ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,917

JEAN NADD, a/k/a JOHN NADD,
JOHN R. NADD and JOHN SCOTT NADD,

Petitioner,

v.

LE CREDIT LYONNATS, S.A.,

Respondent.

RESPONDENT'S AMENDED BRIEF ON THE MERITS

On Review from the District Court of Appeal, Fifth District,
State of Florida
Consolidated Case Nos. 98-01342, 01343

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STATEMENT OF FONT SIZE

Pursuant to this Court's Administrative Order dated July 13, 1998, Petitioner hereby certifies that this Brief utilizes 12 point Courier New type font, a font that is not proportionately spaced, that this font type and size results in not more than 10 characters per inch.

PRELIMINARY STATEMENT

Plaintiff-Respondent Le Credit Lyonnais, S.A. (hereinafter "LCL") holds two French judgments against the Defendant-Petitioner Jean Nadd (hereinafter "Nadd"). LCL filed the judgments in Florida pursuant to the Uniform Out-of-Country Foreign Money Judgment Recognition Act, Fla.Stat. § 55.601 *et. seq.* (hereinafter the "UFMJRA"), which was adopted in Florida in 1994. The Circuit Court for Orange County held that the five-year statute of limitations on actions to enforce foreign judgments, Fla.Stat. § 95.11(2)(a), bars the recognition of LCL's two French judgments since the judgments were filed approximately 15 years after they were rendered. The Fifth District Court of Appeal (hereinafter "DCA"), in a unanimous opinion written by Judge W. J. Sharp, *Le Credit Lyonnais, S.A. v. Jean Nadd, a/k/a John R. Nadd*, 741 So.2d 1165 (1999), held that the five-year statute of limitations does not apply to the registration of a foreign judgment pursuant to UFMJRA, and that the applicable statute of limitations are the ones pertinent to Florida's domestic judgments.

DCA concluded that

> . . . the twenty-year statute is the applicable bar to recording and enforcing a foreign country's judgment under the UFMJRA.

Accordingly, the DCA reversed and remanded. The DCA also

certified two questions as being of "great public importance, meriting a definitive answer from our Florida Supreme Court." The two certified questions, as formulated by the DCA, are:

> First, does Florida's statute of limitations bar the registration in Florida, pursuant to the Uniform Foreign Money Judgments Recognition Act (UFMJRA), of two money judgments obtained in France in 1978 and 1979? Second, if Florida's statute of limitations is applicable, which provision applies: subsection (1) which requires that an action (or proceeding) on a judgment or decree of a court of record in this state be brought within twenty years; or subsection (2)(a) which requires that an action (or proceeding) on a judgment of a foreign country or another state be brought within five years? (741 So.2d at 1165-6.)

Respondent contends that the answer to the first question should be "No," that Florida's statute of limitations does not bar filing pursuant to UFMJRA, and that the 20-year Florida statute of limitations on enforcement of domestic judgments commences to run when the foreign judgment is recognized pursuant to Fla. Stat. § 55.604(5).

STATEMENT OF THE CASE AND FACTS

LCL obtained judgments against Nadd in the Tribunal de Grande Instance de Paris (the Paris County Court), Paris, France on May 9, 1978 and October 1, 1979 (hereinafter the " French Judgments"). The French Judgments were in the respective amounts of 484,836.51 French Francs and 1,976,556.55 French

Francs.[1] LCL submitted to the court below the affidavit of a French attorney who is a partner in the Paris office of the law firm of White and Case, and who states that under French law, the enforcement of judgments issued by French courts is subject to a 30-year statute of limitations (Article 2262 of the French Civil Code) and that the two French Judgments are valid and fully enforceable in France (R.779-856, Exh. C; R.857-925 Exh. C).[2] Nadd did not contest the fact that the two Judgments are valid and fully enforceable in France.

Plaintiff sought to have the Judgments "recognized" pursuant to Fla. Stat. § 55.604 by filing them with the Court Clerk's Office. The Clerk's Office recorded the Judgments on October 4, 1995 and October 6, 1995 (R.5-14, 17-26). Nadd raised various defenses, including the claim that enforcement of the Judgments was time barred (R.35-37, 38-41).[3]

LCL moved to have the Judgments “recognized “ pursuant to Fla. Stat. § 55.604(3). In a decision dated June 17, 1997

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[1] The present exchange rate is approximately 5.8 francs to the dollar.

[2] Parenthetical numerical references preceded by “R” are to pages of the Record On Appeal which is contained in the Appendix filed by Petitioner.

[3] Fla. Stat. § 55.605, which sets forth grounds for non-recognition, does not state that the statute of limitations may be a ground for non-recognition.

(R.573-575), the Circuit Court below pointed out that there are no reported cases on the issue of the applicability of the five-year statute of limitations to the filing of judgments pursuant to the procedures set forth in UFMJRA. On appeal, the DCA, also stated:

> We have found no reported case in Florida or in other states that have adopted the UFMJRA, which involves application of the forum state's statute of limitations where a foreign judgment is sought to be recorded.

Accordingly, the issue presented to the courts below and to this court is one of first impression in Florida. Indeed, with the possible exception of Colorado,[4] it appears that none of the 30 jurisdictions[5] in which the Uniform Foreign Money-Judgment Recognition Act proposed by the Uniform Law Commission (the "Uniform Recognition Act") has been adopted in various forms have addressed the issue of whether local statutes of limitations on actions to enforce foreign country judgments apply to the filing and recognition procedures of UFMJRA.

Finding that the five-year statute is a bar, the Circuit Court entered a judgment for defendant, (R.625, 626) from which LCL appealed (R.627-630, 631-634) to the DCA. As is noted

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[4] See *Milhoux v. Linder*, 902 P.2d 856 (Colo. 1995), which is discussed *infra.*

[5] See Decision of DCA, 741 So.2d 1165, at 1166, fn.6.

above, the DCA, holding that the five-year statute of limitations does not apply to the filing of foreign judgments pursuant to the UFMJRA, reversed and remanded, and certified the questions set forth above.

THE DECISION BELOW

In its decision of September 10, 1999 (the "Decision"), the DCA pointed out that:

> The UFMJRA contains no express statute of limitations. The only statute of limitations implied is the requirement of section 55.603 that the judgment sought to be recorded must be "enforceable where rendered." In this case, the parties agree both judgments are viable in France, since France has a thirty-year time span in which to bring suit on its judgment. (741 So.2d at p. 1167).

The DCA pointed out that prior to the effective date of the UFMJRA, a judgment creditor seeking to enforce a foreign country's judgment in Florida had to file a lawsuit and, if successful, obtain a Florida judgment based on the foreign judgment. The court stated that it was to remedy this "uncertain state of the law" that the UFMJRA was drafted by the Uniform Law Commissioners and adopted by the various states. The DCA stated:

> The main concern was to obtain recognition by foreign countries of judgments rendered in the United States. Foreign courts balked at giving credence to judgments of courts of the United States because like credence was not given to their judgments. It was difficult to convince civil law countries, in particular, that state courts of this country gave conclusive effect to

> their judgments, when states required litigants to bring new law suits to enforce them, and enforcement was dependent on case law, which varied greatly. The Florida Legislature stated that the main purpose behind adopting of the UFMJRA was not to ease the enforcement of foreign money judgments in Florida but to ensure the recognition and enforcement of Florida's judgments. (Id., p. 1167.)

The DCA stated that because of the lack of decisions under the UFMJRA, it considered cases brought under the parallel uniform statute, the Uniform Enforcement of Foreign Judgments Act ("UEFJA"), which was adopted in 1984. § 55.501 *et seq.* That statute provides a simplified procedure for implementing the Full Faith and Credit clause of the U.S. Constitution by providing for the registration of sister-state judgments which would then be treated as a judgment of the registration state.

The DCA pointed out that the 1964 version of the UEFJA prepared by the Commission on State Laws (the version adopted by Florida), like the UFMJRA, has no express statute of limitations. The court noted that despite the UEFJA being a uniform law which is intended to be uniformly interpreted, the decisions reached by various jurisdictions relating to the application of registration state statutes of limitations "have produced a marvel of diversity and non-uniform results." (Id., p. 1168.)

The DCA pointed out that Florida's UEFJA provides in

§ 55.502(4) that

> Nothing contained in this Act shall be construed to alter, modify, or extend the limitation period applicable for the enforcement of foreign judgments. (Id., p. 1169.)

DCA noted that this is a "non-uniform provision added by the Florida legislature" and that "the UFMJRA lacks that provision." (Id., p. 1169.)

