IN THE SUPREME COURT OF FLORIDA

CASE NO. 823

JUAN A. SALINAS and
LUCILA FUENTES,

Appellants

v.

SUE ANN RAMSEY and
HILDA RAMSEY,

Appellees.

ON CERTIFIED QUESTION FROM THE
FEDERAL COURT OF APPEALS FOR
THE ELEVENTH JUDICIAL CIRCUIT

INITIAL BRIEF OF APPELLANTS

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COUNSELS FOR APPELLANTS

PRELIMINARY STATEMENT

This proceeding involves an appeal of the Southern District Court's denial of Appellants' Motion for Appellee, Sue Ann Ramsey, to complete a fact information sheet pursuant to Florida Rule of Civil Procedure 1.560 and 1.977.

REQUEST FOR ORAL ARGUMENT

Appellants, Juan A. Salinas and Lucila Fuentes, request oral argument. In light of the complex legal issues extant herein, oral argument will benefit the Court.

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STATEMENT OF THE CASE AND OF THE FACTS

On September 23, 2004, the United States Court for the Southern District of Florida entered a money judgment against Sue Ann Ramsey (Appelleess) based on a federal jury finding her in violation of the Fair Labor Standards Act, 20 U.S.C. §201 et seq., for not paying Juan Salinas and Lucila Fuentes (Appellants) time and half for overtime work (Tab D of The Appendix). Thereafter the Court issued two writs of execution on the judgments, the first on November 24, 2004, and the second on April 6, 2005 (Tab A of The Appendix [DE 43, 45]). Additionally, on November 01, 2004, the Court granted Appellants motion for attorney fees and costs for the amount of $12,485.00 (Tab E of The Appendix).

On May 15, 2015, Appellants filed a motion with the District Court requesting that Appellees complete a fact information sheet pursuant to Florida Rule of Civil Procedure 1.560 and 1.977 (Tab F of The Appendix). The District Court denied said motion as untimely, relying on Balfour Beatty Bahamas, Ltd. V. Bush, 170 F.3d 1048 (11th Cir. 1999), which held that post judgment discovery was limited to a five-year period[1] (Tab G of The Appendix). The District

[1]Appellees failed to file a response to Appellants' Motion to Compel and never asserted the statute of limitations to the garnishment proceedings as an affirmative defense. Despite Appellees's failure to file a response, the district court sua sponte denied Appellants' motion based on the five-year statute limitations. In Balfour, it

Court ignored The Florida Fourth District Court of Appeals Decision in *Burshan v. Nat. Union Fire Ins. Co.*, 805 So.2d 835 (Fla. 4th DCA 2001), which relied on the Florida Supreme Court's ruling in Young v. McKenzie, 46 So. 2d 184 (Fla. 1950).

In these proceedings, this Court will determine whether A judgment does not become dormant, and will support the issuance of post judgment discovery during its entire lifetime, without any need for revival; or in the alternative, a twenty (20) year limitations period, if any, applies to a request for post-judgment discovery brought in federal district court in Florida on a judgment entered by the same Florida federal district court.

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was the judgment debtor (Appellees) that raised the statute of limitations defense, and was not raised sua sponte by the court. See *Paetz v. United States,* 795 F.2d 1533 (11th Cir. 1986)(Defendants failed to plead the statute of limitations as an affirmative defense and therefore waived the defense). The statute of limitations is an affirmative defense which must be specifically pled. Fed.R.Civ.P. 8(c). *See Day v. Liberty Nat. Life Ins. Co.,* 122 F.3d 1012, 1015 (11th Cir. 1997) *See, also, Braddock v. Madison County,* 34 F.Supp.2d 1098 (S.D. Ind. 1998) addressing waiver of the limitations period in an FLSA context. In the present case, Appellees failed to plead said affirmative defense as Appellees never filed a response to Appellants' garnishment proceedings. Therefore, the statute of limitations affirmative defense should ·not have been raised sua sponte by the court as a basis for denying Appellants' Motion in aid of execution of the final judgment.

