IN THE SUPREME COURT OF FLORIDA

YOUNG BOCK SHIM and CELLUMED CO., LTD.,

Petitioners,

v.

FREDERICK BUECHEL, individually and as Trustee of Biomedical Engineering Trust, and as Trustee of BUECHEL-PAPPAS TRUST, and CYNTHIA C. PAPPAS, as Personal Representative of the Estate of Michael J. Pappas,

Respondents.
_____/

Case No. SC21-249
5th DCA Case No. 5D19-3716

PETITIONERS' INITIAL BRIEF ON THE MERITS

THE CARLYLE APPELLATE LAW FIRM
The Towers, North Plaza
121 South Orange Avenue, Suite 1500
Orlando, Florida 32801
Telephone (407) 377-6870

JOHN N. BOGDANOFF, B.C.S.
Florida Bar No. 297143
Email: served@appellatelawfirm.com
jbogdanoff@appellatelawfirm.com
psullivan@appellatelawfirm.com

CHRISTOPHER V. CARLYLE, B.C.S.
Florida Bar No. 991007

Email: served@appellatelawfirm.com
ccarlyle@appellatelawfirm.com
psullivan@appellatelawfirm.com

Appellate Counsel for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF CASE AND FACTS

Following entry of final judgment for money damages in their favor in Orange County, Florida, Respondents Frederick F. Buechel, individually and as Trustee of Biomedical Engineering Trust and Buechel-Pappas Trust, and Cynthia Pappas, as personal representative of the estate of Michael J. Pappas ("judgment creditors") filed proceedings supplementary and sought, pursuant to section 56.29(6), Florida Statutes, to obtain a negotiable instrument held by the Petitioner Young Bock Shim ("judgment debtor") at his home in the Republic of Korea ("Korea") (R 9). The judgment creditors moved for entry of an order compelling the judgment debtor to deliver the negotiable instrument located in Korea to them in Florida to satisfy the judgment (R 9-10).

By order of November 13, 2019, the trial court denied the motion to compel payment for lack of subject matter jurisdiction. The order contains a succinct explanation of the facts underlying this issue:

> In July of 2017, after a jury trial, Buechel received a verdict which was subsequently written into a Final Judgment and thereafter supplemented. Pursuant to Florida Rules of Civil Procedure it was discovered that one of

> the Judgment Debtors, YOUNG BOCK SHIM, (hereinafter "Shim") sold his stock in the other Judgment Debtor, CELLUMED CO., LTD, (hereinafter "Cellumed"), to a third party, Inscobee, for sixteen billion (16,000,000,000) Korean Republic won.[2] The majority of the proceeds from the sale of Shim's Cellumed stock to Inscobee have been used to pay off other debt, however, Shim has testified that the approximate equivalent of four million dollars ($4,000,000)[3] in proceeds remain, which he holds at his home in South Korea in the form of a negotiable instrument drawn on funds deposited in a Korean bank. The exact amount of the total stock sale proceeds in U.S. currency is immaterial as to the present Motions because Buechel has not moved to void the sale or impleaded Inscobee, and has only specifically identified the $4,000,000 remainder as the subject of his Motions.
>
> ---
>
> [2]Also known as the South Korean won. Approximately $1US=₩1200KRW
>
> [3]For the purposes of this Order only, the amount of the remainder will be referred to as $4,000,000.

(R 8).

The judgment creditors argued that the judgment debtor should be compelled to bring this negotiable instrument to Florida, claiming subsection 56.29(6) gives the trial court broad discretion to issue orders in aid of execution, that the judgment debtor owes a fiduciary duty to judgment creditors, and that the court has *in*

personam jurisdiction over Shim and can order him to bring the negotiable instrument or otherwise move the money from Korea to Florida (R 9-10).

In addressing the motion to compel, the trial court explained that the property at issue is a negotiable instrument located extra-territorially. The court ruled that under Florida law, Florida courts do not have *in rem* or *quasi in rem jurisdiction* over foreign property (R 10). The debtor and the trial court relied on *Sargeant v. Al-Saleh*, 137 So. 3d 432 (Fla. 4th DCA 2014). In *Sargeant,* the Fourth District held that section 56.29(6) does not authorize a trial court to act on the judgment debtor's property located in a foreign country.

