

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONIDAS P. FLANGAS, an
individual,

Appellant,

vs.

PERFEKT MARKETING, LLC, AN
ARIZONA LIMITED LIABILITY
COMPANY,

Respondent.

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Case No. 81385

**APPEAL FROM JUDGMENT
EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY,
NEVADA HONORABLE TREVOR ATKIN, DISTRICT JUDGE**

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the Appellant is an individual, therefore there are no parent corporations or publicly-held companies that own 10% or more of the party's stock.

Ian Christopherson appeared for Appellant Leonidas P. Flangas in proceedings in the District Court and has appeared for Appellant before this Court. Robert L. Eisenberg, Esq., is appearing for Appellant before this Court.

DATED this 10th day of May 2021.

By: /s/ Robert L. Eisenberg

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TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT	1
ROUTING STATEMENT.....	1
ISSUES PRESENTED FOR REVIEW	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
SUMMARY OF THE ARGUMENT	5
ARGUMENT	7
A. THE FOREIGN JUDGMENT ENTERED ON MAY 5, 2014, WAS REQUIRED TO BE TIMELY RENEWED IN THE FOREIGN JURISDICTION TO BE ENFORCEABLE IN NEVADA.....	8
1. This Court has held that an expired judgment is not valid and enforceable	8
2. Other jurisdictions require a valid judgment to be domesticated	10
3. A foreign judgment is treated in the same manner as a judgment of a Nevada district court	14
B. THE JUDGMENT VIOLATES APPELLANT’S DUE PROCESS AS APPLIED TO THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (UEFJA), NRS 17.330 – 17.400C	15
1. Legislative history	15

TABLE OF CONTENTS (cont'd.)

2.	Nevada's Uniform Enforcement of Foreign Judgments Act in general .	
	18
3.	The full faith and credit clause of the United State Constitution and due process	19
4.	Appellant was denied his due process rights to challenge the Arizona judgment.....	20
5.	Respondent's delay in service on Appellant violated due process	21
6.	Court decisions support Appellant's position	24
C.	BOTH NEVADA AND ARIZONA COURTS APPLY A STRICT INTERPRETATION TO THE RENEWAL OF JUDGMENTS; FAILURE TO COMPLY WITH REQUIREMENTS RENDERS THE JUDGMENT EXPIRED	27
D.	THE APPLICATION OF THE FULL FAITH AND CREDIT DOCTRINE DENIES DEFENDANT OF FUNDAMENTAL DUE PROCESS.....	29
1.	Fundamental due process in general	29
2.	Not all judgments are entitled to full faith and credit in Nevada.....	29
3.	Parties can set their own statute of limitations or collection period ...	30
	CONCLUSION	32
	RULE 28.2 ATTORNEY'S CERTIFICATE	33
	CERTIFICATE OF SERVICE	35

TABLE OF AUTHORITIES

Cases

<i>Atlas Life Ins. Co. v. Standfier</i> , 86 S.W.2d 852 (Tex. Civ. App. 1935)	12
<i>Baldwin v. Heinold Commodities Inc.</i> , 363 N.W.2d 191 (S.D. 1985)	30
<i>Bell Atlantic Tricon Leasing Corp. v. Johnnie's Garbage Serv.</i> , 113 N.C. App. 476, 439 S.E.2d 221(N.C. App. 1994).....	11
<i>Bianchi v. Bank of Am., N.A.</i> , 124 Nev. 472, 186 P.3d 890 (2008)	<i>passim</i>
<i>Browning v. Dixon</i> , 114 Nev. 213, 954 P.2d 741 (1998)	24, 27, 29
<i>Brubaker v. Engines Direct Distribs., LLC</i> , 2016 Ariz. App. Unpub. LEXIS 1226 (Ariz. App. 2016).....	25
<i>Burke v. Burke</i> , 32 Del. Ch. 320, 86 A.2d 51 (Del. Ch. 1952)	12
<i>Callie v. Bowling</i> , 123 Nev. 181, 160 P.3d 878 (2007)	22, 24
<i>China Branding Grp. Ltd. v. Bobulinski</i> , No. 2:20-cv-06759-RGK-JC, 2021 U.S. Dist. LEXIS 31475, at *10 (C.D. Cal. Jan. 25, 2021; unpublished)	13
<i>Chiquita Mining Co. v. Fairbanks, Morse & Co.</i> , 60 Nev. 142, 104 P.2d 191 (1940)	31
<i>City of Oakland v. Desert Outdoor Advert., Inc.</i> , 127 Nev. 533, 267 P.3d 48, (2011)	8-9, 18-20, 29-30
<i>Clark Co. Sports Enterprises v. Kaighn</i> , 93 Nev. 395, 566 P.2d 411 (1977)	29
<i>Clientron Corp. v. Devon IT, Inc.</i> , 35 F. Supp. 3d 665 (E.D. Pa. 2014)	13

<i>Clint Hurt & Assocs. v. Silver State Oil & Gas Co.</i> , 111 Nev. 1086, 901 P.2d 703 (1995)	21
<i>Corzo Trucking Corp. v. West</i> , 281 Ga. App. 361, 636 S.E.2d 39 (Ga. App. 2006).....	11
<i>Cristall v. Cristall</i> , 225 Ariz. 591, 242 P.3d 1060 (Ariz. App. 2010)	28
<i>Fed. Work Ready, Inc. v. Wright</i> , 299 So. 3d 140 (La. App. 2020)	11-12
<i>Ferrand Laser Screeding, Inc. v. Concrete Mgmt. Sols., LLC</i> , 150 N.E.3d 227 (Ind. App. 2020)	12-13
<i>Gonzales-Alpizar v. Griffith</i> , 130 Nev. 10, 317 P.3d 820 (2014)	21
<i>Hemlock Semiconductor Corp. v. Kyocera Corp.</i> , No. 15-cv-11236, 2016 U.S. Dist. LEXIS 915 at *49 (E.D. Mich. Jan. 6, 2016; unpublished)	13
<i>In Sik Choi v. Kim</i> , 50 F.3d 244 (3d Cir. 1995)	25
<i>Iraq Middle Mkt. Dev. Found. v. Harmoosh</i> , 947 F.3d 234 (4th Cir. 2020)	13
<i>Kabana, Inc. v. Best Opal, Inc.</i> , 2007 U.S. Dist. LEXIS 10947 (D. Nev. 2007) ..	22
<i>Lathigee v. B.C. Sec. Comm'n</i> , 136 Nev. ___, 477 P.3d 352 (2020)	30
<i>Laser Screeding, Inc. v. Concrete Mgmt. Sols., LLC</i> , 150 N.E.3d 227 (Ind. App. 2020)	12
<i>Lawrence Sys. By & Through Douglas-Guardian Warehouse Corp. v. Superior Feeders</i> , 880 S.W.2d 203 (Tex. App. 1994)	12
<i>Le Credit Lyonnais, S.A. v. Nadd</i> , 741 So. 2d 1165 (Fla. Dist. Ct. App. 1999).....	12
<i>Leven v. Frey</i> , 123 Nev. 399, 168 P.3d 712 (2007)	27
<i>Magliarditi v. TransFirst Grp., Inc.</i> , 2019 WL 5390470 (Nev.; October 21, 2019; No. 73889; unpublished)	22

