issue of indemnity before in the foreign state's court, the “district court could reasonably have believed that whether Mathis waived his right to assert indemnity would be an issue in the declaratory judgment action.” *Id.* Moreover, even if the debtor showed a probable right to prevail on his counterclaim for offset, he failed to show an inadequate legal remedy or irreparable harm from delay in selling his property or costs to regain the assets collected by the creditor, and

thus was not entitled to an injunction. *Id.* The court cited the district court's opinion that it did not believe section 35.006 was intended for use in this context, but that it was “meant to apply in situations in which a party contested the validity of the foreign judgment.” *Id.* at \*2. Since *Mathis*, no other case has interpreted section 35.006(b). Despite this ruling, the artful practitioner might be able to effect a stay of the enforcement proceeding by coupling injunctive relief with a motion to stay under section 35.006 on the basis of alleged irreparable harm if the matter is finalized without an adjudication of the counterclaim for offset.

### I. Standard of review

It is not obvious what standards of review apply to different parts of the UEFJA domestication process. First, the abuse of discretion standard applies to determine if the court correctly denied a motion to vacate the filed foreign judgment, just as with review of the court's ruling on a motion for new trial. *Mindis Metals, Inc.*, 132 S.W.3d at 485. However, in the full faith and credit analysis, the trial court is required to give full faith and credit to the foreign state's judgment unless the judgment debtor produces *clear and convincing* evidence entitling him or her to an exception to that rule. *Id.* The court of appeals, then, stated it would review whether the trial court misapplied the law to the established facts in concluding that the judgment debtor established an exception to full faith and credit. *Id.* at 486. It appears that despite the lengthy discussion, the court in *Mindis Metals, Inc.* nevertheless applied an abuse of discretion standard in the end.

In *Tanner v. McCarthy*, 274 S.W.3d 311, 314

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<sup>36</sup> *Mathis* was decided under the original version of section 35.006 prior to the changes made in 2003. *Id.*

at n.2. However, it appears that the court's holding would have been the same under either version of the statute.

(Tex. App.—Houston [1<sup>st</sup> Dist.] 2008, no pet.), the judgment debtor brought a motion to dismiss the domestication of the foreign judgment brought under UEFJA. The court held that the standard of review of the denial of the motion to dismiss would be the abuse of discretion standard. *Id.* (citing *Enviropower, LLC v. Bear, Stearns & Co.*, 265 S.W.3d 16, 19 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2008, pet. denied)).

*But see Bryant v. Shields, Britton & Fraser*, 930 S.W.2d 836, 841 (Tex. App.—Dallas 1996, writ denied) (holding that the review of the denial of full faith and credit was *de novo*); *Rumpf v. Rumpf*, 237 S.W.2d 669, 673 (Tex. Civ. App.—Dallas 1951) (Bond, C.J., dissenting) (contending that whether Minnesota divorce decree was enforceable by Texas courts presented a question of law under the full faith and credit provision of the United States Constitution), *rev'd*, 242 S.W.2d 416, 416-17 (Tex. 1951) (reaching the same conclusion as that expressed by the dissent). This issue is as clear as mud. Therefore, the attorney should plead the standard most favorable to their client in any appeal, as support for both the abuse of discretion and the *de novo* standards of review exists in the case law.

#### **J. Bill of review is available to judgment debtor after 30 day plenary jurisdiction expires**

Once the trial court loses its plenary power after thirty days, it can no longer vacate the final domesticated foreign judgment except by bill of review. Tex. R. Civ. P. 329b(f);

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<sup>37</sup> Because the trial court lacked jurisdiction to consider the motion, the trial court's order denying the motion to vacate was void. *Bahar*, 2009 WL 2341864, at \*4. The court vacated the trial court's order denying the motion to vacate and dismissed Bahar's issues pertaining to the motion to vacate. *Id.*

*BancorpSouth Bank*, 256 S.W.3d at 729.

In *Bahar v. Lyon Fin. Servs., Inc.*, No. 03-07-00469-CV, 2009 WL 2341864, at \*1 (Tex. App.—Austin July 28, 2009, pet. denied), Bahar waited almost a year after Lyon Financial filed a Minnesota default judgment in Texas before filing a motion to vacate the judgment. The trial court denied the motion after concluding that it did not have jurisdiction to consider the motion to vacate as its plenary power had expired and “because Bahar’s contention that the judgment was void for lack of service of process could only be brought by bill of review.” *Id.*

On appeal, Bahar argued that the trial court erred in finding it did not have jurisdiction to entertain her motion to vacate even though the court had lost its plenary power because the failure to serve her with process in Minnesota made the judgment void and subject to a collateral attack, which she argues could be asserted at any time. *Id.* at \*2. The court disagreed, finding that Bahar’s motion to vacate was a direct attack on the judgment and concluded, based in part on the Texas Supreme Court’s construction of Texas Rule of Civil Procedure 329b(f), that “Bahar’s exclusive avenue for having the judgment vacated or set aside in this direct attack was to file a bill of review.” *Id.*<sup>37</sup>

And, where a trial court voids its order vacating a foreign judgment after finding that it had acted outside its plenary jurisdiction, the judgment debtors are not denied due process, as they may then pursue a bill of review. *Malone*, 858 S.W.2d at 548-49.<sup>38</sup>

<sup>38</sup> Provided, however, they do so within the four year statute of limitations for filing a bill of review. Tex. Civ. Prac. & Rem. Code Ann. § 16.051 (West 2015); *In re Williams*, 378 S.W.3d 503, 507 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2012) (orig. proceeding).

### K. Optional common-law procedure under section 35.008

It is not necessary to proceed under the rubric of UEFJA in order to enforce a foreign state's judgment. Texas Civil Practice and Remedies Code section 35.008 expressly recognizes that "[a] judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this chapter." *Wolf v. Andreas*, 276 S.W.3d 23, 25-26 (Tex. App.—El Paso 2008, pet withdrawn). Texas law provides more than one method to present an order or judgment from another state to Texas court for enforcement under the full faith and credit clause. *Walnut Equip. Leasing Co.*, 920 S.W.2d at 286;<sup>39</sup> *Bryant*, 930 S.W.2d at 841; *Lawrence Sys., Inc.*, 880 S.W.2d at 206; *Brown's, Inc.*, 54 S.W.3d at 453; *Charles Brown, LLP*, 124 S.W.3d at 902.

A valid judgment rendered by a court of another state is conclusive on the merits in the courts of Texas when it is made the basis of an action in Texas.

47 TEX. JUR. 3D JUDGMENTS § 63 (2014) (citing *Cornell v. Cornell*, 413 S.W.2d 385, 387 (Tex. 1967) (holding that the foreign court's judgment was *res judicata* on the issue in controversy in that case)). Indeed, the attorney electing to pursue a common-law action to enforce a judgment should usually immediately move for summary judgment based upon *res judicata*. Additionally, the common-law procedure is often used where

the judgment creditor wishes to enforce a foreign judgment in Texas and wishes to add parties to the new lawsuit in Texas, such as in an action for veil piercing or fraudulent transfer.