SUMMARY ARGUMENT

The *Fla. Stat. §95.11* was erroneously applied by the district court. Pursuant to Fed. R. Civ. P. 69(a)(1), all proceedings in aid of execution of final judgment must accord with the procedure of the state in which the court is located. In interpreting procedure in the State of Florida, a judgment does not become dormant and will support the issuance of post judgment discovery during its entire lifetime without any need for revival; or in the alternative, the twenty (20) year statute of limitations pursuant to Fla. Stat §95.11(1), applies to a request for post-judgment discovery brought in federal district court in Florida on a judgement entered by the same federal district court. This is so because discovery for collections on a judgement is not a new action instituted upon the judgment, but rather, a continuation of the original action.

ARGUMENT

I. The District Court erred when it denied Appellants' motion to compel post-judgement discovery as untimely.

The Appellants contend that the *Fla. Stat. §95.11* was erroneously applied by the district court. The application of *Fla. Stat. § 95.11* is erroneous in the context of a discovery motion filed in the original action it pertains to, because it is not a new action instituted upon the judgment, but rather, a continuation of the original action. *See, infra.*

By recording the Judgment in the Trial Court, pursuant to 28 U.S.C. § 1963, the Judgment is required to be given "the same effect as a judgment of the district court of the district where registered and may be enforced in like manner." Id. Under Florida's "common law a judgment did not operate as a lien...." Burshan, 805 So.2d at 838 n.l (citations omitted). By virtue of 28 U.S.C. § 1962, however, the judgment of a federal court "within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time." 28 U.S.C. § 1962. By Florida statute, Appellants are entitled to record their judgment in any Florida county, and, by so recording it, along with the required affidavit, to enforce a judgment lien against Appellees' property located

within such county for up to twenty (20) years from the date of entry of the Judgment. §§ 55.10 and 55.081, Florida Statutes.

Florida law has long held, and continues to hold, that the registration of a federal court judgment in a Florida district court, and subsequent efforts to enforce judgment liens created by such registration, do not constitute "an action on a judgment" as used in Florida's statute of limitations. Such acts do not give rise to a new and independent action, but are instead only steps in the process of enforcing and collecting on the judgment rendered in the original action. See, e.g., B.A. Lott. Inc. v. Padgett, 14 So.2d 667 (Fla. *1943) (en banc) [hereinafter Lott]; Burshan, 805 So.2d 835.*

The district court in denying Appellants' motion for post discovery judgment relied on Balfour Beatty Bahamas, Ldt., v. Bush, 170 F.3d 1048 (11th Cir. 1999). In Balfour, the district court held that a request for post-judgment discovery, made approximately seven years after the judgment was entered, was barred by the five-year limitations period established in Fla. Stat. §95.11(2)(a). Id. at 1049, 1051. The Eleventh Circuit, in deciding Balfour, adopted the holding from Kiesel. See Balfour, 170 F.3d at 1051, Kiesel v. Graham, 388 So. 2d 594 (Fla. 1st DCA 1980). While the facts in Balfour are similar to this case, the Eleventh Circuit incorrectly applied Kiesel, and in relying on same, erroneously denied Appellants' post judgement discovery motion. In Kiesel, the holders

of a judgment obtained in federal court came to Florida state court seeking a writ of mandamus to aid in collection of their judgment that was more than five years old. Id. at 595.

In neither *Balfour*, nor the earlier Florida case on which it heavily relied, *Kiesel v. Graham*, 388 So.2d 594 (Fla. 1st DCA 1980). *rev. denied* (Fla. 1981), was the court presented with the situation of a judgment creditor seeking post-judgment discovery. That scenario, which is present in the instant case, renders those authorities inapposite, or at least readily distinguishable.