<i>Maiola v. State</i> , 120 Nev. 671, 99 P.3d 227 (2004)	21-22
<i>Mapco, Inc. v. Forrest</i> , 795 S.W.2d 700 (Tex. 1990)	26
<i>Marworth, Inc. v. McGuire</i> , 810 P.2d 653 (Colo. 1991)	30
<i>Mill Alley Partners v. Wallace</i> , 236 Ariz. 420, 341 P.3d 462 (Ariz. App. 2014)	30-31
<i>Mobile Discount Corp. v. Hargus</i> , 156 Ariz. 559, 753 P.2d 1215 (Ariz. App. 1988)	15
<i>Mona v. Eighth Judicial District Court</i> , 132 Nev. 719, 380 P.3d 836 (2016)	7-8
<i>Monks Own Ltd. v. Monastery of Christ in Desert</i> , 142 P.3d 955 (N.M. App. 2006)	7
<i>Montebueno Mktg. v. Del Monte Corp-USA</i> , 570 F. App'x 675 (9th Cir. 2014)	13
<i>Nicoladze v. First Nat'l Bank</i> , 94 Nev. 377, 580 P.2d 1391 (1978)	29
<i>O'Lane v. Spinney</i> , 110 Nev. 496, 874 P.2d 754 (1994)	27
<i>Pan Energy v. Martin</i> , 813 P.2d 1142 (Utah 1991)	10, 11
<i>Perfekt Marketing, LLC v. Leonidas Flangas, et al.</i> , Superior Court, Maricopa County, Case No. CV2012-002215 (Ariz. 2014)	1
<i>Phares v. Nutter</i> , 125 Ariz. 291, 609 P.2d 561 (Ariz. 1980)	8
<i>Pirtek USA, LLC v. Whitehead</i> , 51 So. 3d 291 (Ala. 2010)	11
<i>Playnation Play Sys. v. Guajardo</i> , 2007 Tex. App. LEXIS 3869 at *9 (Tex. App. 2007)	26
<i>Price v. Dunn</i> , 106 Nev. 100, 787 P.2d 785 (1990)	21
<i>Provident Nat'l Assurance Co. v. Sbrocca</i> , 180 Ariz. 464, 885 P.2d 152 Ariz. App. 1994)	31

<i>Redondo Constr. Corp. v. United States</i> , 157 F.3d 1060 (6th Cir. 1998)	15
<i>Romano v. Vecchia (In re Romano)</i> , 371 F. App'x 729 (9th Cir. 2010)	27
<i>Rosenstein v. Steele</i> , 103 Nev. 571, 747 P.2d 230 (1987)	19, 21
<i>Sonntag Reporting Serv., Ltd. v. Ciccarelli</i> , 374 N.J. Super. 533, 865 A.2d 747 (N.J. App. Div. 2005)	25
<i>State of Maine v. SeKap, S.A. Greek Co-op Cigarette Mfg. Co.</i> , 392 N.J. Super. 227, 920 A.2d 667 (N.J. App. Div. 2007)	25-26
<i>Strod v. Lewenstark</i> , 958 So. 2d 1138 (Fla. Dist. Ct. App. 2007)	26
<i>Tandy Comput. Leasing v. Terina's Pizza, Inc.</i> , 105 Nev. 841, 784 P.2d 7 (1989)	7
<i>Thoma v. Thoma</i> , 123 N.M. 137, 934 P.2d 1066 (N.M. App. 1997)	26
<i>Triple E Produce Corp. v. Valencia</i> , 170 Ariz. 375, 824 P.2d 771 (Ariz. App. 1991)	28
<i>Trubenbach v. Amstadter</i> , 109 Nev. 297, 849 P.2d 288 (1993)	10-11
<i>Wooster v. Wooster</i> , 399 N.W.2d 330 (S.D. 1987)	30
<i>Worsnop v. Karam</i> , 2020 WL 970368 at *4 (Nev.; February 27, 2020; No. 77248; unpublished)	27-28
<i>Wright v. Trust Co. Bank</i> , 219 Ga. App. 551, 466 S.E.2d 74 (Ga. App. 1995)	12

Rules and Statutes

Ariz. Rev. Stat. § 1-244	4
Ariz. Rev. Stat. §12-1611	28
Ariz. Rev. Stat. § 12-1612(B)	4, 5, 8, 28
Cal. Code. Civ. P. § 1716(c)(1)(D)	13
EDCR 8.05	1
Md. Cts. & Jud. Proc. §§ 10-704(b)(4)	13

NRAP 3A(b)(1).....	1
NRAP 4(a).....	1
NRAP 17(a)(2).....	1
NRAP 17(a)(11).....	1
NRAP 17(a)(12)	1
NRCP 5(b)(2)(D)	1
NRCP 60(b).....	19, 21
NRS. 11.190(1)(a)	28
NRS 17.214.....	18, 27, 28
NRS 17.330 – 17.400.....	2, 15, 18
NRS 17.340.....	19
NRS 17.350.....	4, 14, 19
NRS 17.360.....	6, 22, 23

Other Sources

30 AM. JUR. 2D EXECUTIONS AND ENFORCEMENT OF JUDGMENTS § 787 (2005)	9, 20, 30
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, <i>Revised Uniform Enforcement of Foreign Judgments Act, Prefatory Note</i> (August 3-8, 1964), https://uniformlaws.com/committees/community-home/librarydocuments/viewdocument?DocumentKey=0406bcac-1034-43d4-aeb6-00be1d8639a0	16

Nevada State Legislature, Assembly Minutes Committee of the Judiciary at p. 721 (April 5, 1979)	17
Nevada State Legislature, Senate Committee Minutes on the Judiciary at p. 1 (January 31, 1979)	18
Nevada State Legislature, Senate Committee Minutes on the Judiciary at p. 4 (February 1, 1979)	17, 18
Uniform Enforcement of Foreign Judgments Act (UEFJA).....	<i>passim</i>

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to NRAP 3A(b)(1) because the district court's Order Denying Appellant Leonidas P. Flangas' Motion to Strike or Relief from Void Judgment on June 4, 2020 is a final order resolving all claims between all parties. The June 4, 2020 order was served on the parties via the Odyssey E-Filing System pursuant to NRCP 5(b)(2)(D) and EDCR 8.05. The notice of appeal was timely filed on June 20, 2020 pursuant to NRAP 4(a).

ROUTING STATEMENT

This case involves a constitutional question and is therefore presumptively retained by the Supreme Court pursuant to NRAP 17(a)(2).

This case involves a stipulated Arizona judgment filed in Nevada before it expired in Arizona, but served after it expired in Arizona. *Perfekt Marketing, LLC v. Leonidas Flangas, et al., Superior Court, Maricopa County, State of Arizona*, Case No. CV2012-002215 (Ariz. 2014).

Appellant filed a motion for relief from void judgment and motion to strike that was denied by the Eight Judicial District Court of Clark County, Nevada on June 4, 2020. Under these circumstances, the appeal involves an issue of first impression, with statewide public policy implications, and the Supreme Court should retain the appeal under NRAP 17(a)(11) and (12).

