NO. 352-233264-08

CELSA HILAO, ET AL	§	IN THE DISTRICT COURT
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
ESTATE OF FERDINAND E. MARCOS	§	352ND JUDICIAL DISTRICT

DEFENDANT-INTERVENORS' MOTION TO VACATE
PLAINTIFFS' FILING OF FOREIGN JUDGMENT

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INTRODUCTION

Defendant-Intervenors are seven corporations sued in April 2005 by Plaintiffs in the U.S. District Court for the Northern District of Texas.[1] The only basis for that suit is a judgment rendered in February 1995 by the U.S. District Court for the District of Hawaii (the "Hawaii Judgment"). In July 2008, the U.S. Court of Appeals for the Ninth Circuit held that the Hawaii Judgment expired in February 2005 under Hawaii's ten-year limitations period for judgments. *In re Estate of Ferdinand E. Marcos*, 536 F.3d 980, 987 (9th Cir. 2008). The Texas federal court had previously stayed resolution of the Hawaii Judgment's validity because the issue would be decided by the Ninth Circuit. After the Ninth Circuit ruled, Defendant-Intervenors promptly moved to dismiss the Texas federal court suit under Tex. Civ. Prac. & Rem. Code § 16.066(a), a "borrowing" statute that bars enforcement in Texas of a judgment that expired in the rendering jurisdiction before enforcement proceedings in Texas began. Defendant-Intervenors' motion to dismiss is fully briefed, and a ruling by the Northern District of Texas is pending.

In an effort to make an end run around the Ninth Circuit's dispositive ruling and avoid dismissal of their time-barred Texas federal court lawsuit, Plaintiffs have filed what they call a "judgment" in the Northern District of Texas under 28 U.S.C. § 1963 and in this Court under Tex. Civ. Prac. & Rem. Code § 35.003. This Court should vacate Plaintiffs' filing for three separate and independently sufficient reasons.

First, Plaintiffs have not filed a "judgment" in this Court, but instead have filed the revival of their *registration* of the Hawaii Judgment in Illinois. In 1997, Plaintiffs registered the

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[1] The defendant corporations are B.N. Development Co., Inc., Ellesmere Investment Corp., Inc., Jason Development Co., Inc., Langley Investment Corp., Inc., Pender Investment Corp., Inc., Revelstoke Investment Corp., Inc., and Vernon Investment Corp., Inc.; the case is *Del Prado v. B.N. Development Company, Inc.*, No. 05-234 (N.D. Tex.).

Hawaii judgment in the Northern District of Illinois for enforcement *in that district* under § 1963. As a matter of federal law, the 1997 registration did not create a new "Illinois judgment."

The Ninth Circuit's recent decision specifically rejected Plaintiffs' "Illinois judgment" argument, holding that the 1997 registration did *not* create a new judgment that could be enforced elsewhere. *In re Estate of Ferdinand E. Marcos*, 536 F.3d at 983, 988-89. Likewise, the Fifth Circuit has squarely held that registration under § 1963 does *not* create a "new judgment as would have been obtained in a plenary action duly filed." *United States v. Kellum*, 523 F.2d 1284, 1289 (5th Cir. 1975).

Second, Plaintiffs have failed to file an authenticated copy of their January 23, 1997 Illinois "judgment" as required by Tex. Civ. Prac. & Rem. Code § 35.003(a). Plaintiffs have filed only a standard form completed by the clerk in the Northern District of Illinois on September 4, 2008. This one-page ministerial document reflects that Court's revival of the 1997 *registration* of the *Hawaii Judgment* in the Illinois court. It does not comply with § 35.003(a) because it identifies neither the nature of the action nor the "judgment" at issue. Most revealing, the order provides that the revived registration includes interest *since 1995* – long before Plaintiffs began litigating in the Illinois court, and thus long before that court could have entered a judgment in their favor. (Pls.' Filing of Foreign Judgment at 7.) Because the documents filed by Plaintiffs do not meet the requirements of § 35.003, the filing has no effect. *See Love v. Moreland*, --- S.W.3d ---, No. 07-07-0418-CV, 2008 WL 2834172, at *2 (Tex. App.–Amarillo July 23, 2008, no pet.) ("to gain the same recognition and effect of a judgment issued by a Texas court under § 35.001 *et seq.* . . . an authenticated foreign judgment must be filed"); *Wolfram v. Wolfram*, 165 S.W.3d 755, 759 n.5 (Tex. App.–San Antonio 2005, no pet.) (filing abstract of judgment did not "me[e]t the requirement of section 35.003").

Third, and finally, the 10-year limitations period of Tex. Civ. Prac. & Rem. Code § 16.066(b) bars enforcement here of what Plaintiffs call the "Illinois judgment." The registration that Plaintiffs seek to disguise as an "Illinois judgment" occurred in 1997, more than 10 years before Plaintiffs filed the revived registration in this Court on October 10, 2008.

For these reasons, Plaintiffs' filing must be vacated. Alternatively, to save judicial resources, this Court may wish to stay ruling on this motion until the Northern District of Texas resolves whether the revived registration in Illinois of the Hawaii Judgment for purposes of enforcement in Illinois creates a new "judgment" that itself can be registered elsewhere. If the Court chooses that course, Defendant-Intervenors respectfully request that it enter an order providing that Plaintiffs' purported filing of an "Illinois judgment" in this Court shall not be deemed a valid judgment unless the Northern District of Texas reaches such a conclusion.

As a second alternative, Defendant-Intervenors request a new trial pursuant to Rule 329b.