More specifically, the Kiesel Court rules on an issue of mandamus, which may have been objectionable as a collection device on some other ground, however it was not an "action on a judgment" within the meaning of section 95.11(2)(a) Florida Law. In so ruling on Appellants' case, the district court ignored or disregarded a much more recent Florida appellate decision, namely: *Burshan v. Nat. Union Fire Ins. Co.*, 805 So.2d 835 (Fla. 4th DCA 2001). The Burshan Court specifically references its disagreement with the decision in Balfour is: the Eleventh Circuit Court misinterpreted post judgment discovery as a new action commenced on a judgment subject to the limitations of *Fla. Stat. § 95.11*. *See, id.* at 844

Fla. Stat. § 95.11 applies to "new and independent actions" brought to enforce the judgment. *See, Fla. Stat. § 95.11*. Compelling discovery is not a "new and independent action." *See,*

infra. The discovery request propounded for purposes of collection proceedings concerning an existing judgment is part of the original action brought within the statute of limitations. Hence, the motion to compel completion of Florida Form 1.977 was erroneously denied based on *Fla. Stat. §95.11(2)(a)*.

> "For similar reasons, we disagree with the eleventh circuit's conclusion that post judgment discovery in aid of execution was an action on a judgment under section 95.11(2)(a). *See Balfour Beatty Bahamas,* 170 F.3d at 1050–51. That case relied primarily on *Kiesel,* without reference to the earlier cases from the Florida Supreme Court. The post judgment discovery at issue in *Balfour Beatty Bahamas*—interrogatories and subpoenas duces tecum—are the type permitted by Florida Rule of Civil Procedure 1.560. In the words of earlier cases, such discovery is not a "new and independent action," but only a "step leading to the execution of a judgment already obtained." *B.A. Lott,* 14 So.2d at 669; *Massey,* 100 So. at 171–72."

Burshan, 805 So. 2d 835 at 844.

The Florida Fourth District Court of Appeals, in Burshan, specifically disagreed with the district Court's conclusion that post judgment discovery is an action on a judgment. The Burshan decision was an intermediate appellate decision on point, that the application of *Fla. Stat. §95.11* to post judgment discovery, is incorrect. *See, id.* Absent a decision from the state supreme court, Federal Courts are required to follow decisions from the state's intermediate appellate courts on state law matters:

> …the rule is that, absent a decision from the

> state supreme court on an issue of state law, we are bound to follow decisions of the state's intermediate appellate courts unless there is some persuasive indication that the highest court of the state would decide the issue differently. *See Galindo v. ARI Mut. Ins. Co., 203 F.3d 771, 775 (11th Cir. 2000);* Trumpet Vine Invs., v. Union Capital Partners I Inc., 92 F.3d 1110, 1120 (11th Cir. 1996). That rule is, if anything, particularly appropriate in Florida, where the state's highest courts has held that "[t]he decisions of the district courts of appeal represent the law of Florida unless and untel they are overruled by [the Florida Supreme Court]." *Pardo v. State,* 596 So.2d 665, 666 (Fla. 1992)(quoting *Stanfill v. State,* 384 So.2d 141,143 (Fla. 1980)).

McMahan v. Toto, 311 F.3d 1077, 1080 (11th Cir. 2002)

The Burshan court relied on This Court's ruling in Young v. McKenzie, 46 So. 2d 184 (Fla. 1950), which held that §95.11 did not apply to certain post-judgment discovery proceedings because those proceedings were meant to help the holder of an existing judgment execute that judgment, and not "to bring new life to the judgment

itself." Id. at 185; see also Burshan 805 So. 2d 842-43. As the forgoing indicates, compelling completion of Florida Form 1.977 is not a new action, it is a collection device which only relates to collections on the original judgement. Thus, *Fla. Stat. §95.11* is not applicable. *See, Crane v. Nuta*, 26 So.2d 670 (Fla. 1946); *Workingmen's Co-operative Bank v. Wallace*, 9 So.2d 731(Fla. 1942); & *Witeside v. Dinkins*, 97 So.2d 517 (Fla. 1923).