On appeal, the judgment creditors asked the Fifth District to decline to follow *Sargeant.* The judgment creditors argued that the trial court has *in personam* jurisdiction over the judgment debtor and can order the debtor to act on foreign property under section 56.29(6). *Buechel v. Shim*, 2021 WL 298161 (Fla. 5th DCA 2021).

The Fifth District agreed and reversed the denial of the motion to compel. While observing that *Sargeant* supported the judgment debtor's position, the Fifth District held that *Sargeant* had been wrongly decided. *Id.* The appellate court concluded that section

56.29 does not contain any express territorial limitation on the circuit court's authority to compel a judgment debtor to transfer money or property located in a foreign country into the State of Florida. The court certified conflict with *Sargeant* and remanded the case for reconsideration of the motion to compel.

The judgment debtor petitioned seeking conflict review and this Court has accepted jurisdiction.

SUMMARY OF THE ARGUMENT

The conflict issue concerns whether the Fourth District decision in *Sargeant* or the Fifth District, in rejecting *Sargeant*, provides the correct rule of law applicable to the judgment creditors' motion to compel brought pursuant to section 56.29(6) in proceedings supplementary. The trial court applied *Sargeant* in denying the motion as pertains to the negotiable instrument drawn on funds in a Korean bank and held by the judgment debtor at his home in Korea.

Sargeant declined to extend extraterritorial effect to section 56.29(6) and held that the statute does not authorize a Florida trial court to act on property of a judgment debtor located in a foreign country. The Fifth District disagreed, holding that section 56.29(6) does not contain any express territorial limitation on the circuit court's authority to require the judgment debtor to transfer money or property located in Korea into the State of Florida.

This Court should approve *Sargeant* and disapprove the Fifth District's decision in this case. Section 56.29(6) is silent as to extraterritoriality. Florida law provides that a statute generally has no effect beyond the territorial limits of the state absent a clearly

expressed intention in the statute that it be given extraterritorial effect. Section 56.29(6) contains no clearly expressed intention that it be given extraterritorial effect. The trial court correctly ruled that it lacked authority to adjudicate issues relating to the right of possession and title to the Korean asset.

ISSUE: **THE FOURTH DISTRICT DECISION IN *SARGEANT* SHOULD BE APPROVED AS IT WAS CORRECTLY DECIDED AND WAS PROPERLY RELIED UPON BY THE TRIAL COURT TO DENY THE JUDGMENT CREDITORS MOTION TO COMPEL; THE FIFTH DISTRICT ERRONEOUSLY REJECTED *SARGEANT* AND ITS DECISION SHOULD BE DISAPPROVED.**

STANDARD OF REVIEW

The standard of review governing interpretation of a statute is *de novo. Kephart v. Hadi*, 932 So. 2d 1086, 1089 (Fla. 2006). Ultimately however, a trial court has discretion in supplementary proceedings brought pursuant to section 56.29. *Donan v. Dolce Vita Sa, Inc.*, 992 So. 2d 859 (Fla. 4th DCA 2008).

ARGUMENT

The conflict issue concerns whether, pursuant to section 56.29(6), Florida Statutes, the trial court was authorized to require the judgment debtor to transfer possession of personal property located in Korea to the State of Florida to satisfy a Florida judgment. The Fourth District decision in *Sargeant* answers this question in the negative. The Fifth District disagreed and ruled the trial court has authority to require transfer of the personal property from Korea to Florida.

Section 56.29(6) provides:

> The court may order any property of the judgment debtor, not exempt from execution, or any property, debt, or other obligation due to the judgment debtor, in the hands of or under the control of any person subject to the Notice to Appear, to be levied upon and applied toward the satisfaction of the judgment debt. The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property or property rights of any judgment debtor to execution, and including entry of money judgments as provided in ss. 56.16-56.19 against any person to whom a Notice to Appear has been directed and over whom the court obtained personal jurisdiction irrespective of whether such person has retained the property, subject to applicable principles of equity, and in accordance with chapters 76 and 77 and all applicable rules of civil procedure. Sections 56.16-56.20 apply to any order issued under this subsection.

§ 56.29(6), Fla. Stat. (2020).