However, the practitioner should be aware that if he or she wishes to domesticate a judgment pursuant to the UEFJA, the judgment *debtor* CAN win the race to the courthouse and initiate the lawsuit. *Myrick v. Nelson's Legal Investigating & Consulting*, No. 04-08-00174-CV, 2009 WL 1353538, at \*3 (Tex. App.—San Antonio May 13, 2009, no pet.). In *Myrick*, Nelson filed an abstract of a default judgment obtained in Utah against Myrick in the Zapata County, Texas deed records, thereby ostensibly placing a lien on Myrick's property in the county. *Id.* at \*1. When Myrick discovered the lien, he (the judgment debtor) brought a suit against Nelson for slander of title and collaterally attacking the default judgment obtained in Utah. *Id.* After both sides filed motions for summary judgment, Nelson amended his answer and counterclaimed, for the first time, that his judgment was valid based on his contemporaneous filing of the foreign default judgment in accordance with the UEFJA. *Id.* The appellate court noted that "Texas courts compare the filing of a foreign judgment under section 35.003 to the entry of a no-answer default judgment because the debtor under these circumstances, unlike the debtor in a common law enforcement proceeding, does not have the opportunity to defend

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<sup>39</sup> Interestingly, in *Walnut Equip. Leasing Co.*, the judgment creditor originally proceeded under UEFJA. 920 S.W.2d at 285. Then more than 30 days later, the creditor abandoned the statutory procedure in favor of a common law action to enforce the judgment. *Id.* The court found the judgment debtor's motion for new trial and appeal were untimely as they were filed more than 30 days after the initial judgment was filed. *Id.* at 286. The amended petition filed more than 30 days after the initial UEFJA filing was considered a nullity. *Id.* Thus, the practitioner must be wary of the initial 30 day

window if he or she proceeds under UEFJA, as the clock may run out on your own ability to add parties or additional claims to the matter. The court of appeals in *Walnut* had held that the judgment creditor abandoned the UEFJA framework in his amended petition, and that therefore the judgment debtor's motion for new trial was timely. *Wu v. Walnut Equip. Leasing Co.*, 909 S.W.2d 273, 279 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1995), *rev'd*, *Walnut Equip. Leasing Co. v. Wu*, 920 S.W.2d 285 (Tex. 1996). As stated, the Texas Supreme Court disagreed. *Walnut Equip. Leasing Co.*, 920 S.W.2d at 285-86.

himself before the judgment is considered final.” *Id.* at \*2. The court observed that the facts of the case before it were not akin to those in a no-answer default because Myrick, the judgment debtor, initiated the lawsuit. *Id.* at \*3. The court concluded that “when Myrick initiated the proceedings by filing a slander of title suit against Nelson he effectively prevented the Utah judgment from instantly becoming an enforceable Texas judgment.” *Id.*

*Myrick* also serves as a warning that participation in proceedings prior to filing the foreign judgment may foreclose an action to domesticate the judgment in Texas using UEFJA. *See id.* (noting also that prior to filing his counterclaim, Nelson filed an answer, a jury demand, and a motion for summary judgment, and participated in depositions, all of which “amounted to an election to pursue enforcement of his judgment through a common law action” (citing *Charles Brown, LLP*, 124 S.W.3d at 902)).

When a judgment creditor uses a common-law action as the vehicle for enforcement of the foreign judgment, “the proceeding has the same character as any other proceeding . . . .” *Charles Brown, LLP*, 124 S.W.3d at 902. The judgment creditor files the lawsuit to enforce the judgment, and the judgment debtor, as defendant, can assert defenses and ultimately, an appealable judgment results. *Myrick*, No. 04-08-00174-CV, 2009 WL 1353538, at \*2.

A foreign judgment admitted into evidence in an action to enforce a judgment in Texas that is properly authenticated is entitled to full faith and credit. *Bryant*, 930 S.W.2d at 841. When a judgment creditor brings a common-law action to enforce a judgment, instead of

proceeding under UEFJA, his filing of the petition initiates the action, then the judgment debtor, as defendant, can assert his defenses, a judgment results, and the losing party can appeal, just as in any other case. *Wolf*, 276 S.W.3d at 26.

The statute of limitations that bars an action against a person who has resided in this state for ten years prior to the action on a foreign judgment rendered more than ten years before the commencement of the action applies to the common law action to enforce a foreign judgment. *Lawrence Sys., Inc.*, 880 S.W.2d at 206 (citing *Collin Cty. Nat’l Bank v. Hughes*, 220 S.W. 767 (Tex. 1920) and *Ferguson-McKinney Dry Goods Co. v. Garrett*, 252 S.W. 738 (Tex. Comm’n App. 1923, judgment adopted)).<sup>40</sup> A creditor seeking to enforce a foreign judgment by filing a common law action may appeal an adverse ruling. *Mindis Metals, Inc.*, 132 S.W.3d at 483-84.

## L. Federal court judgments

Federal court judgments may also be made into Texas court judgments under UEFJA. *Tanner*, 274 S.W.3d at 318-20 (noting that section 35.001 of UEFJA defines a foreign judgment as “a judgment, decree, or order of a court of the United States or any other court that is entitled to full faith and credit in this state”). *See, e.g., Armtech Ins. Servs., Inc. v. Hamilton*, No. 07-08-0325-CV, 2009 WL 498048, at \*4-5 (Tex. App.—Amarillo Feb. 27, 2009, no pet.) (upholding the trial court’s denial of the judgment debtor’s motion contesting domestication of a judgment obtained in federal court after concluding, *inter alia*, that the judgment debtor’s defense was simply an impermissible attempt to relitigate in the state district court the merits

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<sup>40</sup> As previously discussed in this paper in section I(D)(2), *supra*, the ten year statute of limitations in Texas Civil Practice and Remedies Code section

16.066(b) also applies to actions commenced under UEFJA. *Lawrence Sys., Inc.*, 880 S.W.2d at 211.

of the original controversy).

It is also true that another Texas statute permits the recording and indexing of the abstract of judgment rendered in Texas by a federal court. Tex. Prop. Code Ann. § 52.007 (West 2015). The recorded and indexed abstract constitutes a lien on and attaches to any real property of the defendant. § 52.001. The existence of the Property Code section dealing with recording and indexing a Texas federal court abstract of judgment does not preclude domestication of a federal court judgment from Texas under UEFJA. *Tanner*, 274 S.W.3d at 318-20.

The rationale for using UEFJA to enforce a federal court judgment, whether from a Texas federal court or elsewhere, is, of course, that the judgment will become a Texas state judgment, entitling the judgment creditor to the full array of Texas state judgment collection and enforcement procedures.

#### **M. Registration of judgments for enforcement in other districts**

An attorney may also wish to register a judgment from one federal court in another district to one in a local district for enforcement purposes.

28 U.S.C. § 1963 (2012) states:

A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered

the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.

The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

The statute was adopted to spare creditors and debtors the additional costs and the harassment of a separate lawsuit which would otherwise be required by way of an action on the judgment in another district court other than that where the judgment was originally obtained. *Home Port Rentals, Inc. v. Int'l Yachting Grp., Inc.*, 252 F.3d 399, 404 (5<sup>th</sup> Cir. 2001).

