

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* ANGELA M. FORD, ESQ., :
: **CASE NO. 2015-1470**
Relator, :
: **ORIGINAL ACTION**
-vs- : **IN PROHIBITION**
: **AND MANDAMUS**
HONORABLE ROBERT P. RUEHLMAN, :
: **Respondent.** :

INTERVENORS' EMERGENCY MOTION TO RECONSIDER THE COURT'S GRANT
OF PEREMPTORY WRIT OF PROHIBITION AND GRANT OF
RELATOR'S MOTION FOR EMERGENCY RELIEF

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Pursuant to Rule S.Ct.Prac.R. 18.02(B)(4), Intervenor Stanley M. Chesley ("Mr. Chesley") and the law firm of Waite, Schneider, Bayless & Chesley Co., L.P.A. ("the Waite Firm") move for reconsideration of the Court's June 21, 2016, entries (1) granting a peremptory writ of prohibition and ordering Respondent Hamilton County Common Pleas Court Judge Robert Ruehlman to vacate his orders in the Hamilton County Action, and (2) granting Relator's Motion for Emergency Relief (the "Entries"). A Memorandum in Support of this Motion is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Reconsideration is necessary to address certain errors in the Entries and otherwise clarify them so that all parties may proceed in conformity therewith.

First, the Court erroneously issues a writ of prohibition as to the claims pursued by the Waite Firm unrelated to the Ohio's Uniform Enforcement of Foreign Judgments Act. The trial court had jurisdiction to consider such claims.

Second, the Court, perhaps in *dicta*, offers an analysis of the availability of certain defenses under the Ohio's Uniform Enforcement of Foreign Judgments Act. We submit those issues, given the framework of Relator's petition, were not properly before the Court and thus not briefed. As set forth below, the Court's analysis is inconsistent with the statutory language and its own precedent. Thus, this error should be cured inasmuch as such defenses should be available to Mr. Chesley now that the domestication action has been filed.

Finally, there was confusion in the Court's decision as to the domestication action. The Court erroneously held that the domestication proceedings were pending before Judge Martin. [Slip op. at 15, ¶ 43.] This is incorrect. The action assigned to Judge Martin, which was filed on October 2, 2015, and is now complete, was a miscellaneous action filed by the Kentucky Plaintiffs for the service of foreign subpoenas incidental to discovery originating from the Kentucky proceedings (Mildred Abbott, et al. v. Stanley M. Chesley, et al., Hamilton County Court of Common Pleas Case No. M151179). The Kentucky Plaintiffs did not attempt to proceed with domestication until the filing on April 25, 2016, when the Kentucky Plaintiffs filed both an execution case (EX1600448) and CJ case (Case No. CJ16006214) (collectively, the "Domestication Cases"). [See Intervenors' Memo Contra Relator's Motion for Emergency

Relief, Exhs. A-E.] Procedurally, the Kentucky Plaintiffs did it all wrong. Given the apparent confusion in the record, clarification is appropriate to ensure that it is clear that Mr. Chesley may timely assert the statutory protections afforded Ohio judgment creditors.

II. STATEMENT OF PROCEEDINGS

We restate the proceedings in the hope of eliminating the confusion.

A. The Hamilton County Action.

On August 1, 2014, the Kentucky Court in the Abbott Case entered an order (the “Kentucky Judgment”) determining that Mr. Chesley was jointly and severally liable for a \$42 million judgment that had been entered against other defendants in the same case some nine years earlier. The Abbott Case is not a class action. The Kentucky Plaintiffs each have their own claim, of varying amounts. Yet, the Kentucky Judgment did not identify each of the individual judgment creditors or the amount of the judgment awarded to each such judgment creditor. Likewise, the Kentucky Judgment did not make any adjustment for sums that had been collected by the judgment creditors against the other defendants.

