IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 05-cv-00702-MSK-MEH

MARIANO J. PIMENTEL, on behalf of
himself and a Class of Judgment Creditors
of the Estate of Ferdinand E. Marcos

Plaintiff,

v.

DENMAN INVESTMENT CORPORATION, INC.,
IMELDA R. MARCOS and FERDINAND R. MARCOS
as Executors of the Estate of Ferdinand E. Marcos, and
ALL UNKNOWN PERSONS WHO CLAIM INTEREST
IN THE SUBJECT MATTER OF THIS ACTION

Defendants.

BRIEF IN SUPPORT OF DENMAN'S MOTION FOR JUDGMENT ON THE PLEADINGS

This action to enforce a 1995 judgment of a federal district court in Hawaii is time-barred. Colorado's three-year statute of limitations applies, and, therefore, plaintiffs' judgment is no longer enforceable in this forum. Further, plaintiffs could not register their judgment for enforcement pursuant to 28 U.S.C. § 1963 because it had expired under Hawaii law. Finally, Colorado law also barred plaintiffs' attempt to register their judgment.

STATEMENT OF FACTS

Plaintiffs allege that 520 acres of land in El Paso County, Colorado (the "Property") were purchased in October 1979 "for [former Philippine President Ferdinand] Marcos" at the direction of Jose Y. Campos and placed in the name of Denman Investment Corporation, N.V. (Am.

Compl. ¶ 22 (# **57**)). Plaintiffs allege that President Marcos's "personal assets . . . were used for the acquisition" of the Property (*id.* ¶ 23), which is now owned by defendant Denman Investment Corporation, Inc. (*id.* ¶¶ 6, 22). They further allege that the Estate of Ferdinand E. Marcos is the beneficial owner of the Property despite the Campos' family's assertion of ownership of the above property "to the exclusion of Marcos or his estate." (*Id.* ¶ 24.)

Plaintiffs allege that they have a right to the Property to satisfy in part the February 3, 1995 judgment they received against President Marcos's estate in the U.S. District Court for the District of Hawaii (the "1995 Hawaii Judgment"). (*Id.* ¶¶ 1, 4 and Ex. A.) This judgment, signed by Judge Manuel Real, was titled "Final Judgment." (*Id.* Ex. A.) On March 14, 1995, Judge Real directed the Clerk of the Court to "certify the Final Judgment of February 3, 1995 for transfer to other districts" and emphasized that there was "no bar to execution on the Final Judgment" despite "the pendency of any posttrial motions or appeals." (Order Directing the Clerk to Certify the Final Judgment for Transfer to Other Districts, *In re Estate of Marcos Human Rights Litig.*, MDL No. 840 (D. Haw. Mar. 14, 1995) (Ex. 1).)[1] Denman was not a party to this or any other proceeding by plaintiffs in Hawaii.

Plaintiffs further allege that the 1995 Hawaii Judgment "has been transferred to this District." (Am. Compl ¶ 4.) Public records show that the 1995 Hawaii Judgment was registered

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[1] This document and other court filings or dockets attached as exhibits to this motion are public records that may be considered without converting this motion to one for summary judgment. *Tal v. Hogan*, 453 F.3d 1244, 1264 n. 24 (10th Cir. 2006) (". . . [F]acts subject to judicial notice may be considered in a Rule 12(b)(6) motion without converting the motion to dismiss into a motion for summary judgment. . . . This allows the court to take judicial notice of its own files and records, as well as facts which are a matter of public record." (internal citations and quotations omitted)); *see, e.g.*, *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (on motion to dismiss, court may take judicial notice of matters of public record outside the pleadings, such as motion and memorandum filed in another lawsuit).

in the District of Colorado on April 5, 2005 -- more than ten years after that judgment was entered and certified for transfer. (Docket, *Hilao v. Estate of Marcos*, 1:05-rj-00010 (D. Colo.) (Ex. 2).) The docket for plaintiffs' Hawaii case also shows that before June 5, 2006, plaintiffs never sought an extension of the 1995 Hawaii Judgment, and none was ever granted. (*See* Docket, *In re Estate of Marcos Human Rights Litig.,* MDL-840 (D. Haw.) (Ex. 3).)