## **II.**

### **FOREIGN COUNTRY JUDGMENTS**

#### **A. Introduction**

Now, instead of a judgment from a foreign state or federal court, let us say that the attorney is called upon to domesticate, in Texas, a judgment from another country. This process is codified like the domestication of foreign state judgments. It is found in Chapter 36 of the Texas Civil Practice and Remedies Code. Chapter 36 is called the Uniform Foreign Country Money-Judgment Recognition Act. Tex. Civ. Prac. & Rem. Code Ann. § 36.003 (West 2015) (hereinafter UFCMJRA). Section 36.001

states:

In this chapter: (1) “Foreign country” means a governmental unit other than: (A) the United States; (B) a state, district, commonwealth, territory, or insular possession of the United States; (C) the Panama Canal Zone; or (D) the Trust Territory of the Pacific Islands.

(2) “Foreign country judgment” means a judgment of a foreign country granting or denying a sum of money<sup>41</sup> other than a judgment for: (A) taxes, a fine, or other penalty;<sup>42</sup> or (B) support in a matrimonial or family matter.

The enforcement procedures have a lot in common with the enforcement of foreign state judgments, except that **there is no full faith and credit presumption in favor of a foreign country judgment.**<sup>43</sup> To wit:

Section 36.004 states:

Except as otherwise provided by Section 36.005, a foreign country judgment that is filed with notice given as provided by this chapter, that meets the requirements of Section 36.002,

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<sup>41</sup> UFCMJRA was held not to apply to a judgment from the Philippines that was not a judgment granting or denying a sum of money, but which was for declaratory relief pertaining to a probate matter. *Gustilo v. Gustilo*, No. 14-93-00941-CV, 1996 WL 365994, at \*11 (Tex. App.—Houston [14<sup>th</sup> Dist.] July 3, 1996, writ denied), *cert. denied*, 522 U.S. 864 (1997). *See also Sanchez v. Palau*, 317 S.W.3d 780, 783, 786 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2010, pet. denied) (refusing to recognize a Mexican divorce decree which did not award a money judgment or characterize any of the property as separate or community); *Motalvo v. Park Drilling Co. of S. Am. Sucursak Ecuador*, No. H-03-1745, 2006 WL 1030012, at \*6 (S.D. Tex. Apr. 18, 2006) (discussing at length whether a particular order was a judgment granting a sum of money).

<sup>42</sup> *See N.H. Ins. Co. v. Magellan Reinsurance Co.*, No.

and that is not refused recognition under section 36.0044 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The judgment is enforceable in the same manner as a judgment of a sister state that is entitled to full faith and credit.

Section 36.002 requires that the foreign country’s judgment be final and conclusive and enforceable where rendered, even though an appeal is pending or the judgment is subject to appeal. § 36.002(a)(1). Or, the judgment may be in favor of the defendant<sup>44</sup> on the merits of the cause of action and be final and conclusive where rendered. § 36.002(a)(2). The Act does not apply to a judgment rendered before June 17, 1981. § 36.002(b).

Section 36.0044 discusses the methods for the judgment debtor to contest recognition of the foreign country judgment, and section 36.005 lists the grounds for non-recognition of the foreign country judgment in a Texas court. These sections and the case law interpreting them will be discussed below.

## B. Filing a foreign country judgment

02-11-00334-CV, 2013 WL 105654, at \*11 (Tex. App.—Fort Worth Jan. 10, 2013, pet. denied) (concluding that a cost assessment from a UK court was not an unenforceable penalty as it was not intended to be penal under UK law, but rather part of their regular system as opposed to some sort of sanction).

<sup>43</sup> *See Hernandez v. Seventh Day Adventist Corp.*, 54 S.W.3d 335, 336 (Tex. App.—San Antonio 2001, no pet.) (citing *Dear*, 973 S.W.2d at 446), a foreign *state* judgment case, for the proposition that the foreign *country* judgment act is the same as the foreign state act as to the effect of filing the foreign judgment).

<sup>44</sup> *See N.H. Ins. Co.*, 2013 WL 105654, at \*5 (holding that an enforceable foreign country judgment may be for an amount awarded for the defendant’s successful defense of plaintiff’s cause of action).

Alright, I have been assigned to domesticate a foreign country judgment in Texas. What do I do?

Just as with the Texas filing of a foreign state judgment, the Texas filing of a foreign country judgment symbolizes both a plaintiff's original petition and a final judgment. The filing initiates the recognition proceeding, but also instantly creates an enforceable judgment. *Hernandez v. Seventh Day Adventist Corp.*, 54 S.W.3d 335, 336 (Tex. App.—San Antonio 2001, no pet.). In determining finality for purposes of the UFCMJRA, the court considers whether the judgment is final according to the laws of the foreign country. *Id.* at 337. If the judgment appears facially final, the burden of proving that the judgment is not final is on the judgment debtor. *Id.* In *Seventh Day Adventist*, the evidence supported a finding that the Hong Kong judgment was a final judgment for purposes of UFCMJRA. *Id.* The court held that the judgment debtor failed to present evidence that the judgment was not facially final, according to Hong Kong law, other than the judgment's lack of a registrar's signature. *Id.* Nonetheless, the court held that the Texas trial court was required to determine whether the judgment creditor

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<sup>45</sup> See *N.H. Ins. Co.*, 2013 WL 105654, at \*7-11 (discussing in detail potential options for authenticating, and challenging the authentication of foreign country judgments).

<sup>46</sup> In *Nicholas v. Env'tl. Sys. (Int'l) Ltd.*, 499 S.W.3d 888, 900 (Tex. App.—Houston [14th Dist.] 2016, pet. denied), the court held that where a judgment is not authenticated under an act of Congress or a treaty, it must be in compliance with Texas statutes, including TRE 901. The court found that the judgment met the requirements of TRE 901 despite the fact that the testifying witness did not have firsthand knowledge and gave conflicting testimony. *Id.* Because the copy was obtained through a routine process, it was certified and signed by an officer of the Registry of the Federal Court of Canada and authenticated by a stamp from

invoked the UFCMJRA by satisfying the authentication prerequisites of UFCMJRA prior to determining whether the judgment debtor waived his authenticity challenge for failure to file it timely. *Id.* If the foreign judgment was not facially final, the judgment creditor would bear the burden of producing evidence demonstrating that the judgment was final in order to domesticate it under UFCMJRA. *Id.*

Section 36.0041 of UFCMJRA deals with filing of the judgment, authentication and venue in Texas. It states:

A copy of a foreign country judgment authenticated<sup>45</sup> in accordance with an act of congress, a statute of this state,<sup>46</sup> or a treaty or other international convention to which the United States is a party may be filed in the office of the clerk of a court in the county of residence of the party against whom recognition is sought or in any other court of competent jurisdiction as allowed under the Texas venue laws.<sup>47</sup>

The court in *Seventh Day Adventist* held that the trial court was required to determine whether the judgment creditor invoked UFCMJRA<sup>48</sup> by satisfying the authentication

the Department of Foreign Affairs and International Trade, the trial court did not abuse its discretion in weighing the credibility of the evidence. *Id.* at 901.