Sargeant involved an effort by the judgment creditor to reach foreign stock certificates of the judgment debtors to satisfy a final money judgment entered by a Florida court. The Fourth District opinion, authored by Judge Damoorgian, held that "Chapter 56, Florida Statutes, does not apply extraterritorially and that in order to execute the judgment against the debtor's foreign assets, the creditor must proceed under the laws of the foreign jurisdiction

where the stock certificates are held." *Id.* at 434. The court expressly rejected the creditor's argument that the Florida trial court had authority to compel the turnover of the stock certificates by virtue of its *in personam* jurisdiction over the debtors.

The *Sargeant* court additionally offered policy reasons for its decision. The court expressed concern "about the practical implications of permitting Florida courts to order judgment debtors to turn over assets located outside the state." *Id.* at 435. The Fourth District noted "there may be competing claims to the foreign assets and we believe 'that claims against a single asset should be decided in a single forum—and . . . that that forum should be, as it traditionally has been, a court of the jurisdiction in which the asset is located.'" *Id.* at 435 (quoting from *Koehler v. Bank of Bermuda, Ltd.*, 911 N.E.2d 825, 831 (N.Y. 2009)(Smith, J. dissenting)).

The Fourth District expressed additional concern that allowing trial courts to compel judgment debtors to bring out of state assets into Florida would effectively eviscerate domestication of foreign judgment statutes. *Id. Sargeant* has proved prescient in its concerns. *See, e.g., Inversiones Y Procesadora Tropical Inprosta, S.A. v. Del Monte International GMBH*, 2020 WL 6384878 *4 (S. D. Fla.

2020) (relying on *Sargeant* in denying judgment creditor's motion to seize judgment debtor's contract rights with third party located in Costa Rica in proceedings supplementary under section 56.29(6) where granting of relief "would create a very real possibility of competing claims over the same assets" as had been seized in Costa Rican proceeding).

Sargeant was correctly decided and is directly on point. The judgment creditors seek to reach a negotiable instrument held by the judgment debtor at his home in Korea and drawn on funds deposited in a Korean bank. The proceeding here is in the nature of a "*quasi in rem*," action which describes any action between parties where the direct object is to reach and dispose of or adjudicate the title or status of property owned by the parties or of some interest claimed by them. 12A Fla. Jur. 2d, Courts and Judges, § 73.

There is limited authority for the proposition that a court which has obtained personal jurisdiction over a defendant may order that defendant to act on property that is outside of the court's jurisdiction, provided that the court does not directly affect the title to the property while it remains in the foreign jurisdiction.

Thus, in *Ciungu v. Bulea*, 162 So. 3d 290 (Fla. 1st DCA 2015), cited in the Fifth District's decision, the First District applied this principle in holding that a probate court which had personal jurisdiction over heirs in a probate proceedings had the authority to direct the personal representative to effect distribution of real property by issuing deeds even though the property at issue was located in Romania. The appellate court explained that by directing the personal representative to issue the deeds to the Romanian property even though it lay outside the probate court's geographic jurisdiction, the probate court did nothing to directly affect title to the property. *Id.* at 294-95. The issue of title could be litigated in Romanian courts.

The *Ciungu* court relied on *General Electric Capital Corp. v. Advance Petroleum, Inc.*, 660 So. 2d 1139 (Fla. 3d DCA 1995), another case cited in the Fifth District's opinion. *General Electric* involved an action by Advance Petroleum (API) in Dade County against a jet owned by General Electric (GECC) to foreclose a statutory lien for unpaid fuel charges incurred in Dade County. GECC had flown the jet out of Florida but the trial court entered summary judgment on API's foreclosure complaint.

The Third District held the trial court properly exercised jurisdiction in foreclosing on the jet and requiring return of the aircraft to Dade County. The court noted that the trial court had *in personam* jurisdiction over GECC which entitled the court to act on "GECC's possessory interest over the aircraft without directly acting on the aircraft itself." *Id.* at 1142. The court explained the trial court could "order that defendant to act on property that is outside of the court's jurisdiction, provided that the court does not *directly* affect the title to the property while it remains in the foreign jurisdiction." *Id.* (emphasis in original).

The *Sargeant* court distinguished *General Electric,* explaining that case involved a creditor who had a perfected security interest, a lien, on the property which had been removed from the state and which the court ordered the debtor to return to the State of Florida. 137 So. 3d at 434-35.