PROCEDURAL BACKGROUND

A. The Proceedings in Illinois to Enforce the Hawaii Judgment

On February 3, 1995, the U.S. District Court for the District of Hawaii rendered the Hawaii Judgment. (Ex. B, Compl. ¶¶ 1, 4, 12, *Del Prado v. B.N. Development Co., Inc.*, No. 05-234 (N.D. Tex.), at App. 4, 5, 6.)

On January 23, 1997, Plaintiffs registered the judgment in the Northern District of Illinois under § 1963. Plaintiffs did so by filing in that court a certification of authenticity from the District of Hawaii that attached the Hawaii Judgment. (Ex. C, at App. 11.) The registration appears in the docket of the Illinois court as follows (Ex. D, at App. 36):

> CERTIFICATION OF JUDGMENT received From: USDC of Hawaii Other Court #: MDL 840 against the defendants estate in the amount of $1,964,005,859.90 plus interest; Civil cover sheet (Documents 1-1 through 1-2) (fce) (Entered: 01/24/1997).

In beginning enforcement proceedings in the Illinois court, Plaintiffs stated that they were enforcing the Hawaii Judgment and never suggested that its registration created a new judgment. On the day of registration and a few months later, Class Counsel Robert A. Swift submitted affidavits stating that Plaintiffs sought to enforce the judgment "entered on February 3, 1995." (Ex. E, at App. 43; Ex. F, at App. 44.) In opposing a motion to quash the proceedings, Plaintiffs stated that they were enforcing "a money judgment [entered] in February 1995" by the District of Hawaii. (Ex. G, at App. 49.)

On July 22, 1997, Judge Robert W. Gettleman, who was presiding over the enforcement proceedings in the Illinois registration court, granted a motion to dismiss. (Ex. H, at App. 54.) The Illinois court described the judgment that Plaintiffs sought to enforce as "a money judgment against Marcos's estate in February of 1995 in a multi-district action in the District of Hawaii." (*Id.*) For more than a decade thereafter, nothing related to the Hawaii Judgment happened in Illinois and, under Illinois law, the registration became dormant and unenforceable. Under 735 ILCS 5/2-1602, a dormant judgment can be "revived."

B. Plaintiffs' Tactical Decision to Litigate the Validity of the Hawaii Judgment in the Ninth Circuit

In April 2005, Plaintiffs registered the Hawaii Judgment in the Northern District of Texas under § 1963 and filed an execution action against Defendant-Intervenors in that court four days later. (Ex. I, Cert. of Judgment for Registration in Another Dist. (N.D. Tex. filed Apr. 4, 2005), at App. 57; Ex. B, Compl. ¶¶ 1, 4, 12, at App. 4, 5, 6.) In May 2006, Defendant-Intervenors' counsel notified Mr. Swift that Defendant-Intervenors intended to file a dispositive motion based on the expiration of the Hawaii Judgment. On June 15, 2006, Defendant-Intervenors filed that motion.

Without notice to or service on Defendant-Intervenors, Plaintiffs moved in the District of Hawaii for an "extension" of the Hawaii Judgment. *In re Estate of Ferdinand E. Marcos*, 536 F.3d at 983; (Ex. J, Gulland Decl. ¶ 4, at App. 73.) The Ninth Circuit characterized this tactic as a "preemptive strike" designed to "pretermit the outcome of [the Texas] motion to dismiss" and "transfer[ ] the forum for determining the life of the [Hawaii] Judgment . . . to . . . Hawaii." *In re Estate of Ferdinand E. Marcos*, 536 F.3d at 985-86. After the District of Hawaii granted the "extension," Revelstoke appealed to the Ninth Circuit. *Id.* at 984.

Taking notice that the validity of the Hawaii Judgment was before the Ninth Circuit, the Northern District of Texas denied Defendant-Intervenors' dispositive motion without prejudice and granted Defendant-Intervenors leave "to refile their motion to dismiss no later than thirty days from the date of the Ninth Circuit's decision." (Ex. K, at App. 76.) The Northern District of Texas specifically recognized that Defendant-Intervenors' "motion to dismiss [this action] turns on the decision of the Ninth Circuit." (*Id.*) Defendant-Intervenors filed that motion in August 2008, shortly after the Ninth Circuit reversed the District of Hawaii's order "extending" the Hawaii Judgment, and the motion is pending.

In the Ninth Circuit, Plaintiffs argued that the Hawaii Judgment remained viable because it "was registered, *inter alia*, in the United States [District] Court for the Northern District of Illinois on January 23, 1997." (Ex. L, Br. of Appellee at 24-25, *In re Estate of Ferdinand E. Marcos*, No. 06-16301 (9th Cir. Aug. 25, 2006) ("Pls.' Ninth Circuit Br."), at App. 81-82.) Plaintiffs argued that the Illinois "registration constitute[d] a new judgment." (*Id.*, at App. 82.) The Ninth Circuit rejected these arguments, holding that the Hawaii Judgment "expired in February 2005" pursuant to Haw. Rev. Stat. § 657-5. *In re Estate of Ferdinand E. Marcos*, 536 F.3d at 987-89.

C. Plaintiffs' Petition to Revive the Registered Hawaii Judgment in Illinois

Less than a month after the Ninth Circuit's decision, Plaintiffs petitioned the Illinois court under 735 ILCS 5/2-1602 "to revive their judgment against the Estate of Ferdinand E. Marcos registered in th[at] Court on January 23, 1997." (Ex. M, Pls.' Pet. for Revival of Judgment at 1, *In re Estate of Ferdinand E. Marcos*, No. 97-C-0477 (N.D. Ill. Aug. 27, 2008), at App. 85.) The petition states that the judgment "had originally been entered in the United States District Court for the District of Hawaii." (*Id.*) Further, the petition seeks "interest from February 3, 1995 pursuant to 28 U.S.C. 1961," *id.* at App. 86, a federal statute providing that "interest shall be calculated *from the date of the entry of the judgment*," 28 U.S.C. § 1961(a) (emphasis added).

