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 LYONNAIS, S.A.,

Respondent.

PETITIONER'S CORRECTED REPLY 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 14 point Times New Roman type font, a font that is not proportionately spaced, and that this font type and size results in not more than 10 characters per inch.

I. SUMMARY OF ARGUMENT

LCL contends that its French judgments may be "registered" in Florida at any time during their thirty-year enforceable life in France and that this mere filing creates new Florida judgments that may be enforced for an additional twenty years under *Fla. Stat.* §95.11(1). Under LCL's analysis, a judgment entered in France may be enforced in Florida for up to fifty years after its entry in France, a period far longer than either France or Florida provide for their domestic judgments.

This absurd result is the product of two fundamental errors. First, the UFMJRA

[1] does not state, as LCL contends, that a foreign country judgment may be enforced in Florida for as long as it is "enforceable where rendered." Second, "filing" of the foreign country judgment under the UFMJRA does not automatically result in enforceability in Florida. The UFMJRA is a "recognition" statute, not a "registration" statute. A foreign country judgment does not become enforceable until substantive statutory objections are waived or overruled after notice and a hearing. Mere filing, or "registration" of the judgment, is not enough. This distinguishes the UFMJRA from the UEFJA,

[2] which makes uniform state procedures for providing full faith and credit to sister state judgments as mandated by the U.S. Constitution.

The five-year statute of limitations for actions to enforce foreign country judgments, *Fla. Stat.* §95.11(2)(a), applies fully to the commencement of a UFMJRA recognition proceedings, which are, in form and substance, "civil actions or proceedings" for limitations purposes. *Fla. Stat.* §95.011. The

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[1] The Uniform Foreign Money Judgments Recognition Act (UFMJRA) *Fla. Stat.* §§55.601-55.607.

[2] The Uniform Enforcement of Foreign Judgments Act ("UEFJA"), *Fla. Stat.* §55.501 et seq..

legislature's intent, as evidenced by the statutes' plain language, mandates this result. LCL's brief fails even to address these basic, controlling principles of statutory construction.

Additionally, LCL has failed entirely to distinguish this Court's holding in *Wiley v. Roof*, 641 So. 2d 66 (Fla. 1994). That case holds, under the Florida constitution, that 1) a due process property right attaches to the expiration of the limitations period and 2) a subsequent enactment that purports to revive that right of action violates due process. Fading memories and the loss of evidence are just as potentially fatal to the proof of UFMJRA defenses than to any other claim or defense.

II. ARGUMENT

A. THE PHRASE "ENFORCEABLE WHERE RENDERED" IN SECTION 55.603 IS A CONDITION OF RECOGNITION, NOT A REPEAL OF THE STATUTE OF LIMITATIONS

LCL contends that the Florida legislature, in enacting the UFMJRA, intended to permit the commencement of an action for recognition of a foreign judgment for as long as the judgment was "enforceable where rendered." It bases this argument entirely on that three-word phrase, which it quotes, repeatedly, detached from the rest of the provision in which it is found. This is the full provision:

> **Applicability.** --This act applies to any foreign judgment that is final and conclusive and enforceable where rendered, even though an appeal therefrom is pending or is subject to appeal.

Fla. Stat. §55.603. Accordingly, section 55.603 has a dual purpose. It provides 1) that enforceability in the originating country is a **condition** of enforcement in Florida and 2) that a pending or potential appeal in the foreign jurisdiction does not render the judgment unenforceable for UFMJRA purposes.

Critically, this passage does not say that recognition proceedings under the UFMJRA may be

commenced **for as long as** the judgment is "enforceable where rendered." The phrase "for as long as" or its equivalent is, quite simply, missing from section 55.603, nor may it be inferred from the provision's context. Further, the phrase "enforceable where rendered" appears nowhere else in the UFMJRA.

There is, therefore, no conflict between the Florida statute of limitations applicable to actions or proceedings to enforce foreign country judgments, *Fla. Stat*. §95.11(2)(a), and the UFMJRA. The former's plain language requires that UFMJRA recognition proceedings be commenced within five years of rendition in the foreign country, as is the case with a common law action to enforce the same judgment.