The Fifth District additionally relied on *Hirchert v. Hirchert Family Trust*, 988 So. 2d 63 (Fla. 5th DCA 2008), which involved a constructive trust imposed by a California court on Florida real property owned by the defendant over whom the California court had personal jurisdiction. The opinion states that the California

court's action did not directly affect title to the Florida property. Conversely, the Fifth District's decision in this case would allow the circuit court to directly affect the right to possession and title to the negotiable instrument located in Korea. The Fifth District's reliance on *Ciungu, Hirchert* and *General Electric* is misplaced.

The *Sargeant* court correctly declined to extend extraterritorial authority to the Florida court under section 56.29(6) to adjudicate the right to possession of and title to the foreign asset. Where statutes are silent on the issue of extraterritoriality, courts should not infer any such unexpressed intent on behalf of the legislature. *GM Gold & Diamonds LP v. Fabrege Co., Inc.,* 489 F. Supp. 725, 728-29 (S. D. Tx. 2007).

Indeed, Florida law provides that "[A] statute generally has no effect of its own force beyond the territorial limits of that state in which it was enacted." *Boat Town USA, Inc. v. Mercury Marine Div. of Brunswick Corp.,* 364 So. 2d 15, 18 (Fla. 4th DCA 1978) (citing *Equitable Life Assur. Soc. of the United States v. McRee*, 78 So. 22 (Fla. 1918)). Florida law has a strong presumption against extraterritorial application of its laws absent an "express intention that [the statutory] provisions are to be given extraterritorial effect."

Burns v. Rozen, 201 So. 2d 629, 630 (Fla. 1st DCA 1967). In *Burns*, the First District set forth the principle as follows:

> Unless the intention to have a statute operate beyond the limits of the state or country is clearly expressed or indicated by its language, purpose, subject matter, or history, no legislation is presumed to be intended to operate outside the territorial jurisdiction of the state or country enacting it. To the contrary, the presumption is that the statute is intended to have no extraterritorial effect, but to apply only within the territorial jurisdiction of the state or country enacting it, and it is generally so construed. An extraterritorial effect is not to be given statutes by implication. Accordingly, a statute is prima facie operative only as to persons or things within the territorial jurisdiction of the lawmaking power which enacted it. There [sic] rules apply to statutes using general words, such as 'any' or 'all,' in describing the persons or acts to which the statute applies. They are particularly applicable where the statute would be declared invalid if given an interpretation resulting in its extraterritorial operation.

Id. Thus, use of the term "any property" or "any orders" in section 56.29(6) is not enough to grant extraterritorial effect to the statute.

The Fifth District rejected *Sargeant* based on the rationale that section 56.29(6) is clear, and the Fourth District impermissibly added words to the statute. However, the statute does not by its terms provide for extraterritorial effect. The Fifth District decision

gives the statute extraterritorial effect by implication to adjudicate issues relating to the right to possession and to title of a foreign asset. In doing so, the Fifth District has deviated from Florida law, erroneously added words not present in the statute, and impermissibly presumed the extraterritorial effect of section 56.29(6).

The Fifth District decision permits the judgment creditors to judicially compel the judgment debtor to turn over a negotiable instrument he owns located at his Korean home representing funds on deposit in a Korean bank. Unlike in the *General Electric* case, the judgment creditors do not have any possessory interest or perfected lien in the asset and seek by their motion to directly affect title and possession to the foreign asset. Further, unlike in the *Ciungu* and *Hirchert* cases, there is nothing indirect about the judgment creditors effort to have the Florida court act to adjudicate issues of entitlement to possession and ownership of the foreign asset.

The Fifth District opinion further relies on *Schanck v. Gayhart*, 245 So. 3d 970 (Fla. 1st DCA 2018), another case inapplicable to the present facts. S*chanck*, like *General Electric*, and unlike here, involved an asset in which the creditor enjoyed a security interest,

this time a "certificated security interest" under section 678.1121(5), Florida Statutes. *Id.* at 972.