ISSUES PRESENTED FOR REVIEW

1. Whether a foreign judgment entered pursuant to an agreement and entered on May 5, 2014, was required to be timely renewed in the foreign jurisdiction to be enforceable in Nevada.
2. Whether the Uniform Enforcement of Foreign Judgment Act (UEFJA), NRS 17.330 – 17.400, violates due process as applied. In other words, when a stipulated foreign judgment is enforceable and not served until after the foreign judgment expires, thus depriving the judgment debtor of the ability to raise defenses under the UEFJA, whether due process is denied.
3. Whether a contract allowing entry of judgment binds the judgment creditor to the agreement and prevents renewal and/or entry of a foreign judgment.

STATEMENT OF THE CASE

This is an action for domestication of an Arizona judgment. On February 5, 2019, Respondent filed an Application of Foreign Judgment.¹ On February 6, 2019, Respondent filed an Affidavit of Service of Notice of Filing Application of Foreign Judgment² and Affidavit of Judgment and a Notice of Filing Application of Foreign Judgment and Affidavit of Judgment.³ Respondent failed to renew the judgment and

¹ 1 A.App. 1-2 (Application of Foreign Judgment, February 5, 2019).

² 1 A.App. 8-10 (Affidavit of Service of Notice of Filing Application of Foreign Judgment, February 6, 2019).

³ 1 A.App. 11-13 (Notice of Filing Application of Foreign Judgment and Affidavit of Judgment, February 6, 2019).

allowed it to expire in the state of origin, preventing Appellant from litigating the terms of the agreement in regards to the judgment in its jurisdiction.⁴

On July 9, 2019, Appellants filed a Motion to Strike or Relief from Void Judgment.⁵ On June 4, 2020, the district court issued an Order Denying Appellants' Motion to Strike or Relief from Void Judgment.⁶ Appellants filed a Notice of Appeal on June 20, 2020.⁷

STATEMENT OF FACTS

The parties entered into an agreement that governed a stipulated judgment that was entered in the Superior Court of Arizona on May 5, 2014.⁸ According to Arizona statute, the judgment was collectible for only five years and secured payment under the agreement. The parties understood that the judgment would be collectible for only five years, and only in Arizona.⁹ There was no agreement to allow for the renewal of the judgment or allow it to be filed in Nevada. *Id*

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⁴ 1 A.App. 33 (Declaration of Leonidas Flangas).

⁵ 1 A.App. 31-39 (Appellants' Motion to Strike or Relief from Void Judgment, July 9, 2019).

⁶ 1 A.App. 153-55 (Order Denying Appellants' Motion to Strike or Relief from Void Judgment, June 4, 2020).

⁷ 1 A.App. 161-62 (Notice of Appeal, June 20, 2020).

⁸ 1 A.App. 3-7 (Judgment); 1 A.App. 149 (Flangas Declaration).

⁹ 1 A.App. 149 (Flangas Declaration)

The judgment was governed by agreement and expired five years later pursuant to Arizona law on May 5, 2019. Therefore, Respondent can no longer collect upon the Judgment. Any collection efforts would be barred after that date.

Under Ariz. Rev. Stat. § 12-1612(B), if an affidavit for a renewal of a judgment is not filed within five years from the date of its original rendition, or an action brought on the judgment in that time, no execution can be issued thereon and the statute of limitations has run against the judgment itself. The version of Ariz. Rev. Stat. § 12-1612(B)¹⁰ in effect at the time the Respondent obtained its Arizona judgment stated that “[t]he judgment creditor or his personal representative or assignee, *within ninety days preceding the expiration of five years* from the date of entry of such judgment, may make and file an affidavit...” *Id.* (emphasis added).

However, on February 5, 2019, Respondent instead filed an Application of Foreign Judgment in this case in the Clark County District Court, pursuant to NRS 17.350. But Respondent did not promptly serve the papers on Appellant. Instead, on June 6, 2019—122 days after the Application was filed, Appellant was personally served with the Notice of Filing Application of Foreign Judgment and Affidavit of

¹⁰ A 2018 amendment substituted “ten years” for “five years” in the introductory language of (B), effective August 3, 2018. However, the statute amendment applies prospectively because the statute does not mention a retroactive effect. See Ariz. Rev. Stat. § 1-244 (“[n]o statute is retroactive unless expressly declared therein.”). Thus, the 2018 amendment substituting “ten years” is not applicable to this case.

Judgment.¹¹ The Notice of Filing Application was served only after the expiration of the judgment in Arizona.

SUMMARY OF THE ARGUMENT

The district court's judgment should be reversed in favor of Appellant because Respondent domesticated a foreign judgment that was no longer valid and legally enforceable. The judgment was required to be renewed pursuant to Ariz. Rev. Stat. § 12-1612(B). To comply with that statute, to renew the judgment, Respondent was required to file an affidavit by May 5, 2019, within 90 days preceding the expiration of five years from the date of entry of the judgment. Respondent did not do so. As a result, the Arizona judgment became unenforceable as it was not renewed within the prescribed statutory time.

The judgment expired in Arizona, and Appellant was foreclosed from challenging the judgment in Arizona. As such, the settlement agreement should have been applied, Respondent domesticated the expired Arizona judgment, and Appellant has been denied his due process rights. The challenges to a foreign judgment do not allow Appellant to present any contractual defenses to renewal in Nevada which he could have raised in Arizona if the judgment was renewed and if Appellant had been given notice of Respondent's domestication of the judgment in Nevada. Appellant's issues attacking the judgment could only be raised in Arizona.

¹¹ 1 A.App. 11-13.

Respondent's pocket filing in Nevada (filing a document but not serving it on the opposing party) caused Appellant to be denied the opportunity to be heard. Appellant was denied his due process rights in that his defenses were limited in Nevada. As such, the full faith and credit doctrine prevents his contesting the judgment in the removed jurisdiction. Recognizing the Arizona judgment denies Appellant of due process. The full faith and credit doctrine is unconstitutional as applied.

Finally, under Nevada law, the judgment creditor must upon filing the foreign judgment and affidavit, promptly give notice to the judgment debtor and verify to the court that the notice was given. Respondent failed to verify to the Court that the notice was given. Respondent has admitted that any purported verification was not accomplished until four months after it had submitted pleadings to the district court to domesticate the Arizona Judgment. Appellant (Judgment Debtor) has been a practicing attorney in Las Vegas, Nevada for over 25 years. His office has been and still is across from the Las Vegas Justice Center where the foreign judgment was filed. Yet, Respondent delayed the domestication of the foreign judgment for four months without service on Appellant and after the expiration of the judgment in Arizona. This four-month delay was not "prompt" notice, nor was it timely verification. In light of this fact, Respondent failed to properly comply with the requirements of NRS 17.360, causing Appellant severe prejudice.