<sup>47</sup> Thus, unlike UEFJA, this statute expressly mentions the proper venue in Texas. For a discussion of venue under UEFJA, see section I(D)(4) of this paper, *supra*.

<sup>48</sup> Courts have interpreted UFCMJRA to provide that Texas will recognize a foreign country judgment if four conditions are met: (1) the judgment is final, conclusive, and enforceable where rendered; (2) an authenticated copy of the judgment is filed in the judgment debtor's county of residence; (3) notice of the filing is given to the judgment debtor; and (4) none of the defenses provided in Texas Civil Practice and Remedies Code section 36.005 apply. *Reading &*

prerequisites of the Act as a preliminary matter. *Id.* at 337. So, in that case, the court held that because the judgment creditor had not shown the foreign country judgment to be authentic, the trial court’s plenary power 30 day window in section 36.0044 did not start, nor did the appellate clock. *Id.* Therefore, the court held that the trial court had erred in finding that the judgment debtor’s contest of the foreign country judgment was untimely and waived. *Id.* at 338.<sup>49</sup>

### 1. Affidavit; Notice of Filing

Section 36.0042 of UFCMJRA deals with the affidavit and notice of filing requirements. These are essentially the same as their UEFJA counterparts as far as the author can tell. At the time a foreign country judgment is filed, the party seeking recognition of the judgment or the party’s attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor. § 36.0042(a). The clerk shall promptly mail notice of the filing of the foreign country judgment to the party against whom recognition is sought at the address given and shall note the mailing in the docket. § 36.0042(b). The notice must include the name and post office address of the party seeking recognition and that party’s attorney, if any, in this state. § 36.0042(c).

### 2. Alternate Notice of Filing

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*Bates Constr. Co. v. Baker Energy Res. Co.*, 976 S.W.2d 702, 706 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (citing Tex. Civ. Prac. & Rem. Code Ann. §§ 36.002, 36.004, 36.0041). UFCMJRA provides that a judgment debtor may, within 30 days of receiving notice of the Texas filing, contest recognition on certain enumerated grounds. §§ 36.0044, 36.005.

<sup>49</sup> See also *Ningbo FTZ Sanbang Indus. Co. v. Frost Nat’l Bank*, 338 F. App’x 415, 416-17 (5<sup>th</sup> Cir. 2009) (holding, in a Texas diversity case, that a Chinese default judgment was unenforceable where the

Section 36.0043 has to do with the alternate notice of filing that used to have its UEFJA counterpart in Texas Civil Practice and Remedies Code section 35.005.<sup>50</sup> The party seeking recognition may mail a notice of the filing of the foreign country judgment to the other party and may file proof of mailing with the clerk. § 36.0043(a). A clerk’s lack of mailing the notice of filing does not affect the conclusive recognition of the foreign country judgment under UFCMJRA if proof of mailing by the party seeking recognition has been filed. § 36.0043(b).<sup>51</sup>

Even in a default situation, the court must comply with the statutory notice requirements. *Allen v. Tennant*, 678 S.W.2d 743, 744 (Tex. App.—Houston [14th Dist.] 1984, no pet.). The court’s plenary power and the appellate time clock did not start until the judgment creditor complied with the notice requirements. *Id.*

### 3. “Recognition” requirement

Under UFCMJRA, a state is not constitutionally required to give full faith and credit to judgments of foreign countries. *Reading & Bates Constr. Co.*, 976 S.W.2d at 714. Before a party can enforce a judgment from a foreign country in a United States court, the judgment creditor must have the foreign judgment “recognized” by a state in which it is seeking to enforce its judgment.

judgment creditor had failed to file an authenticated copy of the judgment). Also of note, in a Texas diversity case, the Fifth Circuit has held that the Texas statute is used to determine recognition. *Sw. Livestock & Trucking Co. v. Ramon*, 169 F.3d 317, 320 (5<sup>th</sup> Cir. 1999).

<sup>50</sup> See *supra* note 8.

<sup>51</sup> Again, this is different than UEFJA now. Under UEFJA, after the repeal of section 35.005, there is no clerk-mailing option anymore.

*Id.*

Under the predecessor statute to the current UFCMJRA, Tex. Rev. Civ. Stat. Ann. art. 2328b-6, a foreign country judgment was held not entitled to recognition and enforcement, where no initial “plenary” suit was filed and no plenary hearing held on the issue of whether the foreign country judgment was conclusive. *Hennessy v. Marshall*, 682 S.W.2d 340, 344-45 (Tex. App.—Dallas 1984, no writ). As a result, the trial court’s order purporting to recognize the judgment as a Texas judgment was void and of no effect and all subsequent orders were also void. *Id.* at 345. Without the plenary or initial hearing on recognition, the judgment cannot be enforced as a Texas judgment. *Id.* *But see Detamore v. Sullivan*, 731 S.W.2d 122, 123 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1987, no pet.) (holding that the court could not find any procedure within UFCMJRA expressly requiring the plenary suit and hearing before the foreign country judgment would be entitled to recognition)

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<sup>52</sup> In *Don Dockstader Motors*, the judgment debtor complained that UFCMJRA was unconstitutional because it did not provide for a mechanism by which the judgment debtor could assert grounds for nonrecognition of the judgment. 794 S.W.2d at 760-61. The Supreme Court stated that by expressly providing that a foreign country money judgment is enforceable in the same manner as a judgment of a foreign state, UFCMJRA necessarily allows for the bringing of a common-law suit and thereby allows for notice and a hearing at which all defenses including grounds for non-recognition can be asserted. *Id.* The Court also noted the 1989 amendments to the law setting forth the procedural steps for contesting “recognition” of the judgment in sections 36.0041-.0044. *Id.* at 760-61 & n.1. The constitutionality issues in *Don Dockstader Motors* seem to have been resolved with the amendment of the statute.

<sup>53</sup> *N.H. Ins. Co.*, 2013 WL 105654, at \*3-5 (discussing the appellate timetables under the UFCMJRA).

<sup>54</sup> Section 36.005 states:

(disapproved of on other grounds by, *Don Dockstader Motors, Ltd. v. Patal Enters., Ltd.*, 794 S.W.2d 760, 761 (Tex. 1990)).<sup>52</sup>

### **C. Contesting recognition of the foreign country judgment**

Section 36.0044 of the UFCMJRA sets forth the procedure for the judgment debtor to contest recognition of the foreign country judgment.

Section 36.0044 states:

- (a) A party against whom recognition of a foreign country judgment is sought may contest recognition of the judgment if, not later than the 30th day<sup>53</sup> after the date of service of the notice of filing, the party files with the court, and serves the opposing party with a copy of, a motion for nonrecognition of the judgment on the basis of one or more grounds under Section 36.005.<sup>54</sup> If the party

(a) A foreign country judgment is not conclusive if:

- (1) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) the foreign country court did not have personal jurisdiction over the defendant; or
- (3) the foreign country court did not have jurisdiction over the subject matter.

