Fordham Law Review

Volume 82 | Issue 2 Article 22

2013

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THE EARLY BIRD WAITS FOR THE WORM: MAY FEDERAL JUDGMENTS BE REGISTERED PRIOR TO APPEAL?

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The federal registration statute, codified at 28 U.S.C. § 1963, permits a judgment creditor to register his or her judgment in another state by simply filing a copy of the judgment with the clerk of the registering court. Registration is permitted when the judgment becomes final by appeal, when the time to appeal expires, or when the court that entered the judgment orders registration for good cause shown. The majority of courts have interpreted good cause as a showing that the judgment debtor lacks assets in the forum jurisdiction to fulfill the judgment, but possesses substantial assets in the registering jurisdiction. District courts are split, however, on whether there must be a pending appeal before registration can be ordered.

Registration gives the judgment creditor power to create a lien on the judgment debtor's property in another district. The effect of the registered judgment depends on a state's laws regarding liens. Liens in some states may reach personal property, creating the potential for a registered judgment to have harsh effects on the debtor's livelihood and placing restrictions on the alienability of real property. The posting of a supersedeas bond can stay the enforcement of a judgment and alleviate the need for registration.

This Note argues that a judgment creditor should be permitted to register her judgment without waiting for the judgment debtor to file an appeal. However, a court should have discretion to consider whether permitting registration when the judgment debtor has not yet posted a supersedeas bond would cause irreparable harm to a good faith debtor, and if so, grant the debtor time to post a bond.

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INTRODUCTION

28 U.S.C. § 1963 allows a judgment creditor to "register" her judgment in a foreign jurisdiction merely by filing a certified copy of the judgment in that district.[1] A registered judgment has "the same effect as a judgment of the district court of the district where registered and may be enforced in like

1. *See* 28 U.S.C. § 1963 (2006).

manner."[2] Section 1963 was enacted to enable judgment creditors to use the ordinary process of executing on the judgment debtor's property in any district where the judgment has been registered.[3] It provides a judgment creditor with an alternative method of enforcing a lawsuit, other than the traditional means of initiating a second lawsuit.[4]

In its current form, 28 U.S.C. § 1963 provides, "A judgment in an action for the recovery of money or property . . . may be registered . . . when the judgment 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."[5] Prior to 1988, however, the statute permitted registration in only two scenarios: "when the judgment has become final by appeal or expiration of the time for appeal."[6] The language permitting registration on a showing of "good cause" was added in 1988 to avoid an anomalous result, which arose from the statute's interaction with Federal Rule of Civil Procedure 62(d).[7]

Rule 62(d) requires a judgment debtor to post a supersedeas bond if she wishes to obtain a stay of proceedings pending appeal beyond the fourteen-day automatic stay granted by Rule 62(a).[8] A supersedeas bond is a bond filed with the court to secure a judgment creditor's ability to collect her judgment, and to prevent loss from the stay of execution.[9] A supersedeas bond also serves the judgment debtor's interests, enabling her to avoid the hardship of executions on property or "the sometimes impossible task of recouping transferred assets if there is a reversal on appeal."[10] Ordinarily, the amount of the bond should be sufficient to satisfy the judgment in full, plus interest and costs.[11] If an appellant does not post a supersedeas bond,

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2. *Id.*
3. *See* S. REP. NO. 83-1917, at 1 (1954).
4. *See infra* Part I.A.
5. 28 U.S.C. § 1963.
6. 28 U.S.C. § 1963 (1982) (amended 1988).
7. *See* Associated Bus. Tel. Sys. Corp. v. Greater Capital Corp., 128 F.R.D. 63, 65 (D.N.J. 1989); *Court Reform and Access to Justice Act: Hearing Before the H. Subcomm. on Courts, Civil Liberties, and the Admin. of Justice of the Comm. on the Judiciary*, 100th Cong. 6, 44 (1987) [hereinafter *House Subcommittee Hearings*] (statement of Hon. Elmo B. Hunter, Chairman, Judicial Conference of the United States); Hershel Shanks & Steven A. Standiford, *Schizophrenia in Federal Judgment Enforcement: Registration of Foreign Judgments Under 28 U.S.C. § 1963*, 59 NOTRE DAME L. REV. 851, 855–56 (1984).
8. Until 2009, Rule 62(a) only provided a ten-day automatic stay. *See* FED. R. CIV. P. 62(a) & advisory committee's note. The previous rules for calculating the ten-day period also differed in that they did not include weekends. *See* 16A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3950.4 (4th ed. 2012).
9. Wilmer v. Bd. of Cnty. Comm'rs, 844 F. Supp. 1414, 1417 (D. Kan. 1993) (quoting Miami Int'l Realty Co. v. Paynter, 807 F.2d 871, 873 (10th Cir. 1986)), *aff'd*, 28 F.3d 114 (10th Cir. 1994).
10. *See* Thunder Mountain Custom Cycles, Inc. v. Thiessen Prods., Inc., No. 06-CV-02527-PAB-BNB, 2008 WL 5412469, at *4 (D. Colo. Dec. 24, 2008) (quoting Ascher v. Gutierrez, 66 F.R.D. 548, 549 (D.D.C. 1975)); Phansalkar v. Andersen Weinroth & Co., 211 F.R.D. 197, 201–03 (S.D.N.Y. 2002); *see also* Gauthier v. Mardi Capital Corp., 90 CIV. 4313(CSH), 1990 WL 250179, at *1 (S.D.N.Y. Dec. 26, 1990) (holding that a supersedeas bond "liberat[es an] appellant's property from enforcement of the judgment").
11. *See* Popular Grove Planting & Ref. Co., Inc. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1191 (5th Cir. 1979).

the judgment creditor can begin enforcement proceedings after the fourteen-day automatic stay period, despite the pending appeal.[12]

Prior to the 1988 amendment of § 1963, courts applying the literal language of § 1963 only permitted registration when the judgment was "final by appeal or expiration of time for appeal."[13] A judgment debtor could appeal, and as long as the appeal was pending, the judgment creditor was unable to register the judgment, as it was not yet "final." As such, a judgment debtor was able to effectively override the Rule 62(d) bond requirement. The "final by appeal" requirement of § 1963 allowed the debtor to delay or avoid payment by transferring his assets to another jurisdiction *while the appeal was pending*.[14] In this manner, a debtor secured a "de facto" stay of the proceedings.[15]

The 1988 amendment sought to rectify this problem by allowing the court that *entered the judgment* to authorize registration on a showing of "good cause."[16] However, courts are split on whether it is premature for a plaintiff to move for registration after the fourteen-day automatic stay provided by Rule 62(a),[17] but before the judgment debtor has appealed. The Eastern District of Missouri,[18] the Northern District of Illinois,[19] and the District of Idaho[20] have found that the judgment debtor must appeal before registration can be permitted. In contrast, the District of Columbia,[21] the Eastern District of Virginia,[22] the Eastern District of Pennsylvania,[23] and the Southern District of New York[24] have all permitted registration

12. *See In re* Fed. Facilities Realty Trust, 227 F.2d 651, 654 (7th Cir. 1955) ("From the inception of the federal judiciary, a judgment could be executed while an appeal therefrom was pending unless timely application was made by the appellant to the trial court or to a judge or justice of the appellate tribunal for a stay."); *In re* Lewis Jones, Inc., 369 F. Supp. 111, 116 (E.D. Pa. 1973) ("Absent the grant of a stay or injunction and the approval of a bond, the *status quo* of the litigation is not fixed and the litigation is free to continue.").

13. *See* 28 U.S.C. § 1963 (1982) (amended 1988).

14. *See* Shanks & Standiford, *supra* note 7, at 855–56.

15. *See* Associated Bus. Tel. Sys. Corp. v. Greater Capital Corp., 128 F.R.D. 63, 66 (D.N.J. 1989).

16. *See* 28 U.S.C. § 1963 (2006).

17. *See* FED. R. CIV. P. 62(a); *infra* Part I.D.2.

18. *See* Educ. Emps. Credit Union v. Mut. Guar. Corp., 154 F.R.D. 233, 235 (E.D. Mo. 1994).

19. *See* Generica Ltd. v. Pharm. Basics, Inc., No. 95 C 5935, 1996 WL 535321, at *10 (N.D. Ill. Sept. 18, 1996), *aff'd*, 125 F.3d 1123 (7th Cir. 1997).

20. *See* Blaine Larsen Processing, Inc. v. Hapco Farms, Inc., Civ. No. 97-0212-E-BLW, 2000 WL 35539979, at *14 (D. Idaho Aug. 9, 2000).

21. *See* Spray Drift Task Force v. Burlington Bio-Med. Corp., 429 F. Supp. 2d 49, 51 (D.D.C. 2006).

22. *See* E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc., Civil Action No. 3:09cv058, 2012 WL 1203327, at *2–3 (E.D. Va. Apr. 10, 2012).

23. *See* Great Am. Ins. Co. v. Stephens, Civil Action No. 04-3642, 2006 WL 2349991, at *2 (E.D. Pa. Aug. 11, 2006); Garden State Tanning, Inc. v. Mitchell Mfg. Grp., Inc., No. CIV.A. 98-4789, 2000 WL 1201372, at *1–2 (E.D. Pa. Aug. 4, 2000).

24. *See* Commonwealth Assocs. v. Palomar Med. Tech., No. 96 CIV. 1868 HB MHD, 1997 WL 304905, at *1 (S.D.N.Y. June 6, 1997); Notice of Appeal by Palomar Med. Tech. from Judgment Order, *Commonwealth Assocs.*, 1:96CV01868, ECF No. 41.

before the defendant appealed. Additionally, the Tenth Circuit,[25] the District of Maryland, the Northern District of California,[26] the Eastern District of Pennsylvania,[27] the Eastern District of Tennessee,[28] the Northern District of Illinois,[29] and the D.C. District Court[30] have addressed motions to register a judgment after an appeal had been filed. These courts noted that the defendants' failure to post a supersedeas bond was at least part of the reason the court found good cause to register. These cases illustrate the usefulness of giving a judgment debtor an opportunity to post a bond before permitting registration.

Part I of this Note explains the traditional method of enforcing a judgment in a foreign jurisdiction by a second action on the judgment. It outlines the purpose of enacting § 1963, as well as the anomalous result created by the "final by appeal" language of the original statute. This Part then describes the 1988 amendment, which attempted to remedy the issue by introducing the "good cause" language.

Part II discusses the conflict between district courts on whether the judgment debtor needs to commence an appeal before the judgment can be registered. Part III argues that, in the context of a motion for registration prior to an appeal, a creditor should not have to wait until the debtor appeals, but the debtor should at least be given an opportunity to post a supersedeas bond while the case is on appeal.

I. GRABBING AT PURSE STRINGS: FEDERAL JUDGMENTS AND THE ROAD TO ENFORCEMENT AND EXECUTION

Part I.A discusses the traditional method of enforcing a federal judgment in a foreign district by means of a second action on a judgment. Part I.B discusses the enactment of 28 U.S.C. § 1963, which sought to streamline enforcement procedures by permitting a judgment creditor to register her judgment in a foreign jurisdiction by filing a certified copy of the judgment in that district. It also considers the issues created by the literal application of the "final by appeal" language of the original statute. Part I.C introduces the 1988 amendment to § 1963, which sought to remedy the issues created by the "final by appeal language" by permitting the court that entered the judgment to order registration for "good cause" shown. Part I.D explains the effects of a registered judgment, and what enforcement means for both the judgment debtor and creditor.