On September 4, 2008, Judge Gettleman signed an order granting the revival petition. (Ex. N, at App. 98.) Plaintiffs have not submitted the order to this Court.

D. Plaintiffs' Filings of the Illinois "Judgment" in the Northern District of Texas and in This Court

On October 10, 2008, Plaintiffs filed what they call an "Illinois judgment" in this Court. Unlike Plaintiffs' revival petition in the Northern District of Illinois, Plaintiffs' filing in this Court omits that the only judgment at issue was originally entered in the District of Hawaii in February 1995. (Pls.' Filing of Foreign Judgment at 1-4.) At the same time, Plaintiffs misleadingly state that they "have a class action judgment . . . in the Northern District of Illinois entered on January 23, 1997." (*Id.* ¶ 2.) Plaintiffs have not, however, filed any judgment in this Court, but instead have filed only a copy of a one-page AO 450 form, which was filled out by a deputy clerk of the Illinois court and is titled "Judgment in a Civil Case," and a certificate signed by the clerk of that court verifying the authenticity of the AO 450 form. The AO 450 form states, "IT IS HEREBY ORDERED AND ADJUDGED that the judgment is hereby revived

pursuant to 735 ILCS 5/2-1602 in the amount of $1,962,517,981.70 plus interest from 12/6/1995 pursuant to 28 U.S.C. 1961." (*Id.* at 7.)

On October 14, 2008, Plaintiffs moved the Northern District of Texas for leave to file a *second* amended version of the complaint they originally filed in April 2005, two months after the Hawaii Judgment expired. One justification offered by Plaintiffs for such an amendment is "the recent registration in . . . Tarrant County of an Illinois federal judgment in favor of the Class." (Ex. O, at App. 99-107.)

ARGUMENT

I. REGISTRATION OF THE HAWAII JUDGMENT UNDER 28 U.S.C. § 1963 DID NOT CREATE A NEW "ILLINOIS JUDGMENT."

A. The Plain Language of § 1963 Demonstrates that Registration Does Not Create a New Judgment.

The plain language of 28 U.S.C. § 1963 demonstrates that neither the 1997 registration of the Hawaii Judgment nor the recent revival of that registration created a new "Illinois judgment" that can be registered elsewhere. To the contrary, the 1997 registration and its 2008 revival simply authorize *enforcement* of the Hawaii Judgment *in the registration court.*

Section 1963 provides a streamlined means of registering a federal court judgment in other federal judicial districts for enforcement in those districts. It does not provide that registration creates a new judgment of the registration court. Indeed, the statute states that a registered judgment "shall have the *same effect* as a judgment of the district court of the district where registered and may be *enforced* in like manner." (Emphases added.) As the Fifth Circuit has recognized, § 1963 "provides for the registration of one federal district court's money judgment in another federal district court *as the precursor to enforcement of the original judgment in the latter court.*" *Home Port Rentals, Inc. v. Int'l Yachting Group*, 252 F.3d 399, 404 (5th Cir. 2001) (emphasis added).

Moreover, § 1963 authorizes registration only of a judgment that was "entered" by the rendering court. A registered judgment, however, is not "entered" as a separate document in the docket of the registration court, *see* Fed. R. Civ. P. 58, but instead is included in that court's docket as an attachment to a certification from the rendering court. Thus, the Hawaii Judgment was filed in the Illinois court as an attachment to a "Certification of Judgment" from the District of Hawaii, and the Illinois court's docket identifies the registration as a "CERTIFICATION OF JUDGMENT received From: USDC of Hawaii Other Court #: MDL 840." (Ex. D, at App. 36.)

Finally, § 1963 allows a judgment to be registered only if it "has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown." A judgment registered under § 1963 cannot be appealed because it is not a final order, *see* 28 U.S.C. § 1291, and the registration court cannot find good cause because it is not "the court that entered the judgment," *see* Fed. R. Civ. P. 58(b) (judgment is "enter[ed]" by rendering court). Under the plain language of § 1963, therefore, the 1997 Illinois registration of the Hawaii Judgment did not create a new judgment that itself may be registered elsewhere.

B. Fifth Circuit Precedent Holds That Registration Under § 1963 Does Not Create A New Judgment, And Other Courts Around The Nation Agree.

The Fifth Circuit's decision in *Kellum* forecloses any argument that the 1997 registration created a new "Illinois judgment" that itself can be registered under § 1963. In *Kellum*, a judgment entered by the Northern District of Mississippi on October 28, 1964, was registered under § 1963 in the Southern District of Mississippi exactly seven years later, but the judgment creditor did not attempt to execute on the judgment until April 1973. 523 F.2d at 1285. Under Mississippi law, a judgment could not be enforced "'for a longer period than seven years from

the rendition thereof.'" *Id.* at 1288 (quoting Miss. Code § 15-1-47 (1972)).[2] The judgment was enforceable, therefore, only if its registration on October 28, 1971 created a new judgment for all purposes or revived the original judgment. The district court had reasoned that the registration "was tantamount to the obtaining of a new judgment in a plenary action duly filed" and "constituted an effective revival of the original judgment." *Id.* (internal quotation marks omitted). The Fifth Circuit "disagree[d]": "There was no new judgment as would have been obtained in a plenary action duly filed. Neither did the registration renew or revive the 1964 judgment." *Id.* at 1288-89. To the contrary, the registered judgment "was nothing more than the 1964 judgment." *Id.* at 1289.

