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

REPLY BRIEF OF APPELLANTS

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REPLY

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

Appellee's contend that an "action" is defined broadly in §95.011, and that it is not limited to the specific mechanism of an action on a judgement. Appellee's Response Br. At 9.[1] However, there have been various interpretations of the phrase "action on a judgment". Earlier versions of the statute used the phrase "action upon a judgment." See Van Deren v. Lory,87 Fla. 422, 100 So. 794 (1924). See also Milliken & Co. v. Haima Grp. Corp., 654 F. Supp. 2d 1374, 1379 (S.D. Fla. 2009). In Burshan v. Nat'l Union Fire Inc. CO. of Pittsburgh PA, the Court found that, although the wording had changed, nothing "indicate[d] a legislative intent to change the meaning". Burshan v. Nat'l Union Fire Inc. CO. of Pittsburgh PA 805 So. 2d 835 (Fla. 4th DCA 2001). Burshan found that "federal courts have interpreted the words too broadly" and that Kiesel [2] changed the term's interpretation "as an afterthought." Id[3].

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[1] "Appellee's Response Br." Shall refer to the brief filed in this Court on the certified question.

[2] Kiesel v. Graham 388 So. 2d 594 (Fla. 1st DCA 1980)

[3] In 1974, the Legislature created section 95.011, which explicitly provided that the provisions of chapter 95 extend to any "civil action or proceeding. Raymond James Fin. Servs., Inc. v. Phillips, 126 So. 3d 186, 192 (Fla. 2013). The Burshan decision occurred more than 25 years after the enactment of

First, it is important to note that judgments in Florida are good for twenty years. § 55.081, Fla. Stat. (2015). Judgment creditors often spend many years attempting to collect on judgments, and it is not unusual for judgment creditors to obtain partial payments or partial satisfaction of the judgment along the road to what they hope will ultimately be full recovery. Branch Banking & Tr. Co. v. Hamilton Greens, LLC, No. 11-80507-CIV, 2015 WL 5257668, at *4 (S.D. Fla. Sept. 8, 2015). The garnishment statute is intended to help creditors collect on their judgments, and motions for writs of garnishment can be filed many years after the original judgment is obtained. Id.

In interpreting Fla. Stat. § 95.11, the Kiesel (state) and Balfour (federal) courts found that Fla. Stat. § 95.11(2)(a) controls post-judgment collection proceedings. It is important to note, however, that the Eleventh Circuit holding in Balfour was expressly limited to the facts of that case. See Balfour, 170 F.3d at 1051 (holding that "under such [unique] circumstances, the five (5) year statute of limitations controls". Milliken & Co. v. Haima Grp. Corp., 654 F. Supp. 2d 1374, 1379 (S.D. Fla. 2009). The Federal District Court in Balfour correctly noted that:

> ...while it is understandable for a federal district court judgment to be considered "foreign" in a state court, it is absurd that a federal district court judgment might be

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section 95.011 and thus had an opportunity to review same prior to its decision.

> considered "foreign" in that same federal district court when the prevailing party seeks to enforce the judgment. This Court agrees with the district court's finding in Leasco that subsection (1) (the twenty-year limitation period) applies in this action. Subsection (2)(a), the five-year limitation period, pertains to judgments foreign to the state of Florida, not domestic judgments. See Huff v. Pharr, 748 F.2d 1553, 1554 (11th Cir.1984). If the Court were to interpret that portion of subsection (2)(a) that refers to "any court of the United States" to include a court of the United States situated within this state, then a district court presiding over an action to enforce its own judgment would be constrained to view its own judgment as foreign. The Court finds it improbable that this is the construction intended by the legislators who drafted § 95.11 of the Florida Statutes.