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25. *See In re* Steel Reclamation Res., Inc., No. 94-6396, 1995 WL 495272, at *3 (10th Cir. Aug. 21, 1995).

26. *See* Funai Elec. Co. v. Daewoo Elecs. Corp., No. C-04-1830 JCS, 2009 WL 605840, at *3 (N.D. Cal. Mar. 9, 2009).

27. *See* Henkels & McCoy, Inc. v. Adochio, No. Civ.A. 94-3958, 1997 WL 535899, at *2 (E.D. Pa. July 31, 1997).

28. *See* DuVoisin v. Avery (*In re* S. Indus. Banking Corp.), 121 B.R. 229, 230 (Bankr. E.D. Tenn. 1990).

29. *See* First Options of Chi., Inc. v. Polonitza, No. 88 C 2998, 1991 WL 2408, at *2 (N.D. Ill. Jan. 4, 1991).

30. *See* Johns v. Rozet, 143 F.R.D. 11, 12–13 (D.D.C. 1992).

A. Traditional Enforcement of Judgments in Another District by Separate Action

Prior to the enactment of 28 U.S.C. § 1963, a federal judgment could only be enforced in a foreign jurisdiction through a separate action in that jurisdiction.[31] The use of a second action still remains available as an alternative to registration,[32] however, it is less efficient than using the registration statute. The second proceeding is often costly,[33] and may require hiring an attorney in the foreign jurisdiction.[34] It "is subject to the same overcrowded calendars and dilatory activity by the defendants that was possible in the first action."[35] It may also be "inadequate, given the high mobility today of both persons and their property."[36] Given that it is independent action, it requires that the foreign court obtain personal jurisdiction over the debtor.[37] This can be difficult, especially if the only ties the debtor has with the foreign jurisdiction are her assets there.[38] The creditor will first need to find the debtor's property to establish personal jurisdiction.[39]

Accordingly, the Fourth Circuit held in *Kaplan v. Hirsh* that an independent action is not a true alternative to registration.[40] The *Kaplan* district court had denied the judgment creditor's application for registration,[41] and explained that the independent action would provide an alternative means of securing the judgment.[42] On appeal, the Fourth Circuit denounced this logic as flawed because an independent action in a second jurisdiction is not always available. The court thought that this case was "a perfect example."[43] The creditor could not find the debtor in the foreign

31. *See* Home Port Rentals, Inc. v. Int'l Yachting Grp., Inc., 252 F.3d 399, 404 (5th Cir. 2001); Shanks & Standiford, *supra* note 7, at 857–58.

32. The creditor could bring the new action under either a debt theory or an action of indebitatus assumpsit. Note, *Registration of Federal Judgments*, 42 IOWA L. REV. 285, 285 (1957).

33. *See* Juneau Spruce Corp. v. Int'l Longshoremen's & Warehousemen's Union, 128 F. Supp. 697, 700 (D. Haw. 1955) ("28 U.S.C. § 1963 was designed to relieve both creditors and debtors from the additional cost and harassment of further litigation which otherwise would be incident to an action on the judgment in a foreign district.").

34. *See* Shanks & Standiford, *supra* note 7, at 858.

35. Note, *supra* note 32, at 286.

36. *See* ITT Indus. Credit Co. v. Lawco Energy, Inc., 86 F.R.D. 708, 711 (S.D. W. Va. 1980).

37. *See* Shanks & Standiford, *supra* note 7, at 858.

38. *Id.*

39. *Id.*

40. Kaplan v. Hirsh, 91 F.R.D. 106, 107 (D. Md. 1981).

41. *Id.* The case was decided under an older version of § 1963 that only permitted registration where the judgment "has become final by appeal or expiration of time for appeal." 28 U.S.C. § 1963 (1982) (amended 1988). An appeal was pending, therefore under the express terms of the statute, registration was not permitted. *Id.*

42. *Kaplan*, 91 F.R.D. at 110.

43. Kaplan v. Hirsh, 696 F.2d 1046, 1048 n.3 (4th Cir.), *withdrawn*, 765 F.2d 421 (4th Cir. 1982). A subsequent order dismissed the appeal as moot, noting that the panel opinion was vacated due to a grant of a petition for rehearing en banc. *See* Shanks & Standiford, *supra* note 7, at 865 n.43.

jurisdiction, and therefore could not properly serve him there.[44] The independent action remedy recommended by the *Kaplan* district court was thus unavailable to the creditor because he was unable to initiate a suit against the debtor's assets in the foreign jurisdiction.[45]

B. The Creation of Registration and the Loophole Created by Pre-amendment § 1963

Part I.B.1 introduces 28 U.S.C. § 1963 and explains the purpose of the registration mechanism. Part I.B.2 explains how the literal application of § 1963's "final by appeal" requirement in the original statute overrode Rule 62(d)'s supersedeas bond requirement, thus giving unscrupulous judgment debtors an opportunity to appeal without posting a bond, and allowing them to secure additional time to hide or dissipate assets.

1. The Creation of Statutory Registration

28 U.S.C § 1963 was drafted in 1948 for the purpose of "provid[ing] litigants with a 'streamline' [sic] approach to enforcing judgments" and preventing duplicative litigation.[46] Registration relieves both parties of the costs and burdens of a second litigation.[47] Prior to its 1988 amendment, the statute did not permit registration on a showing of good cause, but instead only when the judgment was "*final by appeal* or expiration of time for appeal."[48] This "final by appeal" language prevented registration as long as there was an appeal pending in the upper court or the time to appeal had not yet expired.

A literal interpretation of the statutory language effectively overrode Federal Rule of Civil Procedure 62's bond requirement.[49] The literal "final by appeal or time for appeal" language meant that the court could not authorize registration until the appellate process was exhausted, thereby granting a judgment debtor a de facto stay of the proceedings.[50] Thus, even if the debtor did not post a bond while the appeal was pending, he could "delay or escape payment by transferring his assets to another jurisdiction *during the appeal*."[51] Unscrupulous judgment debtors took advantage of the strict statutory language, and most courts' literal interpretation of it, by

44. *Kaplan*, 696 F.2d at 1048 n.3.
45. *Id.*
46. Associated Bus. Tel. Sys. Corp. v. Greater Capital Corp., 128 F.R.D. 63, 65 (D.N.J. 1989); *see also* Stanford v. Utley, 341 F.2d 265, 270 (8th Cir. 1965) ("[T]he purposes of § 1963 were to simplify and facilitate the enforcement of federal judgments, at least those for money, to eliminate the necessity and expense of a second lawsuit, and to avoid the impediments, such as diversity of citizenship, which new and distinct federal litigation might otherwise encounter." (citations omitted)).
47. *See* S. REP. NO. 83-1917, at 1 (1954); *supra* notes 32–45.
48. 28 U.S.C. § 1963 (1982) (amended 1988) (emphasis added).
49. *Associated Bus.*, 128 F.R.D. at 66.
50. *Id.*
51. Shanks & Standiford, *supra* note 7, at 855–56 (emphasis added).

appealing to secure extra time to dispose of their assets.[52] This left a judgment creditor unable to execute on his or her judgment.[53]

2. The Loophole Created by the "Final by Appeal" Requirement of Pre-amendment § 1963

Prior to the 1988 amendment, six of the seven reported cases where courts addressed registration under § 1963 while an appeal was pending read the "final by appeal" language strictly. Those six courts denied registration while the defendant's appeal was pending.[54]

Abegglen v. Burnham was the first of the seven cases where the court considered a § 1963 motion for registration.[55] Defendants had appealed without posting a supersedeas bond, and the plaintiff moved for registration.[56] The District of Utah held that the plain meaning of "final by appeal" should govern, and until the appeal and judgment were settled, it was not final.[57] The court expressed concern for the defendant's rights, noting that granting registration would force the defendant to hire counsel in each district the judgment was registered in, thus subjecting him to "annoyance and oppression."[58]

The only reported case to *permit* registration pursuant to § 1963 while an appeal was pending was *Dorey v. Dorey*,[59] from the Northern District of Alabama.[60] In *Dorey*, a judgment was entered against the defendant in California, and the defendant subsequently moved to Alabama.[61] The plaintiff brought a suit in the Northern District of Alabama to enforce the judgment under the Full Faith and Credit Clause of the U.S. Constitution. The defendant appealed to the Fifth Circuit without posting a supersedeas bond and moved yet again to Texas.[62] The plaintiff filed a motion in the Alabama district court to permit registration in Texas.[63]

Though the appeal on the first action was still pending in the Fifth Circuit, the Alabama district court permitted registration because it found

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52. *See infra* Part I.B.2.

53. For one example of a judgment debtor attempting to evade payment by taking advantage of the de facto stay provided by pre-amendment § 1963, see Dorey v. Dorey, 77 F.R.D. 721 (N.D. Ala. 1978). *See also infra* notes 59–69 and accompanying text.

54. *See* Air Transp. Ass'n of Am. v. Prof'l Air Traffic Controllers Org. (*In re* PATCO), 699 F.2d 539 (D.C. Cir. 1983); Urban Indus., Inc. v. Thevis, 670 F.2d 981 (11th Cir. 1982); Kaplan v. Hirsh, 91 F.R.D. 106 (D. Md. 1981); Goldsmith v. Midwest Energy Co., 90 F.R.D. 249 (N.D. Ohio 1980); Lipton v. Schmertz, 68 F.R.D. 249 (S.D.N.Y. 1974); Abegglen v. Burnham, 94 F. Supp. 484 (D. Utah 1950).

55. *Abegglen*, 94 F. Supp. at 485.

56. *See id.* at 485.

57. *Id.* at 486.

58. *Id.*

59. 77 F.R.D. 721 (N.D. Ala. 1978).

60. The Eleventh Circuit, however, later disagreed in *Urban Industries, Inc. v. Thevis*, impliedly overruling *Dorey*. *See* Urban Indus., Inc. v. Thevis, 670 F.2d 981, 984–85 (11th Cir. 1982).

61. *See Dorey*, 77 F.R.D. at 721–22; *see also* Shanks & Standiford, *supra* note 7, at 862.

62. *See Dorey*, 77 F.R.D. at 722.

63. *Id.*

that it would be unconstitutional to stay the enforcement where no bond had been posted.[64] The court reasoned that "[§ 1963] should be interpreted in pari materia with F.R.C.P. 62, and that the statute must be read as assuming an appeal with supersedeas."[65] The court stated that there was a constitutional right—unless a stay has been issued—for a judgment creditor to collect his or her judgment,[66] and cited five constitutional principles that would be violated by requiring that a judgment be "final by appeal" before it could be registered, as the literal interpretation of § 1963 would require.[67] Obviously annoyed with the defendant's efforts to avoid payment of the judgment, the court declared, "To allow this defendant to obtain an automatic stay by simply moving across the district line would amount to an injustice of such enormity as to offend the conscience of this court."[68] The court presumed that the legislature could not have intended this result when it enacted § 1963.[69] After *Dorey*, there were no other reported cases that permitted registration while the defendant's appeal was pending.[70]

Dorey's constitutional argument was later evaluated and criticized by the District of Maryland in *Kaplan v. Hirsch*.[71] In *Kaplan*, the court determined that the *Dorey* court had relied on the invalid premise that the only means of executing a judgment in a foreign district was by registration.[72] The court explained that failure to register did not *prevent* execution—the plaintiff always had the option of executing on the judgment by means of an independent action—therefore, there was no constitutional violation.[73] The court also found it entirely logical that Congress would limit the application of § 1963 to cases where the judgment was final by appeal—a streamlined mechanism for enforcement only made sense where there was no risk of reversal on appeal, and collateral attack was limited.[74] It is notable that the district court in *Kaplan* was not dealing

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64. *Id.*

65. *Id.* at 723. This view against reading § 1963 without reference to the other Federal Rules of Civil Procedure is shared by at least one other court:

> [The Rules] would permit a judgment creditor to levy against assets of his judgment debtor, unless supersedeas bond were posted, while [28 U.S.C. § 1963] would prevent the same, bond or no bond. There is no sense to be found in such an incongruity, and in light of the policy in the federal courts against unsecured stays of execution, no justice either.