Likewise, the Fifth Circuit held in *Home Port Rentals* that "a money judgment" that is registered while "live" is "the equivalent" of a new judgment of the registration court "*for purposes of enforcement in the registration district.*" 252 F.3d at 405 (emphasis in original). Accordingly, the Fifth Circuit indicated that the judgment creditor "could presumably extend the limitation period for enforcing the [registered] judgment within the Western District of Louisiana" – the registration court – "by following the state procedure for revival of judgments." *Id.* at 409 n.27. In contrast, the Fifth Circuit did not suggest that revival of the registered judgment under Louisiana law could affect proceedings outside the registration court.

Plaintiffs' assertion that *Stanford v. Utley*, 341 F.2d 265 (8th Cir. 1965), supports their position is simply incorrect. Far from suggesting that registering a judgment under § 1963 renews limitations periods that apply *outside* the registration court, *Stanford* makes clear that it is

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[2] Because the judgment was "entered in Mississippi and registered in Mississippi," it was "crucial" in determining the applicable limitations period that "the same seven year period for enforcement applied in both districts." *United States v. Kellum*, 523 F.2d 1284, 1289 (5th Cir. 1975). Other than on this point, the Fifth Circuit did not suggest it was relevant that the judgment was entered and registered in the same state.

"concerned . . . only with the registration's having the same effect as a money judgment for the purpose of enforcement *in the registration court*." 341 F.2d at 270 (emphasis added). Indeed, in *Kellum* the Fifth Circuit specifically rejected the judgment creditor's assertion that *Stanford* "held that registration created a brand new judgment." *Kellum*, 523 F.2d at 1289. Indeed, *Stanford* merely noted that courts had not ruled on whether a registered judgment is a judgment that can itself be re-registered elsewhere. But *Kellum* effectively answers that question in the negative.

Other courts around the nation likewise hold that "28 U.S.C. § 1963 does not give a new judgment to the judgment creditor." *Juneau Spruce Corp. v. Int'l Longshoremen's & Warehousemen's Union*, 128 F. Supp. 697, 699 (D. Haw. 1955). As one court explained, a registration proceeding "does not constitute an action, defined in the legal sense as a lawsuit brought in court, to sue or be sued, defined as commencing or to continue legal proceedings for recovery of a right." *Powles v. Kandrasiewicz*, 886 F. Supp. 1261, 1263 (W.D.N.C. 1995) (citations omitted). To the contrary, when a judgment is registered pursuant to § 1963, "the lawsuit has already been brought, resolved and pronounced under the jurisdiction of the [rendering court]," and the judgment creditor is "simply going through the legal procedure of enforcing that final judgment." *Id.* A registration proceeding under § 1963, therefore, is fundamentally "different from a suit upon a judgment which is a new and independent action, not ancillary to the original action." *Juneau Spruce*, 128 F. Supp. at 699.

In cases arising under Federal Rule of Civil Procedure 60(b)(4) – which addresses relief from judgment – the federal courts of appeals agree that § 1963 provides only that "the original judgment has the *effect* of a local judgment," not that the registered judgment "becomes a local one." *Board of Trustees, Sheet Metal Workers' Nat'l Pension Fund v. Elite Erectors, Inc.*, 212

F.3d 1031, 1034 (7th Cir. 2000) (emphasis in original). The federal courts of appeals disagree, however, on whether "a court in which a judgment is registered under § 1963 has the authority to hear a Rule 60(b)(4) motion attacking [the rendering court's] judgment." *On Track Transp., Inc. v. Lakeside Warehouse & Trucking Inc.*, 245 F.R.D. 213, 216 (E.D. Pa. 2007) (surveying cases). No such disagreement would exist if registration pursuant to § 1963 created a new judgment of the registration court. If that were the case, the registration court would obviously be able to declare its own judgment void, and there would be no need to consider whether to entertain an attack on another court's judgment.

C. The Ninth Circuit's Holding That The 1997 Illinois Registration Did Not Create A New Judgment Precludes Plaintiffs' "Illinois Judgment" Claim.

In the Ninth Circuit, Plaintiffs argued that the 1997 Illinois "registration *constitute[d] a new judgment*" that could therefore have the "effect of extending and renewing the original Judgment." (Ex. L, at App. 81-82) (emphasis added). The Ninth Circuit disagreed, holding that registration of the Hawaii Judgment "in the Northern District of Illinois in January 1997" was only "the functional equivalent" of a new judgment for the purpose of enforcement proceedings in that District. *In re Estate of Ferdinand E. Marcos*, 536 at 983, 988-89. Indeed, the Ninth Circuit knew of "no authority suggesting that registration in one district – even if accomplished when the judgment was live – 'extends' the statute of limitations in all districts." *Id.* at 989. Accordingly, the Ninth Circuit held that the 1997 registration of the Hawaii Judgment did not create a new judgment, but instead simply allowed "*that* judgment, i.e., the newly *registered* judgment," to be enforced in the Northern District of Illinois. *Id.* (second emphasis added).