On May 9, 2006, Eugene Gulland, counsel for Denman and for several defendants in a similar case brought by plaintiffs in the U.S. District Court for the Northern District of Texas (the "Texas Action"), informed plaintiffs' counsel that the Texas Action was barred because the judgment had expired before it was registered in Texas. On June 5, 2006, without noticing the defendants in the Texas Action, plaintiffs moved before Judge Real for an extension of the 1995 Hawaii Judgment. The defendants in the Texas Action sought to intervene to contest that motion. However, Judge Real denied intervention, stating that "[n]othing . . . that happens in this district can affect the judgment in Texas; so there's no need for intervention of your clients here." (Tr. of Hr'g on June 26, 2006, *In re Estate of Marcos Human Rights Litig.*, MDL No. 840 (D. Haw.), at 12:6-11, 13:10-19 (Ex. 4).) Judge Real then granted the extension, accepting all of the arguments plaintiffs raised in their motion. (Order, *In re Estate of Marcos Human Rights Litig.*, MDL No. 840 (D. Haw. Jun. 27, 2006) (Ex. 5).) He also denied a subsequent motion by one of the Texas defendants to intervene for the purpose of appeal, ruling that "[t]his matter rests in the jurisdiction of the Texas litigation." (Order, *In re Estate of Marcos Human Rights Litig.*, MDL No. 840 (D. Haw. Jul. 3, 2006) (Ex. 6).)

Despite Judge Real's statement that his ruling did not affect the Texas Action, plaintiffs argued in opposition to the Texas defendants' motion to dismiss that Judge Real's decision to

extend the judgment was entitled to "deference and comity." One of the defendants in the Texas Action has appealed to the Ninth Circuit for a ruling overturning Judge Real's decision. (*See* Br. of Appellant on the Merits and for Summ. Reversal, *In re Estate of Marcos Human Rights Litig.*, No. 06-16301 (9th Cir.) (Ex. 7).) Briefing on the appeal is complete, and the Ninth Circuit is still considering the Texas defendant's appeal on the merits. The court in the Texas Action denied the defendants' motion to dismiss without addressing the merits, expressly granting leave to refile after the Ninth Circuit rules. (Order Denying Defs.' Mot. to Dismiss, *Pimentel v. B.N. Devel. Corp.*, Civ. No. 4-05CV-234-Y (N.D. Tex. Feb. 26, 2007), at 2 (denying without prejudice) (Ex. 8).)

LEGAL STANDARD

A motion for judgment on the pleadings, like a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "may be granted only if it appears beyond a doubt that the [plaintiffs are] unable to prove any set of facts" that would entitle them to relief. *Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002). When the statute of limitations is raised as an affirmative defense, however, and "the dates given in the complaint make clear that the right sued upon has been extinguished, the plaintiff has the burden of establishing a factual basis for tolling the statute." *Aldrich v. McCulloch Props., Inc.*, 627 F.2d 1036, 1041 n.4 (10th Cir. 1980). Statute of limitations questions may therefore be resolved on a motion under Rule 12(c). *See id.* Denman has asserted a statute of limitations defense. (Denman's Answer to Am. Compl., Sixth Defense (# **61**)).

ARGUMENT

I. PLAINTIFFS' CLAIMS ARE BARRED BY COLORADO'S THREE-YEAR STATUTE OF LIMITATIONS FOR ACTIONS ON FOREIGN JUDGMENTS.

Courts sitting in diversity apply the forum state's statute of limitations to an action which, like this one, seeks to enforce a judgment issued by a federal district court in another state. *Marx v. Go Publ'g Co.*, 721 F.2d 1272, 1273 (9th Cir. 1983) (applying statute of limitations of forum state to an attempt to enforce registered federal court judgment); *Matanuska Valley Lines, Inc. v. Molitor*, 365 F.2d 358, 359-60 (9th Cir. 1966) ("It has long been established that the enforcement of a judgment of a sister state may be barred by application of the statute of limitations of the forum state.").