Balfour Beatty Bahamas, Ltd. v. Boca Raton Millwork, Inc., 217 B.R. 339, 340-41 (S.D. Fla. 1998), rev'd in part sub nom. Balfour Beatty Bahamas, Ltd. v. Bush, 170 F.3d 1048 (11th Cir. 1999). On appeal, Balfour *appears* to limit post-judgment discovery in aid of execution on a federal court judgment to a period of five (5) years from the entry of the judgment. *Balfour*, 170 F.3d at 1050-51. If it does, it is only because the Kiesel court, on which Balfour relied, erred in determining that all efforts to enforce a judgment are somehow transmogrified into "actions on a judgment." This contention is clearly improper and is addressed at length in Appellants Initial Brief. Had it considered any of the earlier Florida authorities outlined by the Burshan court, it most certainly would not have concluded that either Section 95.11(1) or

Section 95.11(2)(a) necessarily applied.

The Burshan Court found that "the main purpose of an action on a judgment is to obtain a new judgment which will facilitate the ultimate goal of securing satisfaction of the original cause." See Adams v. Adams, 691 So.2d 10 (Fla. 4th DCA 1997). In B.A. Lott and Young, the Florida Supreme Court distinguished between proceedings to enforce a final judgment and the common law "action on a judgment." See B.A. Lott, Inc. v. Padgett, 14 So.2d 667, 668(Fla. 1943) at 669 (referring to the common law action on a judgment as a "new independent action"); Young v. Mckenzie, 46 So.2d (Fla.1950) at 185 (finding that proceedings supplementary did not constitute an "action on a judgment"). Id.

In Young, the Court linked the timeliness of initiating proceedings supplementary to "the period of efficacy of an execution," concluding that proceedings supplementary could be brought for the twenty-year life of the judgment. Biel Reo, LLC v. Barefoot Cottages Dev. Co., LLC, 156 So. 3d 506, 508 (Fla. Dist. Ct. App. 2014) (citing Young v. McKenzie, 46 So.2d 184, 185 (Fla.1950).

An action on a judgment is different than post judgment collection proceedings, filed under the same case number as the final judgment, where the goal is to satisfy the judgment. Such proceedings are merely "'continuation[s] of an action,'" which "'create nothing anew, but may be said to reanimate that which

before had existence.'" Massey v. Pineapple Orange Co., 87 Fla. 374, 100 So. 170, 171 (1924) (quoting Brown v. Harley, 2 Fla. 159 (1848)). Corzo Trucking Corp. v. West, 61 So. 3d 1285, 1289 (Fla. Dist. Ct. App. 2011). In the case at bar, the action was not a proceeding by writ of scire facias, which was formerly used to revive a dormant judgment, rather was a continuation of the original action. *See* Burshan, 805 So.2d at 841-43.Id. Compelling discovery is not a "new and independent action." *Id*. 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 v. 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 v. Pineapple

Orange Co., 87 Fla. 374, 100 So. 170, 171 (1924). Burshan, 805 So. 2d 835 at 844.

The writ of scire facias was formerly used in Florida to revive a dormant judgment so that execution could issue. See Burshan v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.,805 So.2d 835, 841 (Fla. 4th DCA 2001) (citing Spurway v. Dyer, 48 F.Supp. 255, 258 (S.D.Fla.1942)). See generally Henry P. Trawick, Jr., Florida Practice and Procedure §§ 25:16, 37:9 (2008-09) (explaining the function of the writ of scire facias). A proceeding by writ of scire facias to revive a judgment was regarded not as a new proceeding but rather as a continuation of the original action. See B.A. Lott, Inc. v. Padgett, 153 Fla. 304, 14 So.2d 667, 669 (1943); Massey v. Pineapple Orange Co., 87 Fla. 374, 100 So. 170, 171 (1924). Petersen v. Whitson, 14 So. 3d 300, 302-03 (Fla. Dist. Ct. App. 2009). "[A] judgment, whether domestic or foreign, constitutes a cause of action upon which a new and independent action may be based." *Crane v. Nuta*, 157 Fla. 613, 26 So.2d 670, 671 (1946). "[T]he main purpose of an action on a judgment is to obtain a new judgment which will facilitate the ultimate goal of securing satisfaction of the original cause of action." *Adams v. Adams*, 691 So.2d 10, 11 (Fla. 4th DCA 1997) (citing 47 Am.Jur.2d *Judgments* § 945 (1995)). The statute of limitations applicable to an action on a judgment or decree of a court of record in Florida is twenty years. § 95.11(1), Fla.

