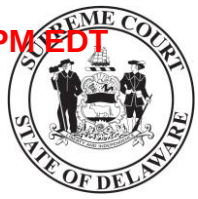

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE G. RYCKMAN, Judgment Debtor Below-Appellant, v. ALBERTA SECURITIES COMMISSION, Judgment Creditor Below-Appellee.	)	No. 278, 2015 On Appeal from the Superior Court Judgment Docket No. N13J-02847

APPELLANT'S REPLY BRIEF

MORGAN, LEWIS & BOCKIUS, LLP

Colm F. Connolly (No. 3151)
The Nemours Building
1007 North Orange Street
Suite 501
Wilmington, DE 19801
(302) 574-7290
(302) 574-3001 (facsimile)
cconnolly@morganlewis.com

Attorney for Judgment Debtor Below-Appellant

Dated: September 1, 2015

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

ARGUMENT

I. ASC's Arguments Do Not Justify the Superior Court's Refusal to Apply the Foreign-Country Judgment Act to the Canadian Judgment or the Superior Court's Automatic Recognition of the Arizona Judgment under the Enforcement Act

ASC makes two principal arguments in its Answering Brief ("AB"): (1) that "[i]t is irrelevant that the Canadian judgment could not have been recognized under the Foreign-Country Judgment Act"; and (2) that the Full Faith and Credit Clause requires Delaware to enforce the Arizona Judgment through the mechanisms of the Enforcement Act as if it were a judgment rendered by Delaware's Superior Court. *See* AB at 5. The first argument ignores the fact that the Arizona Judgment is a domesticated foreign-country judgment. If accepted by this Court, the argument would effectively nullify the Foreign-Country Judgment Act. The second argument is directly at odds with well-established United States Supreme Court jurisprudence.

A. ASC Ignores the Fact that the Arizona Judgment is a Domesticated Foreign-Country Judgment and that the Foreign-Country Judgment Act Codifies the General Assembly's Intent with Respect to the Enforcement of Foreign-Country Judgments

ASC does not dispute that the Canadian Judgment is a foreign-country judgment or that the Foreign-Country Judgment Act governs the recognition and enforcement of foreign-country judgments. Moreover, it "agree[s] . . . that, by its terms, the Enforcement Act does not apply to foreign-country judgments." AB at

6. ASC nonetheless argues that the Foreign-Country Judgment Act is "irrelevant" to this case. *See* AB at 3, 5, 7. ASC's insistence that "[t]he only statute that applies is the Enforcement Act" and that "the judgment at issue here is an Arizona judgment," AB at 6, ignores the fact that the Arizona Judgment was obtained by the domestication of a foreign-country judgment in Arizona. Adopting ASC's position would effectively nullify the Foreign-Country Judgment Act, as parties could avoid the Act's requirements entirely by first domesticating the foreign-country judgment in a sister state like Arizona that has mechanisms of enforcement that differ from, and even directly conflict with, the enforcement mechanisms codified in the Foreign-Country Judgment Act, and then filing the resulting sister-state judgment with the prothonotary to achieve the recognition and enforcement of the judgment in Delaware under the Enforcement Act.

ASC's assertion that "Mr. Ryckman has not demonstrated that Delaware has an interest in refusing to domesticate an Arizona judgment under the Enforcement Act[ ] when that judgment is based upon an Alberta, Canada judgment," AB at 8, is simply incorrect. As Mr. Ryckman noted in his Opening Brief at 13-15, Delaware's interest is giving effect to the intent of the General Assembly, which saw fit to make the recognition and enforcement of foreign-country judgments subject to more scrutiny than the recognition and enforcement of sister-state judgments. That intent is clear from the plain meaning of the Enforcement Act and

the Foreign-Country Judgment Act: sister state judgments are to be automatically recognized and "treat[ed] . . . in the same manner" as a Delaware Superior Court judgment upon their being filed with the prothonotary, 10 *Del. C.* §4782; foreign-country judgments, on the other hand, are to be recognized only by way of "a proceeding under §4809," which can only be initiated by the filing of an original action (§4809(a)) or the filing of a counterclaim, cross-claim, or affirmative defense in a pending action (§4809(b)). The General Assembly also identified numerous grounds on which a foreign-country judgment – but not a sister-state judgment – must not, or need not, be recognized by Delaware courts. Indeed, ASC concedes, as it must, that two of those grounds preclude the recognition of the Canadian Judgment. *See* AB at 6 ("acknowledg[ing] that the [Canadian] judgment could not have been recognized in Delaware under the Foreign-Country Judgment Act because it was entered more than 15 years previously and it arguably was a penalty.").