The DCA concluded that § 55.502(4) of the UEFJA "is not clear" and that it could mean that the five-year statute remains as a bar to suits brought under the common law mode of enforcement, i.e., by a plenary lawsuit, or that the new method of enforcement under the UEFJA remains subject to the five-year statute of limitations bar, despite the provision in the UEFJA requiring that filed foreign judgments be treated in all ways like a Florida judgment. See § 55.502(1).

The DCA noted that similar to the situation with regard to UFMJRA, there are no Florida cases regarding application of the Florida statute of limitations to a judgment sought to be recorded under the UEFJA. (Id. at 1169). The court looked to the diverse decisions in other states.

As an explanation of the diversity of the rulings, the DCA stated:

> . . . [F]orum states have been free to devise their own rulings in this regard. Such diversity of result is made possible by the United States Supreme Court's

> interpretation of the Full Faith and Credit Clause of the United States Constitution, as not reaching procedural matters and its view that application of the forum state's statute of limitations is procedural and not substantive. **(Citations)**(Id. at 1169-1170.)

The DCA then reviewed the decisions under UEFJA, and the disparate conclusions that they reached. The DCA cited and discussed such cases as ***Stanford v. Utley***, 341 F.2d 265 (8th Cir. 1965), in which Judge Blackmun (later Justice Blackmun) held that a Mississippi judgment which had been timely registered in Missouri could be enforced in Missouri even after it was no longer effective in Mississippi, "because it was then subject to Missouri statutes for enforcement of domestic judgments." The DCA stated:

> He concluded that upon registration, the Mississippi judgment was born anew as a new Missouri judgment and the Missouri statutes of limitations on enforcement of domestic judgments commenced to run from the registration date.

The DCA noted that Judge Blackmun was relying upon language common to both the UEFJA and the UFMJRA to the effect that:

> . . . [T]he registered judgment has the same effect as though it had been rendered in a registering court. (Id. at 1170.)

The DCA cited and discussed a number of cases which adopted Justice Blackmun's view that, for purposes of applying the statute of limitations on domestic judgments rendered in the registration state, those statutes of limitations accrue or

begin to run from the registration date of the foreign judgments. Cases cited and reviewed include *Pan Energy v. Martin*, 813 P.2d 1142 (Utah 1991), as well as cases decided by the courts of other states.

The DCA then stated that some jurisdictions "have adopted a more moderate approach." That approach is described by the DCA as follows:

> If the foreign judgment is enforceable in the originating jurisdiction, it can be registered in the forum state. But its enforcement and effect in the forum state turns on compliance with the forum state's statute of limitations, which is applicable to domestic judgments, gauged from the date the judgment was rendered; not the registration date. (Id. at 1171.)

The DCA cited four cases which purportedly followed that "moderate approach," two of which are by courts in Georgia, one in Colorado and one in Illinois. Both Petitioner and Respondent contend on this appeal that the so-called "moderate approach" was, in fact, not adopted in those four cited cases. See Petitioner's Initial Brief, at pp. 39-40, and Point II(D) *infra*.

The DCA made the point that the primary rationale for those jurisdictions which have held the statute of limitations for bringing suit on the foreign judgment does not apply to registration of foreign judgments under the UEFJA, is that the legislatures, in adopting the Uniform Act, did not intend for

them to apply. The DCA stated:

> In Florida, both Uniform Acts were adopted much later in time than the statute of limitations enactment. Thus, the Legislature was aware of the older statute, and had it intended the statute to bar registration, it could have expressly added that provision, as did the earlier version of the Uniform Act. (Id. at 1172.)

The DCA's holding in the case was predicated upon its conclusion that in contradistinction to the purpose of UEFJA, the purpose of the UFMJRA was, as was stated by the Florida legislature, "to ensure the recognition and enforcement of Florida judgments abroad." (Id. at p. 1167.) The DCA stated:

> Achieving enforcement of Florida's judgments abroad by according foreign judgments reciprocity of treatment in Florida was the primary purpose for enacting the UFMJRA, as well as the UEFJA.
>
> If true reciprocity for enforcement of foreign judgments is intended by the Uniform Acts, there should be a change in the old ball game of ruling foreign judgments (usually) "out" or "inferior." Allowing registration of a foreign judgment which is valid where rendered, and then subjecting it to only those defenses (including statutes of limitations) applicable to domestic judgments, best gives force and effect to the language of the Uniform acts which (paraphrased) provide that the registered judgment shall have the same force and effect as a judgment of this state. This interpretation not only enhances the likelihood of recognition and enforcement of Florida's judgments abroad, but also tends to discourage debtors from shopping state to state to find the most favorable limitations period, to escape enforcement of a foreign country's judgment. (Id. at 1172.)

SUMMARY OF ARGUMENT

The lower court correctly held that Florida's five-year

statute of limitations on actions on foreign judgments does not bar the filing and recognition of the French Judgments, since UFMJRA expressly permits the filing and recognition of foreign judgments that are "enforceable where rendered." Fla. Stat. §§ 55.603 and 55.604. UFMJRA thereby incorporates the statute of limitations of the rendering jurisdiction. The two French Judgments, at the time of filing in Florida, were enforceable in France and, in light of France's 30-year statute of limitations, continue to be enforceable there.

Permitting the enforcement in Florida of foreign country judgments which are "enforceable where rendered," effectuates the basic purpose of the Uniform Statute, which is to encourage foreign jurisdictions to enforce Florida judgments by assuring them that their judgments will be enforced here.

The dicta of the DCA that the 20-year statute of limitations on domestic judgments applies to the filing and enforcement of foreign judgment pursuant to UFMJRA, and that the 20-year statute commenced to run when the French Judgments were rendered, violates the basic principles enunciated in the DCA's decision. The 20-year cap imposed by the DCA on the age of foreign judgments which may be enforced in Florida, is inconsistent with UFMJRA which permits the filing of foreign judgments which are "enforceable where rendered." Under the

DCA's ruling, French judgments rendered more than 20 years ago but less than 30 years ago, which are enforceable in France in light of its 30-year statute of limitation on judgments, cannot be filed or enforced in Florida even though they are enforceable in France. This Court should modify the decision below by holding that Florida's 20-year statute on domestic judgments, like the five year statute on foreign judgments, does not bar the filing of foreign judgments which are "enforceable where rendered."

The DCA's reliance upon four cases interpreting the UEFJA, is plainly misplaced. In none of those cases did the court hold that the statute of limitations on domestic judgments commenced to run from the date the judgment was rendered, rather than the registration date. This court should follow the decisions in at least 12 other jurisdictions, in which it was held that in the context of UEFJA, the statute of limitations on domestic judgments commences to run upon the filing of that judgment in the registration state. Similarly, this Court should follow the decisions of the federal courts which have interpreted the federal registration statute to provide that registration, so far as enforcement is concerned, creates the equivalent of a new judgment of the registration court, and that the local statute of limitations commences to run upon the registration of the

foreign judgment.

Cases upon which Petitioner relies which hold that local statutes of limitations apply to filings pursuant to UEFJA, have no application to filings pursuant to UFMJRA. The purpose of the UEFJA is to implement the constitutional mandate that states give full faith and credit to judgments rendered by sister-states. The U.S. Supreme Court has held that the full faith and credit clause does not compel a forum state to use another states limitation period. Given the freedom to do so, the courts in a number of states have held that their local statutes of limitations on actions to enforce foreign judgments are applicable to the filing procedures under UEFJA. In contradistinction to UEFJA, UFMJRA is specific in authorizing the filing and recognition of judgments which are valid and "enforceable where rendered," so as to effectuate the purpose of encouraging reciprocity by enforcing foreign judgments. Accordingly, forum state statutes of limitations have no application to filings under UFMJRA.

Florida's five-year statute continues to apply to the enforcement of foreign judgments which cannot be registered in Florida pursuant to UFMJRA, which is limited to only foreign money judgments. Non-money judgments are outside the purview of UFMJRA, and are subject to the five-year statute of limitations.

The five-year statute was enacted at least as early as 1974. The UFMJRA was enacted in 1994. It was not intended to apply to the dramatically new approach to foreign judgments which was many years later taken in UFMJRA.

Petitioner ignores many distinctions between UFMJRA and UEFJA. Florida's UEFJA expressly provides at § 55.502(4) that "nothing contained in this Act shall be construed to alter, modify, or extend the limitation period applicable for the enforcement of foreign judgments." This non-uniform provision which was added by the Florida legislature to UEFJA was not included in UFMJRA. Similarly, the UEFJA, at § 55.503, provides that recorded judgments shall be "subject to" . . . legal and equitable defenses . . . as a judgment of . . . court of this state." The UFMJRA contains no such provision.

