

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ROMULO DEL PRADO, on behalf of himself and a Class of Judgment Creditors of the Estate of Ferdinand E. Marcos,	:	Civil Action No.
	:	4-05CV-234-Y
	:	
	:	
Plaintiff,	:	
v.	:	Class Action
	:	
B.N. DEVELOPMENT COMPANY, INC.;	:	
ELLESMERE INVESTMENT CORPORATION, INC.;	:	
JASON DEVELOPMENT COMPANY, INC.;	:	
LANGLEY INVESTMENT CORPORATION, INC.;	:	
PENDER INVESTMENT CORPORATION, INC.;	:	
REVELSTOKE INVESTMENT CORPORATION, INC.;	:	
and VERNON INVESTMENT CORPORATION, INC.,	:	
	:	
Defendants.	:	

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE
TO FILE A SECOND AMENDED COMPLAINT**

Plaintiff Romulo Del Prado has moved this Court for leave to file a Second Amended Complaint. The need to file a Second Amended Complaint arises out of the recent registration in this District of an Illinois federal judgment in favor of the Class and against the Estate of Ferdinand E. Marcos. Defendants have challenged the enforceability of the Hawaii federal judgment referenced in the Amended Complaint. The Second Amended Complaint moots that challenge by referencing any judgment registered in this District in favor of the Class and against the Estate of Ferdinand E. Marcos, which includes the Illinois federal judgment.

I. Background to the Motion

Defendants have assailed the enforceability of the Hawaii federal judgment dated February 3, 1995 in this Court as well as the District Court for Hawaii and the Ninth Circuit

Court of Appeals. By Opinion dated July 31, 2008, the Ninth Circuit agreed with defendants that the Hawaii judgment in favor of the Class was no longer enforceable under a Hawaii sunseting statute, Haw. Rev. Stat. 657-5, notwithstanding that the federal judgment is on a federal cause of action. That Opinion is not yet final and the Ninth Circuit has stayed its mandate pending the filing by the Class of a petition for certiorari with the United States Supreme Court.¹ Relying on the Ninth Circuit's Opinion, Defendants filed a Motion for Judgment on the Pleadings on August 8, 2008.

On January 23, 1997 the Class registered the original judgment from the Hawaii federal court with the United States District Court for the Northern District of Illinois. Pursuant to Illinois law, the registered judgment became an independent judgment of the Illinois courts enforceable for 20 years. However, after 7 years the judgment became dormant but subject to revival at any time during the 20 year period.² On Petition of the Class, the Illinois federal court revived the judgment on September 4, 2008. Once the revival became final after 30 days, the judgment was registered in this District on October , 2008 pursuant to 28 U.S.C. § 1963.

II. Argument

A. Leave to File an Amended Complaint Should Be Liberally Granted

Federal Rule of Civil Procedure 15(a) provides that leave to amend a pleading "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). "... [T]he language of this rule 'evinces a bias in favor of granting leave to amend.'" *Smith v. EMC Corp.*, 393 F.3d 590

¹ Further clarity on the construction of Haw. Rev. Stat. 657-5 may be achieved when the Hawaii Supreme Court responds to a Certified Question directed to it by the Hawaii federal court in a non-Class case against the Estate of Ferdinand E. Marcos.

² Interestingly, both the Illinois and Hawaii statutes provide for enforcement for 20 years. But Hawaii requires that a motion to revive be made within the first 10 years while Illinois permits revival at any time during the 20 years.

(5th Cir. 2004) quoting *Lyn-Lea Travel Corp. v. Am. Airlines*, 283 F.3d 282, 286 (5th Cir.2002). A motion for leave to amend should not be denied unless the court finds a substantial reason to do so. See *Jacobsen v. Osborne*, 133 F.3d 315, 318 (5th Cir. 1998); *Leffall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 524 (5th Cir.1994).

The proposed Second Amended Complaint does not change the facts or cause of action. Plaintiff has timely moved to file it after the registration of the Illinois federal judgment. The Second Amended Complaint simply gives notice that instead of the Class relying specifically on the Hawaii federal judgment, the Class relies on any judgment registered in this District in their favor and against the Marcos Estate.

**B. The Illinois Federal Judgment Is Valid and Properly Registered
In this District Pursuant to 28 U.S.C. § 1963**

Once the Hawaii federal judgment was registered in the Illinois federal court, it became an independent judgment with its own effective date. The federal registration statute provides in pertinent part:

A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

In the landmark case in this area, *Stanford v. Utley*, 341 F.2d 265, 268 (8th Cir. 1965), then Circuit Judge Blackmun held that that the statute was substantive as well as procedural and stated that registration “provides, so far as enforcement is concerned, the equivalent of a new judgment of the registration court.” In accord: *United States for the Use and Benefit of Hi-Way Electric Co. v. Home Indemnity Co.*, 549 F.2d 10, 13 (7th Cir. 1977) (“[t]he language of Section 1963 indicates that the court of registration is to treat the registered judgment as if it were an original judgment of the registering court.”); *Condaire, Inc. v. Allied Piping, Inc.*, 286 F.3d 353,

357 (7th Cir. 2002); *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399, 404-05 (5th Cir. 2001); *Marx v. Go Publishing Co., Inc.*, 721 F.2d 1272 (9th Cir. 1983); *US v. Home Indemnity Co.*, 549 F.2d 10, 13 (7th Cir. 1977).

By statute and caselaw, Illinois law treats a foreign judgment³ registered in Illinois as an Illinois judgment for all purposes. The Illinois statute on the status of foreign judgments, 735 ILCS § 5/12-652(a), provides:

A copy of any foreign judgment authenticated in accordance with the acts of Congress or the statutes of this State may be filed in the office of the circuit clerk for any county of this State. The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court for any county of this State. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a circuit court for any county of this State and may be enforced or satisfied in like manner.