(b) A foreign country judgment need not be recognized if:

- (1) the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to defend;
- (2) the judgment was obtained by fraud;
- (3) the cause of action on which the judgment is based is repugnant to the public policy of this state;

is domiciled in a foreign country, the party must file the motion for nonrecognition not later than the 60th day after the date of service of the notice of filing.

- (b) The party filing the motion for nonrecognition shall include with the motion all supporting affidavits, briefs, and other documentation.
- (c) A party opposing the motion must file any response, including supporting affidavits, briefs, and other documentation, not later than the 20th day after the date of service on that party of a copy of the motion for nonrecognition.
- (d) The court may, on motion and notice, grant an extension of time, not to exceed 20 days unless good cause is shown, for the filing of a response or any document that is required to establish a ground for nonrecognition but that is not available within the time for filing the document.
- (e) A party filing a motion for nonrecognition or responding to the motion may request an evidentiary hearing that the court may allow in its discretion.
- (f) The court may at any time permit or

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(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

(6) in the case of jurisdiction based only on personal service, the foreign country court was

require the submission of argument, authorities, or supporting material in addition to that provided for by this section.

- (g) The court may refuse recognition of the foreign country judgment if the motions, affidavits, briefs, and other evidence before it establish grounds for nonrecognition as specified in Section 36.005, but the court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in Section 36.005.

When a judgment debtor files a timely motion for nonrecognition, the trial court may grant the motion and refuse to recognize foreign country judgment if the motion, affidavits, briefs, and other evidence before the trial court establish grounds for nonrecognition as specified in the UFCMJRA. *Haaksman v. Diamond Offshore (Bermuda), Ltd.*, 260 S.W.3d 476, 480 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2008, pet. denied). However, under the express language of UFCMJRA, the trial court may not, under any circumstances, review the foreign country judgment in relation to any matter not specified in UFCMJRA. *Id.* (citing Tex. Civ. Prac. & Rem. Code Ann. § 36.0044(g) (West 2015)).

When recognition of the foreign country judgment is not contested or the contest is

a seriously inconvenient forum for the trial of the action; or

(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of “foreign country judgment.”

overruled, a foreign country judgment is conclusive between the parties to the extent that it grants recovery or denial of a sum of money, and it is enforceable in the same manner as a judgment of a sister state entitled to full faith and credit. *Courage Co. v. Chemshare Corp.*, 93 S.W.3d 323, 330 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2002, no pet.).

### **1. Nonrecognition a question of law or fact?**

To the extent that the trial court is determining what the foreign law is, as in a public policy<sup>55</sup> or reciprocity<sup>56</sup> analysis under UFCMJRA, it is answering questions of law. *Reading & Bates Constr. Co.*, 976 S.W.2d at 707-08, (disagreeing with several cases referring to the determination of foreign law as a hybrid question of law and fact). The standard of review, at least according to the Houston First Court of Appeals is *de novo*, therefore, because the trial court has no “discretion” to improperly determine the law or misapply the law to the facts. *Id.* at 708 (disagreeing with several courts which suggested the standard of review is abuse of discretion in ruling on recognition of a foreign country’s judgment). *See also Soc’y of Lloyd’s v. Turner*, 303 F.3d 325, 332 n.23 (5<sup>th</sup> Cir. 2002) (noting that little turns on whether it is considered a *de novo* review or abuse of discretion as a mistake of law is not beyond appellate correction).

### **2. Burden of proof; affirmative defenses**

Who has the burden of proof on the recognition of a foreign country judgment? If

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<sup>55</sup> § 36.005(b)(3).

<sup>56</sup> § 36.005(b)(7).

<sup>57</sup> Conversely, if it is not a valid judgment on its face, the “judgment” creditor has the burden of proving its validity. *Motalvo*, 2006 WL 1030012, at \*4.

the foreign country judgment appears to be valid on its face, the judgment debtor who alleges that the foreign country judgment should not be recognized on the ground of, for example, non-reciprocity under section 36.005 (b)(7), has the burden of proof. *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1005 (5<sup>th</sup> Cir. 1990); *Motalvo*, 2006 WL 1030012, at \*4; *Courage Co.*, 93 S.W.3d at 331.<sup>57</sup> In a diversity case in federal court seeking a declaration that the foreign judgment was unenforceable, the plaintiff/judgment debtor still had the burden of proving lack of reciprocity as an “affirmative defense.” *Hunt v. BP Expl. Co. (Libya)*, 580 F. Supp. 304, 309 (N.D. Tex. 1984).<sup>58</sup> If the judgment debtor fails to carry his or her burden, the court is required to recognize the foreign country judgment. *Sw. Livestock & Trucking Co.*, 169 F.3d at 320; *Courage Co.*, 93 S.W.3d at 332. The nonrecognition factors in section 36.005(b) (1) – (7) are affirmative defenses which must be asserted by the judgment debtor. *Hennessy*, 682 S.W.2d at 344.

### **3. No second bite at the apple; waiver**

UFCMJRA precludes a judgment debtor from collaterally attacking a foreign judgment where the issue was litigated before the foreign court or the party was given an opportunity to litigate the issue before that court. *Id.*; *Dart v. Balaam*, 953 S.W.2d 478, 480 (Tex. App.—Fort Worth 1997, no writ). *See Presley v. N.V. Masureel Veredelng*, 370 S.W.3d 425, 429 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2012, no pet.) (noting that the enforceability of the arbitration clause had

<sup>58</sup> *Success Motivation Inst. of Japan, Ltd. v. Success Motivation Inst., Inc.*, 966 F.2d 1007, 1010 (5<sup>th</sup> Cir. 1992) declined to follow *Hunt* on other grounds. It held that Texas law rather than Fifth Circuit common law governed the dispute. *Id.*

already been dealt with by the Belgian court, but not appearing to expressly make a ruling on this ground). To that end, the grounds for nonrecognition of the foreign country judgment may be waived if a party had the right to assert the ground as an objection or defense in the foreign country court but failed to do so. *Dart*, 953 S.W.2d at 480.

#### **D. Mandatory nonrecognition provisions**

UFCMJRA sections 36.005(a)(1)-(3) *require* nonrecognition if they are established.

##### **1. Impartial Tribunal Requirement**

Section 36.005(a)(1) first requires that the foreign country judgment have been rendered by a system that provides for impartial tribunals. In one case, the procedures of the English court system, requiring members of English insurance syndicate to immediately fund a reinsurer and to litigate any claims against the overseer of the syndicates later, were not basically unfair under the concept of international due process. *Soc’y of Lloyds v. Webb*, 156 F.Supp.2d 632, 641 (N.D. Tex. 2001), *aff’d*, *Soc’y of Lloyd’s v. Turner*, 303 F.3d 325 (5<sup>th</sup> Cir. 2002). Therefore, the judgment of the English court was enforceable against an American member of the syndicate under UFCMJRA. *Id.* The court found that the system provided “impartial tribunals or procedures compatible with the requirements of due process of law.” *Id.* at 639-40. This was so even though pretrial discovery was barred and the procedures used in English courts were not identical to American procedures. *Id.* at 640. Moreover, the English process did not preclude a member from suing for fraud at a later date if there was “manifest error” in the overseer’s calculations. *Id.* at 639.