This question remains one of first impression in Florida. However, this Court should be made aware of a February 2, 2000 non-final decision in *Muka v. Horizon Financial Corporation*, 2000 WL 121792 (Fla. 4th DCA). That opinion denies registration of a dormant Texas judgment because not filed within section 95.11(2)(a)'s five-year limitations period. *Id*. at *3. The court implied that it would not have applied section 95.11(2)(a) if the judgment was not dormant because, in that case, the UEFJA proceeding would not have been comparable to a "conventional" common law action. This part of the analysis is not well explained, nor does the court cite any authority for the distinction. In any event, that portion of the decision is *dictum*, and the non-final decision has no precedential value as of this writing.

B. THE UFMJRA IS A "RECOGNITION" STATUTE, NOT A "REGISTRATION" STATUTE

LCL's second fundamental error is in its insistence that the UFMJRA permits enforcement upon the mere act of filing the foreign judgment. Throughout its brief, LCL uses the terms "registration", "filing" and "domesticating"

interchangeably, and pretends that all of them describe both the UFMJRA and UEFJA. The following passage is representative:

> By the enactment of the UFMJRA, the legislature adopted a uniform law which provides a procedure permitting the domestication of a foreign judgment **by simply filing that judgment**.

Respondent's Brief at 38 (emphasis added). In fact, mere filing under the UFMJRA is not enough. The UFMJRA includes ten substantive defenses to "recognition." Three of these defenses, if raised and proved, conclusively preclude recognition. *Fla. Stat*. §55.605(1)(a)(b) & (c). Seven additional defenses, if raised and proved, vest the circuit court with discretion to deny recognition. *Fla. Stat*. §55.605(2)(a) through (g). It is only after these defenses are waived or heard and adjudicated after notice that the foreign judgment may be **recognized**, and it is only after recognition that it may be enforced. *Fla. Stat*. §55.604(5).

These defenses are missing from the UEFJA. The U.S. Constitution's Full Faith and Credit Clause mandates that Florida treat domestic and sister state judgments with equal dignity. For this reason, the UEFJA does not require an order recognizing the judgment. The judgment is enforceable thirty days after it is filed. The only defenses to enforcement of a sister state judgment are those that may be raised against a Florida judgment. *See Fla.R.Civ.P*. 1.510. Both LCL and Fifth DCA opinion have ignored this critical distinction.

A UFMJRA recognition proceeding is, therefore, an action, civil in nature, in which substantive rights are adjudicated. The evidence supporting those defenses can grow just as stale or unavailable as the evidence supporting any other substantive right or defense. There is, therefore, no reasoned basis upon which to conclude that a UFMJRA recognition action is a mere proceeding to which Section 95.11(2)(a)

does not apply. If that were not enough, the legislature's definition of "action" as a "civil action or proceeding" prohibits the Fifth DCA's decision. *Fla. Stat.* §95.011.

Notably, although Nadd presented the important distinctions between "registration" and "recognition" in his initial brief, LCL fails to even address this issue. Moreover, the Fifth DCA clearly considered the UFMJRA to be a "registration" statute. The following is a side by side comparison of the UFMJRA and UEFJA, as enacted in Florida. This comparison reveals that a UFMJRA proceeding for recognition is, in fact, an action, civil in nature, in which substantive rights are adjudicated.

UFMJRA

1. Commenced by filing copy of foreign country judgment with Department of State and clerk of court. **Filing does not create lien**. *Fla. Stat*. §55.604(1).

2. Clerk mails notice of filing to debtor at address provided by creditor. *Fla. Stat*. §55.604 (1)(b).

3. **Debtor may file any of ten objections to recognition** within thirty days. *Fla. Stat*. §55.604(2). Defenses include fraud, inconvenient forum, non-reciprocity, denial of due process and repugnancy to Florida public policy. *Fla. Stat*. §55.605.

4. If no timely objection, clerk enters certificate. Judgment is then enforceable. *Fla. Stat*. §55.604(5).

5. Circuit court conducts **hearing** to resolve objections, and enters order granting or denying them. **No recognition or enforcement until order is entered.** *Fla. Stat*. §55.604(5)&(6).

UEFJA

1. Commenced by filing copy of sister state judgment in clerk's office of any county. **Judgment becomes a lien after 30 days.** *Fla. Stat.* §55.505(1).

2. Clerk mails notice to debtor at address provided by judgment creditor. *Fla. Stat.* §55.505(2).

3. **No UEFJA objections to recognition per Full Faith and Credit Clause**. Debtor may file action for stay or to contest 1) validity or 2) entering court's jurisdiction. *Fla. Stat.* §55.505(3) and 55.509(1)&(2); *Fla.R.Civ.P.* 1.540.