FED.R.CIV.P. 69(a) clearly states that "[p]rocess to enforce a [federal] judgment for the payment of money shall be a writ of execution, ..." Id. That rule also provides that the "procedure on execution [of a federal judgment] . . . shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent it is applicable." *Id.* Under Florida law, as elsewhere, "[execution is a final process to enforce a judgment." *Burshan*, 805 So.2d at 839(citing FLA.R.CIV.P. 1.570(a)). The applicable rule of court reads: "Money Judgments. Final process to enforce a judgment solely for the payment of money shall be by execution, writ of garnishment, or other appropriate process or proceedings." FLA.R.CIV.P. 1.570(a). The rule notably refers only to "process," and not to any "action" on the judgment. By definition, then, execution is most certainly not a "new and independent action." Instead, like

the registration of a federal judgment in another district court, the issuance of a Writ of Execution (or, in this case, a Motion to compel a fact information sheet pursuant to Florida Rule of Civil Procedure 1.560 and 1.977) is "only a step" in the process of collecting on the original judgment. *Burshan*, 805 So.2d at 843-44.

"'When issued, an execution is valid and effective during the life of the judgment or decree on which it is issued."' *Burshan*, 805 So.2d at 839 (citing § 56.021, Florida Statutes; FLA.R.CIV.P. 1.550(a)). "An execution is thus subject to the time limit of section 55.081; an 'execution may be issued during the 20 year life of the judgment on which it is based."' *Burshan*, 805 So.2d at 839 (quoting Henry P. Trawick, Jr., FLORIDA PRACTICE AND PROCEDURE § 27-1 (2000)). FED.R.CIV.P. 69(a) again simply directs that such execution procedures "shall be in accordance with the practice and procedure of the state in which the district court is held, . . . except that any statute of the United States governs to the extent that it is applicable." FED.R.CIVP. 69(a). In order to seek satisfaction of their Judgment by way of Appellees' real or personal property, however, Appellants' must first identify that property. In order to do so, Appellants are permitted to utilize an array of post-judgment discovery and collection measures, including compelling a fact information sheet, under FLA.R.CIV. The discovery requested in Tab F, and denied in Tab G, of the Appendix in this Appeal, was

necessary to enforce a lien already created by Federal Law and Florida Law by entry on the Judgment. *See, supra.* Once Appellants discovered property on which to place a lien, the Appellants could have registered same with the Department of State and local clerk of courts for the appropriate jurisdiction under *Fla. Stat. § 55.205(1)*, long after the statute of limitations in *§ 95.11(2)(a)* had run because *Florida Statute § 55.205* can effectively eliminate any statute of limitations applicable to judgment liens because it allows a judgment creditor, who has not obtained a lien or has an expired lien, to "proceed against the judgment debtor's property through any appropriate judicial process." *Fla. Stat. § 55.205(1); See also, See, The Life of a Money Judgment in Florida Is Limited—For Only Some Purposes*, 79 Fla. B.J. No. 7, 20 (2005). Hence, the district court erroneously prohibited the Appellants from seeking further collections remedies available to them under state law, denying the Appellants the information necessary to discern which clerk to file the judgment lien with, and what property to place a lien on. *See, Fla. Stat. § 28.222(3)(C)*. The discovery requested by Appellants in Tab F is filed under the original action, which could have been domesticated under *Fla Stat. §§§ 55.10(1), 55.203 and 55.202 (2)(a), & 55.205(1)*, and then subject to a renewable ten-year statute of limitations for liens under *Florida Statute § 55.10(1)*. Compelling Appellees to fill out Florida Form 1.977 would

have enabled Appellants/Creditors to seek proper redress for the Appellees' failure to pay the judgment. The Appellants/ Creditors were entitled to avail themselves of all remedies under Florida Law for an unsatisfied judgement. The Southern District Court erred in denying the Appellants/judgment creditor the ability to properly seek the lien remedy under Florida law. See, infra & Supra.