ITT Indus. Credit Co. v. Lawco Energy, Inc., 86 F.R.D. 708, 712 (S.D. W. Va. 1980) (citations omitted).

66. *See Dorey*, 77 F.R.D. at 723.

67. *See id.* at 725–26. The five principles are privileges and immunities, equal protection, due process, separation of powers, and full faith and credit. *Id.* For an interesting discussion and criticism of the Alabama District Court's reasoning, see Shanks & Standiford, *supra* note 7, at 863 (criticizing the court's claim that the literal application of the "final by appeal" language violated the Constitution and concluding that while the court reached a just result, it did so by ignoring the plain meaning of the statute).

68. *Dorey*, 77 F.R.D. at 723.

69. *Id.*

70. *See supra* note 54 and accompanying text.

71. Kaplan v. Hirsh, 91 F.R.D. 106, 108 (D. Md. 1981).

72. *Id.*

73. *Id.*

74. *Id.* at 109.

with a judgment debtor who appeared to be evading payment, as was the judgment debtor in *Dorey*.[75]

C. Sewing the Loophole Shut? The 1988 Amendment to § 1963

Section 1963 was amended in 1988[76] to remedy the issues created by the "final by appeal" language.[77] The Judiciary Committee recognized that courts' literal interpretation of the original statute had the potential to prevent judgment creditors from enforcing their judgments until after the appeal process had finished. Meanwhile, the judgment debtor could secure time to dissipate her assets since she was able to obviate the Rule 62(d) bond requirement.[78] The Judiciary Committee's proposed remedy was to also allow the court that entered the judgment to order registration for "good cause shown."[79] The following section discusses how courts have interpreted "good cause" and the requirements imposed on judgment creditors for proving that "good cause" exists to permit registration.

Section 1963 does not articulate what constitutes "good cause" to register a judgment in a foreign jurisdiction,[80] nor does the legislative history give an explanation of what the standard of review should be for "good cause."[81] During the hearings for the bill in which the § 1963 amendment was introduced, the Honorable Elmo B. Hunter, Chairman of the Court Administration Committee of the Judicial Conference, indicated that the purpose of the amendment was to prevent a judgment debtor from hiding assets in a foreign jurisdiction.[82] Judge Hunter recognized that the literal application of § 1963 had the potential to permit a judgment debtor time to dissipate assets by circumventing Rule 62's bond requirement. Thus, the Judicial Conference recommended that the "good cause" language be added to prevent judgment debtors from taking advantage of the de facto stay.[83]

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75. *See* Dorey v. Dorey, 77 F.R.D. 721, 721–22 (N.D. Ala. 1978); *see also* Shanks & Standiford, *supra* note 7, at 864.

76. Congress passed the amendment as part of the Judicial Improvement and Access to Justice Act, a relatively unpublicized statute, which contained a variety of improvements from the Judicial Committee. Pub. L. No. 100-702, 102 Stat 4642 (1988); Note, *supra* note 32, at 287 & n.13; *see also* 28 U.S.C.A § 1963 cmt. (West 2006); Associated Bus. Tel. Sys. Corp. v. Greater Capital Corp., 128 F.R.D. 63, 65 (D.N.J. 1989).

77. *See House Subcommittee Hearings*, *supra* note 7, at 44–45; *supra* Part I.B.

78. *See House Subcommittee Hearings*, *supra* note 7, at 44–45 ("Although these circumstances do not often occur, the Judicial Conference concluded that a judgment debtor should not be permitted to hide assets in a foreign jurisdiction . . . ."); *see also* Chi. Downs Ass'n v. Chase, 944 F.2d 366, 371 (7th Cir. 1991) ("[T]he good cause language 'entered the statute in 1988 to deal with the anomaly that a judgment for which no supersedeas bond had been posted was enforceable during appeal only in the rendering district.'" (quoting Pac. Reinsurance Mgmt. Corp. v. Fabe, 929 F.2d 1215, 1218 (7th Cir. 1991))).

79. 28 U.S.C. § 1963 (2006); *see also House Subcommittee Hearings*, *supra* note 7, at 45 ("[T]he district court entering the judgment should be given discretion to permit registration in a foreign jurisdiction pending appeal, but only upon a showing of good cause.").

80. *See* 28 U.S.C. § 1963.

81. *See generally House Subcommittee Hearings*, *supra* note 7.

82. *Id.* at 6, 44–45.

83. *Id.*

Notably, the U.S. Department of Justice also submitted its remarks to the House Subcommittee, supporting the proposal for the new language, but finding that it did not "go far enough."[84] The Department of Justice suggested that a judgment creditor be able to register a judgment for cause in another district without special approval from the court that entered the judgment.[85] This proposal was not discussed further, and the statute was enacted giving only the court that entered the judgment authority to order registration for "good cause shown."[86]

The commentary to the 1988 amendment, written by David D. Siegel[87] and published in 1989, gives examples of when a court should find "good cause" and permit registration.[88] Professor Siegel wrote that "good cause" would obviously include a showing that the defendant planned to move property outside the district. But demonstrating that a defendant was planning to do so would place an unfair evidentiary burden on a judgment creditor, especially considering that she had already prevailed on her claim at the trial level.[89] Given that burden, Professor Siegel suggested that "[t]he court should have leeway . . . to permit the registration on . . . a mere showing . . . that the defendant has substantial property in the other district and insufficient in the rendering district to satisfy the judgment."[90]

The majority of courts facing motions to register pursuant to 28 U.S.C. § 1963 have followed Professor Siegel's commentary, and held that "good cause" is found where the defendant does not possess assets in the home district but does possess assets in another jurisdiction ("the assets test").[91] A few courts have also held that the combination of the assets test and the judgment debtor's failure to post a supersedeas bond creates "good cause" to register the judgment.[92] A judgment creditor cannot request registration in any district she wishes; the judgment creditor must show that the judgment debtor possesses significant assets in a particular district or districts. Courts typically only allow the creditor to register in those

84. *See id.* at 249–50 (statement of Stephen J. Markman, Assistant Att'y Gen. of the United States, Office of Legal Policy).

85. *Id.*

86. *See* 28 U.S.C. § 1963 (2006).

87. David Siegel, Distinguished Professor of Law Emeritus at the Albany Law School, is a prolific and highly regarded legal commentator, best known in New York for his monthly legal analysis publication *Siegel's Practice Review*. *See* Patrick M. Connors, *The King of New York Practice*, 72 ALB. L. REV. 447, 447–50 (2009). Professor Siegel has also written extensive commentaries in McKinney's New York Laws and in the U.S. Code Annotated. *See About the Author*, SIEGEL'S PRAC. REV., http://www.siegelspracticereview.com/05auth/index.html (last visited Oct. 21, 2013).

88. 28 U.S.C.A. § 1963 cmt. (West 2006).

89. *Id.*

90. *Id.*; *see also* Blaine Larsen Processing, Inc. v. Hapco Farms, Inc., Civ. No. 97-0212-E-BLW, 2000 WL 35539979, at *15 (D. Idaho Aug. 9, 2000).

91. *See, e.g.*, AT & T Corp. v. Pub. Serv. Enters. of Pa., Inc., No. 98CIV6133LAP, 1999 WL 672543, at *6 (S.D.N.Y. Aug. 26, 1999); Ind.-Mich. Corp. v. Sisk Fertilizer-Lime Serv., Inc., 89 C 2735, 1992 WL 159150, at *1 (N.D. Ill. June 29, 1992).

92. *See infra* Part II.C.

districts where a showing of substantial assets that would satisfy the judgment has been made.[93]

For instance, in *Fasolino Foods Co. v. Banca Nazionale Del Lavoro*, the Southern District of New York, when it approved the judgment creditor's § 1963 motion, restricted the registration to New Jersey, as that was the only jurisdiction in which the creditor had established that the debtor held assets.[94] In *Dyll v. Adams*, the Northern District of Texas denied the plaintiff's motion for registration because the two defendants offered evidence that they were insolvent.[95] One had no known assets and was no longer doing business, and the other stated that he was either "virtually broke or that his assets [were] subject to a domestic relations order that regulates asset transfers."[96] There were no "substantial assets" for the plaintiff to register against. The court dismissed the motion to register without prejudice, to allow the plaintiffs to meet their obligation to introduce evidence that refuted the defendants' claims.[97]

D. Effects of Registration

Part I.D.1 explains the process and effect of the enforcement of judgments, including execution through the use of liens. Part I.D.2 explains the requirements and procedures for staying the enforcement of a judgment during an appeal or postjudgment motions. Part I.D.3 discusses the rare situation where a court has permitted a judgment debtor to retroactively stay the enforcement of a judgment and vacate the levies against the judgment debtor when the debtor posts a supersedeas bond and demonstrates that she is suffering from the levies.

1. Creation of a Lien

A judgment registered pursuant to 28 U.S.C. § 1963 "shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."[98] The statute enables a judgment creditor to create a lien on the judgment debtor's property in another district. A lien is "[a] legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied."[99]

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93. *See* Dyll v. Adams, No. CIV.A. 3:91-CV-2734D, 1998 WL 60541, at *2 (N.D. Tex. Feb. 6, 1998); Jack Frost Labs., Inc. v. Physicians & Nurses Mfg. Corp., 951 F. Supp. 51, 52 (S.D.N.Y. 1997); Teachers Ins. & Annuity Ass'n of Am. v. Ormesa Geothermal, No. 87 Civ. 1259 (KMW), 1991 WL 254573, at *2 (S.D.N.Y. Nov. 21, 1991); Fasolino Foods Co. v. Banca Nazionale Del Lavoro, No. 90 CIV. 334(JMC), 1991 WL 107440, at *2 (S.D.N.Y. June 7, 1991). The court in *Residential Funding Co. v. Terrace Mortgage Co.* required a lesser showing, and permitted registration in the judicial districts in which defendant's assets were "likely to be found." Residential Funding Co. v. Terrace Mortg. Co., Civil No. 09-3455 (SRN/AJB), 2013 WL 235905, at *1 (D. Minn. Jan. 22, 2013).

94. *Fasolino*, 1991 WL 107440, at *2.

95. *Dyll*, 1998 WL 60541, at *2.

96. *Id.*

97. *Id.*

98. 28 U.S.C. § 1963 (2006).