Stat. (2007); Commercebank, N.A. v. Taylor, 964 So.2d 817, 818 (Fla. 3d DCA 2007); Marsh v. Patchett, 788 So.2d 353, 354 (Fla. 3d DCA 2001). Id.

II. THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION.

Appellees contend that this Court should decline to answer the certified question. Federal Court is bound by the "procedure of the state in which the district court is located" and the state court's interpretation of same. Fed.R.Civ.P. 69. In this case, as was case in two previous instances, the Federal Appellate Court is asking this court for help in interpreting its state law.

Further, the Buse Court emphasized that courts are not bound to follow prior federal court interpretation of Florida state law where "an intervening Florida decision indicates that [the] earlier appraisal of that state's law is wrong." Id. Buse v. Kuechenberg 325 F.3d 1249 (11th Cir. 2003). Although the Buse opinion was ultimately vacated, due to voluntary dismissal by the parties, it is quite instructive. Following Buse would, at a minimum, require the application of Burshan as it is the most recent intervening intermediate appellate state court decision on the matter. Milliken & Co. v. Haima Grp. Corp., 654 F. Supp. 2d 1374, 1380 (S.D. Fla. 2009). Additionally, the 11th Cir. has previously noted that while it is required to follow prior panel precedent, there is an exception for when a state appellate court

tell declares that the prior panel precedent interpreted its state law incorrectly. EmbroidMe.com, Inc. v. Travelers Prop. Cas. Co. of Am.,845 F.3d 1099, 1105 (11th Cir. 2017). Since the Eleventh Circuit decided Balfour, a Florida intermediate appellate court has vehemently declared that Balfour was wrongly decided. Thus, Appellants respectfully request this Court to answer the certified question in the case at bar, finding the 5 year limitation inapplicable to collection proceedings on a judgement entered by a Florida Federal District Court.

CONCLUSION

Appellants submit that relief is warranted and that the Federal 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. 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

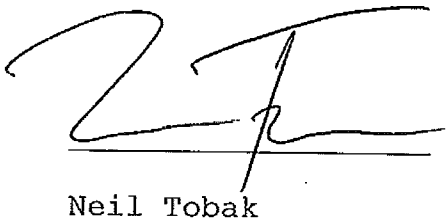
discovery brought in federal district court in Florida on a judgement entered by the same federal district court

Hence, the district court's denial of the Motion to Compel Completion of Florida Form 1.977 should be reversed. (Appellants Initial Br. 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,* 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. 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

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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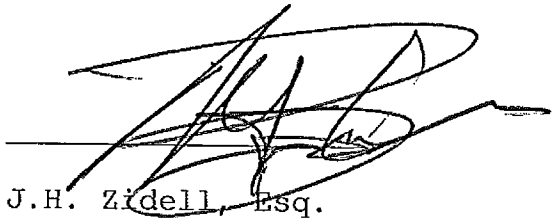

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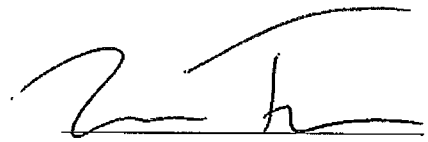
I HEREBY CERTIFY that the instant Reply has been prepared with 12-point Courier New Type, a font that is not proportionately spaced.



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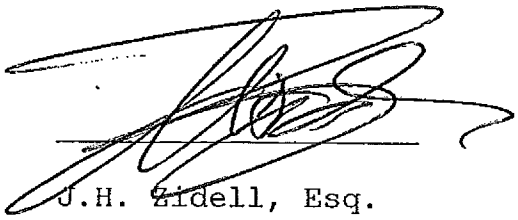

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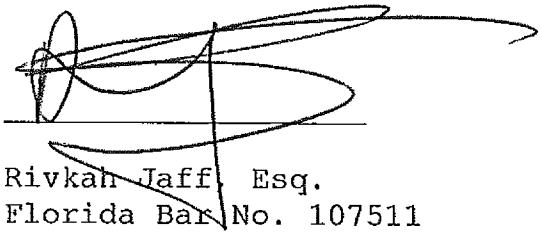

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