II. Florida Legislation has made it clear that there is no time limitation on the life of a Judgment.

The district court erred because compelling completion of Florida Form 1.977 is not a new action, hence, *Fla. Stat. §95.11* is not applicable. *See, Crane v. Nuta*, 26 So.2d 670 (Fla. 1946); *Workingmen's Co-operative Bank v. Wallace*, 9 So.2d 731(Fla. 1942); & *Witeside v. Dinkins*, 97 So.2d 517 (Fla. 1923).

Most importantly, the Florida Legislature has spoken on the issue when it repealed the statute of limitations to execute on a judgment in 1968. *See, infra.* Hence, the district court erred in applying any statute of limitations to Appellants' attempts to execute upon the judgment. *See, infra.*

When Florida Legislature repealed Florida Statute section 55.15 (1965), the legislature appears to have done away with time limitations entirely. When compared to the language of the earlier statutes and that of the section which has taken its place, the original section provided as follows:

> The plaintiff shall be entitled to his execution at any time within three years after the rendition of any judgment or decree, and upon the issuance of his execution, shall be entitled to renew the same upon the return to the clerk's office of the original execution, from time to time for twenty years, unless the same be sooner satisfied.

FLA. STAT. § 55.15 (1965); *repealed,* Fla. Laws 1967, ch. 67-254 § 49.

In the act that repealed the above section, the Legislature's notes provided that when section 55.15 was repealed the full subject contained therein would be covered by section 56.021 which states as follows:

> When issued, an execution is valid and effective during the life of the judgment or decree on which it is issued. When fully paid, the officer executing it shall make his return and file it in the court which issued the execution. If the execution is lost or destroyed, the party entitled thereto may have an alias, pluries or other copies on making proof of such loss or destruction by affidavit and filing it in the court issuing the execution.

FLA. STAT. § 56.021 (1969).

The only time limitation provided by this section is that an execution will only be valid and effective during the life of the judgment or decree on which it is issued. Arguably, the Legislature’s intent was that a judgment does not become dormant and will support the issuance of a "writ of execution" and/or “post judgment discovery” during its entire lifetime without any need for revival.

This position becomes expressly clear by the reviser's notes being unambiguously included in the act which repealed the earlier statute. Fla. Laws 1967, ch. 67-254, I52. Consequently, no statutory construction is relevant to the case at hand. The statute was repealed, and the issue is not how to interpret *Fla. Stat. §§ 95.11(1) or 95.11(2)*; rather, how to proceed, given that there is no statute of limitations on the execution of a judgment. *See, infra.* The Southern District Federal Court was mistaken under Florida law. The Fourth District Court of Appeal's decision in *Burshan* and the Legislature's intent in repealing and replacing Florida Statute Section 55.15, makes that clear. The Fourth District Court of Appeal's decision in *Burshan* and the Legislature's intent in repealing and replacing Florida Statute Section 55.15 also provides the basis for this Court to reverse the District Court's determination and permit Appellants to continue their collection efforts in which they are entitled to engage under Florida law. The most recent Florida authority to address each of the issues on appeal is *Burshan*, 805 So.2d 835. Burshan is the most recent *Florida law on the issues presented in this case,* and should be applied to reverse the order on appeal.

A judgment creditor, without having previously secured a judgment lien, or with an expired judgment lien, may proceed against the judgment debtor's property through other judicial processes,

such as writs of execution. *See, Fla. Stat. § 55.205(1)*. A writ of execution is the collections mechanism in *Fed.R.Civ.Pro. 69(a)* governed by state law. Hence, *Fla. Stat. § 55.205(1)* and the repeal of the statute of limitations to collect on a judgment lien (the repeal of *Fla. Stat. § 55.15*) indicates that the district court erred in applying any statute of limitations. *See, The Life of a Money Judgment in Florida Is Limited—For Only Some Purposes*, 79 Fla. B.J. No. 7, 20 (2005).

