ALAN WILSON
ATTORNEY GENERAL

December 12, 2016

Mr. Tomer Y. Goldstein
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Tel Aviv, ISRAEL 6789115

Dear Mr. Goldstein:

You have raised an issue concerning our opinion of May 20, 2015 "referencing the legality of a Turkish Court Judgment in South Carolina based upon the basic principles of comity." By way of background, you state the following:

> . . . your letter opinion does not address the issue of the statute of limitations and length of time to enforce such a judgment. I kindly seek a letter opinion from your office as to my legal issue as well.
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> I work for a law firm in Israel, where we have received a final Court judgment on May 1, 2011, against an Israeli citizen who has moved to the United States and taken all of his assets with him. It took a few years to locate this individual, and upon diligent search and significant effort, we have since determined he a resident of, and employed within your state.
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> Based upon your 2015 letter opinion regarding a Turkish Court Judgment, and my understanding of your laws, I do believe that an Israeli court Judgment would be recognized in South Carolina.
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> I understand that your state has 10 year statute of limitations, and 10 years to enforce or collect upon a judgment once it has been rendered, however the statute of time to enforce a judgment in Israel for a final Court judgment is 25 years. My inquiry is as such:
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> 1) Is there a time frame within which a foreign country creditor (and therefore not subject to the Full Faith and Credit Clause of the US Constitution) must domesticate the judgment in South Carolina before the South Carolina Court's will refuse the accept the judgment
> 2) Once the judgment is recognized and rendered in South Carolina, will enforcement or collection upon the judgment be limited to:

a) 10 years from the date of the original judgment in Israel
b) 10 years from the date of judgment in a South Carolina Court
c) 25 years from the date of original judgment pursuant to Israeli law.
d) Some other time frame, and if so, why.

Law/Analysis

Our 2015 Opinion concluded that, pursuant to the principles of comity, a court would likely conclude that a judgment from Turkey was enforceable in South Carolina. There, we relied upon a decision from the District Court of South Carolina, South Carolina National Bank v. Westpac Banking Corp., 678 F.Supp. 596 (D.S.C. 1987), which stated as follows:

> [t]he enforceability of judgments rendered by the courts of foreign nations is to be determined under the law of the state in which enforcement is sought. Sangiovanni Hernandez v. Dominicana de Aviacioa, C. Por. A., 556 F.2d 611, 614 (1st Cir. 1977); Somportex Ltd. V. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971), cert. denied, 405 1017, 31 L.Ed. 2d 479, 92 S.Ct. 1294 (1972). The courts of South Carolina have apparently not considered the enforceability of foreign judgments, . . . but the Court assumes South Carolina would adopt the principles of comity generally applied by courts in this country to determine the effect of foreign judgments, in Hilton v. Guyot, 159 U.S. 113, 2020-03, 40 L.Ed. 95, 16 S.Ct. 139 (1895), the United States Supreme Court formulated the following test for recognition and enforcement of foreign judgments:
>
> Where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings after due citation or voluntary appearance of the defendants, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.
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> The test enunciated in Hilton remains the standard applied by most American courts to determine the enforceability of foreign judgments [citation omitted]. . . . Following these principles, courts will generally recognize and enforce the judgments of foreign courts if (1) the foreign court had personal and subject matter jurisdiction; (2) the defendant in the foreign action had notice and opportunity to be heard; (3) the judgment was not obtained by fraud; and (4) enforcement will not contravene important public policy. Id. at 403.

678 F.Supp. at 597-98 (emphasis added).

Our recent Opinion also noted that other decisions elsewhere, as well as a prior opinion of this Office, had concluded that Turkish judgments or judgments of other foreign countries are enforceable if the Hilton v. Guyot criteria are met. Thus, we advised that assuming such criteria are fulfilled, "a Turkish judgment would be enforceable in the State under well-recognized principles of comity."

Likewise, assuming that the Guyot and Westpac test are met here, we believe that a court would conclude that a judgment from an Israeli court is enforceable in South Carolina. In Shapiro v. Shapiro, 442 N.Y.S.2d 928 (1981), for example, the Court in New York concluded:

> [i]t is conceded the court that issued the order has jurisdiction over the subject matter. Jurisdiction in personam was acquired with the appearance of both parties. The issue of jurisdiction having been resolved, the remaining bars to comity in this state are a showing that the judgment was fraudulently obtained . . . or that it was offensive to our public policy . . ., neither of which is claimed by defendant.
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> Defendants' additional argument that reciprocity must be a factor under the doctrine of comity is not well founded. While it is true that the state of Israel does not recognize any civil divorce as being determative of the marital status of its Jewish residents, New York State has, for some time adopted a liberal policy of recognizing foreign judgments through comity, ignoring the doctrine of reciprocity.