In short, ASC asks the Court to ignore both a fundamental fact (*i.e.*, that the Arizona Judgment is a domesticated foreign-country judgment) and the express intent of the General Assembly embodied in the Foreign-Country Judgment Act. There is no legitimate basis to accede to that request; and accordingly, the Court should reverse the Superior Court's Opinion and direct the Superior Court to vacate the Delaware Judgment against Mr. Ryckman.

B. The Full Faith and Credit Clause Does Not Require Delaware to Recognize the Arizona Judgment under the Enforcement Act

As Mr. Ryckman noted in his Opening Brief at 16-17, the United States Supreme Court's decisions in *Baker v. General Motors Corporation,* 522 U.S. 222 (1998), *McElmoyle ex rel. Bailey v. Cohen,* 10 L.Ed. 177 (1839), and *Lynde v. Lynde,* 181 U.S. 183 (1901), make clear that the Full Faith and Credit Clause does not require a state to adhere to a sister state's mechanisms of enforcing a judgment. ASC states in its Answering Brief that it "does not challenge the discussion in *Baker* that '[e]nforcement measures do not travel with the sister state judgment as preclusive effects do,'" and concedes that "such measures remain subject to the evenhanded control of forum law." AB at 10 (quoting *Baker,* 522 U.S. at 235). ASC appears to argue on appeal, however, that *recognition* of the Arizona Judgment is somehow distinct from *enforcement* of the judgment, and that the Full Faith and Credit Clause requires Delaware to *recognize* sister state judgments pursuant to the automatic registration provisions of the Enforcement Act. *See* AB at 10-11.

This argument is easily dismissed. "Recognition" of a judgment under the Enforcement Act is nothing more and nothing less than a required step to obtain the enforcement of a sister-state judgment. Section 4782 of the Enforcement Act requires the prothonotary, upon the filing of the sister-state judgment, to "treat [that judgment] in the same manner as a judgment of the [Delaware] Superior

Court" precisely so that it "*may be enforced or satisfied in like manner.*" (Emphasis added.) The purpose of the Enforcement Act, as evident from its title, is "to streamline and make uniform among the states adopting it *the procedure for enforcing foreign judgments.*" *Guiness PLC v. Ward,* 955 F.2d 875, 890 (4th Cir. 1992) (emphasis added). ASC filed the Arizona Judgment in Delaware for no reason other than to enforce it – and, through it, the Canadian Judgment – in Delaware. As the Superior Court noted, ASC "brought this action . . . to enforce an Arizona judgment, which originated in Canada." Op. at 2. The Superior Court made no distinction between the recognition of a judgment under the Enforcement Act and the enforcement of that judgment; and this Court should reject out of hand ASC's contention that there is a meaningful distinction between recognition and enforcement in this case. ASC cannot plausibly deny that it has come to Delaware for one reason, and one reason only – to enforce the judgment it holds against Mr. Ryckman.

Mr. Ryckman does not dispute that the Full Faith and Credit Claus mandates that states "recognize" the judgments of sister states insofar as they must acknowledge the *de facto* existence of sister-state judgments and determine the nature and scope of those judgments' preclusive effects. Had the Arizona Superior Court, for example, ruled in an opinion that the Canadian Judgment was *not* a penalty under the Foreign-Country Judgment Act, the Full Faith and Credit Clause

would have mandated that the Delaware Superior Court "recognize" the opinion and give preclusive effect to that ruling even if the Delaware Superior Court believed that the Arizona Court had ruled erroneously or that such a ruling violated Delaware public policy. But the Arizona Superior Court made no such ruling; nor did it make it any ruling on any other issue that precluded the Delaware Superior Court from applying the Foreign-Country Judgment Act and vacating the Delaware Judgment ASC automatically obtained when it filed the Arizona Judgment with the prothonotary pursuant to §4782 of the Enforcement Act.