99. BLACK'S LAW DICTIONARY 1006 (9th ed. 2009).

The actual effect of registration varies from state to state, as the Federal Rules of Civil Procedure adopt local state law for lien governance.[100] The reach of a state's laws on liens defines the reach of the federal judgment.[101] Some states permit liens to attach to personal property if certain procedural steps are taken.[102] For instance, in New York, a money judgment can be enforced against any property that can be "assigned or transferred" including property that is acquired after the judgment, or that consists of a future interest that is not yet vested.[103] New York also permits execution against personal property, subject to numerous exceptions.[104] Liens can affect the goodwill of a business, as they are public records and are routinely monitored by credit rating services and published in real estate journals. Thus, a registered judgment could potentially have harsh effects on the debtor's livelihood and alienability of real property.[105]

2. Stays and Bonds

Federal Rule of Civil Procedure 62(a) provides that proceedings to enforce a judgment may not begin until fourteen days after the entry of judgment.[106] The automatic stay gives a judgment debtor time to decide whether to take advantage of the available postjudgment motions or remedies, such as filing an appeal.[107] After that time, a judgment debtor may obtain a stay by posting a supersedeas bond with the court.[108] A supersedeas bond is a bond filed with the court to protect the creditor from loss while the matter is on appeal.[109] Many courts require the debtor to post a supersedeas bond during the pendency of her posttrial motions to preserve the status quo.[110] Stays on appeal by supersedeas bond are a matter of

100. *See* 28 U.S.C. § 1962; 28 U.S.C.A. § 1963 cmt. (West 2006).

101. *Id.*

102. *See id.* The procedural steps may be relatively straightforward. For example, in Iowa, a lien on personal property is created "[b]y the officer taking possession of the property, and signing and appending to the execution its exact description at length, with the date of the levy." IOWA R. CIV. P. 1.1020(1); *see* Jim White Agency, Inc. v. Clark, 489 N.W.2d 26, 28 (Iowa Ct. App. 1992) ("No lien is created on personal property . . . until the procedural steps required under Iowa Rule of Civil Procedure [1.1020] have been taken.").

103. *See* N.Y. C.P.L.R. 5201(b) (McKinney Supp. 2013).

104. *See id.* R. 5205.

105. *See infra* notes 151–58 and accompanying text.

106. *See* FED. R. CIV. P. 62(a). Prior to 2009, the statute provided a ten-day automatic stay. *See* FED. R. CIV. P. 62 advisory committee's note.

107. *See* United States v. One 1962 Ford Galaxie Sedan, 41 F.R.D. 156, 157 (S.D.N.Y. 1966).

108. *See* FED. R. CIV. P. 62(d).

109. Wilmer v. Bd. of Cnty. Comm'rs, 844 F. Supp. 1414, 1417 (D. Kan. 1993) (quoting Miami Int'l Realty Co. v. Paynter, 807 F.2d 871, 873 (10th Cir. 1986)), *aff'd*, 28 F.3d 114 (10th Cir. 1994).

110. *See, e.g.*, Lewis v. United Joint Venture, No. 1:07-CV-639, 2009 WL 1654600, at *1 (W.D. Mich. June 10, 2009); Am. Family Mut. Ins. Co. v. Miell, No. C04-0142, 2008 WL 746604, at *2 (N.D. Iowa Mar. 19, 2008); Int'l Wood Processors v. Power Dry, Inc., 102 F.R.D. 212, 215 (D.S.C. 1984).

right,[111] though it is up to a state to determine whether there is a right of review in an appellate court.[112]

Federal Rule of Appellate Procedure 4 requires that an appeal be made within thirty days after the judgment is entered or the order appealed.[113] There are, however, six motions that if filed timely, will toll the time to file an appeal in a civil case.[114] Under Federal Rule of Appellate Procedure 4(a)(4)(A), "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion."[115] The court may also stay the execution of the judgment pending the disposition of five of the tolling motions, but the stay must be "[o]n appropriate terms for the opposing party's security."[116] What constitutes appropriate terms is up to the court's discretion.[117]

The Sixth Circuit has held that filing a bond is not the only way to obtain a stay.[118] *Arban v. West Publishing Corp.* established that a court may exercise its discretion to grant a stay.[119] At the very least, the judgment debtor would need to demonstrate that it has sufficient assets to satisfy a bond.[120] The District of Kansas has agreed, emphasizing that the court has discretion to determine whether a creditor's interests can be protected without a bond.[121]

After the fourteen-day automatic stay period has lapsed, a judgment creditor can initiate enforcement or execution of the judgment, unless the court has stayed the enforcement pending a postjudgment motion, or the judgment debtor has stayed the execution by posting a bond. Failure to post a bond will still permit the judgment debtor to appeal, but without a bond the judgment debtor runs the risk that the creditor will enforce the judgment

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111. *See* Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n, 636 F.2d 755, 757–58 (D.C. Cir. 1980).

112. *See* Kohl v. Lehlback, 160 U.S. 293, 299 (1895).

113. *See* FED. R. APP. P. 4(a)(1)(A).

114. *See id.* R. 4(a)(4)(A). The six motions are:

> (i) for judgment under Rule 50(b); (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment; (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58; (iv) to alter or amend the judgment under Rule 59; (v) for a new trial under Rule 59; or (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

Id. Rule 50(b)'s motion for judgment as a matter of law, Rule 52(b)'s motion to amend or make additional factual findings, and Rule 59's motions for a new trial and motions to alter or amend a judgment all require that the motion be filed no later than twenty-eight days after the entry of judgment. *See* FED. R. CIV. P. 50(b); *id.* R. 52(b); *id.* R. 59(b), (e).

115. FED. R. APP. P. 4(a)(4)(A); *see also* 16A WRIGHT ET AL., *supra* note 8, § 3950.4.

116. *See* FED. R. CIV. P. 62(d).

117. *See* Ireland v. Dodson, No. 07-4082-JAR, 2009 WL 1559784, at *1 (D. Kan. May 29, 2009).

118. Arban v. W. Pub. Corp., 345 F.3d 390, 409 (6th Cir. 2003).

119. *Id.*

120. *Id.* In *Arban*, the Sixth Circuit found the district court had not abused its discretion when granting a stay without a bond, because the judgment was for roughly $216,000 and the judgment debtor's annual revenue far exceeded that amount. *See id.* at 400, 409.

121. *Ireland*, 2009 WL 1559784, at *1.

while the appeal is pending.[122] The bond takes effect when the court approves it, and the bond should be approved "upon or after filing the notice of appeal or after obtaining the order allowing the appeal."[123] If the judgment debtor chooses not to post a bond within this timeframe, she forgoes the opportunity to prevent registration while her claim is on appeal.[124] The judgment creditor can begin enforcement, including registering the judgment under 28 U.S.C. § 1963 in a foreign jurisdiction.[125] Once enforcement proceedings have begun, the debtor may still post a bond in the rendering district under Rule 62(d)[126] and thereby obtain a stay of enforcement in both the rendering and foreign districts.[127]

Depending on state law, the registration may have the effect of creating a lien. Rule 62(f) provides, "If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give."[128] If a judgment results in a lien on the property of the judgment debtor and the judgment debtor is entitled to a stay under state law, she will also be entitled to one in the district court.[129] However, posting a bond does not lift the liens created; it merely stays the enforcement.[130]

If the defendant prevails on appeal, the lien in the registering district can be lifted by motion.[131] As explained in the § 1963 commentary, there is a more "elementary" way for the judgment debtor to remove the lien.[132] After the rendering court receives notice of the reversal, the debtor may obtain a certificate from the clerk of the rendering court that reflects the reversal and cancellation of the judgment, and file the certificate in the foreign district.[133]

Professor Siegel explains that permitting registration when the defendant has failed the assets test places only a "modest burden" on the defendant.[134] In the current § 1963 commentary, which has been updated since the passage of the amendment, Professor Siegel points to a District of New

122. *See, e.g.*, Strong v. Laubach, 443 F.3d 1297, 1299 (10th Cir. 2006); Koster & Wythe v. Massey, 262 F.2d 60, 62 (9th Cir. 1958); Qatar Nat'l Bank v. Winmar, Inc., 813 F. Supp. 2d 163, 169 (D.D.C.), *vacated in part*, 831 F. Supp. 2d 159 (D.D.C. 2011); Dorey v. Dorey, 77 F.R.D. 721, 723 (N.D. Ala. 1978).

123. FED. R. CIV. P. 62(d).

124. *See* 28 U.S.C.A. § 1963 cmt. (West 2006).

125. *See id.*

126. FED. R. CIV. P. 62(d).

127. *See* 28 U.S.C.A. § 1963 cmt.

128. *See id.*

129. *See id.*; Digital Ally, Inc. v. Z3 Tech., LLC, No. 09-2292-KGS, 2012 WL 2872146, at *1 (D. Kan. July 12, 2012).

130. *See* 28 U.S.C.A. § 1963 cmt.; *see also infra* Part I.D.3.

131. *See* 28 U.S.C.A. § 1963 cmt.

132. *Id.*; *see also* Whitney Nat'l Bank v. Stack, Civ. A. No. 91-1320, 1992 WL 236920, at *3 (E.D. La. Sept. 2, 1992) ("[T]he court [does not] believe that removal of foreign registrations is particularly time consuming or cumbersome—if the [defendants] prevail in their postjudgment motions or on appeal, they can simply file a motion in the foreign district for removal pursuant to Fed.R.Civ.P. 60(b)(5).").

133. *See* 28 U.S.C.A. § 1963 cmt.

134. *Id.*; *supra* Part I.D.

Jersey case that was decided shortly after the amendment passed, where the court faced a judgment debtor who only had assets outside of New Jersey.[135] The defendants had not appealed the decision of the trial court, but had made "numerous" postjudgment motions.[136] After an extensive review of the history of § 1963, the problem caused by the pre-amendment "final by appeal" language, and an analysis of Professor Siegel's commentary, the court found good cause to register because the judgment creditor might be unable to satisfy her judgment.[137]

Some courts have permitted registration prior to the judgment debtor's appeal even where the judgment debtor's time to appeal has not expired.[138] The logic behind permitting registration before the judgment debtor has filed an appeal is that it will allow a judgment creditor to secure assets and thwart any potential efforts of the judgment debtor to delay enforcement with posttrial motion practice.[139]

> Putting the defendant to that modest burden in the event the judgment is reversed seems fairer than denying the plaintiff a lien in the other district during the pendency of the appeal. Denying the lien could mean the loss of a substantial opportunity to satisfy the judgment, an opportunity the plaintiff is entitled to after winning at trial and thereby turning in her own favor all presumptions about the merits of the claim.[140]

A hypothetical situation illustrates the process where a judgment creditor moves for registration before an appeal has been filed: in a New York district court, judgment has been entered and the debtor wishes to make posttrial motions before taking the option to appeal. She has insufficient assets to satisfy the judgment in New York but sufficient assets in California. The judgment creditor moves for registration in California, and it is granted. The creditor then takes the appropriate steps required by local state law to turn the judgment into a lien in California (in some states, this may be as easy as filing the judgment in the registration district).[141] The defendant appeals, posts a supersedeas bond with the New York court, and stays the enforcement of the judgment in both New York and California. The lien in California, once created, is not lifted by the posting of a supersedeas bond. Unless the court is willing to take the rare move to retroactively stay the enforcement upon the posting of the bond,[142] the debtor will be unable to lift the lien in California until she (1) prevails on

135. *See* 28 U.S.C.A. § 1963 cmt.; Associated Bus. Tel. Sys. Corp. v. Greater Capital Corp., 128 F.R.D. 63, 68 (D.N.J. 1989).

136. *Associated Bus.*, 128 F.R.D. at 65.

137. *Id.* at 66–67. Following Professor Siegel's logic, the court also noted that the defendants could stay the proceedings by posting a supersedeas bond and, if they succeeded in reversing the judgment on appeal, simply remove the foreign registrations by motion. *Id.*

138. *See infra* Part II.B.2.

139. 28 U.S.C.A. § 1963 cmt.

140. *Id.*

141. *Id.* In a court of appeals, a motion for approval of a supersedeas bond must first be made in the district court, and the moving party must show that it was denied, unless the party can show that it is impracticable to first move in the district court. *See* FED. R. APP. P. 8(a)(1)–(2).