There is no constitutional bar to the filing and recognition of the French Judgments. The DCA's ruling that the five-year statute does not apply to filings under UFMJRA, does not constitute the lengthening of a statute of limitation on a substantive cause of action. When LCL obtained its judgments against Nadd, it no longer had claims or causes of action. It had the judgments. Nadd did not have a vested property right to be free of liability under the French Judgments because he moved his residence to Florida. The Florida legislature had the

power to determine whether the public policy of its state should be altered to permit the recognition of the judgments of France and allow them to be enforced in Florida. The due process limitations on the revival of barred substantive causes of action, provides no basis for holding unconstitutional the recognition of foreign country judgments which are filed in Florida. Providing a procedure for recognition of foreign judgments is a far cry from "reviving" substantive causes of action.

ARGUMENT

POINT I

THE LOWER COURT CORRECTLY HELD THAT FLORIDA'S FIVE-YEAR STATUTE OF LIMITATIONS ON ACTIONS ON FOREIGN JUDGMENTS DOES NOT BAR THE FILING AND RECOGNITION OF THE FRENCH JUDGMENTS PURSUANT TO UFMJRA

A. The UFMJRA Expressly Permits The Filing And Recognition Of Foreign Judgments That Are Enforceable Where Rendered, Thereby Incorporating The Statute Of Limitationsg Of The Rendering Jurisdiction.

Fla. Stat. § 55.604, sets forth the procedures for filing and seeking recognition of foreign country judgments "meeting the requirements of § 55.603." § 55.603 provides:

> This act applies to any foreign judgment that is final and conclusive and <u>enforceable where rendered</u>,[6] even though an appeal therefrom is pending or is subject to

[6] Unless otherwise stated, all underlining is emphasis added.

appeal.

In light of France's 30-year statute of limitations on the enforcement of judgments, the two French Judgments are indisputably "enforceable where rendered." By authorizing the filing of judgments which are "enforceable where rendered," the UFMJRA, in effect, thereby incorporates the statute of limitations of the rendering jurisdictions.

Permitting the enforcement in Florida of foreign country judgments which are enforceable where rendered is central to effectuating the basic purpose of the uniform statute. The model Uniform Foreign Money-Judgments Recognition Act (hereinafter the "Uniform Recognition Act"), upon which the Florida UFMJRA was patterned, was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, in 1962. The purposes of the codification, and the public policies sought to be effectuated thereby, are described in the prefatory note to the Uniform Recognition Act, as follows:

> In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused recognition abroad either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved or because no certification of existence of

> reciprocity could be obtained from the foreign government in countries where existence of reciprocity must be certified to the courts by the government. Codification by a state of its rules on the recognition of money-judgments rendered in a foreign court will make it more likely that the judgments in the state will be recognized abroad.[7] (Emphasis added.)

The effort to codify a set of rules which defined the criteria for enforcing foreign country judgments so as to encourage foreign jurisdictions to enforce American judgments was thus a primary focus of the Uniform Recognition Act. The hope was that the certainty of recognition of foreign judgments which is provided for in the Uniform Recognition Act would encourage recognition of United States judgments abroad. The DCA acknowledged throughout its opinion, that encouraging reciprocity as aforesaid was the basic purpose of UFMJRA. Indeed, it cited the Florida legislatures staff analysis to that effect (see Decision, fn. 13). Other jurisdictions have recognized this basic purpose. See e.g., *Porisini v. Petricca*, 456 N.Y.S.2d 888, 90 A.D.2d 949 (App.Div. 4th Dep't 1982), in which the New York court stated:

> To protect the interests of New York citizens in foreign states by encouraging reciprocal accommodation in enforcing judgments, New York enacted CPLR Article 53, the Uniform Foreign Money-Judgments Recognition Act in 1970.

Similarly, in *Wolff v. Wolff*, 40 Md. App. 168, 389 A.2d 413,

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[7] See Uniform Laws Annotated, Master Edition Volume 13.

417 (1978), aff'd, 285 Md. 185, 401 A.2d 479 (1979), the court stated:

> [T]he Uniform Foreign Money-Judgments Recognition Act was intended to promote principles of international comity by assuring foreign nations that their judgments would, under certain well-defined circumstances, be given recognition by courts in states which have adopted the Uniform Act. As reciprocity is generally an important consideration in determining whether the courts of one country will recognize the judgments of the courts of another . . . the certainty of recognition of those judgments provided for by the Act will hopefully facilitate recognition of similar United States' judgments abroad. . . . The Act, therefore delineates a minimum of foreign judgments which must be recognized in jurisdictions which have adopted the act, and in no way constitutes a maximum limitation upon foreign judgments which may be given recognition apart from the Act. (Id. at 884.)

Accord; *Bank of Montreal v. Kough*, 430 F.Supp. 1243, 1249 (N.D.Cal. 1977), aff'd 612 F.2d 467 (9th Cir. 1980) ("[T]he purpose of the Uniform Act was to create greater recognition of the state's judgment in foreign nations . . . by informing the foreign nations of particular situations in which their judgments would definitely be recognized").

The U.S. Supreme Court in *Hilton v. Guyot*, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895) required, as a condition to the enforcement of a foreign judgment, that the foreign jurisdiction enforce U.S. judgments. The requirement of reciprocity has come under increasing criticism from courts and commentators. See

e.g., *Royal Bank of Canada v. Trentham*, 665 F.2d 515 (5th Cir. 1981); *Johnston v. Compagnie Generale Transatlantique*, 242 N.Y. 381, 152 N.E. 121 (N.Y. 1926). The drafters of the Uniform Recognition Act upon which the UFMJRA adopted by the various states was patterned, rejected reciprocity as a factor to be considered in recognition of foreign money judgments on the ground that the due process concepts embodied in the Uniform Recognition Act were an adequate safeguard for the rights of citizens sued abroad.

A few states currently require reciprocity or provide that lack of reciprocity by the foreign country whose judgment is sought to be filed is a discretionary ground to deny recognition. Florida is one of them. The Florida legislature inserted lack of reciprocity as a discretionary ground for non-recognition of a foreign judgment, which ground did not appear in § 4 of the Uniform Recognition Act. Subsection 2(g) of § 55.605, which was added by the Florida legislature, states that a foreign judgment need not be recognized if:

> the foreign jurisdiction where a judgment was rendered would not give recognition to a similar judgment rendered in this state.[8]

See also, *Desjardins Ducharme v. Hunnewell*, 585 N.E.2d, 411

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[8] See *Chabert v. Bacquie*, 694 So.2d 805 (1997), holding that France enforces similar judgments as are here involved.

Mass. 711 (1992).

All states which have adopted the Uniform Recognition Act, Florida included, permit the filing and recognition of judgments which are "enforceable where rendered." See, *Seetransport Wiking Trader Schiffahrtsgesellshaft v. Namimpex Centrala Navala*, 29 F.3rd 79 (2d Cir. 1994), in which the court ruled that the award of the Paris court was enforceable in France and that it was therefore enforceable in a New York court, New York having adopted its version of the UFMJRA which provides, like the Florida statute, that a foreign country judgment must be recognized if it is "final, conclusive and enforceable where rendered."[9]

To deny the recognition in Florida of foreign judgments which are more than five years old, or indeed are over 20 years old, despite the fact that such judgments are enforceable in the rendering jurisdictions, would be counterproductive to the effort to encourage reciprocity which underlies the UFMJRA, and would ignore the clear language of the statute which permits the recordation of foreign judgments which are enforceable in the jurisdictions which rendered them.

The DCA, in its Decision, in effect agreed with the above

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[9] See New York Civil Practice Law and Rules, Article 53.

analysis and held "there should be a change in the old ball game ruling foreign judgments (usually) 'out' or 'inferior'. Allowing registration of a foreign judgment which is valid where rendered . . . best gives force and effect to the language of the Uniform Acts which (paraphrased) provide that the registered judgment shall have the same force and effect as a judgment of this state."

Petitioner's brief is remarkable for its failure to even advert to the above conclusion of the DCA, no less discuss it. There is not even a mention in Petitioner's brief that the DCA concluded that the purpose of UFMJRA is to encourage foreign jurisdictions to enforce Florida judgments by enforcing foreign judgments which are enforceable in those jurisdictions that rendered them. Nor is there even mention of the statutory language which was held by the DCA to be decisive, i.e., the phrase permitting the filing of judgments which are "enforceable where rendered." Petitioner's ostrich-like approach to his appeal is a reflection of Petitioner's awareness of the indisputable validity of the DCA's analysis and its holding that the five-year statute does not bar filing and recognition of the French Judgments.