Baker, not *Pyott v. Louisiana Municipal Police Employees' Retirement System,* 74 A.3d 612 (Del. 2013), governs the applicability of the Full Faith and Credit Clause to this case. As the Supreme Court held in *Baker,* it is "[*f*]*or claim and issue preclusion (res judicata) purposes,* [that] the judgment of the rendering State gains nationwide force[,]" and the States therefore remain free to adopt their own practices "regarding the time, manner, and mechanisms for enforcing judgments." 522 U.S. at 233, 235 (emphasis added). The Arizona Judgment "does not carry with it, into [Delaware], the efficacy of a judgment upon property or persons, to be enforced by execution." *Lynde v. Lynde,* 181 U.S. 183, 187 (1901) (internal quotations and citations omitted). Neither the Full Faith and Credit Clause nor the Supreme Court's jurisprudence interpreting the Clause requires Delaware to "recognize" a sister-state judgment in a particular time or manner, let

alone pursuant to the type of automatic recognition procedure codified in §4782 of the Enforcement Act.[1]

* * * *

WHEREFORE, for the reasons stated above and in Mr. Ryckman's Opening Brief, Mr. Ryckman respectfully asks this Honorable Court to reverse the Superior Court's judgment and remand the case with instructions to vacate the Delaware Judgment.

---

[1] It is noteworthy that not even the National Conference of Commissioners on Uniform State Laws, which drafted the Enforcement Act, asserted that the Act's automatic recognition procedure was constitutionally mandated. *See* Revised Uniform Enforcement of Foreign Judgments Act, Prefatory Note, (1964). Moreover, §6 of the Uniform Act (codified at §4786 of the Enforcement Act) provides that "[t]he right of a judgment creditor to bring an action to enforce a judgment, *instead of proceeding under this subchapter*, remains unimpaired." (Emphasis added.) Thus, the drafters did not think compliance with the Act was required by the Full Faith and Credit Clause. It also noteworthy that Vermont, Massachusetts, and California have never adopted the Enforcement Act, *see* http://www.uniformlaws.org/Act.aspx?title=Enforcement%20of%20Foreign%20Judgments%20Act, and that other states that have adopted the Act have carved out certain types of sister-state judgments from its automatic recognition provision. In Vermont, for example, an authenticated copy of a sister-state judgment constitutes only "*prima facie* evidence of such judgment," 12 V.S.A. §1698, and a judgment creditor must initiate a judicial action to obtain recognition of a sister-state judgment. New York and Connecticut adopted the Enforcement Act but carved out default judgments from the Act's automatic recognition provision codified in §4782. *See* N.Y. Civ. Prac. L. & R. §5402; Conn. Gen. Stat. Ann. §52-605. Thus, the Act's language, commentary, and adoption by other states provide further reason to reject ASC's contention that the Full Faith and Credit Clause compels Delaware to recognize and enforce the Arizona Judgment pursuant to the Enforcement Act.

MORGAN, LEWIS & BOCKIUS, LLP

/s/ Colm F. Connolly

Colm F. Connolly (No. 3151)
The Nemours Building
1007 North Orange Street
Suite 501
Wilmington, DE 19801
(302) 574-7290
(302) 574-3001 (facsimile)
cconnolly@morganlewis.com

Attorney for Judgment Debtor Below-Appellant

Dated: September 1, 2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE G. RYCKMAN, Judgment Debtor Below-Appellant, v. ALBERTA SECURITIES COMMISSION, Judgment Creditor Below-Appellee.	)	No. 278, 2015 On Appeal from the Superior Court Judgment Docket No. N13J-02847

CERTIFICATION OF SERVICE

I, Colm F. Connolly, hereby certify that on this 1st day of September, 2015, I served a true and correct copy of the Appellant's Reply Brief on all Delaware counsel of record via File & ServeXpress.

/s/ Colm F. Connolly

Colm F. Connolly (#3151)
MORGAN, LEWIS & BOCKIUS, LLP
The Nemours Building
1007 North Orange Street, Suite 501
Wilmington, DE 19801
(302) 574-7290
cconnolly@morganlewis.com

Attorney for Lawrence G. Ryckman, Judgment Debtor Below-Appellant

Dated: September 1, 2015