## **2. Due process requirement**

Section 36.005(a)(1) also requires that the foreign country’s procedures be compatible with the requirements of due process of law. For example, the procedures of the English court system that had approved the English insurance market’s self-regulatory reinsurance program—including the market overseer’s authorization via its contracts with members to appoint agents to negotiate reinsurance premiums that would bind members without their consent—were fundamentally fair under the federal due process clause. *Turner*, 303 F.3d at 330. The procedures need not be identical to be compatible with American due process requirements. *N.V. Masureel Veredeling*, 370 S.W.3d at 434. A judgment debtor can waive his or her procedural rights in the foreign country’s court by refusing to participate when they are otherwise permitted to do so. Sleeping on one’s rights in the foreign country’s court may have some relevance to whether the Texas court will give any credence to the judgment debtor’s complaints about the foreign country’s due process protections. *See Turner*, 303 F.3d at 331 n.20.

In *DeJoria v. Maghreb Petroleum Expl., S.A.*, 804 F.3d 373 (5<sup>th</sup> Cir. 2015), *cert. denied*, 136 S. Ct. 2486 (2016), the Fifth Circuit sent a strong signal that only the most extreme cases will receive a grant of nonrecognition under § 36.005(a)(1). This case involves the enforcement of a Moroccan judgment against a highly successful entrepreneur, DeJoria, who invested in a company involved in oil exploration in Morocco. *Id.* at 377. Under Moroccan law, the company had to designate local Moroccan partners and shareholders. *Id.* Here, the local partner/shareholder was a company owned by Prince Moulay Abdallah Aloaoui of Morocco (King Mohammed VI’s first cousin). *Id.* After the Texas based

corporation obtained the support of additional investors, the King made a televised announcement concerning the discovery of “copious and high quality oil.” *Id.* at 378. Unfortunately, this was not the case and DeJoria quickly found himself the subject of a Moroccan suit filed on behalf of several dissatisfied investors. *Id.*

DeJoria contested the domestication of the \$122.9 million Moroccan judgment in Texas by alleging that the Moroccan Judiciary fell short of the requirements of due process. *Id.* at 378. He brought forth evidence that a newspaper reporting on the King’s announcement was later suspended in apparent retribution for its portrayal of the King. *DeJoria v. Maghreb Petroleum Exploration S.A.*, 38 F. Supp. 3d 805, 815 (W.D. Tex. 2014), *rev’d*, 804 F.3d 373 (5th Cir. 2015). Additionally, DeJoria cited several reports that questioned the independence of the Moroccan Judiciary, as well as a protest involving two thirds of Moroccan judges demanding greater independence from the King, only two years after the *DeJoria* judgment, as evidence that cases in which the royal family has an economic or political interest will not receive a “fundamentally fair” trial. *Id.* at 812-14. The district court was persuaded by the evidence and noted that the royal family’s financial interest in the suit was not insignificant, given the Moroccan prince’s role as a shareholder in one of the companies involved in the dispute. *Id.* at 815.

The Fifth Circuit took a very different view. It noted that cases which have been overturned under § 36.005(a)(1) have been so serious that it would be “impossible for *an* American to receive due process or impartial tribunals.” *DeJoria*, 804 F.3d at 383 (emphasis added). It cites examples such as a case involving an Iranian judgment when Iran was an official state sponsor of terror and during which the government itself did not believe the judiciary to be independent. *Id.* at 382. Similarly, another case concerned Liberia during the Liberian Civil War when its courts were in a complete “state of disarray.” *Id.* at 383. By comparison, the Fifth Circuit notes that the *DeJoria* case does not meet this level of “serious injustice.” *Id.* at 384.

As support, the court cites that Americans can obtain counsel in Morocco and American firms do business there. *Id.* at 383. The key distinction between the Fifth Circuit and the district court, is that the former looked to Moroccan judgments as a whole, finding that “a judgment debtor must meet the high burden of showing that the foreign judicial system as a whole is so lacking in impartial tribunals or procedures compatible with due process so as to justify *routine* non-recognition of the foreign judgments,” while the district court narrowed its analysis to individual cases in which the royal family has an economic or political interest. *Id.* at 382; *DeJoria*, 38 F. Supp. 3d at 812. This case sets a high bar for nonrecognition under § 36.005(a)(1). Thus, the wise practitioner may wish to focus his efforts elsewhere.<sup>59</sup>

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<sup>59</sup> Although the Fifth Circuit reversed and remanded the case back to the district court, SB 944, if passed could have a dramatic effect on the outcome of this case. Tex. S.B. 944, 85th Leg., R.S. (2017) (pending in the 2017 legislative session as of publication date). If passed, the bill would apply to a “*pending* suit in which the issue of recognition of a foreign-country money judgment is or has been raised without regard

to whether the suit was commenced *before*, on, or after the effective date of this Act.” § 3 (emphasis added). The bill adopts substantially the same provisions of the UFCMJRA of 2005 which Texas has yet to adopt. Sections 36A.004 (c)(7) and (8) are relevant here. These provisions add two discretionary nonrecognition grounds that may affect the outcome in *DeJoria*. Ground (c)(7) allows nonrecognition when:

### 3. Personal jurisdiction as a ground for lack of recognition

For a foreign country's judgment to be conclusive, UFCMJRA section 36.005(a)(2) requires that the foreign country's court had personal jurisdiction over the judgment debtor. The issue is *not* whether the Texas court has personal jurisdiction over the judgment debtor. *Haaksman*, 260 S.W.3d at 481 (asserting, as one basis for its holding, that UFCMJRA specifically states that personal jurisdiction over the judgment debtor in Texas is not one of the grounds for nonrecognition in section 36.005 which the Texas court may evaluate).<sup>60</sup> Rather, the issue is whether the foreign country court had personal jurisdiction over the judgment debtor. *Id.* at 479.<sup>61</sup>

Nor does the act require that the judgment debtor have property in the state. *Id.* at 480-81. The court in *Haaksman* held that judgment creditors were entitled to the opportunity to obtain recognition of their foreign country judgments, even if the judgment debtor lacked property in Texas, and the judgment creditor could later pursue enforcement if or when the judgment debtor appeared to be maintaining assets in Texas. *Id.*

Section 36.005(a)(2) must be read together

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“the *judgment* was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.” Ground (c)(8) allows nonrecognition when: “the *specific* proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.” These new provisions would allow a court to consider the particular circumstances of the case at hand rather than make a ruling based on the foreign country's judicial system as a whole.