142. *See infra* Part I.D.3.

appeal and moves to have the judgment lifted, or (2) loses on appeal and pays the judgment in either court.

A judgment debtor is not always required to post a bond in order to stay the enforcement of a judgment. While district courts and courts of appeals are governed by different rules of procedure to stay an order pending appeal, the conditions are substantially the same.[143] A court examines (1) the applicant's likelihood of success on the merits, (2) the potential for injury to the applicant absent a stay, (3) the potential for injury to the other parties, and (4) the public interest.[144]

Perhaps the factor with the least obvious meaning is the one requiring a determination of where the public interest lies. The public has an interest in having legal questions decided "as correctly and expeditiously as possible."[145] If maintaining the status quo serves the public interest, a stay may be granted.[146] If the case concerns a matter that affects the public interest, the private interests of the parties will come second to the interests of the public.[147]

3. The Judgment Debtor's Side of the Coin

Several courts have recognized the harsh effects created by the execution of judgments on a debtor's property and livelihood. These courts have taken an equitable approach that extinguishes levies on property once a judgment debtor posts sufficient security with an approved supersedeas bond.[148] There are just as many, if not more, that have held the opposite,

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143. *See* Hilton v. Braunskill, 481 U.S. 770, 776 (1987) (citing FED. R. CIV. P. 62(c); FED. R. APP. P. 8(a)).

144. *Id.* (collecting cases). Other courts have created slightly different standards. *See* Accident Fund v. Baerwaldt, 579 F. Supp. 724, 726 & n.4 (W.D. Mich. 1984).

145. *See* Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); *see also* Bank of N.S. v. Pemberton, 964 F. Supp. 189, 191 (D.V.I. 1997) ("[T]he public interest is served neither by a court system clogged with meritless appeals nor by the waste of property which could otherwise be placed into the stream of commerce and put to use by a new owner.").

146. *See Wash. Metro. Area Transit*, 559 F.2d at 843; *see, e.g.*, *Baerwaldt*, 579 F. Supp. at 728 (holding that the injunction the plaintiffs requested was not in the public interest because it would harm not only the defendants, but also the entire worker's compensation industry in Michigan); *see also* E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc., Civil Action No. 3:09cv58, 2012 WL 1202485, at *5 (E.D. Va. Apr. 10, 2012) (rejecting defendant's arguments, where defendant could not post a supersedeas bond, that denying a stay was against public interest because of the harm enforcement would cause to the defendant's business, which in turn would harm its customers, and moreover, that the spirit of competition was best served if the defendant could continue to be a viable company).

147. *See* Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958).

148. *See, e.g.*, Thunder Mountain Custom Cycles, Inc. v. Thiessen Prods., Inc., Civil Action No. 06-cv-02527-PAB-BNB, 2008 WL 5412469, at *7 (D. Colo. Dec. 24, 2008); G.G. Marck & Assocs. v. Peng, No. 3:05 CV 7391, 2008 WL 918435, at *1–2 (N.D. Ohio Apr. 1, 2008); Blue Mountain Envtl. Mgmt. Corp. v. Chico Enters., Inc., No. Civ. A. 01-460, 2005 WL 2304999, at *1 n.2 (W.D. Pa. Sept. 21, 2005); Phansalkar v. Andersen Weinroth & Co., 211 F.R.D. 197, 203 (S.D.N.Y. 2002); United States v. York, 909 F. Supp. 4, 10–11 (D.D.C. 1995); Gauthier v. Mardi Capital Corp., No. 90 CIV. 4313 (CSH), 1990 WL 250179, at *1 (S.D.N.Y. Dec. 26, 1990).

making it clear that debtors are not entitled to a retroactive removal of a lien.[149] In the context of foreign jurisdiction registration, the likelihood that the foreign court will permit a retroactive stay and extinguish liens or levies in its jurisdiction is slim, given that it did not impose the judgment.[150] The merits of permitting retroactive stays are beyond the scope of this Note, however, the willingness of some courts to react to the harsh effects of executed judgments on well-meaning judgment debtors is relevant.

Phansalkar v. Andersen Weinroth & Co., a Southern District of New York case, illustrates a situation where the detriment of enforcement to the well-meaning judgment debtors was so great that the court permitted a retroactive stay upon the late posting of a supersedeas bond to extinguish the levies on the judgment debtors' bank accounts.[151] After receiving a favorable judgment, the judgment creditor had the New York County Sheriff serve writs of execution on the judgment debtors' bank accounts to secure his judgment.[152] Five days later, after diligently pursuing capital for six weeks, the debtors posted a $5.4 million supersedeas bond with the court.[153] The bond was approved and a stay was granted.[154] By that time, restraining notices had already been posted to the debtors' bank accounts, which prevented them from selling securities to generate the cash they needed to post the bond.[155] The debtors pleaded to the court to retroactively stay the enforcement of the judgment, claiming that the levies on their bank accounts were unduly interfering with their business.[156] They explained that the business' checks were bouncing, they began receiving threats of termination of services from their suppliers (including their telephone service provider), they received complaints from the debtors' employees with concerns about the debtors' ability to pay them, and they suffered from a deteriorating credit rating that lead to failures to refinance some of their mortgages.[157] The Southern District, noting that the judgment

149. *See, e.g.*, Ribbens Int'l, S.A. de C.V. v. Transp. Int'l Pool, Inc., 40 F. Supp. 2d 1141, 1145 (C.D. Cal. 1999); Moses v. K-Mart Corp., 922 F. Supp. 600, 605 (S.D. Fla. 1996), *aff'd in part and rev'd in part*, 136 F.3d 140 (11th Cir. 1998); Johns v. Rozet, 143 F.R.D. 11, 12–13 (D.D.C. 1992); State Bank of Spring Hill v. Bucyrus Grain Co. (*In re* Bucyrus Grain Co.), 127 B.R. 52, 55 (D. Kan. 1991); Secure Eng'g Servs., Ltd. v. Int'l Tech. Corp., 727 F. Supp. 261, 264–65 (E.D. Va. 1989); Larry Santos Prods. v. Joss Org., 682 F. Supp. 905, 906 (E.D. Mich. 1988).

150. *See, e.g.*, Laborers Nat'l Pension Fund v. ANB Inv. Mgmt. & Trust Co., 26 F. Supp. 2d 1048, 1051 (N.D. Ill. 1998). The plaintiffs received a favorable judgment in Texas district court, and the defendant did not initially post a bond to stay the enforcement. *Id.* at 1049. After the plaintiffs registered their judgment in Illinois and filed a Citation to Discover Assets there, the defendants posted a bond with the Texas court, and asked it to stay the citations. *Id.* The Texas court granted the stay, but left the issue of the citations up to the Illinois district court. *Id.* at 1050. The Illinois court ruled that the bond should not apply retroactively to an antecedent supplementary proceeding. *Id.* at 1051.

151. Phansalkar v. Andersen Weinroth & Co., 211 F.R.D. 197, 203 (S.D.N.Y. 2002).

152. *Id.* at 198.

153. *Id.* at 198, 200, 202.

154. *Id.* at 200.

155. *Id.*

156. *Id.* at 200, 202.

157. *Id.* at 202.

debtors had diligently financed the bond, granted the extinguishment of the levies to "liberate" the debtors' property while the matter was on appeal.[158]

II. LOOSE ENDS: IS REGISTRATION PERMITTED WHEN AN APPEAL IS NOT PENDING?

Pre-amendment § 1963 was problematic because it prevented registration of a judgment, and thus enforcement, while the judgment debtor's appeal was pending or when the time for appeal had not yet expired.[159] The 1988 amendment changed this by permitting the court that entered the judgment to authorize registration if "good cause" existed. However, courts are split on whether a judgment creditor must wait until the debtor has filed an appeal before she can register her judgment elsewhere. Some courts have held that a motion to register is premature where the judgment debtor has not yet appealed.

Part II.A introduces *Associated Business Telephone Systems Corp. v. Greater Capital Corp.*, the first case to address a § 1963 motion for registration after the 1988 amendment. Examining the legislative history of the amendment, the court found that registration should be permitted where there is a possibility that the judgment creditor will not be able to enforce her judgment. Part II.B discusses the district court split regarding whether a pending appeal is a prerequisite to registration. Part II.C introduces cases that address motions to register a judgment *after* an appeal had been filed, where the court considered the defendants' failure to post a supersedeas bond in its reasoning, and determined that there was good cause to register. These cases could be read to imply that, in certain circumstances, a judgment debtor should be given an opportunity to post a bond to avoid registration.[160]

A. Associated Business*: The First Case To Apply § 1963 After the 1988 Amendment*

Associated Business Telephone Systems Corp. v. Greater Capital Corp.[161] was the first case to address a 28 U.S.C. § 1963 motion after the statute's amendment in 1988.[162] In that case, the plaintiff received a judgment for $1.3 million from the District of New Jersey. The defendants, who lacked assets in New Jersey, made several posttrial motions, including a motion notwithstanding the verdict, a motion for a new trial, a request for a remittitur, and a request for a stay of execution of judgment.[163] The plaintiff opposed these motions and sought to finalize and register its judgment pursuant to § 1963 in California, Arizona, Tennessee, and Illinois,

158. *Id.* at 201–02.
159. *See supra* Part I.B–C.
160. *See infra* Part III.B.
161. 128 F.R.D. 63 (D.N.J. 1989).
162. Judicial Improvements and Access to Justice Act, Pub. L. No. 100-702, § 1002(a), (b)(1), 102 Stat. 4642, 4664 (1988).
163. *Associated Bus.*, 128 F.R.D. at 64–65.

where it believed that the defendants did have assets.[164] In deciding the § 1963 motion, the court analyzed the legislative history of the statute, noting that it was originally enacted to facilitate efficient collection of judgments by judgment creditors where judgment debtors' assets were outside of the rendering court's jurisdiction without having to initiate a second lawsuit.[165] The court felt that a literal application of pre-amendment § 1963's "final by appeal" requirement allowed "disingenuous" litigants to bypass Rule 62(d)'s[166] requirement that defendants post a supersedeas bond to stay the enforcement of a judgment while on appeal.[167] The court cited the commentary to the amendment, explaining that Congress sought to allow registration for "good cause" precisely to prevent litigants from taking advantage of this extra time to dissipate or relocate assets.[168]

The defendants argued that their pending motions were meritorious, and that the "premature" registration would be expensive to reverse if they achieved success on their appeal.[169] The court did not address the merits of these claims, but instead determined that the "distinct possibility of [the] plaintiff being faced with an unsatisfied judgment [was] sufficient 'good cause' to order the registration."[170] The court went on to remind defendants that the option of posting a supersedeas bond was still available to stay the execution of the judgments, and that posting a bond with the District of New Jersey would operate as a stay in all jurisdictions.[171] The defendant's argument that the plaintiffs could bring an independent action on the judgment was summarily dismissed.[172] Although an independent action was still a valid means of enforcing a judgment, it was irrelevant given that the court had found good cause for registering the judgment.[173] As § 1963 was designed to provide a shortcut around the independent action, the court felt that the newly amended statute was crafted for precisely this situation.[174]

164. *Id.* at 65, 68.

165. *Id.* at 66–67.

166. *See* FED. R. CIV. P. 62(d) ("If an appeal is taken, the appellant may obtain a stay by supersedeas bond.").

167. *Associated Bus.*, 128 F.R.D. at 65–66.

168. *See id.* at 66 & n.4 (noting that the concerns expressed in the commentary were the same as those expressed in the amendment's House Reports).