442 N.Y.S.2d at 930 (citation omitted). See also Schwarcz v. Zik, 640 A.2d 1212 (N.J. 1993) [Israeli judgment enforceable in New Jersey under the principles of comity]. We are of the opinion that a South Carolina court would likely follow a similar analysis, thereby concluding that the Israeli judgment is enforceable in this State.

While we believe the Israeli judgment is likely enforceable in South Carolina, the question of which sovereign's statute of limitations would be deemed applicable by a court is a different issue.

Of course, courts are not constitutionally obligated to afford full faith and credit to judgments of foreign countries. However, it is not uncommon to apply the same rules regarding statutes of limitations to enforcement of foreign country judgments as are applied to sister states. See La Societe Anonyme Goro v. Conveyor Accessories, Inc., 677 N.E.2d 30 (Ill. App. 1997). As the Court stated in Truscon Steel Co. of Canada, Limited v. Biegler, 28 N.E.2d 623, 623-24 (Ill. 1940), ". . . by the rule of comity, the same force and effect is given to judgments of foreign countries as is given to the judgments of sister states."

South Carolina has not adopted the Uniform Foreign Money Judgments Recognition Act, but has enacted the Uniform Enforcement of Foreign Judgments Act. See S.C. Code Ann. § 15-35-900 et seq. While we have located no South Carolina case addressing the issue of the applicable statute of limitations for enforcing a judgment rendered in a foreign county, our Court of Appeals has decided the question as related to a judgment issued in another state. In Abba

Equipment, Inc. v. Thomason, 335 S.C. 47, 517 S.E.2d 235 (Ct. App. 1999), the Court addressed the applicable statute of limitations for a default judgment obtained in Florida. Abba Equipment "attempted to file in South Carolina a Florida judgment against Ralph Thomason pursuant to the Uniform Enforcement of Judgments Act (UEFJA)." The trial court had ruled, based upon Payne v. Claffy, 281 S.C. 385, 315 S.E.2d 814 (Ct. App. 1984), that "the ten year statute of limitations of § 15-3-600 applied to an action to enforce a foreign judgment." 335 S.C. at 481, 517 S.E.2d at 237.

The Court of Appeals affirmed. According to the Court, "Section 15-3-600 is a catch-all statute of limitations which provides, 'An action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued.'" The Court explained that Payne was decided prior to the UEFJA, but had concluded that "the statute of limitations to be applied [to a foreign judgment] is ordinarily the statute of the state where the action is brought and not that of the jurisdiction in which the judgment was obtained." Id. Moreover, the Court stated that, in Payne,

> [w]e found, although no statute expressly limits the time within which actions on foreign judgments must be brought § 15-3-600 indirectly applies and can serve to bar prosecutions of foreign judgments. Id. Pursuant to S.C. Code Ann. § 15-3-30 (1976), this statute of limitations is tolled while the judgment debtor resides outside of South Carolina. Thus, the limitation period does not begin to run until the judgment debtor moves to South Carolina and the courts of this state become empowered to adjudicate between the parties upon the particular cause of action. Id. In Payne, because the judgment debtor had resided in South Carolina less than ten years and the judgment remained enforceable in Virginia, the action on the Virginia judgment was not barred in South Carolina.
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> Payne unequivocally mandates application of the ten year statute of limitations to enforcement of a foreign judgment at common law. Abba, contends, however, because Payne was decided some nine years prior to the adoption of the UEFJA, and because the Act itself contains no limitations period, the statute of limitations pursuant to Payne has no application under the Act. We disagree.

Id. According to the Abba Equipment Court,

> [t]he purpose of the UEFJA is to provide a simpler, more expedient procedure to enforce foreign judgments; it is not to endow foreign creditors with substantive rights not otherwise available in the forum state. . . . There is nothing in the UEFJA to suggest it is designed to circumvent the established statute of limitations for enforcing foreign judgments. Id. While the procedure may be easier and less costly to pursue than that of a common law action, it is nevertheless an enforcement procedure, the goal of which is identical to a suit to enforce judgment. Id. Thus, there is no logical basis for imposing two different periods of limitation.
>
> . . . .

> Our Legislature enacted the UEFJA in 1993, but did not provide a limitation period for filing foreign judgments pursuant to the act. . . . The Legislature, however, is presumed to enact legislation with reference to existing law, and there is a strong presumption it does not intend, by statute, to change common law rules. . . . Further, a statute is not to be construed as in derogation of common law rights if another interpretation is reasonable. . . . We therefore conclude enactment of the UEFJA did not abrogate the common law rule of Payne that the ten year statute of limitations under § 15-3-600 applies to actions to enforce foreign judgments.

335 S.C. at 483, 517 S.E.2d at 238 (emphasis added). We believe it is likely a South Carolina court would apply this same reasoning to the Israeli judgment in question.