<sup>60</sup> See also *Beluga Chartering B.V. v. Timber S.A.*, 294 S.W.3d 300, 305 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2009, no pet.) (affirming *Haaksman*'s holding that

with section 36.006, entitled Personal Jurisdiction. Section 36.006 states:

(a) A court may not refuse to recognize a foreign country judgment for lack of personal jurisdiction if: (1) the defendant was served personally in the foreign country; (2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him; (3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved; (4) the defendant was domiciled in the foreign country when the proceedings were instituted or, if the defendant is a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in the foreign country; (5) the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or (6) the defendant operated a motor vehicle or airplane in the foreign country and the

personal jurisdiction in Texas is not a basis for contesting recognition of a foreign country judgment). Thus, a special appearance motion is not available to the foreign country judgment debtor in the course of a Ch. 36 enforcement proceeding. *Id.*

<sup>61</sup> *Beluga Chartering* also makes the point that the trial court always has jurisdiction to enforce its judgment and to rule on, in that case, its own subject matter jurisdiction to hear the judgment debtor's special appearance motion. *Beluga Chartering*, 294 S.W.3d at 305-06 (citing Tex. R. Civ. P. 308 and *BancorpSouth Bank*, 256 S.W.3d at 724).

proceedings involved a cause of action arising out of operation of the motor vehicle or airplane.

(b) A court of this state may recognize other bases of jurisdiction.

Therefore, where a judgment debtor had contractually agreed to submit to personal jurisdiction in the foreign country forum, as listed under UFCMJRA section 36.006(a)(3), that was sufficient to satisfy the recognition requirement and domestication in Texas. *Soc'y of Lloyd's v. Cohen*, 108 F. App'x 126, 127 (5<sup>th</sup> Cir. 2004). An appearance and the ability to have contested personal jurisdiction in the underlying foreign country proceeding may allow a Texas court to uphold domestication under section 36.006. *Norkan Lodge Co. v. Gillum*, 587 F. Supp. 1457, 1459-60 (N.D. Tex. 1984).

#### **4. Subject matter jurisdiction**

Section 36.005 (a)(3) lists a lack of subject matter jurisdiction in the foreign country's court as another ground for non-recognition. The author could not find any cases discussing this section of the statute.

#### **E. Permissive nonrecognition provisions**

Sections 36.005 (b)(1)-(7) are grounds for nonrecognition that allow the Texas court to not recognize the foreign country's judgment, but do not require nonrecognition as do sections 36.005(a)(1)-(3).

##### **1. Lack of notice to the judgment debtor in the foreign country's court**

Section 36.005(b)(1) allows a Texas court to not recognize a foreign country's judgment if "the defendant in the proceedings in the

foreign country court did not receive notice of the proceedings in sufficient time to defend."

#### **2. Judgment obtained by fraud**

Pursuant to section 36.005(b)(2) a court may refuse to recognize a foreign country judgment obtained by fraud. In a federal case, allegations that there were instances in a Canadian trial proceeding where the plaintiff presented only its side of the evidence and did not fairly and completely present the facts of the dispute, and that deposition and trial testimony were inconsistent, were insufficient to show that the foreign country judgment was procured by fraud. *Norkan Lodge Co.*, 587 F. Supp. at 1460-61. The *Norkan Lodge* court discusses *Harrison v. Triplex Gold Mines*, 33 F.2d 667, 671 (1<sup>st</sup> Cir. 1929) as setting forth the standard for judging fraud in connection with recognizing a foreign country's judgment. *Norkan Lodge Co.*, 587 F. Supp. at 1461. The *Harrison* court noted:

In any case to justify setting aside a decree for fraud, it must appear that the fraud practiced, unmixed with any fault or negligence of the party complaining, prevented him from making a full and fair defense, and that the fraud complained of was not involved in, or presented to, the court of first instance either at the original trial or in a petition for review. This rule is universal. False testimony or fabricated documents are not sufficient to justify the interference of a court of equity, if they have been presented to the court determining the law and fact in the first instance. The reason for the rule is that there must be an end to litigation.

*Harrison*, 33 F.2d at 671. The court in *Norkan Lodge Co.* found that the facts of that

case did not rise to this level, and the fact that the judgment debtor did not raise the “fraud” at the trial level or on appeal in the foreign country court weighed strongly against the Texas court’s consideration of those issues. *Norkan Lodge Co.*, 587 F. Supp. at 1461.

### **3. Public policy ground for nonrecognition**

Section 36.005(b)(3) permits a Texas court to refuse to recognize a foreign country judgment if the cause of action on which the judgment is based is repugnant to the public policy of Texas.

The public policy nonrecognition criteria seems somewhat flexible. It could provide fruitful area for litigation. In one case, under UFCMJRA, the appellate court ruled that the trial court erred in refusing to recognize a Mexican judgment which had been entered in favor of a Mexican lender against a corporate borrower. *Sw. Livestock & Trucking Co.*, 169 F.3d at 323. The trial court had reasoned that the judgment violated Texas’s public policy against usury. *Id.* at 319. The appellate court reversed, finding that the underlying cause of action itself for collection of a promissory note, as opposed to the judgment which contained usurious interest, was not repugnant to Texas public policy. *Id.* at 323 (citing *Norkan Lodge Co.*, 587 F. Supp. at 1461). Further, Texas public policy against usury was not inviolable, and the case did not involve the victimizing of a naive consumer. *Id.* at 323.

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<sup>62</sup> *Reading & Bates* is also interesting in that it involved a Canadian judgment that was first domesticated in Louisiana before it was sought to be domesticated in Texas. *Reading & Bates Constr. Co.*, 976 S.W.2d at 706. The Texas court held that the judgment creditor could not avoid the requirements of UFCMJRA by running a foreign country judgment through Louisiana. *Id.* at 715. The Louisiana judgment recognizing the Canadian judgment was not entitled to

Courts consistently hold that the level of contravention of public policy must be high to satisfy 36.005(b)(3). *Id.* at 321; *Turner*, 303 F.3d at 331-32.

English judgments requiring American members of an English insurance market to pay reinsurance premiums based on contracts entered into by substitute agents appointed by a market overseer were based on a cause of action not repugnant to Texas public policy: breach of contract. *Id.* at 332-33. Thus, the judgments were not unenforceable under the public policy exception of UFCMJRA. *Id.* That the standards for evaluating the cause of action were allegedly less demanding for the plaintiff under English law did not determine repugnancy. *Id.* See also *Norkan Lodge Co.*, 587 F. Supp. at 1461 (holding that the trebling of costs, causes of action for trespass and conversion, and the assessment of damages for these intentional torts did not render the judgment unenforceable in Texas under the public policy exception).

Finally, where the public policy that is possibly offended is not *Texas* policy, but rather, *federal* policy, a Texas court could not refuse to recognize the foreign country judgment for intellectual property infringement. *Reading & Bates Constr. Co.*, 976 S.W.2d at 708.<sup>62</sup>

### **4. Other final and conclusive judgment**

In *Brosseau v. Ranzau*, 81 S.W.3d 381, 389 (Tex. App.—Beaumont 2002, pet. denied) ,

full faith and credit in Texas under UEFJA because it was held that such recognition or enforcement would involve improper interference with important interests of Texas. *Id.* at 714-15. The Canadian judgment could not be clothed in the garment of a foreign state's judgment in order to evade the more onerous process for recognition of a foreign country judgment in Texas under UFCMJRA. *Id.* at 715.

the court discussed UFCMJRA section 36.005(b)(4). That section permits nonrecognition if the judgment sought to be domesticated conflicts with another final and conclusive judgment. In *Brosseau*, the court of appeals held that the trial court did not err in refusing to recognize a Mexican judgment and accord it collateral estoppel effect. *Id.* at 390. The court held that the Mexican judgment holding that an individual had never been a stockholder in a particular company conflicted with a bankruptcy court order conveying stock certificates to the individual. *Id.*

#### **5. Contrary to an agreement between the parties to settle or otherwise proceed out of court**

Arbitration agreements are typical of agreements discussed under section 36.005(b)(5). That section allows for the nonrecognition of foreign country judgments if the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceeding in that court.