Schanck concerned a marriage dissolved by a consent final judgment of dissolution entered in Florida wherein the husband, as part of the equitable distribution, agreed to pay the wife an equalizing payment of $2.5 million in exchange for keeping 100% of the shares in Stellar Recovery, Inc., a Florida business entity. The husband failed to make the payment and following the wife's death, her estate filed a motion seeking a court order to aid in executing the judgment by having the husband turn over the stock certificates in Stellar. After claiming in his deposition that he did not know the whereabouts of the stock certificates, the husband changed his testimony without explanation after it was discovered the certificates had been transported to his new wife's residence in Canada. *Id.* The trial court ordered husband to cancel the existing stock certificates in Stellar, reissue them in his name and deliver them to counsel for the estate.

Husband conceded that the law permitted a creditor to take a debtor's interests in a single member LLC or corporation fully owned by the debtor, but contended that because the certificates

were now located outside Florida the court lacked jurisdiction and that the estate was required to seek relief in the foreign jurisdiction. *Id.* The estate countered that the court had *in personam* jurisdiction over the husband and could order him to take action with respect to the certificates, relying on section 678.1121(5) which broadly authorizes a court to give aid to a creditor to reach a certificated security interest. The trial court ordered the husband to cancel the existing stock certificates, reissue them in his name and deliver them to counsel for the estate.

The First District affirmed, relying on *Ciungu,* the probate case, and *General Electric,* the lien case, and held that the trial court properly ordered reissuance though in doing so stated "the only issue before us is whether the court properly ordered the alternative relief of reissuance . . ." *Id.* at 974. The court relied in part on a specific statute, section 678.1121(5), Florida Statutes, which provides in part that a "creditor whose debtor is the owner of a certificated security . . . is entitled to aid from a court of competent jurisdiction . . . in reaching the certificated security . . . in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal

process." *Id.* at 974. That statute has no application whatsoever to the present case and thus reliance on *Schanck* here is simply incorrect.

Sargeant correctly declined to apply section 56.29(6) to a foreign asset and the trial court in this case correctly relied upon *Sargeant.* The Fifth District decision in this case extends the reach of section 56.29(6) to foreign assets even though the statute does not so provide. In doing so, the Fifth District decision is contrary to Florida law regarding extraterritoriality, and further impermissibly adds words to the statute.

CONCLUSION

WHEREFORE, for all the foregoing reasons, the decision of the Fifth District in this matter should be disapproved, the decision in *Sargeant* approved, and the cause be remanded to the Fifth District for entry of a decision affirming the trial court's ruling denying the motion to compel.

Respectfully submitted,

THE CARLYLE APPELLATE LAW FIRM
The Towers, North Plaza
121 South Orange Avenue, Suite 1500
Orlando, Florida 32801
Telephone (407) 377-6870

/s/John N. Bogdanoff
JOHN N. BOGDANOFF, B.C.S.
Florida Bar No. 297143
Email: served@appellatelawfirm.com
jbogdanoff@appellatelawfirm.com
psullivan@appellatelawfirm.com

CHRISTOPHER V. CARLYLE, B.C.S.
Florida Bar No. 991007
Email: served@appellatelawfirm.com
ccarlyle@appellatelawfirm.com
psullivan@appellatelawfirm.com

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing was e-filed pursuant to Florida Rule of Judicial Administration 2.525 and that the foregoing was served by email or U.S. regular mail in compliance with Florida Rule of Judicial Administration 2.516(b)(1)(A) on this 21st day of July, 2021 to:

Edmond E. Koester, Esquire Coleman, Yovanovich & Koester P.A. 4001 Tamiami Trail North, Suite 300 Naples, Florida 34103 ekoester@cyklawfirm.com ryovanovich@cyklawfirm.com mdevisse@cyklawfirm.com dparliament@cyklawfirm.com cykservice@cyklawfirm.com mcaswell@cyklawfirm.com Counsel for Buechel & Trustees	Vello Veski, Esquire 3241 S.W. Island Way Palm City, Florida 34490 velloveski@gmail.com vveski@hotmail.com Counsel for Cynthia Pappas

/s/John N. Bogdanoff
JOHN N. BOGDANOFF, B.C.S.
Florida Bar No. 297143

CERTIFICATE OF COMPLIANCE

I CERTIFY that pursuant to Florida Rules of Appellate Procedure 9.045(b) and 9.210(a)(2)(B), as amended, this pleading was prepared using proportionately spaced Bookman Old Style 14-point font and complies with the applicable font and word count limit requirements.

/s/ John N. Bogdanoff
JOHN N. BOGDANOFF, B.C.S.
Florida Bar No. 297143