4. No analogous provision. Enforcement is automatic after thirty days. *Fla. Stat.* §55.505(3).

5. **No provision for "recognition."** Judgment is enforceable and becomes a lien within thirty days of registration. *Id.*

This comparison becomes even more striking when section 55.605's substantive objections are considered. They provide no fewer than ten grounds upon which the circuit court must or may refuse recognition of a foreign country judgment. These consist of the originating jurisdiction's failure to provide impartial tribunals or procedures compatible with Florida notions of due process of law, *Fla. Stat.*

§55.605(1)(a); lack of personal or subject matter jurisdiction, *Fla. Stat*. §55.605(1)(b)&(c); lack of notice, *Fla. Stat*. §55.605(2)(a); that the judgment was obtained by fraud, *Fla. Stat*. §55.605(2)(b); that the underlying cause of action is repugnant to Florida public policy, *Fla. Stat*. §55.605(2)(c); that the judgment conflicts with another final order or an agreement of the parties, *Fla. Stat*. §55.605(2)(d)&(e); that the foreign court was a seriously inconvenient forum, *Fla. Stat*. §55.605(2)(f); and that the foreign court would not reciprocally enforce a Florida judgment, *Fla. Stat*. §55.605(2)(g).

In contrast, the UEFJA has no analogous provision. The only relief available to a debtor under a sister state judgment is that which is available for the defense of a Florida judgment: invalidity or a lack of subject matter jurisdiction by the entering court. These are the same, very limited defenses to enforcement of a Florida judgment. The differences between the UFMJRA and UEFJA are fundamental. For example, a Florida court cannot refuse to reciprocally enforce a Nevada judgment because it is based on a gambling debt, even though Florida public policy would preclude the underlying claim's assertion here.[3] If, however, an otherwise identical gambling debt were reduced to judgment in France, a Florida court would have the discretion to deny recognition. *Fla. Stat*. §55.605(c).

As is discussed above, because the UEFJA requires only filing, not recognition, as a precondition to enforcement, it could be logically argued that a statute of limitations period for commencement was superfluous or inconsistent with this simple procedure. To dispel that suggestion, the Florida legislature, through non-uniform section 55.502(4), expressly preserved the section 95.11(2)(a) limitations period for the commencement of UEFJA proceedings:

Nothing contained in this act shall be construed to alter, modify, or extend the limitation

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[3] *See, e.g., M&R Invest., Co. v. Hacker*, 511 So.2d 1099 (Fla. 5th DCA 1987).

period applicable for the enforcement of foreign judgments.

Fla. Stat. §55.502(4). The Florida statute of limitations applicable to "enforcement of foreign judgments is *Fla. Stat*. §95.11(2)(a). It requires commencement, within five years, of

> [a]n **action on a judgment** or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, **or a foreign country.**

Fla. Stat. §95.11(2)(a) (emphasis added).

Accordingly, even where "registration", that is, mere filing, is the only condition to enforcement, section 95.11(2)'s five year limitations provision requires that registration, like a common law action for enforcement, must be accomplished within five years of rendition in the originating state. *See Turner Murphy Co. v. Specialty Construct*., 659 So. 2d 1242 (Fla. 1st DCA 1995). It would be anomalous indeed for the legislature to preserve the five-year limitations period for mere registration, but to impliedly abandon it where recognition was required.

Of course, the legislature had no such intent. The potentials for failed memories and lost evidence present the same risks of injustice in UFMJRA proceedings as in any other action in which substantive rights are adjudicated. There was no need to insert a provision such as section 55.502(4) in the UFMJRA.

Remarkably, LCL accuses Petitioner of an "ostrich-like" approach to this appeal because Petitioner did not raise and then dispose of LCL's erroneous "enforceable where rendered" argument. Respectfully, it is LCL that has its head in the sand. Nowhere in its brief does LCL squarely address the basic principles of statutory construction that must govern the instant analysis. Section 95.11(2)(a) cannot be deemed inapplicable to UFMJRA proceedings simply because it limits the period during which the judgment may be brought to Florida. Comity and reciprocity are amply served if a foreign court can objectively determine

whether and under what circumstances a Florida court would enforce a judgment of that country. It does not follow, as LCL seems to assume, that foreign countries will not reciprocally enforce Florida judgments because the statute of limitations requires that recognition proceedings be commenced within five years.