Respondent has contended that if a foreign judgement is filed prior to the statute of limitations expiring, it is enforceable notwithstanding failure to preserve the judgement in the originating jurisdiction. This position does not comport with the applicable case law. The critical factor in this case is the judgment is expired and no longer enforceable under the laws of the forum state Arizona and Appellant has lost his due process rights to contest the judgment in Arizona pursuant to the agreement entered by the parties. This Court is not bound to enforce a judgment which stems from an unenforceable judgment under the Full Faith and Credit Clause of the Constitution, and in fact violates it by doing so.

ARGUMENT

A decision regarding domestication of a foreign judgment is reviewed for abuse of discretion, unless legal questions call for de novo review. *See Tandy Comput. Leasing v. Terina's Pizza, Inc.* 105 Nev. 841, 844, 784 P.2d 7, 8 (1989) (review for abuse of discretion); *Bianchi v. Bank of America, N.A.*, 124 Nev, 472, 186 P.3d 890 (2008) (court appears to have applied de novo review to legal issues arising out of domestication dispute); *Monks Own Ltd. v. Monastery of Christ in Desert*, 142 P.3d 955 (N.M. App. 2006) (de novo review applied to interpretation of uniform act involving domestication of judgments); *cf. Mona v. Eighth Judicial District Court*, 132 Nev. 719, 380 P.3d 836 (2016) (de novo review applied

regarding statutory interpretation in context of execution on California judgment domesticated in Nevada).

A. THE FOREIGN JUDGMENT ENTERED ON MAY 5, 2014, WAS REQUIRED TO BE TIMELY RENEWED IN THE FOREIGN JURISDICTION TO BE ENFORCEABLE IN NEVADA

As stated above, Respondent’s Arizona judgment was required to be renewed pursuant to Ariz. Rev. Stat. § 12-1612(B). To comply with that statute, to renew the judgment, Respondent was required to file an affidavit by May 5, 2019—within 90 days preceding the expiration of five years from the date of entry of the judgment. However, Respondent did not file a timely renewal of the May 2014 judgment, and as a result, it is unenforceable. See *Phares v. Nutter*, 125 Ariz. 291, 293, 609 P.2d 561, 563 (Ariz. 1980) (“foreign judgments may be attacked if the rendering court lacked jurisdiction over the person or subject matter, the judgment was obtained through lack of due process, the judgment was the result of extrinsic fraud, *or if the judgment was invalid or unenforceable.*”) (emphasis added).

1. This Court has held that an expired judgment is not valid and enforceable

This Court in *City of Oakland v. Desert Outdoor Advert., Inc.*, 127 Nev. 533, 537, 267 P.3d 48, 50-51 (2011) stated that “not all judgments are entitled to full faith and credit in Nevada.” Specifically, the Court said that “defenses such as lack of personal or subject-matter jurisdiction of the rendering court, fraud in the

procurement of the judgment, lack of due process, satisfaction, or other grounds that make the judgment invalid or unenforceable may be raised by a party seeking to reopen or vacate a foreign judgment.” *Id.*, citing 30 AM. JUR. 2D EXECUTIONS AND ENFORCEMENT OF JUDGMENTS § 787 (2005).

Nevada law demands that a domesticated judgment is only valid if the original judgment is valid. This Court held in *Bianchi v. Bank of Am., N.A.*, 124 Nev. 472, 476, 186 P.3d 890, 892-93 (2008) that a judgment creditor could domesticate a foreign judgment as many times as allowed, *provided the original judgment was valid*. *Id.* “The issue before us is whether a judgment creditor may domesticate *a valid and enforceable renewed foreign judgment* in Nevada after Nevada's six-year limitation period for the enforcement of judgments has run on the original domesticated foreign judgment.” *Id.* at 475, 186 P.3d at 892 (emphasis added). In addressing this issue, the *Bianchi* Court determined that the original judgment could be domesticated multiple times as long as it was valid: “*Bianchi* has failed to provide us with any opposing or contrary authority that would prevent a judgment creditor from filing a new domesticated foreign judgment in Nevada, *so long as the foreign judgment is valid and enforceable in the issuing state.*” *Bianchi*, 124 Nev. at 476, 186 P.3d at 893 (emphasis added).

The *Bianchi* Court further held that those seeking to redomesticate a valid foreign judgment in Nevada may do so even after the limitation period on judgments

has expired; however, *the Court did not extend this holding to foreign judgments that have not been renewed prior to redomestication in Nevada*, despite their validity under the issuing state's limitation period. *Id.*

Here, although the Respondent filed its application to domesticate the judgment in Nevada while the judgment was still effective in Arizona, the Respondent failed to renew the judgment in Arizona and delayed serving Appellant until after the expiration of the judgment in Arizona. The judgment was no longer enforceable in Arizona at the time Appellant received notice of its domestication in Nevada. Respondent's delay in serving Appellant had the effect of denying Appellant his due process rights because all of his defenses that could have been raised in Arizona were effectively extinguished. As such, the full faith and credit doctrine prevents his contesting the judgment in the removed jurisdiction. Recognizing the Arizona judgment denies Appellant of due process.

2. Other jurisdictions require a valid judgment to be domesticated

In *Trubenbach v. Amstadter*, 109 Nev. 297, 849 P.2d 288 (1993), this Court noted several cases from other jurisdictions which recognized that both the foreign judgment and domesticated judgment must concurrently be enforceable. As referenced in *Trubenbach*, this Court's decision was based in part on the rationale of *Pan Energy v. Martin*, 813 P.2d 1142 (Utah 1991) which discussed judgments that expire in the foreign state or as described become "dormant" and may not be

enforced. *Trubenbach*, 109 Nev. at 300-301, 813 P.2d at 290. See *Pan Energy v. Martin*, at 1146 n.6 (“[I]f a judgment is dormant in the rendering state, the judgment holder is obligated to first revive the judgment in the rendering state before seeking to enforce the judgment in a different state. However, because under Oklahoma law a dormant judgment may not be revived, the Oklahoma dormancy statute operates in a manner similar to a statute of limitations.”).

In addition to *Trubenbach* and the cases cited therein, cases from other jurisdictions support Appellant’s position here. In *Corzo Trucking Corp. v. West*, 281 Ga. App. 361, 364, 636 S.E.2d 39, 41 (Ga. App. 2006) the court held to allow a foreign judgment a longer life than it would have had enjoyed in the foreign state could be contrary to the principles of the Uniform Enforcement of Foreign Judgments Act. See also *Pirtek USA, LLC v. Whitehead*, 51 So. 3d 291, 295 (Ala. 2010) “[T]he validity and effect of a foreign judgment, of course, are to be determined by the law of the state in which it was rendered.”); *Bell Atlantic Tricon Leasing Corp. v. Johnnie's Garbage Serv.*, 113 N.C. App. 476, 478-79, 439 S.E.2d 221, 223 (N.C. App. 1994) (“[B]ecause a foreign state's judgment is entitled to only the same validity and effect in a sister state as it had in the rendering state, *the foreign judgment must satisfy the requisites of a valid judgment under the laws of the rendering state before it will be afforded full faith and credit.*”) (citation omitted) (emphasis added); *Fed. Work Ready, Inc. v. Wright*, 299 So. 3d 140, 148 (La. App.