169. *Id.* at 66.

170. *Id.* at 66–67; *see also* United Fire & Cas. Co. v. Coggeshall Constr. Co., No. 91-3159, 1991 WL 169147, at *1–2 (C.D. Ill. June 28, 1991) (holding the same where the defendant had failed to follow a preliminary injunction requiring them to post $500,000 in collateral with the plaintiff).

171. *Associated Bus.*, 128 F.R.D. at 67.

172. *Id.*

173. *Id.* The court found that there was good cause because the defendants had no assets in New Jersey, but did have assets in California, Arizona, Tennessee, and Illinois. *See id.* at 68.

174. *Id.* at 67–68.

B. The Split

Neither the language of § 1963 nor the legislative history sheds any light on whether a pending appeal is necessary to permit registration for good cause.[175] While many courts have relied on Professor Siegel's commentary to the 1988 amendment for guidance, the commentary does not answer whether "good cause" for registration could be found before the judgment debtor files an appeal.[176] Professor Siegel's commentary explains that amended language "explicitly permits the registration *during the appeal period*."[177] This is ambiguous, as it is unclear whether the appeal period is the time in which an appeal is pending, or during the thirty-day period in which a judgment debtor may file for an appeal.[178] Professor Siegel also explains that "§ 1963 gives the rendering court discretion, 'for good cause,' to allow the registration in the other district *during the pendency of the appeal*."[179] This suggests that an appeal must be pending, but does not explicitly exempt the scenario where a judgment debtor has not yet filed an appeal.

With little or no guidance, courts are split on whether a pending appeal is a prerequisite to permitting registration for good cause. Part II.B.1 introduces the cases holding that registration is only permitted after the judgment debtor has appealed. Part II.B.2 outlines the cases finding that to uphold the purpose of the amendment, registration should be permitted at any time after the entry of judgment (and after the fourteen-day automatic stay)[180] for good cause shown.

1. The View That Registration for Good Cause Is Only Permitted During Pendency of Appeals

Several courts have found that the court that entered the judgment may only order registration after the judgment debtor has filed for an appeal. In *Educational Employees Credit Union v. Mutual Guaranty Corp.*, the Eastern District of Missouri denied the judgment creditor's motion to register their judgment in Tennessee, finding that registration was premature, as the defendants had not yet appealed.[181] A $2 million judgment against the defendant had been entered in May 1993, and the defendant made two postjudgment motions that were denied: a motion for reconsideration and motion to alter or amend the judgment.[182] At the time of the court's decision on the motion to register in January 1994, the

175. *See generally* 28 U.S.C. § 1963 (2006); *House Subcommittee Hearings*, *supra* note 7 (discussing the addition of the language but not defining it).
176. *See* 28 U.S.C.A. § 1963 cmt. (West 2006).
177. *Id.* (emphasis added).
178. *See id.*; FED. R. APP. P. 4.
179. *Id.*
180. *See* FED. R. CIV. P. 62(a).
181. Educ. Emps. Credit Union v. Mut. Guar. Corp., 154 F.R.D. 233, 234 (E.D. Mo. 1994).
182. *Id.*

defendant had not appealed, posted a bond, nor requested a stay of execution while the postjudgment motions were pending.[183]

The plaintiff cited *Associated Business*[184] in support of its § 1963 motion, arguing that there was good cause for registration because the defendant lacked assets in Missouri—the forum state—but had substantial assets in Tennessee.[185] The defendant argued that because it had not yet appealed, the motion was premature, and the court agreed.[186] Noting that case law was "scant" on what constitutes "good cause" under § 1963, the district court examined three cases[187] that dealt with motions to register pursuant to the post-amendment § 1963.[188] Those cases, however, were not analogous, as they dealt with registration in the context of a pending appeal. Therefore, the Missouri court held that even if good cause was shown, registration was premature because the defendant had not yet appealed.[189] The court acknowledged that *Associated Business* permitted registration on a finding of good cause regardless of whether or not an appeal was pending, but instead ruled that the three cases had "stronger support" for only permitting registration during an appeal.[190] The court did not elaborate on what it considered "stronger support."

The first case that the court relied on in *Educational Employees* was *Chicago Downs Ass'n v. Chase*, where the Seventh Circuit found good cause to register because the defendant had no property in the forum district, substantial assets outside the district, and declined to post a supersedeas bond.[191] The court, discussing the circumstances in which registration would be available, spoke specifically about registration in the context of a pending appeal.[192]

> A court with jurisdiction to authorize execution if the appellant does not post a bond—*power a district court possesses during an appeal*—also may make the findings that under § 1963 authorize execution in another district. The statute calls on a district judge to make 'good cause' findings *while an appeal is pending*[.][193]

Additionally, because the defendant declined to post a supersedeas bond, the Seventh Circuit found that the district court had not abused its discretion

183. *Id.*
184. 128 F.R.D. 63 (D.N.J. 1989).
185. *Educ. Emps.*, 154 F.R.D. at 235.
186. *Id.*
187. Chi. Downs Ass'n v. Chase, 944 F.2d 366, 371 (7th Cir. 1991); Pac. Reinsurance Mgmt. Corp. v. Fabe, 929 F.2d 1215 (7th Cir. 1991); Johns v. Rozet, 143 F.R.D. 11, 12 (D.D.C. 1992).
188. *Educ. Emps.*, 154 F.R.D. at 235.
189. *Id.*
190. *Id.*
191. *Chi. Downs Ass'n*, 944 F.2d at 372.
192. An analysis of this language appears *infra* Part III.
193. *Chi. Downs Ass'n*, 944 F.2d at 372 (alteration in original) (emphasis added) (quoting Trs. of Chi. Truck Drivers v. Cent. Transp., Inc., 935 F.2d 114, 120 (7th Cir. 1991)) (internal quotation marks omitted).

in ordering registration.[194] Chicago Downs had demonstrated "good cause" for registration.[195]

The second case that the court relied on in *Educational Employees* was *Pacific Reinsurance Management Corp. v. Fabe*, a case with a somewhat complicated procedural history.[196] Pacific Reinsurance was granted an arbitration award that ordered Ohio Reinsurance Corp. to pay money into Pacific's escrow account.[197] A California district court confirmed the arbitration award, but Ohio Reinsurance did not pay and appealed to the Ninth Circuit without posting the court-ordered supersedeas bond.[198] Pacific subsequently registered the judgment in the Northern District of Illinois to obtain assets held in trust for Ohio Reinsurance by another bank.[199] Several issues were appealed to the Seventh and Ninth Circuits, and the questions posed to the Seventh Circuit mainly concerned the nature of the assets Pacific was trying to reach.[200] In its analysis, however, the court approved of the registration, stating that because the judgment was on appeal, registration could only be ordered for good cause.[201]

In the third case, *Johns v. Rozet*, the District Court for the District of Columbia approved registration during a pending appeal when the defendants did not post a bond.[202] The defendants had requested a stay pending appeal and a waiver of the supersedeas bond requirement; the stay was granted but the court ordered that the defendants post a bond pursuant to Rule 62(d).[203] The defendants did not post a bond by the deadline, and failed yet again to post one after the court extended the deadline by another two weeks.[204] The court determined that because the defendants declined two opportunities to post a bond, and had no assets in the District of Columbia but held substantial assets in California, registration was appropriate.[205]

After *Educational Employees*, two cases, one from the Northern District of Illinois and another from the District of Idaho, also held that a pending appeal is necessary before registration can be authorized. The Northern District of Illinois, with limited discussion, denied registration prior to an appeal in *Generica Ltd. v. Pharmaceutical Basics, Inc.* Generica won an arbitration award and moved to confirm the award, for an order directing entry of final judgment, and for registration pursuant to § 1963.[206] The court approved of Pharmaceutical Basics' response in opposition to the

194. *Id.*
195. *Id.*
196. Pac. Reinsurance Mgmt. Corp. v. Fabe, 929 F.2d 1215, 1216 (7th Cir. 1991).
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.* at 1217.
201. *Id.* at 1218.
202. Johns v. Rozet, 143 F.R.D. 11, 12 (D.D.C. 1992).
203. *Id.*
204. *Id.*
205. *Id.* at 12–13.
206. Generica Ltd. v. Pharm. Basics, Inc., No. 95 C 5935, 1996 WL 535321, at *1 (N.D. Ill. Sept. 18, 1996), *aff'd*, 125 F.3d 1123 (7th Cir. 1997).

registration motion, which argued that because judgment had not been entered at the time of briefing, an appeal was not yet possible and the defendant did not have an opportunity to post a supersedeas bond.[207] Relying on the Seventh Circuit's interpretation in *Pacific Reinsurance* that "good cause" is shown when an appeal is filed and no supersedeas bond is posted,[208] the court ruled that until an appeal has been filed "the motion is premature and, accordingly, is denied."[209] The court noted that a bond would make registration unnecessary, as the bond would provide sufficient security for the creditor.[210]

In *Blaine Larsen Processing, Inc. v. Hapco Farms, Inc.*, the District of Idaho, after a thirteen-day trial, ruled in favor of the plaintiff who then moved to register in another district.[211] The defendant made several posttrial motions, including a Rule 50(b)[212] motion for a judgment as a matter of law, or in the alternative, pursuant to Rule 59,[213] a motion for a new trial.[214] The defendant also moved for a stay in the execution of the judgment until the other motions were resolved.[215]

The court denied plaintiff's § 1963 motion because the intention of the 1988 amendment was to harmonize § 1963 with Rule 62, which allows defendants to stay the enforcement of a judgment by posting a supersedeas bond.[216] Since, the defendant had not yet appealed, they had not yet had an opportunity to file a bond.[217] Citing Siegel's commentary, the court explained that a court could register a judgment if "no bond is filed to back the judgment when the appeal pends."[218] The court held that "defendant has the option of filing a supersedeas bond under Rule 62(d), in which case plaintiff may not register the judgment elsewhere."[219] The plaintiff would be allowed to register if and when the defendant failed to file a supersedeas bond.[220]

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207. *Id.* at *10.

208. Pac. Reinsurance Mgmt. Corp. v. Fabe, 929 F.2d 1215, 1218–19 (7th Cir. 1991); *see also supra* notes 196–201 and accompanying text.

209. *Generica*, 1996 WL 535321, at *10.

210. *Id.*

211. Blaine Larsen Processing, Inc. v. Hapco Farms, Inc., Civ. No. 97-212 E BLW, 2000 WL 35539979, at *1, *14 (D. Idaho Aug. 9, 2000).

212. FED. R. CIV. P. 50(b).

213. *Id.* R. 59.

214. *Blaine Larsen Processing*, 2000 WL 35539979, at *1.

215. *Id.* The court resolved the motions before it, and thus dismissed the motion for a stay. *Id.* at *15.

216. *Id.* at *14.

217. *See id.*

218. *Id.* (citing 28 U.S.C.A § 1963 cmt. (West Supp. 1989)).

219. *Id.* at *14.