POINT II

THE COURT SHOULD HOLD THAT NEITHER THE FIVE-YEAR NOR THE TWENTY-YEAR STATUTE BARS FILING OF JUDGMENTS

PURSUANT TO UFMJRA AND THAT THE TWENTY-YEAR STATUTE OF LIMITATIONS APPLICABLE TO DOMESTIC JUDGMENTS COMMENCES TO RUN WHEN THE JUDGMENTS ARE RECOGNIZED IN FLORIDA, NOT WHEN THE JUDGMENTS WERE RENDERED BY THE FOREIGN JURISDICTION

A. The 20-Year Cap Imposed By The DCA On The Age Of Foreign Judgments Which May Be Filed And Enforced In Florida Pursuant to UFMJRA Violates The Language And Purpose Of UFMJRA.

The dicta of the DCA that the twenty-year statute of limitations contained in § 95.11(1) applies to the filing and enforcement of foreign judgments pursuant to UFMJRA, and that the statute commenced to run when the French judgments were rendered, violates the basic principles enunciated in the DCA's Decision which are reviewed above, and is inconsistent with UFMJRA which permits the filing of foreign judgments which are "enforceable where rendered." Under the DCA's ruling, for instance, French judgments rendered more than 20 years ago but less than 30 years ago, which are enforceable in France in light of its 30-year statute on judgments, cannot be filed or enforced in Florida even though they are enforceable in France. This court should modify the Decision below by holding that Florida's 20-year statute on domestic judgments, like the five-year statute on foreign judgments, does not bar the filing of foreign judgments which are "enforceable where rendered." It should hold that the 20-year statute does not commence to run until the foreign judgment is recognized pursuant to § 55.604.

By the DCA's Decision, foreign jurisdictions become advised that their judgments which are enforceable in their countries for 30 years will not be enforced in Florida after only 20 years. In light of the clear language of UFMJRA which permits the filing of judgments which are "enforceable where rendered," and in light of the indisputable purpose of the statute which that language was intended to effectuate, it was clear error for the court to put a 20-year cap on the age of foreign judgments which will be enforceable in Florida.

The DCA has, in effect, redrawn § 55.603 of UFMJRA to read that foreign judgments may be filed in Florida if they are "enforceable where rendered so long as they were rendered no more than 20 years prior to filing." The statute contains no such proviso. The DCA incorrectly engrafted the proviso onto the statute.

B. The DCA's Reliance On Four Cases Interpreting UEFJA Is Misplaced.

The DCA cited four cases in support of its statement that certain jurisdictions have adopted a "more moderate approach" than other jurisdictions in cases involving the UEFJA, by holding that the enforcement in the forum state "turns on compliance with the forum state's statute of limitations, which is applicable to the domestic judgments, gauged from the date

the judgment was rendered; not the registration date." 741 So.2d at 1171. The cases cited by the DCA which purportedly support that holding are *Hunter Technology, Inc. v. Scott*, 701 P.2d 645 (Colo. App. 1985), *Williams v. American Credit Services, Inc.,* 229 Ga. App. 801, 495 S.E.2d 121 (Ga. App. 1997), *Wright v. Trust Company Bank*, 219 Ga. App. 551, 466 S.E.2d 74 (Ga. App. 1995), and *Johnson v. Johnson*, 267 Ill. App.3d 253, 642 N.E.2d 190 (Ill. App. 2 Dist. 1994, 204 Ill. Dec. 728). In none of those cases, did the court hold that the statute of limitations on domestic judgments is applicable to the filing and enforcement of sister-state judgments under UFMJRA, and that the statute commenced to run from the date that the judgment was rendered. To the contrary, in *Hunter Technology*, the court simply held that the Colorado six-year statute of limitations applicable to actions on sister-state judgments does not bar the filing of a sister-state judgment under the Uniform Act, since the filing procedure is not "an action" within the meaning of the statute of limitations. In *Williams*, the court applied the local statute of limitations against actions on foreign judgments, because it concluded that the procedure chosen was, in fact, an action to enforce a judgment, and was not a filing under Georgia's UEFJA.

Williams, also decided by a Georgia court, similarly held

that the local five-year statute on actions to enforce foreign judgments is not applicable to domestication under Georgia's Uniform Law. In none of the above three cases was there any discussion about the application of the local statute of limitations on domestic judgments.

In the fourth case, *Johnson v. Johnson*, *supra*, the Illinois court held that, pursuant to the terms of the Uniform Law, "a foreign judgment filed under this section is treated as an Illinois judgment, and that, as a consequence, the limitations period for enforcing a judgment applied, rather than the five-year statute on other actions." The court expressly stated that it did not reach the issue of when the limitations period began to run.

Accordingly, the DCA cited no authority for what it described as a "moderate approach" of applying the statute of limitations on domestic judgments, gauged from the date the judgment was rendered in the foreign jurisdiction. Respondent is aware of no such authority.

C. This Court Should Follow Colorado Which Permitted The Filing And Enforcement Of A Foreign Judgment Which Was Enforceable In The Foreign Jurisdiction By Virtue Of That Jurisdiction's 30-Year Statute of Limitation, Although Colorado Had A Shorter Statute.

A case closely on point with the issues raised in this case is *Milhoux v. Linder*, 902 P.2d 856 (Colo.App. 1995) in which the plaintiff filed for recognition and sought enforcement of a Belgium judgment pursuant to Colorado's Uniform Foreign Money-Judgments Recognition Act. The defendants there contended that the trial court erred in recognizing the Belgium judgment because they were unfairly burdened in their defense as a result of Belgium's 30-year statute of limitations which they argued was repugnant to Colorado's public policy.

The *Milhoux* court held that the Colorado version of UFMJRA, for reasons not here relevant, was not applicable but that the Belgium judgment could be recognized and enforced under common law principles of comity. The court held that the statute of limitations applicable in Belgium which permitted enforcement of Belgium's judgments for 30 years, was a mere difference in the "practice" and "procedural system" which was not a sufficient basis for non-recognition, and stated:

> . . . [C]ourts in the United States normally will not deny recognition merely because the law or practice of the foreign country differs, even if markedly from that of the recognition forum. See Hunt v. BP

> Exploration Co. (Libya) Ltd., supra; Uniform Foreign Money-Judgments Recognition Act § 4 (comment) 13 Uniform Laws Annot. 268 (1986) (A mere difference in the procedural system is not a sufficient basis for non-recognition. A case of serious injustice must be involved.). As Judge Cardozo observed: "We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home." Loucks v. Standard Oil Co., 224 N.Y. 99, 110-11, 120 N.E. 198, 201 (1918).
>
> As have numerous other courts, we conclude that an appropriate standard is that set forth in the Restatement (Second) of Conflicts § 117 comment c (1971). Under this standard, the public policy exception is limited to "situations where the original claim is repugnant to fundamental notions of what is decent and just" in the recognition forum. See Ackerman v. Levine, supra; Tahan v. Hodgson, supra; Pariente v. Scott Meredith Literary Agency, Inc., supra. (Id. at 861.)
>
> The Colorado court concluded:
>
> Here, defendants have failed to demonstrate that Belgium's longer statute of limitations caused any burden that was repugnant to fundamental notions of what is decent and just. (Id. at 861.)

The UFMJRA incorporates the "public policy" basis for refusing to recognize the judgment of a foreign country. Sec. 55.605(2)(c) provides that a foreign judgment need not be recognized if the claim for relief upon which the judgment is based is "repugnant to the public policy of the state."

No finding was made by the DCA, nor should it be made, that France's 30-year statute of limitations is repugnant to fundamental notions of what is considered decent and just in Florida. Accordingly, it was error for the DCA to have held

that Florida's 20-year statute of limitations would, in effect, supercede France's 30-year statute. To the contrary, Fla. Stat. § 55.603 requires that Florida recognize foreign judgments which are "enforceable where rendered."

D. This Court Should Adopt The Approach Of Cases Which Hold That Local Statutes Of Limitation Do Not Bar Filings Under The Federal Registration Statute And UEFJA And That Registration State Statutes On Domestic Judgments Run From The Date The Judgment Is Recognized In The Registration State

Both UFMJRA and UEFJA are patterned after the simplified filing procedures which have been and continue to be in use in the Federal Courts. See 28 U.S.C. § 1962, 1963. Under the Federal procedure, a judgment of a District Court of one State may be registered in the District Court of a sister State. The registered judgment then becomes a new judgment of the court in which the "foreign"judgment was registered. As was stated by then Circuit Judge Harry A. Blackmun (later United States Supreme Court Justice Blackmun) in *Stanford v. Utley*, 341 F.2d 265 (8th Cir. 1965):

> We have concluded that § 1963 is more than "ministerial" and is more than a mere procedural device for the collection of the foreign judgment. We feel that registration provides, so far as enforcement is concerned, the equivalent of a new judgment of the registration court. In other words, for the present fact situation and for enforcement purposes, the Missouri federal registration equated with a new Missouri federal judgment on the original Mississippi federal judgment, that is, it is no different than a

> judgment timely obtained by action in Missouri federal Court on that Mississippi judgment.