2020) (The court must determine “whether the assignment is a valid foreign judgment that meets the statutory requirements for full faith and credit recognition by Louisiana courts.”); *Atlas Life Ins. Co. v. Standfier*, 86 S.W.2d 852, 856 (Tex. Civ. App. 1935) (noting that full faith and credit clause applies only to foreign judgment that is “final, valid, subsisting judgment, not reversed, vacated, or annul[l]ed in the state of its rendition.”); *Burke v. Burke*, 32 Del. Ch. 320, 325, 86 A.2d 51, 53 (Del. Ch. 1952) (“To support a suit thereon, a foreign judgment must be a valid, final, personal adjudication in full force and virtue for the payment of money only.”).

See also Le Credit Lyonnais, S.A. v. Nadd, 741 So. 2d 1165, 1171 (Fla. Dist. Ct. App. 1999) (stating that a foreign judgment which has “super-reciprocity appears unnecessary and unwarranted if equal treatment or reciprocity is the goal of the Uniform Acts”); *Wright v. Trust Co. Bank*, 219 Ga. App. 551, 551, 466 S.E.2d 74, 75 (Ga. App. 1995) (registration of foreign judgment “is not a new action but merely picks up where it was left off in the state where rendered.”); *Lawrence Sys. By & Through Douglas-Guardian Warehouse Corp. v. Superior Feeders*, 880 S.W.2d 203, 211 (Tex. App. 1994) (“[W]hen a judgment is a nullity, it is subject to either a direct or collateral attack in any proceeding where its validity is asserted.”); *Ferrand Laser Screeding, Inc. v. Concrete Mgmt. Sols., LLC*, 150 N.E.3d 227, 230 (Ind. App.

2020) (“In assessing a claim that a foreign judgment is void for lack of personal jurisdiction, we apply the law of the state where the judgment was rendered.”).

Moreover, courts have refused to recognize a foreign judgment where there is a contrary agreement between the parties. “Courts may not enforce a foreign judgment if the foreign court's proceeding ‘was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.’” *China Branding Grp. Ltd. v. Bobulinski*, No. 2:20-cv-06759-RGK-JC, 2021 U.S. Dist. LEXIS 31475, at *10 (C.D. Cal. Jan. 25, 2021; unpublished), citing Cal. Code. Civ. P. § 1716(c)(1)(D); *Montebueno Mktg. v. Del Monte Corp.-USA*, 570 F. App'x 675, 677 (9th Cir. 2014) (the foreign judgment was contrary to arbitration agreement between the parties); *Iraq Middle Mkt. Dev. Found. v. Harmoosh*, 947 F.3d 234, 236 (4th Cir. 2020) (“[A] domestic court need not recognize a foreign judgment if ‘[t]he proceeding in the foreign court was contrary to an agreement between the parties under which the dispute was to be settled out of court.’”) (quoting Md. Cts. & Jud. Proc. §§ 10-704(b)(4)); *Clientron Corp. v. Devon IT, Inc.*, 35 F. Supp. 3d 665, 679 (E.D. Pa. 2014) (same); *Hemlock Semiconductor Corp. v. Kyocera Corp.*, No. 15-cv-11236, 2016 U.S. Dist. LEXIS 915, at *49 (E.D. Mich. Jan. 6, 2016; unpublished) (Even where a party obtains a final and valid foreign judgment, a court may refuse to recognize the judgment “where the proceeding in the foreign court was contrary to an agreement between

the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court.”).

Again, the terms of the parties’ agreement governed the enforceability of judgment. The agreement did not contemplate enforceability beyond five years or in another jurisdiction such as Nevada. Appellant is now foreclosed from asserting his defenses in Arizona because Respondent did not renew the judgment as required by law.

3. A foreign judgment is treated in the same manner as a judgment of a Nevada district court

NRS 17.350 provides:

An exemplified copy of any foreign judgment may be filed with the clerk of any district court of this state. *The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of this state.* A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

Id. (emphasis added).

Given that a foreign judgment is to be treated in the same manner as a judgment of a Nevada district court, because the Arizona judgment expired before the Nevada domestication papers were served on Appellant, the Arizona judgment likewise was an expired judgment of the Nevada district court and therefore,

unenforceable. The foreign judgment is not valid and enforceable in the issuing state of Arizona. Respondent cannot make a showing that the foreign judgment is *valid and enforceable in the issuing state*. See *Bianchi*, 124 Nev. at 473, 186 P.3d at 891 (emphasis added). The judgment was required to be renewed by May 5, 2019, within 90 days preceding the expiration of five years from the date of entry of the judgment. See *Mobile Discount Corp. v. Hargus*, 156 Ariz. 559, 753 P.2d 1215 (Ariz. App. 1988) (“The language of the statute is plain and unambiguous. The phrase ‘within ninety days of expiration’ means within 90 days *before* expiration and not 90 days after expiration”; emphasis added). Respondent failed to renew the judgment, and as such, the judgment expired and was no longer valid and legally enforceable in Arizona.

B. THE JUDGMENT VIOLATES APPELLANT’S DUE PROCESS AS APPLIED TO THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (UEFJA), NRS 17.330 – 17.400

1. Legislative history

“The purpose of the UEFJA is to give the holder of a foreign judgment the same rights and remedies as holders of domestic judgments, and to make foreign judgments just as easy to enforce.” *Redondo Constr. Corp. v. United States*, 157 F.3d 1060, 1065 (6th Cir. 1998). When drafting the Uniform Enforcement of Foreign Judgments Act, the National Conference of Commissioners on Uniform State Laws took care to protect a judgement debtor’s due process rights. “While there is no

constitutional requirement that a debtor who has had a full due process trial in one state need be given a second full scale trial on the judgment in another state, this is the only course generally available to creditors.”¹²

The scenario here, however, demonstrates that the Act can applied unconstitutionally. The UEFJA provides that foreign judgements are to be accepted and not subject to collateral or any attack in the new forum. Any attack on the judgement must be raised in the originating forum. While this allows a party to contest the judgement in the originating forum, the judgement must be *viable*. When the foreign judgement expires and is dormant, collateral attack is no longer an option. Here, Appellant is now foreclosed from attacking the enforceability of the judgment under the agreement in Arizona because the judgment is now expired.

As noted above, the intent of the Uniform Foreign Judgments Act is that valid enforceable foreign judgements be enforceable in other jurisdictions and that challenges to the enforceability of those judgments be reserved to the originating jurisdiction. When the judgement in the foreign jurisdiction is abandoned and expires, and enforcement is sought in another jurisdiction depriving a defendant of

¹² NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *Revised Uniform Enforcement of Foreign Judgments Act, Prefatory Note* (August 3-8, 1964). Retrieved at <https://www.uniformlaws.org/committees/community-home/librarydocuments/viewdocument?DocumentKey=0406bcac-1034-43d4-aeb6-00be1d8639a0>

due process, the judgement is unenforceable in the originating and foreign jurisdictions.

In Nevada in 1979, when the state considered adoption of the UEFJA in Senate Bill 98, the Assembly Committee on the Judiciary explained:

Amendments to this bill would bring the judgement into Nevada for enforcement. It also provides a method for the individual to come into the state under a foreign judgement and to proceed against the individual. The clerk then shall treat the foreign judgement in the same manner as a judgement of the district court of this state.