Under the doctrines of claim and issue preclusion, the Ninth Circuit's holding forecloses Plaintiffs' contention here (Pls.' Filing of Foreign Judgment ¶ 2) that the 1997 registration of the judgment in the Northern District of Illinois created a "new" judgment that itself can be

registered under § 1963. *See John G. & Marie Stella Kenedy Mem'l Found. v. Dewhurst*, 90 S.W.3d 268, 287-88 (Tex. 2002) (doctrine of claim preclusion binds parties "not only as to every matter which was offered and received . . . but as to any other admissible matter which might have been offered for that purpose") (quoting *Comm'r v. Sunnen*, 333 U.S. 591, 597 (1948)); *Dewhurst*, 90 S.W.3d at 288 (issue preclusion applies where "(1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action").

D. The Legislative History Further Confirms that Registration Under § 1963 Does Not Create a New Judgment of the Registration Court.

When Congress enacted § 1963 in 1948, the key sentence was identical to the current version: "A judgment so registered shall have the same effect as a judgment of the district court where registered and may be enforced in like manner." Act of June 25, 1948, Pub. L. No. 80-773, § 1963, 62 Stat. 958 (1948). The legislative history makes clear that Congress intended this sentence to facilitate enforcement of original federal district court judgments in other federal judicial districts, not to allow judgment creditors to generate new judgments that might be registered in courts around the nation.

Congress enacted § 1963 after the Supreme Court declined to adopt Proposed Federal Rule of Civil Procedure 77. Much like § 1963, the Proposed Rule stated not that a registered judgment is a new judgment of the registration court, but rather that a registered judgment "'shall have the *same effect* and *like proceedings for its enforcement* may be taken thereon in the court in which it is registered *as if* the judgment had been originally entered by that court.'" H.R. Rep. No. 80-308, at A166 (1947) (quoting Proposed Fed. R. Civ. P. 77) (emphases added); H.R. Rep. No. 79-2646, at A159 (1946) (same).

The advisory committee's note contrasted proposed Fed. R. Civ. P. 77 with the broader statute authorizing registration of Court of Claims judgments, then codified at 28 U.S.C. § 252, which provided that a registered judgment "'shall thereby *become and be a judgment of [the registration] court* and be enforced as other judgments in such court are enforced.'" Report of the Advisory Committee on Rules for Civil Procedure 198 (Apr. 1937) (quoting 28 U.S.C. § 252) (emphasis added). The House Reports on the bill enacted as § 1963 similarly discussed 28 U.S.C. § 2508, the successor to § 252. H.R. Rep. No. 80-308, at A166; H.R. Rep. No. 79-2646, at A159. When Congress recodified § 252 as § 2508 in 1948 – the same year it enacted § 1963 – Congress modified § 2508 to provide that a registered Court of Claims judgment shall "*be a judgment of [the registration] court* and [be] enforceable as such." Act of June 25, 1948, Pub. L. No. 80-773, § 2508, 62 Stat. 977 (1948) (emphasis added). By declining to include language like the italicized text in § 1963, Congress demonstrated that it did not intend for a judgment registered under that statute to be a new judgment of the registration court. *Compare Point Landing, Inc. v. Omni Capital Int'l, Ltd.*, 795 F.2d 415, 423 (5th Cir. 1986) (en banc) (per curiam) (where "clear language" in related statutes "demonstrate[d] that Congress kn[ew] how to provide for nationwide service of process," that "Congress omitted [such] language from [the statute at issue]" showed that "it did not intend to permit nationwide service of process [under that statute]").

Notably, Congress then revised § 2508 in 1953 to provide, as with § 1963, that registration of a Court of Claims judgment authorizes only its enforcement in the registration district. The House Report described the reason for harmonizing § 2508 with § 1963 as follows:

> The purpose of [the registration] provision is, of course, to avoid the duplication of enforcement machinery by making the facilities of the district court available to enforce the judgment against a person in that district. *But the judgment is not a judgment of the district court,* but of the United States Court of Claims. The

> amendment, therefore, simply provides that the judgment should be enforceable as other judgments. H.R. Rep. No. 83-695 (1953), *reprinted in* 1953 U.S.C.C.A.N. 2006, 2011 (emphasis added).

As amended, § 2508 – much like § 1963 – provided that a registered judgment "shall be *enforceable* as other judgments." Act to Amend Title 28, United States Code of July 28, 1953, Pub. L. No. 83-158, § 10, 67 Stat. 227 (1953) (emphasis added).

Likewise, the Senate Report on the 1954 amendment to § 1963, which made the statute applicable to judgments rendered by and registered in the district court for what was then the Territory of Alaska, states:

> The purpose of this bill is to permit any judgment obtained for the recovery of money or property and *entered in the United States district court wherein it was obtained*, to be registered in the District Court for the Territory of Alaska *for enforcement by that court* and conversely for any judgment of the District Court for the Territory of Alaska to be registered in any of the United States courts *for enforcement by the court in which it is registered.*" S. Rep. No. 83-1917 (1954), *reprinted in* 1954 U.S.C.C.A.N 3142 (emphases added).

Further confirming that only the original judgment of the rendering court can be registered under § 1963, the Senate Report states that the statute enables judgment creditors to seek "satisfaction of *a judgment* . . . in any district where *the judgment* is registered." *Id.* (emphases added). As a court applying § 1963 recognized in 1955, the legislative history for the 1954 amendment "is applicable to the whole section" and shows that "the plain and simple purpose of the statute is enforcement of the *original* judgment." *Juneau Spruce Corp.*, 128 F. Supp. at 700 (emphasis added) (citing 1954 U.S.C.C.A.N. at 3142).