341 F.2d at 268 (emphasis added). Judge Blackmun therefor held that the applicable statute of limitations is that which applies to domestic judgments of the "registration" state, and that the statute begins to run from the date of the registration of the new judgment.

The courts of many States interpreting UEFJA have construed the act in conformity with the federal policy articulated in *Stanford v. Utley*, *supra*, by treating the filed judgment as a new judgment of the registration State and by applying the statute of limitations on the enforcement of domestic judgments, gauged from the time the new judgment was obtained by filing pursuant to the Uniform Act.

The first case to address the issue of whether the statute of limitations on the bringing of actions on sister-state judgments applies to the filing of judgments of sister-states pursuant to the procedures of UEFJA, was *Producers Grain Corporation v. J.D. Carroll*, 546 P.2d 285 (Okla.Ct.App. 1976). The judgment creditor there sought to have its sister-state judgment recognized under the Oklahoma version of UEFJA after Oklahoma's three-year statute of limitations on actions to enforce foreign judgments had expired. The lower court in

Carroll refused to recognize the judgment, holding that the three-year statute was applicable. The Oklahoma Court of Appeals in *Carroll* noted that the issue had not then been resolved in any of the States that had adopted the 1964 version of the UEFJA. It reviewed the legislative history of that Act and concluded that the statute of limitations on the bringing of "actions" to enforce foreign judgments had no application to the filing procedures under the Oklahoma version of the Uniform Act. The court stated:

> [The statute of limitations] applies to civil actions on a foreign judgment and a proceeding under the Act is not a civil action within the meaning of [the statute of limitations]. Indeed, as we noted above, the Act was designed to provide a viable alternative to the traditional method of enforcing foreign judgments by a separate lawsuit in which the judgment was considered nothing more than a contract debt; it totally lacked the force of a domestic judgment, except for evidentiary purposes. [Citation omitted.] The Act does not involve the institution of an action to enforce the judgment; it requires, to give the foreign judgment immediate legally enforceable consequences, only that it be filed in accordance with its provisions. 546 P.2d at 287 (emphasis added).

The *Carroll* court concluded that under the Oklahoma version of UEFJA,

> . . . [t]he mere act of filing, in substance, transfers the properly authenticated foreign judgment into an Oklahoma judgment. Adequate notice and an opportunity to be heard are, of course, mandatory, but unless the judgment debtor comes forward with some sufficient reason with striking the judgment, it may be enforced against him in the same manner as any

intra-state judgment. (Id. at 287.)

Id. Thus, the *Carroll* court noted that the Oklahoma version of UEFJA transformed the foreign judgment into a domestic judgment, to which the statute of limitations for domestic Oklahoma judgments is applicable and begins to run upon recognition of the filed judgment.

In arriving at its conclusion, the *Carroll* court examined the legislative history, noting that the original version of UEFJA, which was promulgated by the Commissioners on Uniform State Laws in 1948, included a provision that expressly made the filing of foreign judgments subject to the local statute of limitations on the bringing of actions to enforce foreign judgments. The 1948 provision referred to and quoted by the Carroll court was as follows:

> On application made within the time allowed for bringing an action on a foreign judgment in this state, any person entitled to bring such action may have a foreign judgment registered in any court of this state having jurisdiction of such an action. (Id. at 288.)

The Carroll court went on to note that in 1964 the Uniform Act was radically altered. Most importantly, the above quoted provision was eliminated. Oklahoma, like Florida, adopted the 1964 version of the Uniform Act. The *Carroll* court pointed out:

> Under the 1948 Act, then, the statute of limitations applicable to suits on foreign judgments governs the

> institution of an enforcement proceeding. If, therefore, Oklahoma were one of the states which have retained the 1948 Act the trial court's judgment would be correct. But Oklahoma never adopted the 1948 Act; it adopted instead the 1964 Revised Act, which represents a radical departure from the earlier effort. Section 2 of the Revised Act completely omits any reference to the statute of limitations. Under this Section, which is codified at 12 O.S. 1971, s 721 (quoted above), the mere filing of an authenticated foreign judgment gives the judgment the same effect 'as a judgment of the District court of any county of this state.' (Id. at 288.)

UFMJRA contains a similar provision to that in the Oklahoma statute. Fla. Stat. § 55.604(5) provides that the filed judgment, when recognized, "shall be enforced in the same manner as the judgment of a court of this state."

The *Carroll* court concluded that "[t]he Revised Act essentially adopts the Federal practice . . . ," as enunciated in *Stanford v. Utley*, supra., stating that:

> Since an enforcement proceeding under the Act is not a civil action within the meaning of Section 95 and since the express terms and statutory purposes of the Revised Act indicate unequivocally that the statute of limitations has no application to a proceeding under the Act, we hold that the trial court erred by striking Producers' judgment from the judgment docket. (Id. at 288.)[10]

[10] That the registration state's statutes of limitations has no application to the procedures relating to the filing of a judgment pursuant to UFMJRA, is also apparent from the fact that the grounds for non-recognition set forth in § 55.605 do not include any ground that the judgment is barred by a statute of limitation.

The UFMJRA follows the federal practice, by looking to the statute of limitations of the jurisdiction that rendered the foreign judgment. Abandoning the practice followed in the 1948 version of UEFJA, which expressly made applicable the local statute of limitations on the bringing of actions to enforce foreign judgments, the Commissioners on Uniform State Laws did not include the requirement which was contained in the 1948 version of UEFJA that the filing need be within the time required by the statute of limitations on the bringing of actions on foreign judgments.

Other cases which have similarly held include *Pan Energy v. Martin*, 813 P.2d 1142 (Utah 1991), in which the Utah Supreme Court noted that UEFJA adopted by Utah is consistent with the approach taken by the federal courts in *Stanford v. Utley, supra*. The *Pan Energy* court referred to that part of the Utah statute which provides, again like Fla. Stat. § 55.604(5) and (6), that the court "shall treat the foreign judgment in all respects as a judgment of a district court." The court concluded:

> We agree with the approach taken by the federal courts and hold that, at least for the purposes of enforcement, the filing of a foreign judgment under [the Utah version of the uniform Act] creates a new Utah judgment which is governed by the Utah statute of limitations (on Utah domestic judgments). Because Utah Code Ann. § 78-12-22 (1987) establishes an

> eight-year statute of limitations for the enforcement of judgments, foreign judgments filed in Utah must also be governed by the eight-year statute of limitations, which runs from the date of filing.
>
> * * *
>
> The Utah Foreign Judgment Act simply requires that foreign judgments filed in the state be treated the same as local judgments in all respects, including the applicable statute of limitations regarding enforcement. *Pan Energy*, 813 P.2d at 1144.

The *Pan Energy* case was cited with approval, and discussed at length in *Drllevich Construction, Inc. v. Stock*, 958 P.2d 1277 (Sup.Ct. Okla. 1998). The court there stated:

> The oft cited *Pan Energy v. Martin, 813 P.2d 1142 (Utah 1991)* provides an example of the most often used policy regarding the time limitations within which a foreign judgment must be enforced.

Pointing out that the Utah Supreme Court had held that the filing of a foreign judgment created a new Utah judgment and that Utah's eight-year statute of limitations was applied from the date of that new judgment, the court further stated:

> The Utah Supreme Court noted that its interpretation creating a new Utah judgment, upon the proper registration of a foreign judgment, was consistent with the approach taken by federal courts in their application of 28 U.S.C. § 1963, a similar federal registration statute. n3. The Utah court noted a line of federal cases which found a new judgment was created with the registration of a foreign judgment. Id. (citing Stanford v. Utley, 341 F.2d 265, 268 (8th Cir. 1965) (Judge, later Justice, Blackmun wrote, "We feel that registration provides, so far as enforcement is concerned, the equivalent of a new judgment of the registration court.", emphasis added); United States

v. Palmer, 609 F. Supp. 544, 548 (E.D.Tenn. 1985); Dichter v. Disco Corp., 606 F. Supp. 721, 724 (S.D.Ohio 1984); Anderson v. Tucker, 68 F.R.D. 461, 463 (D.Conn. 1975); Juneau Spruce Corp. v. Int'l Longshoremen's & Warehousemen's Union, 128 F.Supp. 715, 717 (N.D.Cal. 1955)).