[Minutes of the Nevada State Legislature, Assembly Committee on the Judiciary, April 5, 1979, at p. 721]. Moreover, testimony at the time indicates the importance of notice to the judgment debtor:

Senator Close stated that he would like to have the notice sent to the attorney of the judgment debtor, if known. [...] It was the consensus of the Committee to amend SB 98 by deleting "order" from the definition of foreign judgment and to require notice be sent to the attorney of the judgment debtor, if known.

[Minutes of the Nevada State Legislature, Senate Committee on the Judiciary, February 1, 1979, at p. 4]. In Committee, Eighth Judicial District Judge Charles Thompson stated he was speaking on behalf of the District Judges Association as well as some attorneys when he explained:

The problem is the United States Supreme Court has outlawed quasi in rem jurisdiction. This means if the plaintiff is suing on a judgment from another jurisdiction, he has to serve the defendant personally within the state. If the defendant's property is in this state, Nevada can't enter a

judgment upon the foreign judgment, unless there is a registration of judgment, such as is being proposed in SB 98.

[Minutes of the Nevada State Legislature, Senate Committee on the Judiciary, January 31, 1979, at p. 1]. Further, Senator Close stated that he would like to have the notice sent to the attorney of the judgment debtor, if known. [Minutes of the Nevada State Legislature, Senate Committee on the Judiciary, February 1, 1979, at p. 4]. Thus, notice was deemed critical to the due process protections of the judgment debtor. Here, the UEFJA works to deny Appellant his due process rights.

2. Nevada’s Uniform Enforcement of Foreign Judgments Act in general

Nevada has adopted the Uniform Enforcement of Foreign Judgments Act and identifies that renewals of judgment must be made by affidavit 90 days prior to the expiration of the limitations period by, “[f]iling an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation.” NRS 17.214. The Nevada Supreme Court explained:

To further the principle of comity, Nevada adopted the UEFJA in NRS 17.330 through 17.400. Under this act, a properly filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a Nevada district court judgment, and may be enforced or satisfied in like manner.

City of Oakland, 127 Nev. at 537, 267 P.3d at 48, citing NRS 17.350. The Court went on to state that Nevada's UEFJA applies to all foreign judgments filed in Nevada district court for the purpose of enforcing the judgment in Nevada. *Id.*, citing NRS 17.340 and 17.350.

3. The full faith and credit clause of the United States Constitution and due process

This Court has held:

The full faith and credit clause of the United States Constitution requires that a final judgment entered in a sister state must be respected by the courts of this state absent a showing of fraud, *lack of due process or lack of jurisdiction in the rendering state*. Consequently, the defenses preserved by Nevada's Uniform Enforcement of Foreign Judgments Act and available under NRCP 60(b) are limited to those defenses that a judgment debtor may constitutionally raise under the full faith and credit clause and which are directed to the validity of the foreign judgment.

Rosenstein v. Steele, 103 Nev. 571, 573, 747 P.2d 230, 231-32 (1987) (citations omitted) (emphasis added).

When a foreign judgment is enforceable but is not served until after the foreign judgment expires, it deprives the judgment debtor of the ability to raise defenses under the UEFJA, and due process is denied. This Court has stated:

[N]ot all judgments are entitled to full faith and credit in Nevada. Notably, 'defenses such as lack of personal or subject-matter jurisdiction of the rendering court, fraud in the procurement of the judgment, lack of due process, satisfaction, or other grounds that make

the judgment invalid or unenforceable may be raised by a party seeking to reopen or vacate a foreign judgment.’

City of Oakland, 127 Nev. at 537, 267 P.3d at 48, quoting 30 AM. JUR. 2D EXECUTIONS AND ENFORCEMENT OF JUDGMENTS § 787 (2005).

When a party such as Respondent in this appeal files an UEFJA action in the new forum (Nevada), timing it to allow the original judgement to expire before the judgment debtor is served in Nevada, then the judgment creditor finally gives notice to the judgment debtor after his right to contest becomes moot, Appellant is deprived of due process under the UEFJA which accepts the judgement as valid and does not allow the judgment debtor to raise issues the originating forum would have heard.

4. Appellant was denied his due process rights to challenge the Arizona Judgment

In this case, there was a settlement agreement between the parties, as the Arizona judgment reflects (1 A.App. 5) and Appellant lost his due process rights to challenge the judgment under the agreement in Arizona. The Arizona judgment was stipulated, and its enforceability was governed by an agreement. Respondent has allowed that judgment to expire in Arizona. As a result, Appellant is now prohibited from challenging the judgment and enforcing his rights as to the agreement in Arizona, because the judgment is now expired there and is moot. And the judgment expired in Arizona before Appellant was given notice that the judgment creditor was attempting to domesticate the judgment in Nevada.

Appellant's due process rights were abridged as the defenses preserved by Nevada's Uniform Enforcement of Foreign Judgments Act and available under NRCF 60(b) are *limited* to those defenses that a judgment debtor may raise under the full faith and credit clause and which are directed to the validity of the foreign judgment. *Clint Hurt & Assocs. v. Silver State Oil & Gas Co.*, 111 Nev. 1086, 1088, 901 P.2d 703, 705 (1995); *Rosenstein*, 103 Nev. at 573, 747 P.2d at 232. The issue is not just whether the judgment was valid for five years, but rather, whether there was an agreement permitting it to be renewed and domesticated in Nevada. Here, it is clear that Appellant forfeited certain defenses in Nevada court by Respondent not renewing the judgment in Arizona.

Nevada courts will refuse to recognize a judgment or order of a sister state if there is "a showing of fraud, lack of due process, or lack of jurisdiction in the rendering state." *Gonzales-Alpizar v. Griffith*, 130 Nev. 10, 19-20, 317 P.3d 820, 826 (2014), quoting *Rosenstein*, 103 Nev. at 573, 747 P.2d at 231.

5. Respondent's delay in service on Appellant violated due process

In *Price v. Dunn*, 106 Nev. 100, 103, 787 P.2d 785, 787 (1990), this Court noted that the Due Process Clause requires a party to exercise due diligence in notifying a defendant of a pending action. *Id.* ("Where other reasonable methods exist for locating the whereabouts of a defendant, plaintiff should exercise those methods."). See *Maiola v. State*, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004). Here,

the Respondent did not serve Appellant until over four months after the application to domesticate the judgment was filed **and after the expiration of the judgment in Arizona.**

Nevada recognizes that due process applies to domestications of foreign judgments. *See, e.g., Magliarditi v. TransFirst Grp., Inc.*, 2019 WL 5390470 (Nev.; October 21, 2019; No. 73889; unpublished) citing *Callie v. Bowling*, 123 Nev. 181, 184, 160 P.3d 878, 880 (2007) (“The only method by which Bowling could have asserted her alter ego claim without jeopardizing Callie's due process rights was through an independent action against Callie with the appropriate notice.”).