On January 6, 2015, Mr. Chesley filed the Hamilton County Action, Case No. A1500067 in the Hamilton County Court of Common Pleas, seeking certain injunctive relief against Angela Ford, as counsel for the underlying judgment creditors in the Abbott Case. The Hamilton County Action was assigned to Respondent, Judge Ruehlman. Certain of the judgment creditors who are Ohio residents were subsequently added as defendants in the Hamilton County Action.

The Waite Firm became involved in the Hamilton County Action after Relator obtained an order from the Kentucky court in the Abbott Case on June 23, 2015, requiring Mr. Chesley to direct that his beneficial interest in the shares of the Waite Firm be transferred to the judgment creditors. In response, on June 26, 2015, the Waite Firm filed a motion to intervene in the

Hamilton County Action in order to seek declaratory and injunctive relief. Judge Ruehlman granted the Waite Firm's motion via an order entered on August 26, 2015, and the Waite Firm filed its Complaint on September 4, 2015.

On September 4, 2015, approximately three weeks before Judge Ruehlman was to hold a preliminary injunction hearing, Relator commenced this original action. On September 17, 2015, this Court granted Relator's request for an emergency stay, ordering that "Case No. A1500067 and the enforcement of Respondent's orders are hereby stayed pending this court's resolution of this case."

B. The Adverse Result Against The Kentucky Plaintiffs In The Nevada Litigation.

This Court's stay of the Hamilton County issued at the initiation of this original action in September 2015 did not preclude the Kentucky Plaintiffs from their collection efforts. All 382 of the underlying Kentucky Judgment creditors filed actions in Nevada courts seeking to domesticate the Kentucky Judgment in Nevada and to garnish certain payments that were owed by the Castano Directed Distribution Trust (the "Castano Trust"), a trust located in Nevada. Mr. Chesley and the Waite Firm opposed such efforts and argued that the Kentucky Judgment and related Kentucky orders are not enforceable against the Waite Firm. As the Waite Firm's Complaint in the Hamilton County Action noted, the firm was never a party to the Abbott Case, and neither Relator nor her clients have ever asserted any claims against it—nor could they since the statute of limitations had long passed. The Nevada court agreed and concluded that the Kentucky orders are not enforceable against the Waite Firm because, among other things, it was never a party to the Abbott Case and thus the Due Process clause precluded the court in the Abbott Case from entering orders against the Waite Firm.

In fact, two separate judges in the Eighth Judicial District Court in Clark County, Nevada, have addressed the Kentucky Plaintiffs' ability to collect against the Waite Firm, and Attorney Ford has twice sought to garnish monies to be paid to the Waite Firm by the Castano Trust. The first effort was before Judge Jerry A. Wiese in Case No. A718827 (the "First Nevada Action"), commencing May, 2015. [Memo Contra Relator's Motion for Emergency Relief, Exh. M.] In that case, Plaintiffs sought to domesticate the original Kentucky Judgment even though it had been rendered unenforceable by the amended Kentucky Judgment. Prior to dismissing the first case, Judge Wiese heard arguments on a number of issues with such collection efforts. In response, Judge Wiese held that the Kentucky Plaintiffs' garnishment efforts violated the Waite Firm's constitutional right to due process:

I don't think Waite Schneider was a party to the prior case [the Kentucky Action]. *So I do think that there is a problem with due process* as far as trying to take money that belongs to Waite Schneider. I understand that there was essentially an alter ego, but there was no alter ego claim. There was no determination as far as piercing the corporate veil that would lead to a judgment that can be collected directly, I don't think, from Waite Schneider. So I think that there needs to be some type of alter ego or corporate veil claim brought before that can happen.

[Id. (emphasis added).]

Judge Wiese, however, did not have to resolve the due process issue, as he found that the original Kentucky Judgment was unenforceable under Nevada's version of the Uniform Enforcement of Foreign Judgments Act:

ORDERED, that Defendant's Motion to Strike Domestication Documents and declaring the attempted domestication void ab initio as the underlying judgment is not enforceable is granted.