220. *Id.*

2. The View That Registration for Good Cause Is Permitted Anytime After Judgment

Several courts have taken the opposite view from *Educational Employees* and its progeny, reading 28 U.S.C. § 1963 to permit registration anytime after the entry of judgment. The Eastern District of Pennsylvania denied the defendant's petition for the court to refuse pre-appeal motions for registration in *Garden State Tanning, Inc. v. Mitchell Manufacturing Group, Inc.*[221] After a four-day trial, the court entered judgment for the plaintiff in the amount of $4.6 million, and the plaintiff immediately moved for registration in Michigan and South Carolina.[222] The defendant opposed the motion. Citing *Educational Employees* as its authority, the defendant argued that because it had not appealed but still had time to appeal, registration could not be permitted even with good cause.[223] Relying on *Associated Business*, its "lengthy discussion of the legislative history," and the § 1963 commentary, the *Garden State Tanning* court determined that upholding defendant's interpretation of § 1963 to require a pending appeal would "thwart[] the goal of the 1988 amendment by enabling the judgment-debtor to remove known property from its jurisdiction, prior to the filing of such an appeal."[224] The court also cited *Whitney National Bank v. Stack*,[225] a case from the Eastern District of Louisiana, which suggested that a judgment could be registered outside the jurisdiction even when the defendant had filed a motion to amend the judgment under Rule 59 but had not yet appealed.[226]

In *Great American Insurance Co. v. Stephens*, the Eastern District of Pennsylvania followed its precedent in *Garden State Tanning*, again granting the plaintiff's motion for registration for good cause without an appeal.[227] The court determined there was good cause because the defendant lacked substantial assets to satisfy the judgment in Pennsylvania, but held assets in Alabama and Florida.[228] The defendant cited *Educational Employees* as authority that registration was premature.[229] The court again found the argument without merit, and held that the "legislative history of the statute and its 1988 amendment draw into sharp focus the difficulties which would result if Defendants' position on the timing of registration were adopted."[230]

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221. No. CIV.A. 98-4789, 2000 WL 1201372, at *1 (E.D. Pa. Aug. 4, 2000).
222. *Id.* at *1 n.1.
223. *Id.* at *1–2.
224. *Id.*
225. Civ. A. No. 91-1320, 1992 WL 236920, at *1 (E.D. La. Sept. 2, 1992).
226. *Garden State Tanning*, 2000 WL 1201372, at *1; *Stack*, 1992 WL 236920, at *1.
227. Great Am. Ins. Co. v. Stephens, Civil Action No. 04-3642, 2006 WL 2349991, at *3 (E.D. Pa. Aug. 11, 2006). Earlier, the Eastern District of Pennsylvania also permitted registration when the defendant had not appealed at all. Fidelity Bank, N.A. v. Anania, Civ. A. No. 91-4819, 1991 WL 236208, at *2 (E.D. Pa. Nov. 1, 1991).
228. *Great Am. Ins.*, 2006 WL 2349991, at *2–3.
229. *Id.* at *1.
230. *Id.* at *2.

In *Spray Drift Task Force v. Burlington Bio-Medical Corp.*, the D.C. District Court also held that a pending appeal was not a prerequisite for registering a judgment.[231] Spray Drift received an arbitration award and sought both a judgment confirming the award and an immediate registration of the order confirming the award.[232] Spray Drift argued that there was good cause for registration because Burlington lacked assets in the District of Columbia but held assets in another jurisdiction.[233] Burlington asserted that an appeal was a prerequisite for registration and argued against registration on the ground that it had not failed to post a bond, and it had not refused to since a request to post one had not been made.[234] The court drew two inferences in order to approve the registration. First, although Burlington had not been asked to post a supersedeas bond, it did not offer any assurances that it would, "despite the obvious opportunity to do so created by the filing of [its] petition [against registration]."[235] The court distinguished Burlington's behavior from that of the defendant's in its decision in *Cheminova A/S v. Griffin L.L.C.* In *Cheminova*, the court denied registration because the defendant had promised to pay the award or post bond if so ordered.[236] Second, because the court could not imagine on what grounds Burlington would appeal because it had neither contested the arbitration award nor its confirmation, it was unlikely that an opportunity for Burlington to post a supersedeas bond would arise.[237]

The D.C. District Court also attacked the substance of Burlington's claim that registration could only be permitted during the pendency of an appeal. First, it found, "The statute's plain meaning is that a judgment may be registered when it has become final or, *at any other time*, for good cause shown."[238] Second, any cases that may have held to the contrary were found to be nonbinding and lacking in a legitimate rationale for requiring a pending appeal.[239]

Most recently, in *E.I. DuPont de Nemours & Co. v. Kolon Industries, Inc.*, the Eastern District of Virginia also determined that a judgment could be registered where the court found good cause, regardless of whether an appeal was pending.[240] Kolon's motion to stay execution of final judgment was denied as moot as to Rule 62(b) and was denied as to Rule 62(d).[241] DuPont sought to register its judgment in jurisdictions outside the Eastern

231. Spray Drift Task Force v. Burlington Bio-Medical Corp., 429 F. Supp. 2d 49, 51 (D.D.C. 2006).
232. *Id.* at 49.
233. *Id.* at 50.
234. *Id.* at 50–51.
235. *Id.* at 51.
236. *Id.* (citing Cheminova A/S v. Griffin L.L.C., 182 F. Supp. 2d 68, 80 (D.D.C. 2002)); *see infra* Part II.B.2.
237. *Spray Drift*, 429 F. Supp. at 51.
238. *Id.* (emphasis added).
239. *Id.* (citing Educ. Emps. Credit Union v. Mut. Guar. Corp., 154 F.R.D. 233 (E.D. Mo. 1994)).
240. E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc., Civ. A. No. 3:09CV058, 2012 WL 1203327, at *1 (E.D. Va. Apr. 10, 2012).
241. *Id.*

District of Virginia.[242] The court noted that a motion for registration prior to appeal was a scenario of first impression in the Fourth Circuit, but found *Spray Drift*'s analysis, and the subsequent cases that rejected *Educational Employees*, to be persuasive.[243] The court also held that a literal reading of § 1963 meant that registration could be ordered for good cause shown *at any time*.[244]

C. Courts Have Found Good Cause To Register When the Judgment Debtor Has Appealed and Failed To Post a Supersedeas Bond

Many cases, although they addressed § 1963 motions to register *while an appeal was already pending*, have held that good cause is established (in part or in whole) by the judgment debtor's failure or refusal to post a supersedeas bond. These cases are distinguishable from those that have permitted registration based solely on the assets test.[245] These cases suggest that, but for the failure to post a bond, the court may not have found good cause to permit registration. At least one court has explicitly held that the judgment debtor should be given an opportunity to post a supersedeas bond to stay the enforcement of her judgments.

In *Cheminova*, the D.C. District Court explicitly required that a defendant be given an opportunity to post a supersedeas bond prior to allowing registration.[246] The court approved Cheminova's application for the confirmation and enforcement of an arbitration award against Griffin, but denied its § 1963 motion to register.[247] Cheminova argued that good cause existed to register the award because Griffin had no assets in the District of Columbia, and had substantial assets in Georgia and Texas.[248] Griffin, opposing the registration, demonstrated that Cheminova was protected by the final arbitration order's provision for late payment interest, and additionally, promised to post a supersedeas bond for the full amount if the court so ordered.[249] The court held that since a bond will usually protect the creditor's interest, registration should be permitted only after the debtor

242. *Id.*
243. *Id.* at *2.
244. *Id.* ("[T]he statute seems to contemplate registration apart from the process of appeal.").
245. *See, e.g.*, HSH Nordbank AG New York Branch v. Swerdlow, 08 CIV. 6131 (DLC), 2010 WL 1957265, at *1 (S.D.N.Y. May 14, 2010) ("Good cause is established upon a mere showing that the party against whom the judgment has been entered has substantial property in the other foreign district and insufficient property in the rendering district to satisfy the judgment." (internal quotation marks omitted) (quoting Owen v. Soundview Fin. Grp., Inc., 71 F. Supp. 2d 278, 278–79 (S.D.N.Y. 1999))); Becherer v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 809 F. Supp. 1259, 1275 (E.D. Mich. 1992), *aff'd in part, vacated in part, rev'd in part*, 43 F.3d 1054 (6th Cir. 1995) (holding the same); Ind.-Mich. Corp. v. Sisk Fertilizer-Lime Serv., Inc., No. 89 C 2735, 1992 WL 159150, at *1 (N.D. Ill. June 29, 1992) (same).
246. Cheminova A/S v. Griffin L.L.C., 182 F. Supp. 2d 68, 80 (D.D.C. 2002).
247. *Id.* at 79–80.
248. *Id.* at 80.
249. *Id.*

refuses or fails to post a bond.[250] Because Griffin had made a good faith offer to pay the award or post a supersedeas bond if the court so ordered, the request to register was denied.[251]

The Southern District of New York followed *Cheminova*'s precedent in *Lankler Siffert & Wohl, LLP v. Rossi* when it denied registration where the defendants promised to post a supersedeas bond.[252] The defendants had filed notice of appeal from the judgments, and the plaintiff demonstrated good cause to register as the defendant had insufficient assets to satisfy the judgment in New York, but held assets in the Northern District of Texas.[253] Because the defendants indicated that they intended to post a bond, the court felt that the defendant should be given an opportunity to do so, and it deferred authorization for registration for fourteen days.[254]

At least seven other courts have weighed the lack of a supersedeas bond as one factor that added to a finding of good cause for permitting registration outside the forum jurisdiction. The District of Maryland, in *Saint Anne's Development Co. v. Trabich* and *Hofmann v. O'Brien*, held that defendant's failure to post a supersedeas bond and lack of assets in the forum jurisdiction but existence of substantial assets in another jurisdiction, together demonstrated sufficient good cause to order registration in the other districts.[255] The Northern District of California found good cause where the automatic stay period had expired, the defendants failed to post a bond after appeal, and the defendants lacked assets in California to satisfy the judgment.[256] The Tenth Circuit,[257] Eastern District of Pennsylvania,[258] the Eastern District of Tennessee,[259] the Northern District of Illinois,[260] and the D.C. District Court[261] all held the same.

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250. *Id.* (citing Henkels & McCoy, Inc. v. Adochio, No. Civ.A. 94-3958, 1997 WL 535899, at *2 (E.D. Pa. July 31, 1997), and Johns v. Rozet, 143 F.R.D. 11, 12–13 (D.D.C. 1992)).

251. *Id.*

252. Lankler Siffert & Wohl, LLP v. Rossi, No. 02 Civ.10055(RWS), 2004 WL 1627167, at *2 (S.D.N.Y. July 21, 2004).

253. *Id.*

254. *Id.*

255. *See* Saint Anne's Dev. Co. v. Trabich, Civ. No. WDQ-07-1056, 2010 WL 4284930, at *2 (D. Md. Oct. 29, 2010); Hofmann v. O'Brien, Civ. No. WDQ-06-3447, 2009 WL 3216814, at *3 (D. Md. Sept. 28, 2009).

256. *See* Funai Elec. Co. v. Daewoo Elecs. Corp., No. C-04-1830 JCS, 2009 WL 605840, at *3 (N.D. Cal. Mar. 9, 2009).

257. *See In re* Steel Reclamation Res., Inc., No. 94-6396, 1995 WL 495272, at *3 (10th Cir. Aug. 21, 1995) (upholding the decision of the district court to allow registration because the defendant "had not posted a supersedeas bond and had no property in the district that the judgment was rendered").

258. *See* Henkels & McCoy, Inc. v. Adochio, No. Civ. A. 94-3958, 1997 WL 535899, at *2 (E.D. Pa. July 31, 1997) ("In cases in which the judgment debtor has no assets in the judgment district, but has assets in another district and refuses to post a supersedeas bond, there is good cause to register the judgment." (citing Jack Frost Labs., Inc. v. Physicians & Nurses Mfg. Corp., 951 F. Supp. 51 (S.D.N.Y. 1997), and Fidelity Bank, N.A. v. Anania, Civ.A. No. 91-4819, 1991 WL 236208, at *2 (E.D. Pa. Nov. 1, 1991))).