The *Drllevich* court further stated:

Other jurisdictions with holdings similar to that of Pan Energy include: The Texas Supreme Court dismissing an appeal for want of jurisdiction held that when a creditor proceeds under the Uniform Enforcement of Judgments Act, "the filing of the foreign judgment comprises both a plaintiff's original petition and a final judgment." Walnut Equipment Leasing Co. v. Wu, 920 S.W.2d 285, 286 (Tex. 1996); The Supreme Court of Nevada, citing Pan Energy v. Martin and others, found "that when a party files a valid foreign judgment in Nevada, it constitutes a new action for the purposes of the statute of limitations." Trubenbach v. Amstadter, 109 Nev. 297, 849 P.2d 288, 290 (Nev. 1993). See also Galef v. Buena Vista Dairy, 117 N.M. 701, 875 P.2d 1132 (N.M.Ct.App. 1994); Mee v. Sprague, 144 Misc.2d 1057, 545 N.Y.S.2d 268 (N.Y.Sup. 1989); Payne v. Claffy, 281 S.C. 385, 315 S.E.2d 814 (S.C.Ct.App. 1984); Warner v. Warner, 9 Kan.App.2d 6, 668 P.2d 193, 195 (Kan.Ct.App. 1983) ("registration of a foreign judgment which is enforceable when registered gives the judgment creditor a new and additional five years to execute, regardless of when the judgment was rendered in the foreign state.").

The *Drllevich* court then concluded:

In keeping with Pan Energy and those jurisdictions which hold similarly, a foreign judgment which is enforceable at the time the judgment creditor registers the foreign judgment in Oklahoma will be considered, for the purposes of enforcement, as a new judgment of this state to which Oklahoma's five year dormancy statute will apply. Once filed, the foreign judgment becomes a judgment of this state and "shall [be] treated ... in the same manner as a judgment of

> the district court of any county of this state. 12 O.S. 1991 721.

A similar result was reached in *Trubenbach v. Amstadter*, 849 P.2d 288 (Nev. 1993), in which the Nevada Supreme Court stated:

> [W]e conclude that when a party files a valid foreign judgment in Nevada, it constitutes a new action for the purposes of the statute of limitations. Thus, when Trubenbach filed a notice of a valid foreign judgment in a Nevada district court in July, 1991, NRS 11.190(1)(a) began running. (Emphasis added.) (Id., at 290.)

See also *Walnut Grove Products v. Schnell*, 659 S.W.2d 6 (Mo.App. 1983) and *Johnson v. Johnson, supra*.

Accordingly, following the conclusions reached in *Carroll* and the many other cases discussed above, the DCA, while correct in holding that Florida's five-year statute of limitations on civil actions to enforce foreign judgments is inapplicable to the filings made by LCL pursuant to UFMJRA, incorrectly held that the 20-year statute on domestic judgments began to run when the French Judgments were rendered.[11] In accordance with the above authorities, the recognized judgments that result from such filings should be held to be governed by Florida's statute

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[11] In the instant case, while the 1978 and 1979 Judgments were filed in Florida in 1995, well within the 20-year statute, the instant litigation has been going on for 5 years, and the French Judgments are now more than 20 years old. It would be clearly inequitable to deny Respondent the right to enforce the Judgments after they are recognized upon the remand of the DCA.

of limitations on domestic judgments, which statute begins to run from the filing and recognition of the Judgments, not from the rendition of the Judgments.

E. Cases Which Hold That Local Statutes Of Limitation Apply To Filings Pursuant To UEFJA Have No Application To Filings Pursuant To UFMJRA.

As noted in the DCA opinion, there are a number of jurisdictions which have rejected the approach in the *Carroll* and *Pan Energy* cases and the other cases reviewed above. However, those cases which reject the *Carroll* and *Pan Energy* approach are clearly distinguishable and are not persuasive. The major distinction is the difference between the policy objectives and language of UFMJRA and UEFJA. As is noted above, to effectuate its purpose of encouraging reciprocity between the U.S. and foreign countries regarding the enforcement of each others' judgments, UFMJRA authorizes the filing and recognition of foreign country judgments which are valid and "enforceable where rendered." In contrast, the purpose of the UEFJA is to implement the constitutional mandate that states give full faith and credit to judgments rendered by sister states. See *Jones v. Roach*, 118 Ariz. 146, 150, 515 P.2d 345, 349 (App. 1977). (The UEFJA is "a uniform act by which procedurally those rights and defenses afforded under the Full Faith and Credit Clause may be enforced or imposed..")

As is noted by the DCA at 741 So.2d at 1169-1170, the U.S. Supreme Court has held that the full Faith and Credit Clause does not compel a forum state to use another state's limitations period. *Wells v. Simonds Abrasive Co.*, 345 U.S. 514, 73 S.Ct. 856, 97 L.Ed. 1211 (1953). This is true not only for limitations periods for filing causes of action but also for limitations periods for enforcing judgments. *Strickland v. Watt*, 453 F.2d 393 (9th Cir. 1972).

Given the freedom to do so, courts in a number of states, rejecting the long line of cases discussed above, have held that their local statutes of limitations on actions to enforce foreign judgments apply to filing procedures under UEFJA. Thus, it was pointed out in *Eschenhagen v. Zika*, 144 Ariz. 213, 696 P.2d 1362, as it is by the DCA (741 So.2d at 1168):

> We find that courts which have been presented with the question of whether the Uniform Enforcement of Foreign Judgments Act requires the forum state to recognize any judgment properly filed under the Act at a time the judgment was valid in the rendering state have reached differing conclusions. 696 P.2d at 1365.

Rejecting the *Carroll* and *Pan Energy* reasoning, the *Eschenhagen* court addressed the point made by the *Carroll* court that the difference in wording between the 1948 version of the statute which expressly required that sister-state judgments be filed within the period of the forum states statute of

limitations on actions to enforce foreign judgments and the 1964 version which eliminated that requirement. The court stated that the deletion of the requirement

> does not necessarily mean that the forum state cannot apply its statute of limitations for the enforcement of foreign judgments. The language may have been deleted merely to leave it up to the court whether to apply that statute of limitations. 696 P.2d at 1367.

However, in contradistinction to UEFJA, UFMJRA is quite specific in authorizing the filing and recognition of judgments which are valid and "enforceable where rendered," so as to effectuate the purpose of encouraging reciprocity. To hold, as Nadd suggests, that the Florida five-year or twenty-year statute of limitations bars the filing and recognition of LCL's French Judgments even though they are valid and enforceable in France, violates both the purpose and the express language of UFMJRA. That statute, as well as associated local statutes, should be interpreted to promote, not undermine the policy of the act. Recognizing the two French Judgments which are "enforceable where rendered" would be in accordance with the language and spirit of the act.

The *Carroll* court raised the question of why the State legislature would leave in place a statute of limitations on foreign judgments -- in Florida a five-year statute -- after enacting UFMJRA, if that statute did not apply to foreign

judgments filed pursuant to UFMJRA. The *Carroll* court stated:

> We do not find this a compelling reason to judicially gloss the plain language of the statute. Any unnecessary incongruity between the Act and the statute of limitations must be resolved by the legislature. *Carroll*, 546 P.2d at 288 (emphasis added).

Moreover, Florida's five-year statute of limitations on the bringing of actions to enforce foreign judgments did not become moot when UFMJRA was passed. As the DCA pointed out, the five-year Statute of Limitations continued to apply to the enforcement of foreign judgments which can not be registered in Florida pursuant to UFMJRA. UFMJRA is limited to only money judgments rendered by the courts of foreign countries. Thus, Fla. Stat. § 55.602(2) provides:

> "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine, or other penalty."

Foreign judgments that are not for a sum of money can only be enforced in Florida by plenary actions. Such actions would still be subject to Florida's five-year statute of limitations on the bringing of civil actions to enforce foreign judgments. Judgments for divorce, or judgments granting injunctive or other equitable relief, would thus be outside the purview of UFMJRA. They must be enforced by actions brought within the five-year period of the Statute of Limitations.

In addition, foreign judgments that for other reasons do not meet the criteria set forth in § 55.605(2) would have to be enforced in Florida, if at all, by plenary actions, which actions would be subject to the five-year limitation period.

Turner Murphy Company vs. Specialty Constructors, Inc., 659 So. 2d 1242 (Fla. App., 1st Dist. 1995) illustrates the point. *Turner Murphy* was a plenary action brought against the corporate parent of a company against which the plaintiff had obtained a South Carolina judgment. The Court held that the five-year statute of limitations on actions brought to enforce foreign judgments was applicable, since the claim being made against the parent corporation was predicated on the South Carolina judgment. *Turner Murphy* is an example of a situation where the five-year statute applies, since it is a common law action.