[Memo Contra Relator's Motion for Emergency Relief, Exh. N (emphasis added).]

On October 22, 2015, while the First Nevada Action was pending before Judge Wiese, the Kentucky Plaintiffs caused to be filed in the same court, before Judge Linda Marie Bell, another Application for Filing of Foreign Judgment Pursuant to NRS 17.330, this time using the amended Kentucky Judgment (Case No. A-15-726616-F, the “Second Nevada Action”). At the hearing, the Kentucky Plaintiffs presented the various Kentucky orders (including the June 2015 and September 2015 Kentucky Orders), but on February 11, 2016, Judge Bell expressly held that the Kentucky Orders were unenforceable against the Waite Firm and not entitled to “full faith and credit.”

In the instant case, Abbott failed to give WSBC notice that WSBC was a potential alter ego of Chesley until the Kentucky Court already ruled on the issue. WSBC was not named as a party in Kentucky case 05-CI-00436. Abbott did not bring any separate action against WSBC to assert that Chesley and WSBC are alter egos. The Kentucky Court made an alter ego determination in a case with no way for WSBC to assert a defense against Abbott’s claims.

The Court cannot extend full faith and credit to an order resulting from a lack of due process. “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.” Mason v. Cuisenaire, 128 P.3d 446, 448 (Nev. 2006) (quoting Rosenstein v. Steele, 747 P.2d 230, 231 (Nev. 1987).

The Court finds that respecting the Kentucky Order declaring Chesley and WSBC to be alter egos would create a due process violation in this case. Abbott asks this Court to apply an order entered solely against Chesley to deprive a nonparty of its property. The Court grants WSBC’s petition and determines that WSBC’s interest in the Castano Trust is not subject to garnishment by Abbott. WSBC’s interest in the Castano Trust is its sole property. Abbott may attach funds distributed to Chesley individually, not funds distributed to WSBC.

[Memo Contra Relator’s Motion for Emergency Relief, Exh. P (emphasis added).]¹

¹ Ohio law is in accord. A judgment rendered by a court that lacks personal jurisdiction over a defendant is void, *See, e.g., Maryhew v. Yova*, 11 Ohio St. 3d 154, 156 (1984). An objection to the lack of jurisdiction over a person generally must be raised either in the defendant’s answer or in a motion filed before the filing of an answer.

Copies of Judge Bell's subsequent March 31, 2016 Decision and Order denying the request for reconsideration is attached as Exhibit Q to the Memo Contra Relator's Motion for Emergency Relief. The Kentucky Judgment creditors did not file an appeal from the Nevada court's decisions, so they are final and not appealable. The Nevada court decisions, which actually included the correct party, are entitled to issue preclusion.

C. The Miscellaneous Action Assigned to Judge Martin.

On October 2, 2015, the Kentucky Plaintiffs, represented by Relator's counsel in the instant action, filed a Motion for Miscellaneous Case Number to Serve Subpoena in the Hamilton County Court of Common Pleas. That action was assigned the case number M115179.

By filing the miscellaneous action, among other things, Relator sought to interfere with the Waite Firm by seeking to command Mr. Rehme to appear at a deposition and bring with him a large volume of documents, pertaining to the Waite Firm's business and the wind-up of that business. In short, it was a discovery matter by which the Kentucky Plaintiffs sought the issuance of subpoenas to Mr. Rehme and other Ohio residents. After motion practice, the subpoenas requested by Plaintiffs were issued and served. Mr. Rehme produced documents and sat for a deposition. A subsequent appeal was dismissed as moot. There is no pending or outstanding matter in this case and it is viewed as closed.