Moreover, the United States Supreme Court has held that a state does not violate the Full Faith and Credit Clause of the Due Process Clause by applying its own statute of limitations with respect to enforcement of a foreign judgment. In Sun Oil Company v. Wortman, 486 U.S. 717 (1988), the Supreme Court explained:

> [a]t the time the Fourteenth Amendment was adopted, this Court had not only explicitly approved (under the Full Faith and Credit Clause) forum-state application of its own statute of limitations, but the practice had gone essentially unchallenged. And it has gone essentially unchallenged since. "If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it." Jackman v. Rosenbaum Co., 260 U.S. 22, 31, 43 S.Ct. 9, 9-10, 67 L.Ed. 107 (1922).
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> A State's interest in regulating the work load of its courts and determining when a claim is too stale to be adjudicated certainly suffices to give it legislative jurisdiction to control the remedies available in its courts by imposing statutes of limitations.

486 U.S. at 729-30.

The reasoning of Sun Oil thus applies to limitations imposed upon enforcing foreign judgments. In Strickland v. Watt, 453 F.2d 393 (9th Cir. 1972), judgment creditors sought to enforce California judgments in the United States District Court for the State of Arizona. The Ninth Circuit held that Arizona's four year statute of limitations on foreign judgments would prevail over the ten year limitation of California. According to the Ninth Circuit,

> [a]ppellants argue that the Full Faith and Credit Clause of the Constitution compels recognition of California's longer statute of limitations. The Supreme Court has held otherwise. Wells v. Simonds Abrasive Co., 345 U.S. 514, 73 S.Ct. 859, 97 L.Ed. 1211 (1954), is one of a long line of cases authorizing the forum to apply its own statute of limitations if it so desires. . . . The Full Faith and Credit Clause does not compel recognition of a different period. Wells, supra, 345 U.S. at 516-18, 73 S.Ct. 856, 97 L.Ed. 1211.

453 F.2d at 393-94.

Of course, as noted above, the Full Faith and Credit Clause has no applicability to judgments of foreign nations. Gould v. Gould, 138 N.E. 490 (N.Y. 1923). In view of the fact, however, that our own Court of Appeals, as well as other courts, have applied South Carolina's ten year statute of limitations to judgments of sister states, we believe our courts as a matter of comity would do the same with respect to the judgment of a foreign country, in this instance, Israel. We assume, of course the criteria, referenced above, are met. While no South Carolina decision has addressed this issue, we believe such is the likely outcome.

As our courts recognized long ago, "statutes of limitations upon particular actions, . . . belong to the law of the forum." Nelson Carlton & Co. v. Felder, 27 S.C.Eq. 58, 63 (6 Rich. Eq. 58 1853). Moreover, "[i]n accordance with general conflict of laws principles, an action will not be maintained if it is barred by the statute of limitations of the forum or if it is barred by the statute of limitations of another state whose statute has been 'borrowed' in accordance with the forum state's 'borrowing statute.'" Employers Ins. Of Wausau v. Ehico Liquidating Trust, 723 N.E.2d 687, 692 (Ill. App. 1999), referencing Restatement (Second) of Conflicts Law § 142 at 396-97 (1971).

Moreover, courts elsewhere have applied the applicable forum state's statute of limitations for enforcement of judgments with respect to sister states to judgments rendered by foreign countries as well. In La Societe Anonyme Goro v. Conveyor Accessories, Inc., 677 N.E.2d 30, 32 (Ill. App. 1997), the Illinois Court of Appeals concluded that "foreign-country judgments are enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit." While the law in Illinois is distinguishable, the fact that the forum state applied its own statute of limitations to the enforcement of a judgment of a foreign country is instructive. The Court explained that it saw "no reason" to subject a foreign country judgment to a "different limitations period." Id. Relying upon Attorney General of Canada on Behalf of Her Majesty the Queen in Right of Canada v. Tysowski, 800 P.2d 133 (Idaho App. 1990), the Court in La Societe stated:

> [w]e hold that the 1991 amendment to the Code adopting the Foreign Judgments Act rendered the seven-year limitation period for an Illinois judgment applicable to the registration and enforcement of foreign country judgments as well as sister-state judgments.

Id. at 33. In addition, the court's language in Tysowski, as follows, is to the same point:

> [o]our initial inquiry involves a choice of laws. We must determine whether to apply the laws of Alberta Canada, the jurisdiction in which the action arose, or those of this state, wherein the present action is being prosecuted. In general, the forum applies its own statutes of limitations to actions before it. Miller v. Stauffer Chemical Co., 99 Idaho 299, 301, 581 P.2d 345, 347 (1978). Thus, a foreign plaintiff is subject to Idaho's limitation periods, except as otherwise provided by statute. See Miller v. Stauffer, supra; Canadian Birbeck Inv. & Savings Co. v. Williamson, 32 Idaho 624, 633, 186 p. 916, 919 (1920).