Under Nevada law, the judgment creditor must, upon filing the foreign judgment and affidavit, “promptly” give notice to the judgment debtor and *verify to the court that the notice was given*. NRS 17.360; *see Kabana, Inc. v. Best Opal, Inc.*, 2007 U.S. Dist. LEXIS 10947, at *9 (D. Nev. Feb. 8, 2007). Here, it is obvious that with 122 days from filing of the domestication action until Appellant was finally served, Appellant was not “promptly” served, and Respondent failed to verify to the Court that the notice of prompt service was given. Further, service of the instant action and due process notice was delayed past the five-year limitation on renewal in Arizona, and the judgement lapsed before service on Appellant. This is clear from the record that service was not accomplished until four months after it had submitted pleadings to the district court to domesticate the Arizona Judgment. This four-month

delay is not “prompt” notice, nor is it timely verification. In light of this fact, Plaintiff has failed to properly comply with the requirements of NRS 17.360.

There is no evidence of a valid judgement which now can be domesticated. When a party files an UEFJA in the new forum, timing it to allow the originating judgement to expire, then delays notice to the judgment debtor until after the judgment has expired and after the judgment debtor has lost his right to contest the judgment in the originating state, the judgment debtor is deprived of due process under the UEFJA, which accepts the judgement as valid and does not allow the issues the originating forum would have heard to be raised in the new forum.

Due process does not allow an Arizona judgement be domesticated in Nevada and then expire under Arizona law prior to notice to Appellant in the Nevada action. By the time the domestication was filed on February 5, 2019, the judgement was due to and did expire as a matter of law in Arizona on May 5, 2019. Service of the Nevada action was not effectuated on Appellant until one month after the judgment lapsed in Arizona. Respondent did not send the Nevada domestication notice to a viable mailing address, as required by NRS 17.360 (service must be made on the judgment debtor’s “last known address”). However, Appellant’s last known address was very simple to find. Appellant is a practicing attorney who has been in the same law office for years, one block from the courthouse. 1 A.App. 192. Yet Respondent did not mail the notice to Appellant’s last known address. Instead, Respondent mailed the

notice to an old address—five years old. 1 A.App. 171. Clearly, Respondent failed to exercise due diligence in this case in notifying Appellant. Respondent spent four months attempting to locate Appellant, who is an active member of the Nevada Bar, and whose law office is located close to the courthouse in Las Vegas.

Such feeble efforts demonstrate Respondent's failure to exercise due diligence in notifying Appellant. As a result, it is clear that Appellant's due process rights were violated. Full faith and credit dictates that Nevada recognize the failure to renew the Arizona judgement timely and strike the domestication of the lapsed judgement in Nevada. See *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (noting that notice is required by due process in any proceeding that is considered final). The judgment must be reversed on these grounds.

6. Court decisions support Appellant's position

The state of Nevada has few court decisions on the issue of due process in domesticated judgments. However, in 2007, the Nevada Supreme Court held that the correct procedure was not followed where an appellant never received notice and an opportunity to be heard before he was rendered individually liable on the domesticated foreign judgment. This was a deprivation of his property and a violation of his due process rights. *Callie*, 123 Nev. at 182, 160 P.3d at 878. However, other jurisdictions have held that courts will not give full faith and credit

to a judgment where there was a denial of due process. The judgment debtor must receive notice and be given an opportunity to be heard.

As a New Jersey appellate court explained:

When viewed through the prism of due process protections, a foreign judgment will not be entitled to full faith and credit in New Jersey if a defendant can demonstrate the forum state lacked personal or subject matter jurisdiction, or if a defendant was denied adequate notice and a reasonable opportunity to be heard.

Sonntag Reporting Serv., Ltd. v. Ciccarelli, 374 N.J. Super. 533, 538, 865 A.2d 747 (N.J. App. Div. 2005).

A denial of due process occurs when “the rendering state 1) lacked personal jurisdiction over the judgment debtor, 2) lacked subject matter jurisdiction, [or] 3) *failed to provide the judgment debtor adequate notice and an opportunity to be heard.*” *Id.*, at 538, 865 A.2d at 749 (alteration in original; emphasis added), quoting *In Sik Choi v. Kim*, 50 F.3d 244, 248 (3d Cir. 1995).

An Arizona decision held that the lack of notice violated Appellants' due process rights, and the court of appeals thus reversed the superior court's order and vacated the order domesticating the Pennsylvania judgment. *Brubaker v. Engines Direct Distributions, LLC*, 2016 Ariz. App. Unpub. LEXIS 1226, at *5-6 (Ariz. App. Sep. 29, 2016). Other courts have held the same way. *See, e.g., State of Maine v. SeKap, S.A. Greek Co-op Cigarette Mfg. Co.*, 392 N.J. Super. 227, 235, 920 A.2d 667 (N.J. App. Div. 2007) (“[T]he judgment debtor may raise due process defenses

in any enforcement action in New Jersey under the UEFJA.”); *Strod v. Lewenstark*, 958 So. 2d 1138 (Fla. Dist. Ct. App. 2007) (appellant’s due process rights were violated in this case, as the mother and the court clerk did not comply with the notice requirements either fully or substantially); *Playnation Play Sys. v. Guajardo*, 2007 Tex. App. LEXIS 3869, at *9 (Tex. App. May 17, 2007) (if the Texas court finds that a foreign court lacked jurisdiction over the parties or property because it did not allow the defendant to appear, present his or her case, or be fully heard, then the judgment must be ruled null and void.); *Thoma v. Thoma*, 123 N.M. 137, 934 P.2d 1066 (N.M. App. 1997) (“Potential defenses include lack of personal or subject matter jurisdiction, fraud in procuring the judgment, *lack of due process, or other grounds making the judgment invalid or unenforceable.*”) (emphasis added); *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (judgments are void for lack of personal jurisdiction if rendered contrary to constitutional or valid statutory prohibition).

Clearly, Respondent’s Arizona judgment expired, and Appellant can no longer litigate the issue of the judgment’s enforceability in Arizona under the agreement and is limited from bringing such a defense in Nevada. The Appellant has not been afforded due process. Judgment for Respondent must be reversed.

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C. BOTH NEVADA AND ARIZONA COURTS APPLY A STRICT INTERPRETATION TO THE RENEWAL OF JUDGMENTS; FAILURE TO COMPLY WITH REQUIREMENTS RENDERS THE JUDGMENT EXPIRED

In *Leven v. Frey*, 123 Nev. 399, 400, 168 P.3d 712, 713 (2007), this Court reversed the district court's order denying the debtor's motion to declare void an expired judgment. This Court held that "when a statute's language is plain and its meaning clear, the courts will apply that plain language. Here, NRS 17.214's mandatory requirements of filing, recording, and service of the affidavit are plainly set forth and must be followed for judgment renewal." *Id.* This Court went on to opine:

As this court stated in *Browning v. Dixon*, notice is "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality." We agree with the Supreme Court of North Dakota that because judgment renewal proceedings are purely statutory in nature and are a measure of rights, a court cannot deviate from those judgment renewal conditions purposefully stated by the Legislature.