See, e.g., Franklin v. Franklin, 5 Ohio App. 3d 74, 75-76 (7th Dist. 1981). However, if the defendant does not appear in the action, the defense is not waived for failing to object. Maryhew, 11 Ohio St. 3d at 156-159 (holding defendant had not submitted to the court's jurisdiction, where submission to jurisdiction would have waived the issue of lack of personal jurisdiction); State ex rel. DeWine v. 9150 Group, L.P., 977 N.E.2d 112, 116-17 (Ohio Ct. App. 9th Dist. 2012) (same). Furthermore, the judgment is void even if the defendant knew about the action because it is plaintiff's duty to perfect service of process. See, e.g., Maryhew, 11 Ohio St. 3d at 159 (dismissing judgment even when there was "some indicia of legal gamesmanship on the part of the defendant" in knowing of, but not appearing in, the action).

D. The Kentucky Plaintiffs' Filing of The Domestication Cases.

Having lost in Nevada, less than a month later, on April 25, 2016, all 382 of the Kentucky Judgment creditors made their first attempt to domesticate the Kentucky Judgment in Ohio and execute on the newly created Ohio judgment. They did so by the filing of an Affidavit for Foreign Judgment Registration in Hamilton County (the "First Domestication Affidavit"). Despite the required thirty-day waiting period provided for under Ohio Revised Code §2329.023(C), simultaneously, counsel for the Kentucky Plaintiffs had the Hamilton County Clerk of Courts issue execution-related papers: EX1600448 (in preparation for an asset seizure); and CJ16006214 (in preparation for a lien on real property).² The non-Relator defendants in the Hamilton County Action are all included in in the Domestication Cases. [Intervenors' Memo Contra Relator's Motion for Emergency Relief, Exhs. A-E.]

E. The Filing Of The 2016 Complaint Against Thirty-Eight Kentucky Plaintiffs.

Three days after the filing of the First Domestication Affidavit, Mr. Chesley and the Waite Firm filed the Complaint in Stanley M. Chesley et al. v. Probate Estate of Danny Lee Abney, Hamilton County Case No. A1602508 (the "2016 Complaint" and the "2016 Case"). [Intervenors' Memo Contra Relator's Motion for Emergency Relief, Exh. F.] The 2016 Complaint asserts that, as a matter of law, thirty-four of the Kentucky Plaintiffs in fact are not co-owners of the Kentucky Judgment because they filed for bankruptcy or are deceased and failed to follow Kentucky probate law to preserve their claims against Mr. Chesley. The remaining four Kentucky Plaintiffs had, in addition to the Domestication Cases, asserted various claims in Ohio, in which they (a) claimed that the bankrupt individuals and Kentucky probate estates were holders of claims under the Kentucky Judgment; and (b) attempted to enforce the

² The thirty-day stay provided by this section is intended to preserve the due process rights of the judgment debtor by providing adequate notice before enforcement proceedings commence in Ohio. See, e.g., DLM Joint Venture v. Mershon's World of Cars, Inc., 1995 WL 59718 (Ohio Ct. App. 2nd Dist, Jan. 5, 1995).

Kentucky Judgment and related orders from the Kentucky Court against the Waite Firm despite the Nevada court's final determination that those orders are not enforceable against the Waite Firm.

The 2016 Complaint seeks equitable relief in its prayer and, if equitable relief had been pursued with the filing of the case, the matter would have been assigned to the designated "equity" judge during the month it was filed, the Honorable Ethna M. Cooper. But no injunctive proceedings occurred, *i.e.*, no hearing was scheduled, no order was issued, etc. With no emergency hearings held on the injunctive relief claims, the docket sheet notes that the Clerk of Courts "re-rolled" the case, and it was randomly assigned to a judge on the non-equity docket: Judge Ruehlman. [Intervenors' Memo Contra Relator's Motion for Emergency Relief , Exh. F, Docket Sheet.]

The Kentucky Plaintiffs then moved to dismiss the 2016 Case. [Intervenors' Memo Contra Relator's Motion for Emergency Relief, Exhs. I, J.] The Kentucky Plaintiffs also moved to transfer the 2016 Case to Judge Cooper.