Importantly, LCL is advocating the extreme position that its French judgments should be enforceable in Florida for as long as fifty years after their entry in France. According to LCL, their French judgments may be registered in Florida for their full enforceable life in France, a period of thirty years. Once filed or registered, LCL continues, each French judgment becomes a new Florida judgment that may be enforced for an additional twenty years pursuant to *Fla. Stat*. §95.11(1). This is the "super-reciprocity" that the Fifth DCA rejected. It leads to the absurd result that a French judgment may be enforced in Florida for up to twenty years after it had become unenforceable in France.

This "construction" does obvious violence to the plain language of section 95.11(2)(a) and the UFMJRA. It also elevates reciprocity to a supreme status, one that consumes and overwhelms all of the other policy considerations that the legislature clearly weighed and balanced in enacting the UFMJRA without modifying or repealing section 95.11(2)(a).

The legislature, of course, did not intend to repeal the statute of limitations and achieve "super-reciprocity." The statutes' plain and unambiguous language mandates a simple and balanced result. A UFMJRA action to enforce a foreign country judgment must be commenced within five years of the judgment's entry in the originating jurisdiction. *Fla. Stat*. §95.11(2)(a). If and when the circuit court enters an order recognizing that judgment, the foreign judgment becomes a new Florida judgment that may be enforced for twenty years. *Fla. Stat*. §95.11(1); *Fla. Stat*. §55.604(6).[4]

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[4] A February 15, 2000 bankruptcy court decision, *In Re Tranter*, 2000 WL 235401 (Bkrtcy. S.D. Fla. (2000), holds that the originating jurisdiction's limitations

C. THE MINORITY OF UEFJA STATES IS IRRELEVANT IN VIEW OF *FLA. STAT.* §55.502(4)

For the reasons explained above, the differences between the UFMJRA and UEFJA call into serious question the persuasiveness of UEFJA decisions relating to the statute of limitations. Even so, a majority of UEFJA jurisdictions treats UEFJA registration the same as a common law action for statute of limitations purposes. See Petitioner's Brief at 32-34.

This majority position must be the law in Florida. Section 55.502(4) prohibits any view except that section 95.11(2)(a)'s five-year limitations period for the commencement of actions to enforce foreign judgments applies with full force to UEFJA registration proceedings. Through this non-uniform provision, the legislature has adopted the majority view as is expressed, for example, *in Lawrence v Systems, Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203 (Tex.App. 1994). In that court's words, the statute of limitations

> applies equally to proceedings to enforce a foreign judgment under section 35.003 of the [UEFJA] as it does to common law actions for the enforcement of foreign judgments. **For limitations purposes there is no logical difference between the two enforcement proceedings.**

Id. at 208 (emphasis added).

D. LCL HAS MISSTATED THE HOLDINGS OF AT

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period for the enforcement of domestic judgments limits the enforceable life, in Florida, of a sister state judgment registered under the UEFJA. That court denied enforcement of a sixteen-year old Kentucky judgment because judgments are only enforceable in Kentucky for fifteen years. The court did not address section 95.11(2)(a), even though the registration had occurred more than five years after entry in Kentucky. However, denial of enforcement on other grounds precludes any inference that the court would have found section 95.11(2)(a) inapplicable had the argument been raised. It appears that section 95.11(2)(a) may not have been raised as a defense because the debtor appeared in the proceeding *pro se*.

LEAST FOUR UEFJA DECISIONS FROM OTHER JURIDICTIONS

Respondent cites thirteen cases for the proposition that the "statutes of limitations of states in which sister state judgments are filed do not bar such filing under UEFJA." Respondent's Brief at pg. 39. Petitioner addressed nine of those thirteen cases in his initial brief, and adopts those arguments here. The remaining four cases actually contradict Respondent's position.

In *Walnut Equipment Leasing Company, Inc. v. Wu*, 920 S.W.2d 285 (Tex. 1996), the Court, following the *Stanford v. Utley*[5] *reasoning, held that a foreign judgment becomes a new judgment of the domesticating jurisdiction on the date it is filed. Id.* at 286, *citing, Lawrence Systems, Inc. v. Superior Feeders, Inc., supra*. There was no suggestion that the UEFJA proceeding had been commenced after the expiration of the limitations period applicable to common law actions to enforce foreign judgments. *Walnut Equipment,* therefore, simply does not deal with the issue before this court.