Accordingly, it was perfectly reasonable for Florida's legislature to retain the existing five-year statute of limitations on civil actions to enforce foreign judgments, while at the same time creating an entirely new procedure in UFMJRA for recording and recognizing money judgments which are "enforceable where rendered," to which that statute of limitation does not apply.

The DCA made a similar point as follows:

The UEFJA, however, expressly states that a judgment

> creditor still has the option to bring a common law action to enforce the foreign judgment instead of proceeding under the Uniform Act. Although the UFMJRA lacks this provision, the alternative means of enforcing a foreign judgment clearly remains open to a holder of a judgment rendered in a foreign country, since the UFMJRA only encompasses money judgments.

F. The Five-Year Statute Of Limitations Is Not Intended To Bar The Filing Of Foreign Judgments Pursuant To UFMJRA

Petitioner argues that Fla. Stat. 95.011, by defining "action" to include "a civil action or proceeding" clarifies that the five-year Statute of Limitations was intended to prevent the filing of foreign judgments pursuant to UFMJRA. The contention is untenable. UFMJRA was enacted in 1994. The statute of limitations here at issue was enacted in its present form at least as far back as 1974.[12] The only action or proceeding that could have been brought prior to 1994 to obtain a domestic judgment predicated on a foreign judgment was a conventional lawsuit, whether it is called an "action" or a "proceeding." By the enactment of UFMJRA, the legislature adopted a uniform law which provides a procedure permitting the domestication of a foreign judgment by simply filing that judgment. Such a procedure which in effect turned a foreign judgment into a Florida judgment by the ministerial act of

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[12] See Laws 1974, c.74-382, sec. 7. The statute previously provided for a seven-year statute of limitations on actions on the judgment of a foreign country, of a sister state, and of a federal court.

filing the foreign judgment was not available when the statute of limitations at issue was enacted. To suggest that the Florida legislature, when it enacted that statute of limitations, intended it to apply to such a procedure by barring the ministerial act of the filing of a foreign judgment unless it was done within five years of the rendition of the judgment, is folly.

The legislature, by defining "action" to include a "civil action or proceeding," contemplated a conventional lawsuit brought to enforce a substantive right, such as a claim for a breach of contract or for the commission of a tort. It cannot be said that the legislature, when it enacted the Statute of Limitations in 1974, intended the five year statute to apply to the dramatically new approach to foreign judgments which was many years later taken in UFMJRA, to encourage foreign countries to enforce Florida judgments by treating foreign judgments, so long as they are "enforceable where rendered," the same as domestic judgments. The brand new remedial procedure made available by UFMJRA, which provides for the filing and recognition of foreign judgments, is not a conventional "civil action" or "proceeding" as was contemplated by the legislature when it enacted the Statute of Limitations.

Petitioner claims that only a small minority of

jurisdictions have held that statutes of limitations of states in which sister state judgments are filed do not bar such filing under UEFJA. That is not so. At least eleven jurisdictions have so held. They include Arkansas (*Durham v. Arkansas Department of Human Services*, 322 Ark. 789, 912 S.W.2d 412, 1995 Ark. Lexis 747);[13] Oklahoma (*Producers Grain Corporation v. J.D. Carroll*, 546 P.2d 285 (Okla.Ct.App. 1976), *Drllevich Construction, Inc. v. Stock*, 958 P.2d 1277 (Sup.Ct. Okla.1998)); Colorado (*Hunter Technology, Inc. v. Scott*, 701 P.2d 645 (Colo.Ct.App. 1985)); Nevada (*Trubenbach v. Amstadter*, 849 P.2d 288 (Nev. 1993)); Illinois (*Johnson v. Johnson*, 267 Ill.App.3d 253,642 N.E.2d 190 (1994)); Georgia (*Wright v. Trust Company Bank*, 219 Ga.App. 551 (1995), *Williams v. American Credit Services, Inc.*, 229 Ga.App. 801, 495 S.E.2d 121 (Court of Appeals of Georgia, 1997)); and Pennsylvania (*Morrissey v. Morrissey*, 713 A.D.2d 614 (Pa. 1997); Texas (*Walnut Equipment*

[13] In *Durham*, Arkansas permitted the filing and enforcement of an 18-year old Illinois judgment that was enforceable in Illinois which had a 20-year statute of limitations on the enforcement of judgments, although Arkansas had a 10-year statute of limitations on the enforcement of judgments. The court stated that to prevent enforcement of the judgment "might well lead to situations where devious obligors would shop from state to state to find the most favorable limitations period and then subsequently seek to invalidate enforcement of the issuing state's judgment."

Leasing Co. v. Wu, 920 S.W.2d 285 (Tex. 1996)); New Mexico (*Galef v. Buena Vista Dairy*, 117 N.M. 701, 875 P.2d 1132 (N.M. Ct.App. 1994)); South Carolina (*Payne v. Claffy*, 281 S.C. 385, 315 S.E.2d 814 (S.C. Ct.App. 1984)); and Kansas (*Warner v. Warner*, 9 Kan. App.2d 6, 668 P.2d 193 (Kan. Ct.App. 1983)). What may be considered an thirteenth jurisdiction, the federal courts, have taken the same view with respect to the federal statutes which permit the filing and registration in a district of a judgment rendered by a federal district court of a different district (*Stanford v. Utley*, 341 F.2d 265 (8th Cir. 1965)).[14]

The instant case is an *a fortiori* situation in relation to the above cases, since UFMJRA expressly permits the filing of judgments which are "enforceable where rendered," while UEFJA

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[14] Nadd claims that the only reported case to address the issue here presented is *Vrozos v. Sarantopoulos*, 552 N.E.2d 1093, 1098 (App. Ct., Ill. 1990), which held that the forum's general statute of limitations applied. Illinois law required the commencing of a conventional action to enforce a foreign judgment, as a consequence of which the statute of limitations applicable to actions was held to apply. Accordingly, the case has no application here where a conventional lawsuit was not needed since it was dispensed with by UFMJRA which treated filed foreign judgments as domestic judgments. It should also be noted that the court in *Vrozos* pointed out that no brief was submitted by the appellee in the case. Most importantly, as Petitioner acknowledges, after Illinois did adopt UFMJRA, it held that the statute of limitations on conventional civil actions to enforce foreign judgments did not apply.

(which was involved in the above cited cases) has no similar provision. The cases cited by Petitioner in those jurisdictions which have rejected the approach of the above cases are clearly distinguishable in that UEFJA does not contain the provision which is contained in UFMJRA which authorizes the filing of judgments which are "enforceable where rendered." Nadd has failed to address or even acknowledge that determinative distinction.

Indeed, throughout his brief, Nadd ignores this most important differences between UEFJA and UFMJRA. For instance, he cites *Fairbanks v. Large*, S.W.2d 307 (Ky. App. 1997) in which the court stated that "there is nothing in UEFJA to suggest that it is designed to circumvent the forum state's statute of limitations for enforcing judgments." While there may be nothing in UEFJA to suggest it, there is clear language in UFMJRA which reflects that it is indeed designed to circumvent the forum state's statute of limitations in that it contains an authorization to file and recognize judgments which are "enforceable where rendered."

Nadd fails to address another determinative distinction between cases involving the applicability of statutes of limitations to the filing of judgments pursuant to UEFJA and UFMJRA. The Florida UEFJA at Fla. Stat. § 55.503, after

providing for the recordation of a judgment of a sister state, states:

> A judgment so recorded shall have the same effect and shall be subject to the same rules of civil procedure, legal and equitable defenses, and proceedings for reopening, vacating, or staying judgments, and it may be enforced, released, or satisfied, as a judgment of a circuit or country court of this state. (Emphasis supplied.)

Accordingly, UEFJA expressly provides that filed judgments are subject to "legal ... defenses," such as the bar of a statute of limitations. UFMJRA contains no such provision. It sets forth, at Fla. Stat. § 55.605, the "grounds for non-recognition" of a foreign country judgment. Accordingly, there is no statutory basis for permitting a statute of limitations defense to a foreign country judgment which has been filed in Florida pursuant to UFMJRA.

POINT III

THERE IS NO CONSTITUTIONAL BAR TO THE FILING AND RECOGNITION OF THE FRENCH JUDGMENTS

Nadd relies on *Wiley v. Roof*, 641 So.2d 66 (Fla. 1994), claiming it supports his contention that the Judgments should not be recognized under UFMJRA since that would purportedly be an unconstitutional "revival" of a previously barred claim. The

DCA, for good reason, did not rely on, address, or even cite the *Wiley* case and the constitutional issue which it involved. The facts and holding of *Wiley* are inapposite. *Wiley* involved the lengthening of a statute of limitations on certain tort claims by the Florida legislature, as a consequence of which a cause of action for the commission of a tort that had been barred before the lengthening of the statute, was revived. The Florida Supreme Court held that once barred, the legislature could not revive the barred cause of action by lengthening the statute of limitations since that would be a deprivation of property without due process.

