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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

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PETITIONERS' JURISDICTIONAL BRIEF

On Review from the District Court of Appeal,
Fifth District
State of Florida

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

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STATEMENT OF CASE AND FACTS

For purposes of the issue before this Court, Frederick F. Buechel, individually and as Trustee of Biomedical Engineering Trust and Buechel-Pappas Trust, and Cynthia C. Pappas, as Personal Representative of the Estate of Michael J. Pappas (the "Creditors"), appealed to the Fifth District the denial of their motion to compel filed post-judgment pursuant to section 56.29, Florida Statutes (2019). The motion sought an order compelling Young Bock Shim (the "Debtor") to deliver to them or place in escrow in the Florida court a negotiable instrument located in the Republic of Korea toward satisfying their judgments. The trial court denied the motion to compel, reasoning that it lacked jurisdiction over the foreign personal property.

As background, the parties fully litigated their claims surrounding a licensing agreement and the sale of a medical device company. The Creditors ultimately prevailed at trial, and the court entered two separate final judgments for damages in their favor.

During proceedings supplementary, the Creditors alleged that the Debtor is holding a negotiable instrument at his home in Korea.

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The Creditors filed a motion pursuant to section 56.29(6), Florida Statutes, seeking an order compelling the Debtor to deliver the instrument to the Creditors in Florida. The trial court denied the motion after concluding that it was without authority over foreign personal property, citing *inter alia,* the Fourth District's holding in *Sargeant v. Al-Saleh*, 137 So. 3d 432 (Fla. 4th DCA 2014).

On appeal, the Fifth District reversed, holding that the trial court erred in denying the motion to compel as it has *in personam* jurisdiction to order the Debtor to act on the foreign personal property. Concluding there is no general impediment to such an order, the Fifth District held, contrary to the *Sargeant* decision, that section 56.29(6), Florida Statutes, expressly authorizes a trial court to act upon the Debtor's personal property located outside the court's territorial jurisdiction. That statutory subsection 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

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> 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.

Fla. Stat. § 56.29(6).

The Fifth District decision certifies direct conflict with *Sargeant*.

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SUMMARY OF THE ARGUMENT

It is clear that this Court has jurisdiction over the certified conflict. It is respectfully submitted that this Court should exercise that jurisdiction to resolve the significant issue presented by this case. Direct conflict exists between the Fifth and Fourth Districts. Important considerations are involved as relates to the jurisdiction of Florida trial courts, and litigants, as well as the courts, should have the benefit of this Court's clarity on this important issue.

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JURISDICTIONAL STATEMENT

The Supreme Court of Florida has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Art. V, § 3(b)(3) Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

ARGUMENT

ISSUE: THE FIFTH DISTRICT'S OPINION EXPRESSES AND CERTIFIES DIRECT CONFLICT WITH A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL AND THIS COURT SHOULD ACCEPT JURISDICTION TO RESOLVE THE CONFLICT.

The Fifth District Court of Appeal has certified direct conflict with the Fourth District Court of Appeal decision in *Sargeant v. Al-Saleh,* 137 So. 3d 432 (Fla. 4th DCA 2014) on a straightforward, yet extremely important issue. Specifically, the issue is whether section 56.29(6), Florida Statutes, which addresses a trial court's authority over property of a judgment debtor, authorizes the court to enter an order compelling a party to act upon and bring to Florida out of state personal property, in this case a negotiable instrument located in the Republic of Korea.

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In *Sargeant,* which the trial court followed, the Fourth District reversed a judgment compelling the turnover of stock certificates located in foreign countries, concluding that the lower court lacked *in rem* jurisdiction over the certificates, and that the *in personam* jurisdiction over the debtors did not confer upon the court the power to enter an order compelling the debtors to turn over the stock certificates. The appellate court held that the statute does not authorize a trial court to act on personal property located outside of its territorial jurisdiction. The appellate court declined to read section 56.29(6) broadly to give extraterritorial jurisdiction to the trial court.

In the instant case, the Fifth District disagreed and read the subsection as containing no express territorial limitation on a trial court from ordering a judgment debtor to transfer money or real property into the State of Florida.

The Fifth District decision relies upon and implicates additional decisional law of this state, including *Ciungu v. Bulea*, 162 So. 3d 290 (Fla. 1st DCA 2015)(Florida court which has *in personam* jurisdiction over defendant may order defendant to act on

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real property that is outside the court's jurisdiction, provided the court does not directly affect title to the property); *Hirchert v. Hirchert Family Trust,* 988 So. 2d 63 (Fla. 5th DCA 2008)(same); *Gen. Elec. Cap. Corp. v. Advance Petroleum, Inc.,* 660 So. 2d 1139 (Fla. 3d DCA 1995)(trial court properly ordered debtor to return to state of Florida, personal property on which creditor had a perfected lien, since court was not directly affecting title to the property); and *Schank v. Gayhart*, 245 So. 3d 970 (Fla. 1st DCA 2018)(in connection with judgment creditor's effort to execute on Florida debtor's stock certificates located in Canada, trial court correctly ordered debtor to cancel, reissue and turn over reissued stock certificates to creditor). The Fifth District decision in the present case involves personal, not real property, and the court's decision authorizes the trial court to directly affect title to the personal property in Korea.

The conflict between districts has resulted in one standard being applied to judgment debtors arising within the counties under the Fourth District's jurisdiction, and another standard in the counties subject to the jurisdiction of the Fifth District Court of

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Appeal. The current situation makes little sense because the authority of a trial court over a judgment debtor's out of state personal property should not be determined by the appellate district wherein the execution proceedings are being conducted. Florida courts are in need of uniformity on this issue, and it is respectfully submitted that this Court should accept jurisdiction to clarify the law.

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CONCLUSION

WHEREFORE, for all the foregoing reasons, this Court clearly has discretionary jurisdiction to review the decision below, and the Court should exercise that jurisdiction to consider the merits of the Petitioners' argument.

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

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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 4th day of March, 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

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/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

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