Since, the twenty-year statute of limitations to collect on a Judgment Lien was repealed (*Fla. Stat. § 55.15*), *Fla. Stat. § 55.205(1)* permitted Appellants to proceed against Debtor Appellees using other judicial means, including a writ of execution, regardless of the time frame in which they sought to proceed. The discovery Appellants attempted to compel was necessary to obtain the information needed for a writ of execution. The district court erroneously denied same, and same could be used to aid other judicial means, including writs of execution, and Proceedings Supplementary, as contemplated by the Florida Statutes and *Federal Rule of Civil Procedure 69(a)*. See, Burshan 805 So.2d 835; *Federal Judgments in Florida Still Good after Five Years*, 73 Fla. B.J. 63, 64 (1999) & *The Life of a Money Judgment in Florida Is Limited—For Only Some Purposes*, 79 Fla. B.J. No. 7, 20 (2005). *Fla. Stat. § 55.205(1)* creates no limit on the "life of a judgment," by allowing

judicial action on a lien sought within or outside of the statute of limitations, or not sought at all.

CONCLUSION

Appellants submit that relief is warranted and that the District Court erred when it disregarded Burshan and knowingly applied a five-year statute of limitations to a discovery motion that was not filed as a new action, but rather part of the original action. *Fla. Stat. § 95.11* does not limit the time for a post-judgment discovery motion to five, or twenty years. Rather, the statute should not have been applied at all to a post-judgment discovery motion, because it only applies to new actions. The Florida Legislature repealed the statute of limitations applicable to judgment liens and it was not replaced.

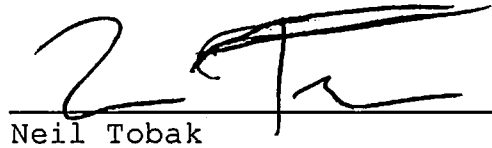
Hence, the district court's denial of the Motion to Compel Completion of Florida Form 1.977 should be reversed. (Tabs F & G, Respectively).

This Court should reverse the district judge's order in Tab G of the Appendix to this Appeal, with instructions to allow post judgment discovery, as same is not limited by *Fla. Stat.§ 95.11*. The Appellants should be given the right to seek a lien on the property/assets of the judgment debtor in the appropriate Florida Jurisdiction, and to execute upon the original judgment, using all

methods available under Florida Law, including post judgment discovery proceedings.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing has been furnished by e-filing to all counsel of record, on this 8th day of June 2017



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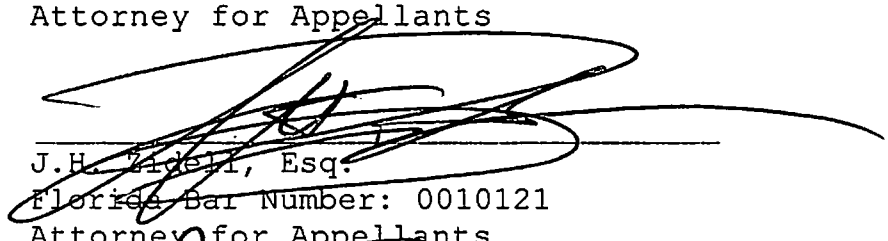

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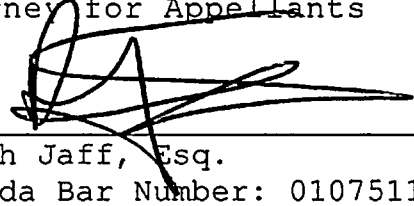

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I HEREBY CERTIFY that the instant brief has been prepared with 12-point Courier New type, a font that is not proportionately spaced.

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