In 1996, Congress amended § 1963 to allow court of appeals and bankruptcy court judgments to be registered in the same manner as district court judgments. Both the Senate and House Reports for the 1996 amendment state that § 1963 authorizes a judgment to be "registered *for enforcement purposes* in any district." S. Rep. No. 104-366 (1996), *reprinted in* U.S.C.C.A.N. 4202, 4208-09 (emphasis added); H.R. Rep. No. 104-798, at 19 (1996) (same).

In sum, the legislative history confirms that registration of a judgment under § 1963 only authorizes enforcement of that judgment in the registration court and does not make the judgment one of the registration court.

E. Revival of the 1997 Registration Did Not Create a New Judgment of the Northern District of Illinois.

As a matter of federal law, the 1997 registration of the Hawaii judgment under § 1963 in the Northern District of Illinois did not create a new judgment of the Illinois court. *In re Estate of Ferdinand E. Marcos*, 536 at 983, 988-89. Under federal law, the 1997 Illinois registration "was nothing more than the [Hawaii Judgment]." *Kellum*, 532 F.2d at 1289. Any reference that Plaintiffs may make to Illinois law on the effect of registration is irrelevant.[3] Likewise, because there was no "Illinois judgment" entered in favor of Plaintiffs, the "judgment" revived by Judge Gettleman is nothing more than the revival of the 1997 *registration* of the Hawaii Judgment in the Northern District of Illinois for purposes of enforcement in that state.

Plaintiffs' revival petition makes clear that they were asking the Illinois court to revive the 1997 registration of the Hawaii Judgment, not any purported "new" judgment created by that registration. The petition states that the "judgment" to be "revived" is the "judgment against the Estate of Ferdinand E. Marcos" that "had originally been entered in the United States District Court for the District of Hawaii" and was "registered in [the Illinois] Court on January 23, 1997." (Ex. M, at App. 85-86.) The petition further states that the amount of the revived judgment should include "interest from February 3, 1995 pursuant to 28 U.S.C. 1961." (*Id.*)

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[3] Even if Illinois law applied here -- and it does not -- the Illinois version of the Uniform Enforcement of Foreign Judgments Act provides that a foreign judgment filed in an Illinois court "'has the same effect'" as a judgment of the Illinois court, not that such a filing creates a new judgment of the Illinois court. *See* 735 ILCS § 5/12-652(a). Likewise, a case relied upon by Plaintiffs in a motion filed before the Norhtern District of Texas states that a foreign judgment filed in an Illinois court is "'treated as'" an Illinois judgment, not that it becomes an Illinois judgment. *Revolution Portfolio, LLC v. Beale*, 774 N.E.2d 14, 21 (Ill. Ct. App. 2002).

Section 1961 provides that "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court" and that "[s]uch interest shall be calculated *from the date of the entry of the judgment*." (Emphasis added.) Because Plaintiffs had not initiated any proceeding in Illinois as of February 1995, they cannot have "recovered" a "money judgment" there at that time, and the Illinois court cannot have "enter[ed] . . . the judgment" that it revived. 28 U.S.C. § 1961. By identifying "February 3, 1995" as the date of the judgment for which they sought interest, therefore, Plaintiffs acknowledged that the "judgment" they sought to revive was the 1997 registration of the Hawaii Judgment.

Plaintiffs' revival petition neither mentions Federal Rule of Civil Procedure 58 nor suggests that the 1997 registration created an Illinois judgment. Instead, the petition states that Plaintiffs "move [the Illinois] Court to revive their judgment against the [Marcos Estate] registered in [the Illinois] Court on January 23, 1997." (Ex. M, at App. 85.) By contrast, the order signed by Judge Gettleman on September 4, 2008 – which Plaintiffs have not submitted to this Court – grants "plaintiffs' Petition for Revival of Judgment," but then erroneously indicates that the "judgment" at issue was originally entered by the Illinois court: "The Clerk shall enter this revived judgment pursuant to FRCP 58." (Ex. N, at App. 98.) It appears that counsel prepared the order, as evidenced by (i) the document identification number on the bottom-right-hand corner of the page and (ii) the misspelling of the judge's name as "Gettlemen" in the signature block. (*Id.*)

On the same day Judge Gettleman signed the order, George Schwemin, a Deputy Clerk of the Northern District of Illinois, completed a standard form AO 450, titled "Judgment in a Civil Case," stating that "the judgment is hereby revived" without identifying the "judgment" at issue. (Pls. Filing of Foreign Judgment at 7.) But Plaintiffs' revival petition did not seek entry of a new

judgment, and the order signed by Judge Gettleman does not suggest that either the revival of the 1997 registration or the registration itself created a new judgment of the Illinois court.

Nevertheless, Plaintiffs have purported to file in this Court what they call "a class action *judgment* against the Estate of Ferdinand E. Marcos in the Northern District of Illinois *entered on January 23, 1997*." (Pls.' Filing of Foreign Judgment ¶ 2.) But Plaintiffs have not submitted to this Court any of the documents they filed in the Illinois court in 1997; nor have they submitted the order reviving the 1997 registration. Instead, Plaintiffs have submitted only the AO 450 form that Deputy Clerk Schwemin prepared after Judge Gettleman signed the revival order that was apparently prepared by counsel. (*Id.* at 7.) Thus, the "judgment" they claim to have "registered" in this Court is simply a disguised revival of the certified copy of the Hawaii Judgment that they filed in the Northern District of Illinois in 1997. Because Plaintiffs have not filed any genuine Illinois judgment in this Court, they are wrong in suggesting that there is a basis for creating a new judgment of this Court under Tex. Civ. Prac. & Rem. Code § 35.003. Any reference to cases applying "full faith and credit" principles are similarly misplaced because there simply in nothing to give full faith and credit to.