F. Additional Challenges To The First Domestication Affidavit.

In addition to the issues raised in the Complaint, the First Domestication Affidavit fails to meet Ohio's Uniform Enforcement of Foreign Judgments Act ("OEFJA") because it does not disclose the current amount owed on the Judgment as required by Miller v. Bock Laundry Machine Co., 64 Ohio St. 2d 265, 266-67 (1980), and it does not disclose the names and addresses of the judgment creditors as required by the OEFJA, at Ohio Rev. Code § 2329.023(A).

In response to Mr. Chesley's filings, on June 8, 2016, counsel for the Kentucky Plaintiffs filed a Supplement To Affidavit For Foreign Judgment Registration (the "Second Domestication

Affidavit”). The Kentucky Plaintiffs made that filing in the 2016 Case. Attached to that affidavit was a list of the creditors and their supposed addresses. All of the supposed creditors who are defendants in the 2016 Case are listed in the Second Domestication Affidavit.

The Second Domestication Affidavit is also wrong. Plaintiffs have demonstrated that fact in a filing in the 2016 Case. For example: Plaintiffs attempted to serve the 2016 Complaint on Defendant Linda Brumley at the address shown on the Second Domestication Affidavit; that effort failed; and the postcard from the Hamilton County Clerk of Courts states that said address is “VACANT.” Counsel for the Kentucky Plaintiffs apparently does not know the residence address of her client, the nominated replacement Relator in the instant writ action. [Intervenors’ Memo Contra Relator’s Motion for Emergency Relief, Exh. S.] Others deficiencies exist and will be subject to adjudication in due course.

III. LAW AND ARGUMENT

A. The Court’s Decision Improperly Deprived The Intervenors Of Their Right To Seek Relief Against Relator And/or Her Clients On Claims Unrelated To Judge Ruehlman’s Authority Under The Ohio Enforcement Of Foreign Judgments Act, The Stated Grounds For Granting The Writ.

The Court held that Judge Ruehlman “patently and unambiguously lacked in subject-matter jurisdiction” to preside over the Hamilton County Action based on its contention that Judge Ruehlman lacked statutory authority under the Ohio Enforcement of Foreign Judgments Act (“OEFJA”). [Slip op. at 23-28, ¶¶ 63-80.] The crux of the Court’s ruling was that Judge Ruehlman lacked authority to proceed inasmuch as the Kentucky Plaintiffs had not yet filed an action to domesticate the Kentucky Judgment. As set forth next, however, the Court improperly precluded the Waite Firm from seeking avenues of relief that it was legally entitled to pursue and as to which Judge Ruehlman clearly has subject-matter jurisdiction to decide.

1. Judge Ruehlman Has Subject-Matter Jurisdiction To Determine The Enforceability of A Kentucky Order That Was Issued Without Process to The Waite Firm.

First, the Court's grant of the writ was in error because it impeded the Waite Firm from protecting its due-process rights via the Hamilton County Action, which in the ordinary progression would include application of the *res judicata* effect of certain final judgments in Nevada courts. Nothing in the OEFJA deprives the Waite Firm of this constitutional right of Due Process, and Judge Ruehlman clearly has subject-matter jurisdiction over an action by the Waite Firm to pursue such declaratory relief as to its constitutional rights.

2. The Court Erred By Limiting Its Review Of The Waite Firm's Complaint To The "Wherefore" Clause.

The Waite Firm's complaint specifically noted that Ford and her clients have taken various actions to directly interfere with the Waite Firm and/or to attach, garnish, or seize its assets, for example, to garnish funds payable to the Waite Firm that were owed to it by the Castano Trust. It also sought declaratory relief as to the lack of enforceability of a Kentucky order against it when it had never been joined as a party.