Applying a Colorado limitations period here will not conflict with any federal law. According to *Hilao v. Estate of Marcos*, 103 F.3d 789, 791-92 (9th Cir. 1996), the 1995 Hawaii Judgment granted relief pursuant to the district court's jurisdiction under the Alien Tort Claims Act, 28 U.S.C. § 1350. That statute does not provide a statute of limitations for an action to enforce a judgment awarded under it. Therefore, this Court, sitting in diversity (Am. Compl. ¶ 2), must borrow Colorado's statute of limitations to analyze whether plaintiffs' attempt to enforce their foreign judgment is timely. *See Agency Holding Corp. v. Malley-Duff & Assoc.*, 483 U.S. 143, 147 (1987) (recognizing "longstanding practice" of applying state statutes of limitation where federal statute does not apply); *Bowdry v. United Air Lines, Inc.*, 956 F.2d 999, 1004-06 (10th Cir. 1992) (applying state statute of limitations because no federal statute set a limitations period).

Under the applicable Colorado law, plaintiffs should have brought this action by February 3, 1998, three years from the date that the 1995 Hawaii Judgment was rendered. Colo.

Rev. Stat. § 13-80-101(k) provides that "[a]ll actions accruing outside this state if the limitation of actions of the place where the cause of action accrued is greater than that of this state" are subject to a three-year limitations period. This action accrued on February 3, 1995, in Hawaii because the 1995 Hawaii Judgment – without which plaintiffs could not allege that Denman is liable to them – was rendered in Hawaii on that date. *See* Colo. Rev. Stat. § 13-80-108(4) ("A cause of action for debt . . . shall be considered to accrue on the date such debt . . . becomes due.")

Therefore, under Colo. Rev. Stat. § 13-80-101(k), the Court must look to Hawaii's limitation period and determine if it is longer than Colorado's. The relevant Hawaii statute states that a person may not bring an action on a judgment "after the expiration of ten years from the date a judgment or decree was rendered or extended." Haw. Rev. Stat. § 657-5 (2005). Because Hawaii provided ten years for plaintiffs' cause of action and Colorado provided three, under Colo. Rev. Stat. § 13-80-101(k) the three-year limitations period applies and plaintiffs' action is barred. *See Matanuska*, 365 F.2d at 360 (applying Washington's statute of limitations governing foreign judgment actions to bar suit on judgment rendered by federal district court in Alaska); *Powles v. Kandrasiewicz*, 886 F. Supp. 1261, 1267 (W.D.N.C. 1995) (applying North Carolina's foreign judgment statute to bar action on judgment rendered by Alabama federal court).

II. PLAINTIFFS' UNTIMELY REGISTRATION OF THEIR JUDGMENT IN COLORADO DOES NOT RESCUE THEIR CLAIMS.

For three separate and independent reasons, plaintiffs' purported registration of their judgment in Colorado pursuant to 28 U.S.C. § 1963 was invalid and without effect and therefore did not prolong the term in which plaintiffs could bring an action on the 1995 Hawaii Judgment.

First, plaintiffs' judgment had expired under Hawaii law and therefore could not be registered in Colorado. Under 28 U.S.C. § 1963, a federal court judgment that has expired under the law of the rendering forum may not be registered and enforced elsewhere. *See Home Port Rentals, Inc. v. Int'l Yachting Group, Inc.*, 252 F.3d 399, 408 (5th Cir. 2001) (South Carolina's statute of limitations limited the time during which a judgment from a federal district court in South Carolina could be registered under 28 U.S.C. § 1963); *Juneau v. Couvillion*, 148 F.R.D. 558, 561 (W.D. La. 1993) (applying Mississippi's statute of limitations on judgments to a registration in Lousiana and holding that "[b]ecause the judgment was invalid when registered with this court, the registration must be vacated").