Finally, Plaintiffs have wrongly argued in the Northern District of Texas, and will likely argue here as well, that the U.S. Supreme Court has approved Plaintiffs' "re-registration" tactic. (Ex. O, Pls.' Mem. at 4-5, 7, at App. 102-03, 105.) Unlike the § 1963 registration context here, the cases cited by Plaintiffs involved judgments rendered by *state courts* and enforcement through *independent actions* on the judgments rather than registration, and do not even mention § 1963. *See Watkins v. Conway*, 385 U.S. 188, 188 (1966) (per curiam) (judgment creditor "sued upon [a Florida state court] judgment in a superior court of Georgia"); *Union Nat'l Bank of Wichita v. Lamb*, 337 U.S. 38, 39 (1949) (suit on Colorado state court judgment was brought in

Missouri state court); *Roche v. McDonald*, 275 U.S. 449, 450-51 (1928) (judgment creditor obtained a new judgment from an Oregon state court after he sued there "upon [a Washington state court] judgment," and then sued "upon the Oregon judgment" in the Washington state court).

II. PLAINTIFFS FAIL TO COMPLY WITH § 35.003.

"To gain the same recognition and effect of a judgment issued by a Texas court under § 35.001 *et seq.* of the Texas Civil Practice and Remedies Code [the "Uniform Act"], an authenticated foreign judgment must be filed with the clerk of the Texas court." *Love*, 2008 WL 2834172, at *2; *see also Carter v. Jimerson*, 974 S.W.2d 415, 417 (Tex. App.–Dallas 1998, no pet) ("The filing of a foreign judgment is effective under the Uniform Act only if the party follows the statutory requirements of authentication, filing, and notice.") Where a party fails to file an authenticated copy of the judgment it seeks to enforce, the terms of the Uniform Act "never enure to her benefit." *Love*, 2008 WL 2834172, at *2. A deficient filing "never create[s] a final Texas judgment," *Dear v. Russo*, 973 S.W.2d 445, 448 (Tex. App.–Dallas 1998, no pet.), and a trial court retains jurisdiction "to adjudicate the validity of [the] purported [] filing [of] a foreign judgment," *Love*, 2008 WL 2834172, at *2.

Texas courts hold that filing an abstract or transcript of a judgment does not satisfy the requirements of § 35.003. *Wolfram*, 165 S.W.3d at 759 n.5; *Love*, 2008 WL 2834172, at *2 & n.5. Such documents are insufficient because they (i) are not reproductions of the words of the original judgment, (ii) are not signed by the judge of the rendering court, and (iii) omit elemental items of a judgment such as "verbiage manifesting the adjudication of the rights involved." *Id.*; *Wolfram*, 165 S.W.3d at 759 n.5.

Here, Plaintiffs have failed to file even an authenticated copy of the docket entry in the Northern District of Illinois that reflects the 1997 registration of the Hawaii Judgment. (Ex. D, at

App. 36 ("CERTIFICATION OF JUDGMENT received From: USDC of Hawaii Other Court #: MDL 840").) Instead, Plaintiffs have filed a one-page form completed by a deputy clerk. The form does not reproduce the words of any judgment, does not contain the rendering judge's signature, and does not specify the "judgment" being revived. Moreover, the form states that interest is awarded *from 1995* – over one year *before* the Illinois "judgment" was allegedly entered. (Pls.' Filing of Foreign Judgment at 7.) This form, therefore, is plainly insufficient under § 35.003. *See Love*, 2008 WL 2834172, at *2 & n.5; *Wolfram*, 165 S.W.3d at 759 n.5

In the alternative, because the Court's plenary power lasts until a final judgment is entered, the Court may adjudicate the validity of Plaintiffs' purported filing of the Illinois judgment through summary proceeding. *See Lov*e, 2008 WL 2834172, at *3. In addition, the Court could stay proceedings on the validity of Plaintiffs' filing until the Northern District of Texas rules on Plaintiffs' motion for leave to amend, which poses virtually the exact same issues as those raised here. (*See* Ex. O, at App. 99-107.)

III. ANY ENFORCEMENT OF THE SO-CALLED ILLINOIS JUDGMENT IS TIME-BARRED UNDER TEX. CIV. PRAC. & REM. CODE § 16.066(b).

Under Texas law, section 16.066(b) governs an action based on a judgment filed under Tex. Civ. Prac. and Rem. Code § 35.003. *See Lawrence Sys., Inc. v. Superior Feeders*, 880 S.W.2d 203, 208 (Tex. App.–Amarillo 1994, writ denied). Section 16.066(b) provides: "An action against a person who has resided in this state for 10 years prior to the action may not be brought on a foreign judgment rendered more than 10 years before the commencement of the action in this state." Since the Hawaii Judgment was registered in Illinois on January 23, 1997, the 10-year period would run from that day, even if it is assumed that registration created a new "Illinois judgment." Thus, the filing of the Illinois judgment on October 10, 2008 should be

vacated insofar as it may be used as the basis for an enforcement action against Defendant-Intervenors.