This Court's decision ignores all of the factual allegations contained in the body of its Complaint, and offers select excerpts of the paragraphs of the "wherefore" clause of the Complaint and then concluding that Judge Ruehlman lacked subject-matter jurisdiction based on a view that OEFJA governs all of the relief referenced in the "wherefore" paragraphs.³ This

³ As with any litigation, the label attached to a complaint is not dispositive of the cause of action; rather, the issue is whether the facts alleged, if taken as true, can be read to state a cause of action by the third party against another party's attorney. On point is Border City Sav. & Loan Ass'n v. Moan, 15 Ohio St. 3d 65 (1984), which was decided by this Court shortly after it enunciated exceptions to the attorney immunity doctrine in Scholler. In Border City, this Court reversed the trial court's judgment of dismissal under Rule 12(B)(6) and held that the plaintiff savings and loan association sufficiently pleaded a cause of action for malicious prosecution based on allegations that the defendant attorneys represented a number of clients in lawsuits against it and intentionally inflicted harm upon the plaintiff without justification. Although plaintiff did not include that label on its claim, the Court noted that "Civ. R 8(A)(1) only requires 'a short and plain statement of the claim showing that the pleader is entitled to

reading is too narrow. Under Rule 12(C), however, a court does not or measure the validity of a complaint based on the “wherefore” clause – it determines whether the *factual allegations* in the body of the complaint state some cognizable claim for relief. Of course, under Rule 8 notice pleading, parties are not obligated to attach labels to their claims. See, e.g. Desenco Inc. v. City of Akron, 84 Ohio St. 3d 535, 538 (1999) (“The factual allegations of the complaint and items properly incorporated therein must be accepted as true. Furthermore, the plaintiff must be afforded all reasonable inferences possibly derived therefrom. It must appear beyond doubt that plaintiff can prove no set of facts entitling her to relief.”) (citations omitted).

The Waite Firm readily stated a claim for declaratory relief and other tort claims unrelated to whether the Kentucky Judgment had yet been domesticated in Ohio.

3. Mr. Rehme’s Absence—Not Raised By Relator—Was Waived.

The Court’s decision against the Waite Firm also was based in part on its view that the Waite Firm sought an order in the Hamilton County Action with respect to the duties of Mr. Rehme, but “Judge Ruehlman lacks jurisdiction over these claims because Rehme is not a party to the case.” [Slip op. at 27, ¶ 78.] The Court’s conclusion merely proves the point the Waite Firm has been making all along: It was never a defendant in the Abbott Case. The Kentucky court’s orders in the Abbott Case, thus, are unenforceable against the Waite Firm. The Waite Firm sought a declaration from Judge Ruehlman to that effect. In short, the Waite Firm, like anyone, is entitled to protection from an unenforceable order.

This Court, however, sidestepped the issue by asserting that the Waite Firm could not pursue the relief it sought unless it joined Mr. Rehme as a party to the Hamilton County Action. We submit the Court cites the right law – that failure to join an interested and necessary party

relief,’ ” and it held that plaintiff’s complaint sounded in malicious prosecution, given that “*Scholler* establishes that an attorney may be liable to third persons if the attorney acts maliciously.” 15 Ohio St. 3d at 66.

may be deemed a jurisdictional defect – but for the wrong proposition. If Relator believed it was necessary to join another party – Mr. Rehme – to resolve this issue, Relator was obligated to raise that issue via a Rule 12(B)(7) motion in the Hamilton County Action, but Relator failed to raise it. Having failed to raise it, Relator waived any objection to the nonjoinder of Mr. Rehme. The language of Ohio Civil Rule 19 makes clear that a party’s failure to raise a join a Rule 12(B)(7) defense based on the failure to join a necessary party as part of a motion to dismiss results in waiver of that defense. See Rule 19(A) (noting that if party is subject to joinder, “the court shall order that he be made a party upon *timely* assertion of the defense of failure to join a party as provided in Rule 12(B)(7). *If the defense is not timely asserted, waiver is applicable as provided in Rule 12(G) and (H).*”) (emphasis added). See, e.g., Fletcher v. University Hospitals of Cleveland, 172 Ohio App. 3d 153, 157-58 (8th Dist. 2007) (“[C]iv.R.12(G) requires a party to join all available motions”); Sippola v. Kennedy, 2000 WL 1369893, *4 (Ohio Ct. App. 8th Dist., Sept. 21, 2000) (court applied above-quoted language from Rule 19(A), and held that party waived Rule 12(B)(7) defense by failing to assert it in its first responsive pleading).