Under Hawaii law, judgments expire after ten years if not timely extended and cannot be enforced thereafter. The applicable Hawaii statute states:

> "Unless an extension is granted, every judgment and decree of any court of the State shall be presumed to be paid and discharged at the expiration of ten years after the judgment or decree was rendered. No action shall be commenced after the expiration of ten years from the date a judgment or decree was rendered or extended. No extension of a judgment or decree shall be granted unless the extension is sought within ten years of the date the original judgment or decree was rendered. . . ." Haw. Rev. Stat. § 657-5 (2006) (emphasis added).

At the time plaintiffs registered their judgment in Colorado -- more than ten years after the 1995 Hawaii Judgment was entered -- plaintiffs had not sought and had not received an extension. Therefore, the registration was ineffective because the statute of limitations of the rendering forum (Hawaii) had extinguished the judgment, barring plaintiffs from pursuing a remedy in Colorado based on that judgment. *See Int'l Sav. & Loan Ass'n, Ltd. v. Wiig*, 921 P.2d

117, 121 (Haw. 1996) ("[T]he rights and remedies pertaining to the judgment are terminated as a matter of law unless the judgment creditor takes affirmative steps to protect its judgment.").

The purported extension of the 1995 Hawaii Judgment does not save plaintiffs' claims. First, it is indisputable that when the judgment was registered in Colorado, it had expired and had not been extended. Therefore, that registration had no effect in Colorado. Second, even if the Court were to determine that a properly extended judgment could have allowed plaintiffs' case to continue, the Court may independently consider whether Hawaii law barred such an extension if not requested before ten years passed after issuance of the judgment.[2] *See Threadgill v. Armstrong World Indus., Inc.*, 928 F.2d 1366, 1371 (3d Cir. 1991) (even when different judge in same district court faces the same facts, the second district judge is not compelled to follow the first); *Colby v. J.C. Penney Co., Inc.*, 811 F.2d 1119, 1124 (7th Cir. 1987) ("[D]istrict judges in this circuit must not treat decisions by other district judges, in this and a fortiori in other circuits, as controlling, unless of course the doctrine of res judicata or of collateral estoppel applies."). Because Hawaii law clearly barred an extension of plaintiffs' judgment, Judge Real's ruling was wrong and is entitled to no deference here.

Second, quite apart from § 1963, Colorado law expressly applies the rendering state's statute of limitations to an action to enforce a judgment in Colorado. Colo. Rev. Stat. § 13-80-110 provides, "If a cause of action arises in another state . . . and, by the laws thereof, an action thereon cannot be maintained in that state . . . by reason of lapse of time, the cause of action shall not be maintained in this state." *See also Wyatt v. United Airlines, Inc.*, 638 P.2d 812, 813 (Colo.

[2] Should this Court determine that the extension granted in Hawaii will materially affect its ruling on this Motion, Denman requests that the Court stay a decision on the Motion pending the outcome of the appeal of the extension in the Ninth Circuit.

Ct. App. 1981) (applying borrowing statute to bar claim that arose in California). Under this provision, as well as under Hawaii law standing alone, plaintiffs' action to enforce their expired judgment is barred here in Colorado.

Third, and finally, Colo. Rev. Stat. § 13-80-101(k)'s three-year limitations period barred the registration of the Hawaii judgment in Colorado. Other federal courts have held that similar statutes bar registration regardless of whether the judgment is still valid in the rendering state. *See Matanuska*, 365 F.2d at 360 ("The question presented to us is whether Matanuska's Alaska judgment is registrable; the Washington laws, which we hold are applicable, say that it is not."); *Powles*, 886 F. Supp. at 1267 (to be registered, a judgment must "pass muster under the registering state's limitations law"). Here, because plaintiffs did not register their judgment within the three years provided by Colo. Rev. Stat. § 13-80-101(k), the registration was invalid.

CONCLUSION

Denman's motion for judgment on the pleadings should be granted and plaintiffs' Amended Complaint should be dismissed with prejudice.

March 30, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 3/30/2007, I have caused to be electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

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and I hereby certify that I have caused to be mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non-participants name:

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Defendants.