Both elements of section 16.066(b) are satisfied here. *First*, Plaintiffs did not attempt to enforce the 1997 Illinois registration in Texas until October 2008, "more than 10 years" later. Tex. Civ. Prac. and Rem. Code § 16.066(b). Although the purported "judgment" was revived in September 2008, Texas law provides that the limitations period imposed by section 16.066(b) is renewed by revival of a judgment only if the law of the rendering state provides that revival creates a new judgment – even when the rendering court's revival order is styled a "judgment." *McCoy v. Knobler*, 260 S.W.3d 179, 182-86 (Tex. App.–Dallas 2008). Under Illinois law, "[t]he revival of a judgment is not the creation of a new judgment." *First Nat'l Bank in Toledo v. Adkins*, 650 N.E.2d 277, 279 (Ill. App. Ct. 1995). Accordingly, even under the incorrect view that the 1997 registration of the Hawaii Judgment in Illinois created an "Illinois judgment," the 10-year limitations period would have started to run in 1997.

Second, as of October 2008 (indeed, as of April 2005), each of the Defendants had "resided" in Texas for more than 10 years. Under Texas law, a foreign corporation is deemed to have "resided" in Texas when it is licensed to do business in Texas. *See, e.g., Nat'l Truckers Serv., Inc. v. Aero Sys., Inc.*, 480 S.W.2d 455, 458 (Tex. App.–Ft. Worth 1972, writ ref'd n.r.e.). In *National Truckers*, the Texas Court of Appeals held that nonresident foreign corporations qualified to do business in Texas are "residents" under the State's long-arm statute. *Id.* at 456.[4]

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[4] The relevant portion of the Texas long-arm statute in force when *National Truckers* was decided is materially identical to the current version. *Compare* 480 S.W.2d at 457 ("'[A]ny foreign corporation . . . or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas . . . .'") (quoting Tex. Civ. Stat. Ann. art. 2031b, § 4), *with* Tex. Civ. Prac. & Rem. Code § 17.042 (Vernon 2008) ("[A] nonresident does business in this state if the nonresident: (1) contracts by mail or otherwise with a Texas resident . . . .").

The court observed that, under Texas law, "'[a] foreign corporation which shall have received a certificate of authority . . . shall . . . enjoy the same . . . rights and privileges as a domestic corporation.'" *Id.* (quoting Tex. Bus. Corp. Act ann. Art. 8.02). Thus, the court held that any foreign corporation licensed to business in Texas is a "resident" of the state because a contrary determination would be a "denial of equal protection of the laws." *Id.*; *accord St. Paul Fire & Marine Ins. Co. v. Paw Paw's Camper City, Inc.*, 346 F.3d 153, 157 (5th Cir. 2003) (same in case involving the meaning of "residents" under an analogous Mississippi statute).

Here, the Court may take judicial notice of the fact that every Defendant has been qualified to do business in Texas for more than 10 years. The Texas Secretary of State Business Organization records, of which Texas courts may take judicial notice, *In re Doctor's Hosp. 1997*, 351 B.R. 813, 822 (Bankr. S.D. Tex. 2006) (applying federal rule of evidence that is identical to Texas rule), and Plaintiffs' pleadings in the Northern District of Texas show:

- Ellesmere Investment Corp., Inc., Pender Investment Corp., Inc., and Revelstoke Investment Corp., Inc. have been qualified to do business in Texas since December 31, 1987 (Exs. P, Q & R);
- Langley Investment Corp., Inc., and Vernon Investment Corp., Inc., have been qualified to do business in Texas since January 11, 1988 (Exs. S & T);
- B.N. Development Co., Inc., is a Texas corporation and successor to Breton [Property] Corp., Inc. (Ex. B, Compl. ¶ 6, at App. 5), which has been qualified to do business in Texas since December 31, 1987 (Ex. U); and
- Jason Development Co., Inc., is a Texas corporation and successor to Jasonville Investment Corp., Inc., (Ex. B, Compl. ¶ 7, at App. 6), which has been qualified to do business in Texas since December 31, 1987 (Ex. V).

Therefore, Tex. Civ. Prac. and Rem. Code § 16.066(b) would preclude any enforcement action based on the filing of the purported "Illinois judgment."

CONCLUSION

For the forgoing reasons, Defendant-Intervenors request that this Court vacate Plaintiffs' October 10, 2008 filing of a foreign judgment. Alternatively, the Court should stay ruling pending resolution of Plaintiffs' motion for leave to file a second amended complaint in *Del Prado v. B.N. Development Co., Inc.*, No. 05-234 (N.D. Tex), and enter an order providing that the AO 450 form filed by Plaintiffs in this Court shall not be deemed a valid judgment unless the Northern District of Texas reaches such a conclusion.

As a second alternative, Defendant-Intervenors request a new trial pursuant to Rule 329b.

Respectfully submitted,

Janet E. Militello
State Bar No. 14051200
Neale Shields
State Bar No. 24013499
Locke Lord Bissell & Liddell LLP
3400 JPMorgan Chase Tower
600 Travis Street
Houston, TX 77002
Telephone: 713-226-1200
Fax: 713-223-3717

Of Counsel:

Eugene D. Gulland
Peter D. Trooboff
Neil K. Roman
Joshua D. Greenberg
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-6000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record by certified mail, return receipt requested, hand delivery, and/or facsimile on the 10th day of November, 2008:

Patrick Woodson
2800 South Hulen Street
Suite 115
Fort Worth, TX 76109
Fax: 817-698-9401

Robert A. Swift, Esq.
Kohn, Swift & Graf P.C.
One South Broad Street
Suite 2100
Philadelphia, PA 19107

Mrs. Imelda Marcos, Executrix
Suite 34-B Pacific Plaza Condominium
Ayala Avenue, Makati City 1226
Philippines

Congressman Ferdinand R. Marcos, Executor
House of Representatives, Rm. N 114
Constitution Hill
1126 Quezon City
Philippines

Neale Shields