123 Nev. at 409, 168 P.3d at 719. *See Romano v. Vecchia (In re Romano)*, 371 F. App'x 729, 730 (9th Cir. 2010) ("Nevada requires 'strict compliance' with the 'unambiguous' statutory procedures for renewal."); *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754, 755 (1994) ("Judgment renewal [pursuant to NRS 17.214] is simple: the judgment creditor simply files an affidavit with the clerk of the court where the judgment is entered within ninety days before the judgment expires."). *See also Worsnop v. Karam*, 2020 WL 970368 at *4 (Nev., February 27, 2020; No.

77248; unpublished) (“Karam failed to comply with the statutory judgment renewal process under NRS 17.214 and there was no legal or equitable basis to toll the limitation period. Therefore, Karam's judgment expired by limitation under NRS 11.190(1)(a).”).

Similarly, in Arizona, the court of appeals has held that the statutory requirements must be followed strictly in order that a judgment be renewed. *Triple E Produce Corp. v. Valencia*, 170 Ariz. 375, 378, 824 P.2d 771, 774 (Ariz. App. 1991). In Arizona, “judgments may be renewed either by action within five years after the date of the judgment under A.R.S. § 12–1611 (2010) or by affidavit pursuant to § 12–1612(B). If the judgment creditor proceeds by filing an affidavit, it must be filed ‘within ninety days preceding the expiration of five years from the date of entry of such judgment.’” *Cristall v. Cristall*, 225 Ariz. 591, 594, 242 P.3d 1060, 1063 (Ariz. App. 2010).

The language of Ariz. Rev. Stat. § 12-1611 concerning the renewal of a judgment is plain, and the Arizona judgment is expired. Respondent is barred from recovery against Appellant. Judgment for Respondent must be reversed.

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D. THE APPLICATION OF THE FULL FAITH AND CREDIT DOCTRINE DENIES DEFENDANT OF FUNDAMENTAL DUE PROCESS

1. Fundamental due process in general

“Fundamental due process requires that a person against whom a claim is asserted in a judicial proceeding have an opportunity to be heard and present his defenses.” *Nicoladze v. First Nat'l Bank*, 94 Nev. 377, 378, 580 P.2d 1391 (1978), citing *Clark Co. Sports Enterprises v. Kaighn*, 93 Nev. 395, 566 P.2d 411 (1977) (“Justice is served only when parties are given adequate notice and an appropriate opportunity to respond in open court.”). See *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (“The fundamental requisite of due process is the opportunity to be heard.”).

Appellant was not given adequate notice until after the judgment had expired in Arizona depriving Appellant his due process rights to contest the enforceability of the judgment under the Arizona agreement.

2. Not all judgments are entitled to full faith and credit in Nevada

This Court in *City of Oakland* noted that not all judgments are entitled to full faith and credit in Nevada. *City of Oakland*, 127 Nev. at 537-38, 267 P.3d at 51.

[D]efenses such as lack of personal or subject-matter jurisdiction of the rendering court, fraud in the procurement of the judgment, lack of due process, satisfaction, or other grounds that make the judgment invalid or unenforceable may be raised by a party seeking to reopen or vacate a foreign judgment.

Id., quoting 30 AM. JUR. 2D EXECUTIONS AND ENFORCEMENT OF JUDGMENTS § 787 (2005), citing *Marworth, Inc. v. McGuire*, 810 P.2d 653, 656 (Colo. 1991) (The proper grounds for collaterally attacking a foreign judgment are limited to lack of personal or subject matter jurisdiction of the rendering court, fraud in the procurement of the judgment, satisfaction, lack of due process, or other grounds that make the judgment invalid or unenforceable.); *Wooster v. Wooster*, 399 N.W.2d 330, 333 (S.D. 1987) (quoting *Baldwin v. Heinold Commodities Inc.*, 363 N.W.2d 191, 194 (S.D. 1985) (“When a foreign judgment has been appropriately filed...”). Again, Nevada courts will not “recognize a judgment or order of a sister state if there is 'a showing of fraud, *lack of due process*, or lack of jurisdiction in *the rendering state*.’” *Lathigee v. B.C. Sec. Comm'n*, 136 Nev. ___, 477 P.3d 352 (2020) (emphasis added).

3. Parties can set their own statute of limitations or collection periods

Unlike judgments entered by state courts based on the merits of the case, the parties are free to enter into a judgment by stipulation which subjects the judgment to contrary interpretation and defenses as herein. Much like in Nevada, Arizona courts have held that parties can set their own statute of limitations or collection periods. “Notwithstanding any general rule of accrual, *the parties may agree on notice or cure periods* that as a practical matter will toll the accrual of a claim for breach of the guaranty until some point after a breach of the underlying obligation.” *Mill Alley Partners v. Wallace*, 236 Ariz. 420, 424, 341 P.3d 462, 466

(Ariz. App. 2014), *as amended on reconsideration* (Mar. 17, 2015) (emphasis added). *See Provident Nat'l Assurance Co. v. Sbrocca*, 180 Ariz. 464, 466, 885 P.2d 152, 154 (Ariz. App. 1994) (“The nature and extent of a guarantor’s liability depends upon the terms of the contract.”).

There were no terms in the agreement that stated that the judgment could be renewed or that it could be domesticated in Nevada. But now that it is expired in Arizona, Appellant has lost the right to attack the judgment that Respondent seeks to enforce after its expiration in Nevada.

This Court has stated, “[w]hen a party makes a contract and reduces it to writing, he must abide by its terms as he has plainly stated them.” *Chiquita Mining Co. v. Fairbanks, Morse & Co.*, 60 Nev. 142, 153, 104 P.2d 191, 196 (1940). In light of the fact that the parties in this matter agreed to a five-year collection period, the ongoing collection efforts are void as beyond the agreed upon duration.

Moreover, Appellant’s issues could only be raised in Arizona. Plaintiff’s pocket filing and delay in serving notice on Appellant caused Appellant to be denied the opportunity to be heard. Appellant can no longer apply his defenses in Arizona to contest the judgment because it was allowed to expire. Recognizing the Arizona judgment denies Appellant of due process because Appellant cannot apply the defenses per the agreement as it relates to the judgment. Judgment for Respondent must be reversed.

CONCLUSION

It is clear that the Arizona judgment expired and that Respondent failed to renew the judgment. The judgment was entered in Arizona pursuant to an agreement between the parties. By failing to renew the judgment in Arizona, and by delaying notice to Appellant in Nevada, Respondent has deprived Appellant of his due process rights. As a result, Respondent is barred from recovery against Appellant.

Appellant asked that this Court reverse the judgment for Respondent.

DATED this 10th day of May 2021.

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RULE 28.2 ATTORNEY'S CERTIFICATE

Pursuant to NRAP 28.2, undersigned counsel certifies that:

1. This Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman in size 14-point font.
2. I further certify that this Opening Brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 7,381 words, which is less than the 14,000 word count available for an opening brief.
3. Finally, I certify that I have read this Opening Brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Opening Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion regarding matters in the record to be supported by a reference to the page of the record on appeal where the matter relied upon is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying Opening Brief is not in compliance.

DATED this 10th day of May 2021.

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CERTIFICATE OF SERVICE

I certify that I am an employee of LEMONS, GRUNDY & EISENBERG and that on this date the foregoing *Appellant's Opening Brief* and *Appendix* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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