DENMAN'S MOTION FOR JUDGMENT ON THE PLEADINGS

COMES NOW Defendant Denman Investment Corporation, Inc., which moves this Court to grant judgment to it on all of plaintiffs' claims, pursuant to Fed. R. Civ. P. 12(c).

Denman certifies that, pursuant to D.C. Colo. L. Civ. R. 7.1(A), its counsel discussed the grounds for this motion and the relief requested with counsel for the plaintiffs on March 29, 2007. Plaintiffs' counsel opposes the relief requested herein.

The only documents outside the pleadings upon which this motion relies are public records subject to judicial notice; therefore, this motion is properly brought pursuant to Fed. R. Civ. P. 12(c) rather than under Fed. R. Civ. P. 56. *See Tal v. Hogan*, 453 F.3d 1244, 1264 n. 24 (10th Cir. 2006).

RELEVANT FACTS

This case concerns a 520-acre parcel of property in El Paso County, Colorado owned by Denman (the "Property"). Plaintiffs seek a declaration that the Property is "beneficially owned" by the Estate of former Philippine President Ferdinand Marcos (the "Marcos Estate") and request an order transferring title to plaintiffs to satisfy in part a judgment entered against the Marcos Estate by a federal district court in Hawaii on February 3, 1995 (the "Final Judgment"). (Am. Compl. ¶¶ A, B at pp. 5-6 (# **57**)). Denman was not a party to the Hawaii district court action against the Marcos Estate.

ARGUMENT

I. Beneficial Ownership and Execution Claim

A. Burden of proof: Plaintiffs, as judgment creditors, carry the burden of showing that Denman is indebted to the Marcos Estate. *See Security Trust Co. v. Kilpatrick*, 434 P.2d 123, 124 (Colo. 1967) (in garnishment action against third party, judgment creditor had the burden of showing that property belonged to or was obtainable by the judgment debtor). Plaintiffs also must show that their judgment is valid and enforceable. *See Superior Distrib. Corp. v. Zarelli*, 352 P.2d 967, 968-69 (Colo. 1960).

B. Elements: To show that the Marcos Estate is the beneficial owner of the Property, plaintiffs must establish that President Marcos paid the purchase price for the Property and that the Property was held in trust for the benefit of President Marcos. *Shepler v. Whalen*, 119 P.3d 1084, 1088-89 (Colo. 2005). To recover on their judgment, plaintiffs must demonstrate that it "was a valid and final adjudication remaining in full force in the state of its rendition and capable of being there enforced by final process." *Superior Distrib. Corp.*, 352 P.2d at 968-69.

C. Elements not supported by Complaint: As explained in more detail in the supporting brief, plaintiffs' claims are barred by the applicable statutes of limitations. Under Colorado law, which applies to this action to enforce a judgment issued by a district court in another state, "all actions accruing outside [Colorado]" must be brought within three years of when the cause of action accrued, "if the limitation of actions of the place where the cause of action accrued is greater than that of [Colorado]." Colo. Rev. Stat. § 13-80-101(k) (2006). The three-year limitation applies to bar plaintiffs' action because the cause of action accrued in Hawaii and Hawaii law provides a ten-year period for actions on judgments. *See* Haw. Rev. Stat. § 657-5 (2006).

Further, under 28 U.S.C. § 1963, plaintiffs could not register their Hawaii judgment in Colorado because it had expired under Hawaii law. Haw. Rev. Stat. § 657-5. Moreover, Colorado law also barred the registration. Colo. Rev. Stat. § 13-80-101(k); Colo. Rev. Stat. § 13-80-110. Although the Hawaii district judge who issued the original judgment has granted an "extension" of the judgment that was requested by plaintiffs after the judgment had already expired and become unenforceable, that order was erroneous and is before the Ninth Circuit on appeal.

CONCLUSION

For these reasons, which are set forth in more detail in the brief accompanying this motion, the Court should dismiss the Complaint for failure to state a claim upon which relief can be granted.

Dated March 30, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on 3/30/2007, I have caused to be electronically filed the foregoing with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

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and I hereby certify that I have caused to be mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non-participants name:

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