



HENRY McMASTER
ATTORNEY GENERAL

April 17, 2006

DeShield Smith, Circuit Court Representative
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Ms. Smith:

In a letter to this office you raised a question concerning the filing, docketing and indexing of an uncontested foreign judgment. You have specifically questioned whether the indexing of a foreign judgment should be suspended until thirty days after the notice of filing of the foreign judgment has expired or may the clerk of court immediately index the judgment if it is uncontested. You also asked if enforcement of the uncontested foreign judgment is stayed until after the notice of filing of the foreign judgment has expired.

South Carolina has adopted the Uniform Enforcement of Foreign Judgments Act, the UEFJA, which is codified at S.C. Code Ann. § § 15-35-900 et seq. As set forth in Section 15-35-910(1), a “[f]oreign judgment” means a judgment, decree or order of a court of the United States or a court of another state which is entitled to full faith and credit in this State....” Section 15-35-920 (A) allows for the filing of foreign judgments in the office of a clerk of court in this State. Such provision states in part:

...Along with the foreign judgment, the judgment creditor or his attorney shall make and file with the clerk an affidavit which states that the foreign judgment is final, that it is unsatisfied in whole or in part setting forth the amount remaining unpaid on the judgment, and whether the judgment is further contested. A contested judgment includes a judgment for which post-trial motions are pending before the trial court, notice of appeal has been filed, or an appeal is pending. (emphasis added).

Subsection (B) of such provision states:

Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved.... (emphasis added).

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S.C. Code Ann. § 15-35-930 states

(A) Promptly upon the filing of a foreign judgment and affidavit, the judgment creditor shall serve the notice of filing provided for in subsection (B) on the judgment debtor...

(B) The notice must set forth the name and address of the judgment creditor, his attorney if any, and the clerk's office in which the foreign judgment is filed in this State, and must state that the judgment attached to the notice has been filed in that office, that the judgment debtor has thirty days from the date of receipt of the notice to seek relief from the enforcement of the judgment....

S.C. Code Ann. § 15-35-940 authorizes a judgment debtor to file a motion for relief or a notice of defense to a foreign judgment stating:

(A) The judgment debtor may file a motion for relief from, or notice of defense to, the foreign judgment on the grounds that the foreign judgment has been appealed from, that enforcement has been stayed by the court which rendered it, or on any other ground for which relief from a judgment of this State is allowed.

(B) If the judgment debtor has filed a motion for relief or notice of defenses, then the judgment creditor may move for enforcement or security of the foreign judgment as a judgment of this State, if all appeals of the foreign judgment are finally concluded and the judgment is not further contested...The judgment creditor has the burden of proving that the foreign judgment is entitled to full faith and credit.

As further explained by Judge Hearn in Abba Equipment, supra,

(Citing Section 15-35-940)...[a]fter the foreign judgment has become a South Carolina judgment under the UEFJA, the judgment debtor may then challenge the now South Carolina judgment on "any...ground for which relief from a judgment of this state is allowed.

335 S.C. at 488.

The North Carolina Court of Appeals in Security Credit Leasing, Inc. v. D.J.'s of Salisbury, Inc., 537 S.E.2d 227 at 230 (N.C. Ct. App. 2000) indicated that language similar to that in Section 15-35-920 (B) prohibiting an execution upon a foreign judgment until the expiration of thirty days after service of the notice of filing "...is specifically set to bar a plaintiff-creditor from obtaining a foreign judgment against one of our state's citizens and then immediately (within thirty days) being able to enforce it without that defendant-debtor being afforded the notice required by due process."

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Consistent with such, in my opinion, enforcement of an uncontested foreign judgment is stayed until after the notice of filing of the final judgment has expired.

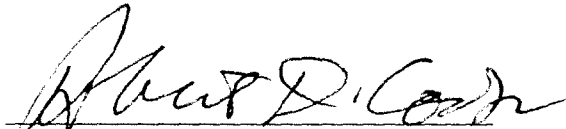
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General