Thus, where an optional arbitration agreement was waived by substantially invoking the litigation process in the foreign country jurisdiction, the judgment debtor could not avoid recognition of the foreign country judgment in Texas court by claiming that parties had agreed to submit any disputes to arbitration rather than resolving them in court. *Hunt*, 580 F. Supp. at 309.<sup>63</sup> *But see Courage Co.*, 93 S.W.3d at 331 & n.5 (finding that a foreign country judgment in a breach of contract action was not entitled to recognition and enforcement in Texas under UFCMJRA where the parties to the contract

agreed to arbitrate any disputes arising under the contract).

#### **6. Where personal jurisdiction in the foreign country court is based only on personal service; Forum non conveniens**

Section 36.005(b)(6) of UFCMJRA allows the Texas court to refuse to recognize a foreign country judgment where jurisdiction in the foreign country's court is based only on personal service of the judgment debtor and the foreign country's court is a seriously inconvenient forum for the trial of the action.

In *Dart*, 953 S.W.2d at 482-83, the judgment debtor tried to invoke the exception to recognition in section 36.005(b)(6). He argued that Australia's jurisdiction over him was only based on personal service, and that the Australian court was a seriously inconvenient forum. *Id.* at 482. The court first held that jurisdiction over the judgment debtor in Australia was based on his unconditional appearance, the filing of a counterclaim, *and* personal service. *Id.* Therefore, section 36.005(b)(6) did not apply. *Id.* Further, the court stated that the convenience of the forum had to be ascertained by looking at the facts as they existed at the time the lawsuit in Australia was filed. *Id.* at 482-83 & n.2 (citing the Texas forum non conveniens statute, Tex. Civ. Prac. & Rem. Code Ann. § 71.051(e) (West 2008)). At the relevant time, the judgment debtor was a resident and citizen of Australia, and the agreement in dispute in the action involved the development of real property in Australia. *Id.* at 482-83. Thus, the trial court did not abuse its discretion in denying the request for nonrecognition. *Id.* at 483.

even though they were inextricably intertwined with the joint-venture agreement containing the arbitration clause).

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<sup>63</sup> See also *N.V. Masureel Veredeling*, 370 S.W.3d at 431-33 (holding that the later-in-time loan agreements allowed the dispute to be heard in a Belgium court

## 7. Reciprocity

Several cases discuss what is commonly referred to as the “reciprocity” ground<sup>64</sup> for nonrecognition contained in section 36.005(b)(7). Section 36.005(b)(7) allows a Texas court to refuse recognition of a foreign country judgment where:

it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in this state, conform to the definition of ‘foreign country judgment.’

The decision not to recognize a foreign judgment due to lack of reciprocity can only be set aside on appeal upon a clear showing of abuse of discretion. *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1007 (Tex. 1990).

In *Norkan Lodge Co.*, the court held that there was no showing that the Canadian courts would not recognize a judgment based upon trespass and criminal conversion entered by Texas courts so as to permit the Texas court to refuse to enforce such a judgment from the Canadian court. *Norkan Lodge Co.*, 587 F. Supp. at 1461. See also *Don Dockstader Motors*, 794 S.W.2d at 761; and *Reading & Bates Constr. Co.*, 976 S.W.2d at 712 (holding that Canadian courts will not automatically refuse to enforce a foreign country judgment on the sole basis that damages were excessive compared to Canadian standards; therefore, the Texas court could not deny recognition to the Canadian judgment under UFCMJRA on the basis of lack of reciprocity).

The judgment debtor who alleges that the

foreign country judgment should not be recognized on the ground of non-reciprocity has the burden of proof. *Banque Libanaise* 915 F.2d at 1005; *Courage Co.*, 93 S.W.3d at 331. Although the judgment creditor, in *Banque Libanaise*, which operated in Abu Dhabi cited relevant Abu Dhabi law providing for recognition of foreign judgments at the Abu Dhabi court's discretion, an attorney practicing in Abu Dhabi testified that the local courts favored resolution of disputes in the local forum under local law and that Abu Dhabi courts had a certain skepticism toward the unquestioned application of western legal principles, at least where they worked to the disadvantage of local parties. *Banque Libanaise*, 915 F.2d at 1005-06. As a result, the court affirmed the trial court's decision not to recognize the judgment due to non-reciprocity. *Id.* at 1007.

## F. Stay in Case of Appeal

If the defendant demonstrates to the court that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the appeal has been determined or until a period of time sufficient to enable the defendant to prosecute the appeal has expired. Presumably, this will work like the stay provision in UEFJA. § 35.006 et seq.

The party seeking to stay the proceeding in Texas should do so early in the proceeding, as soon as it becomes clear that, for example, the foreign country's court may have reversed itself. In *Gustilo v. Gustilo*, No. 14-93-00941-CV, 1996 WL 365994, at \*11 n.6 (Tex. App.—Houston [14<sup>th</sup> Dist.] July 3, 1996, writ denied), *cert. denied*, 522 U.S. 864 (1997), the judgment creditor sought to use the foreign court's judgment on appeal as a

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<sup>64</sup> *Reading & Bates Constr. Co.*, 976 S.W.2d at 706.

bar to the Texas proceeding it had started. The Texas court had ruled against the judgment creditor, and the foreign country's court entered a favorable ruling for the judgment creditor. *Id.* Because the judgment creditor did not seek a stay under section 36.007 while the foreign country matter proceeded through its appellate process, the Texas court would not grant the requested relief. *Id.*

### **G. Other Foreign Country Judgments**

Section 36.008 states that the “chapter does not prevent the recognition of a foreign country judgment in a situation not covered by this chapter.” There are no Texas cases discussing this provision. However, in *Zalduendo v. Zalduendo*, 360 N.E.2d 386, 390 (Ill. App. Ct. 1977)<sup>65</sup> the court stated that Illinois law would not allow the foreign country's judgment for alimony and child support to be enforced in Illinois. The court

held that Illinois' analogous section dealing with situations not otherwise covered by UFCMJRA would not allow enforcement under principles of comity, either. *Id.*

### **III.**

### **CONCLUSION**

This paper has given you a step by step guide for domesticating foreign state and foreign country judgments in Texas. Armed with the statutes and case law in sections I and II of this paper, the Texas practitioner should be able to provide excellent legal collection services for his or her client. The attorney must follow the wording of the statutes closely, and ensure that his or her filings meet the formal criteria. Good luck in undertaking such matters in the future. Feel free to call me at the courthouse if I can be of service.

Mike Engelhart

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<sup>65</sup> *Superseded by statute as recognized in, Pinilla v. Harza Eng'g Co.*, 755 N.E.2d 23, 26 (Ill. App. Ct.

2001).