We are here not dealing with the lengthening of a statute of limitation on a substantive cause of action, as was the case in *Wiley*. LCL's substantive causes of action against Nadd were asserted in 1978 and 1979 in the two actions brought against Nadd in France. LCL's causes of action ripened into the two Judgments which this Court is being asked to recognize. At the point LCL obtained its Judgments, it no longer had claims or causes of action against Nadd in the sense discussed in *Wiley*. It had the Judgments.

The policy considerations that led the Court to rule as it did in *Wiley* have no application to this situation where LCL has Judgments against Nadd, not substantive claims or causes of

action. One of the policy considerations referred to by the *Wiley* court, which quoted the U.S. Supreme court in *Campbell v. Holt*, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885), is as follows:

> Statutes of limitation are not only calculated for the repose and peace of society, but to provide against the evils that arise from loss of evidence and the failing memory of witnesses. . . .

Considerations of loss of evidence and failing memories are not germane here, where the merits of the controversies between LCL and Nadd were long ago conclusively resolved by a French court in LCL's favor.

The Florida Supreme Court, in *Firestone Tire & Rubber Co. v. Acosta*, 612 So.2d 1361 (1992), quoted with approval a basic pronouncement by the U.S. Supreme Court which has clear application here:

> No person has a vested interest in any rule of law [ ] entitling him to insist that it shall remain unchanged for his benefit. New York Cent. R.R. v. White, 243 U.S. 188, 198, 37 S. Ct. 247, 250, 61 L.Ed 667 (1917); see Eddings v. Vokswagenwerk, A.G., 835 F.2d 1369, 1374 (11th Cir.), cert. denied, 488 U.S. 822, 109 S.Ct. 68, 102 L.Ed.2d 44 (1988); see also Acosta v. Firestone Tire & Rubber Co., 592 So.2d 1102 (Fla. 3d DCA 1991).

Nadd did not have a vested property right to be free of liability under the French Judgments because he fled to Florida. The Florida legislature had the power to determine whether the

public policy of this State should be altered to permit the recognition of the judgments of France and allow them to be enforced in Florida. Florida is one of 30 states to adopt UFMJRA. Petitioner cites no case and research reveals no case in which any of the other 29 jurisdictions have adopted the view now urged by Nadd, i.e., that UFMJRA is unconstitutional to the extent that it permits the recognition of foreign country judgments that were barred before the adoption of UFMJRA from enforcement by a statute of limitations of the state in which the foreign judgment was filed.

Wiley is predicated on the notion that a Florida resident has a "property right" in being free of prosecution on a contract or tort claim against him if such a claim is barred because a statute

of limitation on such claim expired. It cannot reasonably be said that when Nadd became a Florida resident he thereby acquired a "property right" to be relieved and free of the obligation to pay the Judgments rendered against him by courts of competent jurisdiction in France. To suggest, as Nadd does, that by moving to Florida he obtained such a constitutionally protected "property right" to be relieved of his obligations to pay the French Judgments, is to contort the meaning of "property right" beyond recognition.

The U.S. Supreme Court has taken a more restricted view of the impact of the "due process" clause in the 14th Amendment to the U.S. Constitution, than Florida has taken in the ***Wiley*** case of the due process clause in the Florida constitution. The federal constitutional test was first stated in ***Campbell v. Holt***, ***supra***, and was reaffirmed and explained in ***Chase Securities Corp. v. Donaldson***, 325 U.S. 304, 311-312, 65 S.Ct. 1137, 1141, 89 L.Ed 1628, as follows:

> In Campbell v. Holt, supra, this Court held that where lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with the Fourteenth Amendment, may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar. This has long stood as a statement of the law of the Fourteenth Amendment * * *. (Emphasis supplied.)

While the Florida Supreme Court in ***Wiley*** extended the State due process limitation to ***in personam*** tort claims, even if no title to property has vested, it would be an illogical quantum leap to extend it further as is now urged by Nadd. UFMJRA authorizes LCL to have its French Judgments recognized. Nadd simply did not have a constitutional right to have the Florida legislature preclude a French citizen from collecting in Florida on a valid judgment rendered by a duly constituted French court that had jurisdiction over Nadd and which afforded Nadd full opportunity to defend. That the recognition afforded foreign

country judgments by the 1994 enactment of UFMJRA was not previously available did not give Nadd a constitutional right to be free of the French Judgments while he resides in Florida and keeps all of his assets here.

There is a significant, qualitative difference between seeking to obtain a judgment by asserting a substantive cause of action, and seeking to collect on a judgment. The extension in *Wiley* of Florida due process limitations to the revival of barred substantive causes of action, provides no basis for holding unconstitutional the recognition of foreign country judgments which are simply filed in Florida in accordance with a filing procedure that was not previously available in Florida and was made available by the adoption of UFMJRA in 1994. See DCA's citations of authorities which support the view that the registration or recording process under the Act is simply "a continuation of the original suit; not a proceeding or action." 741 So.2d at 741; see *Wright v. Trust Co. Bank*, 219 Ga. App. 551, 466 S.E.2d 74 (Ga. App. 1995). Cf. *State, Dept. of Revenue, Child Support Enforcement Div. V. Dean*, 902 P.2d 1321 (Ak. 1995); *Morrissey v. Morrissey*, 552 Pa. 81, 713 A.2d 614, 617 (Pa. 1998); *Myers v. Hoover*, 157 Ind. 310, 300 N.E.2d 110 (Ind. App. 1st Dist. 1973). The language of UFMJRA supports this view. The "recognition" procedure does not culminate in the

rendering of a new Florida judgment. Sec. 55.604(5) simply provides that:

> Upon entry of an order recognizing the foreign judgment . . . the foreign judgment shall be enforced in the same manner as the judgment of a court of this state.

Providing a procedure for the filing, recognition and enforcement in Florida of foreign judgments, is a far cry from "reviving" substantive causes of action which lapsed because of the period of the statute of limitations.

By the enactment of UFMJRA in 1994, the Florida legislature has neither lengthened nor repealed the five-year statute of limitations set forth in Fla. Stat. § 95.11(2)(a). It simply determined that judgments of foreign countries which complied with basic due process requirements, would be treated as Florida judgments. As stated by the Supreme Court of Pennsylvania in *Morrissey v. Morrissey*, 713 A.D.2d 614 (Pa. 1997):

> By eliminating the necessity of an action upon a judgment as a prerequisite to reciprocal enforcement of a foreign support order and providing the ministerial act of registration as an alternative, the legislature advanced the [foreign judgment] to the enforcement stage, at which point the four-year statute [of limitations] has no relevance.

The Statute of Limitations still requires that conventional lawsuits which are predicated on foreign judgments be brought within five years. As is noted in our initial brief, UFMJRA

applies only to money judgments. Foreign judgments that are not for a sum of money can still only be enforced in Florida by a conventional plenary action or proceeding, which continues to be subject to Florida's five-year statute of limitations. The five-year statute also continues to apply to actions or proceedings to enforce foreign judgments for divorce or to enforce foreign judgments or decrees granting injunctive or other equitable relief, as well as foreign judgments that do not meet all of the criteria for filing required under UFMJRA.

Thus, the five-year statute of limitations, Fla. Stat. § 95.11(2)(a), is still applicable to the enforcement of foreign judgments that fall outside the purview of UFMJRA. This case, however, involves money judgments that are squarely under the provisions of that Act. For the reasons stated above, the implementation of UFMJRA is not prevented by the ***Wiley*** case. Recognition of foreign judgments is governed by UFMJRA, which provides in unmistakable language that if the judgments are valid and enforceable in the jurisdiction that rendered them, they can be filed and recognized in Florida, in which case they can be enforced in the same manner as Florida judgments. There is no constitutional bar to such enforcement.

CONCLUSION

In light of the above, the Court should answer “No” to the

first of the two certified questions, and should hold that the 20-year statute of limitations on domestic judgments commences to

run upon the filing and recognition of foreign judgments in Florida.

Dated: New York, New York
February 23, 2000

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Respondent's Brief On The Merits, was served by overnight mail, upon Philip A. Allen, III, P.A., Litow,

Cutler, Zabludowski & Allen, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 1616, Miami, Florida 33131, this 23rd day of February, 2000.

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