Thus, if someone else had to be joined to afford the relief sought by the Waite Firm, it was incumbent on Relator to raise that issue. She did not, and it is waived. This waived argument is not a basis for denying the Waite Firm the ability to seek judicial relief as to the lack of enforceability of a Kentucky order in Ohio where process was never afforded—the law cited by this Court make this clear.

B. The Court’s Decision Could Be Read To Deprive Mr. Chesley Of His Right To Seek Relief Under OEFJA After the Domestication of the Kentucky Judgment.--.

Next, with respect to declaratory relief sought by Mr. Chesley in the Hamilton County Action with respect to provisions of the OEFJA, the Court concluded that Judge Ruehlman

lacked jurisdiction to clarify Mr. Chesley’s rights under the statute until a domestication action is actually filed. [Slip op. at 24, ¶ 24.] As noted above, the triggering event has occurred: Setting aside their procedural flaws, on April 25, 2016, the Kentucky Plaintiffs initiated a domestication action. As such, Mr. Chesley should be entitled to exercise the same rights accorded under Ohio law to any other judgment creditor.

The problem is the Court’s decision, although perhaps dicta, appears to prejudge the exercise of such rights—even though unrelated to the singular issue before the Court of the lower court’s subject matter jurisdiction.

Chesley’s complaint asked the court to impose conditions on Ford, as attorney for the judgment creditors, for domesticating the Kentucky judgment that far exceed the statutory requirements. The Ohio Enforcement of Foreign Judgments Act does not require judgment creditors to calculate and disclose their respective shares of the judgment, detail the amounts and dates on which they recovered money from other sources, or disclose the amount of money retained by their attorney. ...

[Slip op. at 24, ¶ 66.]

The Court did not offer any citation for this broad pronouncement. We submit the Court’s statement does not comport with the statutes or with prior decisions of this Court, as we address next.

1. Each Of The Judgment Creditors Must Identify And Authenticate Their Individual Judgments.

First, with respect to the statement that the OEFJA “does not require judgment creditors to calculate and disclose their respective shares of the judgment,” the Court’s reference to “shares” of “a judgment” is inapposite. Because the Chelsey Judgment is not a class-action judgment, each named judgment creditor has a separate and distinct judgment against Mr. Chesley. Stated otherwise, there are 382 separate and distinct judgments, and each judgment is treated separately.

Ohio Rev. Code § 2329.022 provides that each judgment must be “authenticated in accordance with” 28 U.S.C. § 1738 (the Full Faith and Credit Act) before it may be filed with the clerk of a court of common pleas in Ohio.” Section 2329.023(B) provides that upon the filing of a foreign judgment, “[T]he judgment creditor or his attorney shall file with the clerk of the court a praecipe instructing the clerk to issue a notice of the filing of the foreign judgment to the judgment debtor at the address given in the affidavit. The clerk shall enter a note of the mailing in the docket. The notice shall include the name and address of the judgment creditor, and of the judgment creditor’s attorney, if any, in this state.”

The OEFJA contains no provision for grouping individual judgments together to allow individual creditors to escape the obligation to identify a specific judgment amount and instead claim some undefined “share” of an aggregate number. This is simply a matter of statutory construction—an issue unrelated to the trial court’s subject matter jurisdiction.

2. Each Of The Judgment Creditors Must Disclose Amounts Received From Other Judgment Debtors Who Were Held Jointly And Severally Liable.