In the leading Illinois case on foreign judgments, *Revolution Portfolio, LLC v. Beale*, 332 Ill.App.3d 595, 774 N.E.2d 14, appeal denied, 202 Ill.2d 662, 787 N.E.2d 169 (2002), the court held that “a foreign judgment filed in accordance with section 12-652 is treated as an Illinois judgment.” 774 N.E.2d at 21. The court also ruled that an Illinois court could revive the foreign judgment under Illinois law the same as a judgment originally issued in an Illinois court. *Id.* The date of registration in Illinois establishes a new effective date for the judgment from which the 20 year period runs. *Light v. Light*, 12 Ill.2d 502, 147 N.E.2d 34 (1958); *Logemann Holding, Inc. v. Lieber*, 341 Ill.App.3d 689, 793 N.E.2d 135 (Ill.App. 2003). So the Illinois federal judgment was rendered on January 23, 1997.

Section 1963 is no bar to registration of the Illinois judgment in this District. An indexed judgment of an Illinois federal court is entitled to transfer to another federal court pursuant to

³ Under Illinois law, a “foreign judgment” is a judgment rendered in another state of the union. A “foreign country judgment” is a judgment rendered in a foreign country.

Section 1963. Section 1963 does not limit where a federal court judgment may be registered or how many times it may be registered in a particular state. The United States Supreme Court has even counseled that re-registration of a judgment in the same state a foreign judgment was first registered is an appropriate way to avoid the bar of a state sunseting law. *See Watkins v. Conway*, 385 U.S. 188, 189-90 (1966) (stating that a Florida judgment could be transferred to Georgia a second time in order to avoid Georgia's 5 year bar on enforcement of the first registered judgment).

Nor is there any question of the validity and enforceability of the newly registered judgment in this District. A federal court must give full faith and credit to the judgment of a sister federal court. In a closely analogous context, the United States Supreme Court has held that it is unconstitutional for a state court to refuse to honor a second state's judgment on the same judgment which sunsetted in the first state. In *Roche v. McDonald*, 275 U.S. 449 (1928) the plaintiff obtained a monetary judgment in Washington against the defendant and sued on the judgment in Oregon just before the 6 year Washington sunseting statute expired. Several months after the 6 years had lapsed, plaintiff received an Oregon judgment based on the Washington judgment. Plaintiff then sued on the Oregon judgment in Washington. The Washington courts dismissed the case on the ground that the Oregon judgment contravened the expiration of the Washington judgment. The United States Supreme Court reversed stating:

In short, the Oregon judgment, being valid and conclusive between the parties in that state, was equally conclusive in the courts of Washington, and under the full faith and credit clause should have been enforced by them.

Id. at 455.

The *Roche* holding was relied upon by both the majority and dissenting opinions in *Union Nat'l Bank of Wichita Kansas v. Lamb*, 337 US 38 (1949) which required Missouri to enforce an 18 year old revived Colorado judgment which was then registered in Missouri

notwithstanding that the Missouri statute only permitted execution ten years after a judgment is “rendered.” Justice Frankfurter succinctly described the holding in *Roche*:

... where the enforcement of a judgment by State A is sought in State B, which has a longer limitation period than State A, State B is plainly free to enter its own judgment upon the basis of State A's original judgment, even though that judgment would no longer be enforceable in State A. If enforcement of State B's new judgment is then sought in State A, State A cannot refuse to enforce it without violating the principle that the State where enforcement of a judgment is sought cannot look behind the judgment. That was the situation in *Roche v. McDonald*, 275 U.S. 449, 48 S.Ct. 142, 72 L.Ed. 365, 53 A.L.R. 1141, and so we there held.

Id. 337 U.S. at 46 (dissenting on other grounds).

Here, even assuming the sunseting of the Hawaii federal judgment, the Illinois federal judgment was and is an independent judgment between the Class and the Estate of Ferdinand E. Marcos which is entitled to full faith and credit in this Court. Section 16.066 of the Texas Civil Practice and Remedies Code provides that “an action on a foreign judgment is barred in this state if the action is barred under the laws of the jurisdiction where rendered.” The instant judgment was “rendered” as an independent judgment of the Illinois federal court and is not barred by the law of Illinois.

C. The Illinois Federal Judgment Moots the Other Pending Motions

The registration of the January 23, 1997 Illinois federal judgment and the filing of the Second Amended Complaint moots the defendants’ Motion for Judgment on the Pleadings. That Motion is premised on the unenforceability of the Hawaii federal judgment. Assuming that Motion is denied as moot, plaintiff’s Motion to Stay Proceedings also becomes moot.

IV. Conclusion

Accordingly, plaintiff seeks leave to file his Second Amended Complaint in the form attached hereto in support its cause of action against defendants.

October , 2008

/s/ Patrick Woodson
Patrick Woodson
State Bar No. 00786364
WOODSON LAW FIRM
2800 S. Hulen, Suite 115
Fort Worth, Texas 76109
Tel: 817-698-9400

ROBERT A. SWIFT
Kohn, Swift & Graf, P.C.
One South Broad Street, Suite 2100
Philadelphia, PA 19107
(215) 238-1700

Of Counsel:

SHERRY P. BRODER
Attorney at Law - A Law Corporation
Davies Pacific Center
841 Bishop Street, Suite 800
Honolulu, Hawaii 96813
(808) 531-1411

JON M. VAN DYKE
2515 Dole Street
Honolulu, HI
(808) 956-8509

Attorneys for Plaintiff Romulo Del Prado and the Plaintiff Class