Finally, long ago in Napier v. Gidiere, 17 S.C. Eq. (Speers Eq.) 215 (1843), our own Court addressed the question of the applicability of the relevant South Carolina statute of limitations to a claim based on a judgment rendered in the Courts of New York against the defendant's intestate. In Napier, the Court cited with approval McElmoyle v. Cohen, 38 U.S. 312 (13 Pet.) (1839), noting that in McElmoyle, "the Statute of Limitations of Georgia, which declares that actions on the judgments of another state shall be barred unless brought within five years after judgment rendered, was properly pleaded to a judgment obtained in South Carolina." 17 S.C. Eq. at 231.

And, in Levy v. Boas, 18 S.C.L. (2 Bai(.) 217 (183)), our Court stated that "[t]he principle is the lex loci contractus (place of contract) is to be observed in deciding on the nature, validity and construction of the contract; but the form of the action, the course of judicial proceedings, and the time when the action must be commenced, must be directed exclusively to the laws of the State in which the action is brought." Id. at 219.

Further, in Pegram, Co. v. Williams, 38 S.C.L. (4 Rich). 219, 224-25 (1850) our Court emphasized that the doctrine that the lex fori governed statutes of limitations is universal as a doctrine of the "comity" of the law of nations:

> The nature, obligation and construction of contracts are to be governed by the lex loci contractus, but the remedies by which contracts are enforced, are to be according to the lex fori, which is strictly territorial in its operation. Story de confl. § 239, 240, 242, 260, 556, 557. We all agree, says Mr. Justice Heath (1 Bos. & Pal. 142) that in construing contracts, we must be governed by the laws of the country in which they are made; for all contracts have relation to such laws. But when we come to remedies it is another thing; they must be pursued to the means which the law points out where the parties reside. The laws of the country where the contract was made, can only have reference to the nature of the contract, not to the mode of enforcing it. In De La Vegas vs. Vianna (1 B. & Ad. 284), Lord Tenterden said: "A person suing in this country, must take the law as he finds it. He cannot, by any regulation of his own country, enjoy greater advantages than other suitors here. He is to have the same rights which all the subjects of this kingdom are entitled to." Judge Story, in his treatise on the Conflict of Laws, sect. 556, says: "It is universally admitted and established, that the forms of remedies, and the modes of proceeding, and the execution of judgments, are to be regulated solely and exclusively by the laws of the place where the action is instituted, or, as the civilians express it, according to the lex fori." And in sec. 557, he says "All that a nation can therefore be justly required to do, is to open its own tribunals to foreigners in the same manner and to the same extent as they are open to its own subjects, and to give them the redress, as to rights and wrongs, which it deems fit to acknowledge, in its own municipal code, for natives and residents." This is what is meant by the comity of nations, and I do not find it has ever been extended beyond what is here said. (Story De Confl. § 38.) It is enough that in the construction and obligation of a contract made in a foreign country, effect is given to it according to the laws of that country, but in doing so we must resort to the same code of procedure as we extend to our own citizens.

Conclusion

Thus, based upon the foregoing authorities, it is our opinion that a South Carolina court would likely apply the ten year statute of limitations for enforcement of judgments, found at § 15-3-600. This is the same rule enunciated by our Court of Appeals in Abba Equipment, Inc. v. Thomason, supra and we believe it would apply as well to judgments rendered in foreign countries, which are entitled to comity. Abba indicated that the ten year limitation "is tolled while the judgment debtor resides outside of South Carolina." Thus, "the limitation period does not begin to run until the judgment debtor moves to South Carolina and the courts of this State became empowered to adjudicate between the parties upon the particular cause of action." Abba Equipment, supra. See also, Payne v. Claffy, supra [where defendant had resided in South Carolina less than 10 years and the judgment against him remained enforceable where the judgment was obtained, plaintiff's action was not barred by the South Carolina ten year statute of limitations for enforcement of judgments]. Such a rule of tolling would likely apply with respect to judgments of foreign countries enforceable in South Carolina as well. See also Vagenas v. Continental Gin Co., 988 F.2d 104 (11th Cir. 1993) [Greek judgment is controlled by Alabama statute of limitations applicable to the United States citizen seeking to enforce a sister state judgment in Alabama]; Truscon Steel co. of Canada v. Biegler, 28 N.E.2d 623 (Ill. 1940) ["And by the rule of comity, the same force and effect is given to judgments of foreign countries as are given to the judgments of sister states."] Accordingly, we believe the ten-year South Carolina statute is applicable in accordance with the rule expressed in Abba Equipment and Payne.

Sincerely,

Robert D. Cook
Solicitor General