Second, as to the statement that the OEFJA does not require judgment creditors to “detail” the amounts recovered from other judgment debtors, Ohio Rev. Code § 2929.022 provides that a foreign judgment filed under the OEFJA “has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of common pleas and may be enforced or satisfied in same manner as a judgment of a court of common pleas.”

As this Court has held, “[a] foreign judgment for the payment of money will not be enforced in an amount greater than the amount, including costs, for which the judgment is enforceable in the state where it was rendered. This is true even though the judgment had been

rendered in a larger amount. ...” Security Pacific Nat’l Bank v. Roulette, 24 Ohio St. 3d 17, 18-19 (1986). It is axiomatic that in the Abbott Case, the Kentucky court must give a credit against each of the judgment creditors for amounts collected by each creditor upon each judgment; there can be no duplicative recovery. “It is a tort rule of longstanding that where two or more persons are potentially liable for a single indivisible harm, a payment by or on behalf of any of them shall be a credit against the total amount due.” Burke Enterprises, Inc. v. Mitchell, 700 S.W.2d 789, 794 (Ky. 1985) (citing Prosser and Keeton on Torts, 5th ed., 1984, §§ 49, 52; Restatement (Second) Torts, § 885(3)). An Ohio court domesticating the judgment must do the same. “Where the rendering state entitles a judgment debtor credit for amounts paid toward satisfaction of a judgment, such credit will be permitted by the Ohio court domesticating and enforcing such judgment.” Signal Data Processing, Inc. v. Rex Humbarnd Found., 99 Ohio App. 3d 646, 650 n.2 (Ohio Ct. App. 9th Dist. 1994) (citing Miller v. Bock Laundry Machine Co. 64 Ohio St. 2d 265, 266-67 (1980)).

In sum, given that Ohio’s statutory process provides these rights of disclosure to every judgment debtor who faces an action to domesticate a foreign judgment, there is no basis for suggesting that a lower court lacks subject-matter jurisdiction to determine Mr. Chesley’s rights under the OEFJA now that a domestication action has been filed, including various defenses not properly presented to this Court on the issue of subject-matter jurisdiction.

C. The Court Should Clarify Its Entry Regarding The Stay Of The 2016 Case.

The Kentucky Plaintiffs filed their first domestication affidavit on April 26. They did so using a “CJ” number and an “EX” number. These filings, however, do not open a civil action.

Accordingly, Mr. Chesley and the Waite Firm filed the 2016 Case (that is, Hamilton County Case No. A1602508). In her Motion for Emergency Relief, Relator asked the Court “to

issue an order staying the case currently before Respondent, Hamilton County Court of Common Pleas Case No. A1602508, including the preliminary injunction hearing set for June 22, 2016.” In one of the two Entries filed on June 21, 2016, the Court granted the Motion, simply stating that “[u]pon consideration of relator’s motion for emergency relief, it is ordered by the court that the motion is granted.” The stay prevents Judge Ruehlman from transferring the case to Judge Cooper, as requested by the Kentucky Plaintiffs.

This Court should make clear that the stay does not preclude Mr. Chesley from pursuing his statutory rights now that a Domestication Action has been filed, provided, presumably, as it is not before Judge Ruehlman. In short, there needs to be a forum for all parties to proceed, but no party wishes to run afoul of the Court’s order. Intervenors ask the Court to clarify its ruling so that Mr. Chesley may exercise his statutory rights and challenge the Domestication Action.

IV. CONCLUSION

For the above reasons, this Court’s Entries should be reconsidered consistent herewith.

Respectfully submitted,

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CERTIFICATE FOR SERVICE

The undersigned certifies that on this 1st day of July, 2016, a true and correct copy of the foregoing was served via U.S. Mail, first class postage prepaid, and electronic mail pursuant to Civil Rule 5(B)(2)(c) and (f) on:

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