259. *See* DuVoisin v. Avery (*In re* S. Indus. Banking Corp.), 121 B.R. 229, 232 (Bankr. E.D. Tenn. 1990) ("Because the defendant also has assets in Kentucky, and because there has been no stay of execution on the judgment, good cause exists entitling the plaintiff to [registration].").

III. COURTS SHOULD PERMIT A JUDGMENT TO BE REGISTERED FOR "GOOD CAUSE SHOWN" REGARDLESS OF WHETHER AN APPEAL IS FILED, BUT NOT BEFORE GIVING THE JUDGMENT DEBTOR AN OPPORTUNITY TO OBTAIN A STAY BY POSTING A SUPERSEDEAS BOND

Part III.A explains that a judgment creditor should not have to wait to register her judgment until the judgment debtor has filed an appeal. To ensure that a judgment creditor is able to collect on the judgment to which she is rightfully entitled, courts must permit registration as soon as the fourteen-day automatic stay has lapsed. Part III.B proposes a caveat. Should the creditor move for registration before the debtor's time for an appeal has lapsed, the court should have discretion to grant the debtor an opportunity to post a bond, and if necessary, a few days' time in order to collect the requisite funding.

A. Requiring That a Judgment Creditor Wait Until the Defendant Has Appealed Renders the Good Cause Language of § 1963 Meaningless and Derogates from the Purpose of the Amendment

Educational Employees, *Blaine Larsen*, and *Generica* misinterpreted the purpose of adding the "good cause" language to 28 U.S.C. § 1963 by amendment in 1988.[262] The amendment sought to eliminate the anomaly that permitted judgment debtors to avoid registration and secure additional time to hide or dispose of their assets.[263] Further, these cases misconstrued prior cases, such as *Pacific Reinsurance*.[264] *Educational Employees* cited *Pacific Reinsurance* and other cases to establish that most cases that had considered § 1963 motions to register had done so in the context of a pending appeal.[265] This logic is flawed, however, because the judgment creditor decides when to file a motion for registration, and the fact that the creditors had done so after an appeal was filed in the few cases that *Educational Employees* examined may have been coincidental. In any lawsuit, it may take some time for the creditor to realize there are no assets in the forum jurisdiction, and, moreover, it may take time to locate the debtor's assets in other jurisdictions. Perhaps it is not until the debtor appeals that a creditor will feel uneasy about the ability to collect her judgment and feel the need to register.

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260. *See* First Options of Chi., Inc. v. Polonitza, No. 88 C 2998, 1991 WL 2408, at *2 (N.D. Ill. Jan. 4, 1991) ("This court agrees with *Associated Business*, *Southern Industrial*, and the commentary [to the 1988 amendment of § 1963] that lack of a supersedeas bond, no assets in this district, and substantial assets in another district constitute good cause justifying registration of the judgment in the other district.").

261. *See* Johns v. Rozet, 143 F.R.D. 11, 12–13 (D.D.C. 1992). The debtor appealed and the court denied the request for a waiver of the bond requirement. *Id.* After the debtor did not post a bond by the imposed deadline, the court granted the creditor's motion to register in California since the defendant's financial statements showed the presence of assets there and an absence of assets in the District of Columbia. *Id.* at 12–13.

262. *See supra* Part II.B.

263. *See supra* Part I.C.

264. *See supra* notes 196–201 and accompanying text.

265. *See supra* notes 179, 196–201 and accompanying text.

Generica's reading of *Pacific Reinsurance* for the proposition that "good cause is shown when an appeal has been filed for which no supersedeas bond has been posted"[266] is also misleading. The Seventh Circuit limited its discussion of "good cause" to only noting that the Ninth Circuit found that there was "good cause" to register.[267] It did not expressly approve of or articulate the Ninth Circuit's standard, nor did it articulate a standard of its own.[268]

The purpose of the amendment was to avoid the end-run around Rule 62(d) by providing an additional—and earlier—timeframe than what the older version of the statute provided.[269] Requiring a plaintiff to wait until a defendant has appealed makes the "good cause shown" language useless. Denying a motion to register (after the fourteen-day automatic stay period) because it is premature forces a judgment creditor to wait until the defendant has decided whether to appeal. Practically speaking, this may be the same as waiting until the time for appeal has expired.

Requiring an appeal as a prerequisite to registration aids the judgment debtor who wishes to take advantage of extra time to hide assets. Even assuming that the defendant does not engage in any postjudgment motion practice,[270] if the defendant possesses no assets in the forum jurisdiction, but substantial assets in a second jurisdiction that she wishes to hide or dissipate, the defendant can simply wait until the very end of the thirty-day window to file an appeal, giving her ample time to make sure there is nothing left in the second jurisdiction for the plaintiff to claim in enforcement of the judgment. Refusing to permit registration would allow a judgment debtor to create a de facto stay for thirty days, doubling the fourteen-day automatic stay.[271]

B. Permitting Registration Before the Debtor Has an Opportunity To Post a Supersedeas Bond Can Give a Judgment Creditor Too Much Security, to the Detriment of the Judgment Debtor's Rights

Even when a defendant has already appealed or is engaged in postjudgment motion practice, she should not be deprived of an opportunity to post a supersedeas bond to stay the execution in the other jurisdictions. The posting of a supersedeas bond avoids execution on property in other, and sometimes multiple, states. Once a judgment has been registered, taking the appropriate steps required by local state law can turn it into a lien or levy against property there.[272] The debtor can stay the enforcement by

266. *See supra* note 208 and accompanying text.
267. *See supra* notes 196–201 and accompanying text.
268. *See supra* notes 196–201 and accompanying text.
269. *See supra* Part I.C.
270. Should the defendant decide to engage in postjudgment motion practice, the court will likely require a bond to stay the execution of the judgment while the motions are resolved. *See supra* note 110 and accompanying text.
271. *See supra* Part I.D.2.
272. *See supra* Part I.D.2.

posting a bond in the rendering court, but this will not always lift the liens or remove the registered judgment—it merely stays them.[273]

The effect of liens or levies, even if they do not reach personal property, can be detrimental. For example, in *Phansalkar v. Andersen Weinroth & Co.*, the creditor used New York execution laws to create levies on the judgment debtors' bank accounts.[274] The levies prevented the debtors from selling securities to raise cash for the posting of a bond, and nearly drove the debtors out of business as they bounced checks, nearly had their telephone service cut off, and were rejected for a mortgage refinancing because of a lowered credit rating.[275]

A judgment debtor may need additional time to secure the necessary financing for posting a supersedeas bond. For instance, in *Phansalkar*, the judgment debtors needed six weeks to secure their $5.4 million bond.[276] Executing on a debtor's property may even *prevent* her from being able to secure the cash to post a bond.[277] Moreover, if the judgment creditor is a business with limited physical assets—for instance a think tank, whose assets are mainly in the form of intellectual property—raising the funds may take longer than it would take a business with a great deal of physical assets and real property. For a business with limited physical assets, there is little or no real property to mortgage against.

The central purpose of the 1988 amendment was to eliminate judgment debtors' ability to stay the enforcement of the judgment on appeal while circumventing Rule 62(d)'s supersedeas bond requirement.[278] While supersedeas bonds are not mandatory,[279] a judgment debtor is entitled to post a bond to stay the enforcement of the judgment during the resolution of her postjudgment motions, even if she has not yet appealed, and should—in the appropriate case—be granted time to do so.[280] That view is supported by the cases that have found good cause where a judgment debtor failed to post a supersedeas bond after requesting a stay of execution.[281] Failure to post a bond after an appeal has been filed or during the pendency of postjudgment motions generally entitles a judgment creditor to begin enforcement proceedings.[282] However, these courts add some additional meaning to the bond requirement by defining it as a trigger for good cause to register. This implies that the court should use its discretion to consider whether to delay immediate registration and authorize extra time for the judgment debtor to post a bond.

This is the view articulated in *Cheminova*, which held that "permission to register should be deferred until after a judgment debtor refuses or fails to

273. *See supra* Part I.D.2.
274. *See supra* notes 151–58.
275. *See supra* notes 151–58.
276. *See supra* note 153 and accompanying text.
277. *See supra* notes 155–57 and accompanying text.
278. *See supra* Part II.A.
279. *See supra* notes 12, 119 and accompanying text.
280. *See supra* Part I.D.2.
281. *See supra* Part II.C.
282. *See supra* Part I.D.2.

post a supersedeas bond."[283] Indeed, the D.C. District Court in *Spray Drift* found it problematic that the defendant did not offer any assurance that it would pay the plaintiff's award, nor that it would comply with a court ordered bond.[284] Absent a showing that the debtor intends to hide assets, the court should exercise its discretion to give the debtor extra time to secure funding by examining whether the debtor has the ability to post a bond, and the court should take a good faith promise that she will post a bond. Judge Robert Sweet in the Southern District of New York gave judgment debtors time to post a bond in *Lankler Siffert & Wohl, LLP v. Rossi*.[285] In *Lankler*, the defendants had not yet had an opportunity to post a bond but stated their intention to post one. The court therefore deferred registration of the judgment for fourteen days, noting that registration would be authorized if no bond was posted in that time.[286]

Just as courts have leeway in determining what constitutes "good cause" under the statute,[287] courts confronted with a motion to register should exercise their discretion to permit a stay without the posting of a bond,[288] and conduct a balancing test to determine whether or not to grant the judgment debtor time to post a bond before permitted registration. A useful guideline for such a balancing test could be created from the test used by most courts to consider whether to permit a stay without the posting of a bond.[289] Adapting the principles behind these four factors to decide whether to allow additional time for a judgment debtor to post a bond might work as follows. A court could weigh: (1) whether the judgment debtor has made a strong showing that he is likely to secure the assets to post a bond within the time allotted; (2) whether the judgment debtor will be irreparably injured if registration is permitted without the opportunity to post a bond; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. This framework would allow a court to weigh the interest of the creditor in collecting her judgment in a timely fashion, against the interest of the debtor in fulfilling the judgment payment with minimal adverse interference to the debtor's livelihood, assets, and property. It also protects the interests of the public, and the interests of a judgment debtor-corporation's or debtor-business's customers.[290]

CONCLUSION

This Note provides direction for district courts in evaluating when it is appropriate to order registration for good cause shown pursuant to 28 U.S.C. § 1963. Some district courts have held that registration for good

283. *See supra* notes 247–51 and accompanying text.
284. *See supra* notes 234–36 and accompanying text.
285. *See supra* notes 252–54 and accompanying text.
286. *See supra* note 254 and accompanying text.
287. *See supra* note 90 and accompanying text.
288. *See supra* notes 119–21.
289. *See supra* note 144 and accompanying text.
290. *See supra* notes 145–47.

cause shown cannot be ordered prior to the time when the judgment debtor files an appeal, while others have permitted registration any time after the entry of judgment and expiration of the automatic stay. This Note argues that registration should be ordered for good cause shown anytime after the automatic stay expires, but that the judgment debtor should be given an opportunity, and if necessary, time, to post a supersedeas bond to stay the enforcement of the judgment during the resolution of her postjudgment motions or during the pendency of her appeal. Registration is a powerful tool for judgment creditors in securing assets to satisfy their judgments. That tool is blunted, however, when permission to register is cabined to the period after an appeal has been filed. On the other side of the scale, courts must be wary of the potential for registration to tie up assets unnecessarily, and should give well-meaning judgment debtors an opportunity to furnish a supersedeas bond to secure the creditor's judgment.