Similarly, *Galef v. Buena Vista Dairy*, 875 P.2d 1132 (N.M.Ct.App. 1994), held that a 1987 New Mexico UEFJA proceeding to enforce a 1977 California judgment was timely because it was commenced within New Mexico's fourteen year limitations period for the commencement of actions on foreign judgments. Once timely registered, the California judgment became a new judgment, enforceable for the same period as any New Mexico judgment. *Id.* at 1134.

In *Payne v. Claffy*, 315 S.E.2d 814 (S.C.Ct.App. 1984), the court held a UEFJA proceeding to be timely because it was filed within the ten-year catch-all limitations period applicable to civil actions

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[5] *Stanford v. Utley*, 341 F. 2d 265 (8th Cir. 1965)

for which no different period had been provided. The court rejected the contention that the UEFJA proceeding could be commenced for twenty years based on Virginia's statute of limitations applicable to enforcement of its own judgments.[6]

Finally, in *Warner v. Warner*, 9 Kan.App.2d 6, 668 P.2d 193 (Ct.App.Kan. 1983), the court held that UEFJA

> [r]egistration is a simplified alternative to bringing suit on the foreign judgment**, and if suit is barred so is registration**. Thus K.S.A., 60-511, the general statute of limitations, and not the Kansas dormancy statutes governs the enforceability of foreign judgments in Kansas.

668 P.2d at 195, *citing Alexander Construction Co. v. Weaver*, 3 Kan.App.2d 298, 594 P.2d 248 (1979). *Warner* squarely contradicts LCL's position.

E. LCL FAILED ENTIRELY TO DISTINGUISH *WILEY V. ROOF*

If ambiguous language had left room for statutory construction, then this Court would have to reject LCL's position under *Wiley v. Roof*, 641 So. 2d 66 (Fla. 1994). Under its holding, the 1983 and 1984 expiration of section 95.11(2)(a)'s five-year limitations period on LCL's right to commence common law enforcement actions was final. A property right attached to that expiration, and the 1994 enactment of the UFMJRA could not revive those rights.

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[6] Registration was timely only because, under another South Carolina statute, which has no Florida counterpart, the ten-year limitations period was tolled until the debtor moved to South Carolina.

LCL's effort to distinguish *Wiley* rests entirely on its insistence that UFMJRA proceedings consist solely of the clerical task of filing:

> 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.

Respondent's Brief at 43. LCL goes on to quote *Campell v. Holt*, 115 U.S. 620 (1885) for the proposition that statutes of limitations

> are not only calculated for repose and peace of society, but to provide against the evils that arise from the loss of evidence and the failing memory of witnesses. [*Id*. at 43-44].

Examination of section 55.605 confirms that it sets forth defenses of substance. The "evils" that arise when memories fade and evidence is lost are just as important at a hearing on those objections as in any other civil action. The fact that LCL has made this argument at all confirms that it is treating the UFMJRA as though it were a mere "registration" statute, lacking entirely in matters of substance. LCL's error is clear and obvious.

Wiley's rationale, therefore, applies fully to the revival of the right to commence an action to enforce a judgment, through either the common law or the UFMJRA. Witnesses' memories and the availability of other evidence is just as important with respect to these defenses as it is with respect to any other legal right or duty. If the statute of limitations did not bar these actions, Nadd would have to present evidence

necessary to show, for example, that LCL's 1979 judgment was procured by fraud. The passage of twenty-one years raises an obstacle to this proof that the legislature never intended.

Wiley is directed, quite clearly, to section 95.011, which applies, by reason of section 95.11(2)(a), to actions to enforce foreign country judgments. Without question, LCL's rights to commence actions in Florida expired in 1983 and 1984, five years after the judgments were entered in France. Upon those expirations, the legislature lost the power to constitutionally enact a law that would have the effect of reinstating LCL's rights of action. If the UFMJRA had been intended to achieve that effect, it would be this Court's duty to place upon it a limiting construction, denying it this retroactive effect. Failing this, the entire statute would have to be stricken as unconstitutional.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY true and correct copies of the foregoing Petitioner's Corrected Reply Brief On The Merits were served via U. S. mail upon Robert Trien, Esq., Harvis & Trien, LLP, 750 Lexington Avenue, New York, New York 10022, and Myles H. Malman, Esq., 12955 Biscayne Boulevard, Suite 202, Miami, Florida 33131, this 27th day of March, 2000.

By _____
Philip A. Allen, III