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S. 23: Ohio Enacts an Enforcement of Foreign Judgments Law

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S. 23: OHIO ENACTS AN ENFORCEMENT OF FOREIGN JUDGMENTS LAW

I. INTRODUCTION

In Ohio, it is no longer necessary to bring a new civil action to enforce a judgment rendered in another state, as an alternate method is now available. Ohio has now enacted¹ the Uniform Enforcement of Foreign Judgments Act (UEFJA).² This new law provides an optional, expedited procedure for enforcing foreign judgments in Ohio.³

The focus of this note will be on the concerns which prompted adoption of the UEFJA by Ohio, the Act's provisions, and their relation to due process considerations. The note will also analyze the procedures and defenses which judgment debtors and judgment creditors⁴ may wield in using the new law.

II. BACKGROUND

A judgment rendered in one state would be of little value in our highly mobile society if it could only be enforced by the authorities of the state in which it was rendered. In an attempt to unify the states⁵ and make a remedy available in every state for wrongs suffered or obligations entered into throughout the United States,⁶ the full faith and credit clause was included in the United States Constitution.⁷ The

1. Act of Apr. 29, 1983, 1983 Ohio Legis. Serv. 5-29 (Baldwin) (to be codified at OHIO REV. CODE ANN. §§ 311.07, 2329.021-.027).

2. 13 U.L.A. 173, 176 (1964). Some minor modifications have been made in Ohio's version of the Uniform Act. See *infra* note 41.

3. A foreign judgment is "any judgment, decree, or order of a court of the United States, or of any court of another state, that is entitled to full faith and credit in this state." OHIO REV. CODE ANN. § 2329.021 (Page Supp. 1983). This definition does not include judgments of foreign countries. *Multibanco Comermerx, S.A. v. Gonzalez*, 129 Ariz. 321, 630 P.2d 1053 (1981).

4. The terms "debtor" and "creditor" are used throughout this note to simplify the analysis. However, the UEFJA mechanism is not restricted to debtor-creditor money judgments. It has been used to enforce support orders or other equity decrees. *Ehrenzweig v. Ehrenzweig*, 86 Misc. 2d 656, 383 N.Y.S.2d 487 (Sup. Ct. 1976), *aff'd*, 61 A.D.2d 1003, 402 N.Y.S.2d 638 (App. Div. 1978); *Hudson v. Hudson*, 569 P.2d 521 (Okla. Ct. App. 1977). In child custody matters, the UEFJA should be compared to OHIO REV. CODE ANN. § 3109.32 (Page 1980) (derived from the UNIF. CHILD CUSTODY JURISDICTION ACT § 15, 9 U.L.A. 111, 158 (1968)). See *Beck v. Smith*, 296 N.W.2d 886 (N.D. 1980) (both Uniform Acts must be construed together in child custody decree filing and enforcement proceedings). In proceedings to enforce foreign support orders, the UEFJA should be compared to OHIO REV. CODE ANN. § 3115.32 (Page 1979) (derived from UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT §§ 35-41, 9A U.L.A. 647, 741-45 (1968)). See *Hudson v. Hudson*, 569 P.2d 521 (Okla. Ct. App. 1977).

5. See *Hughes v. Fetter*, 341 U.S. 609, 612 (1951).

6. See *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 277 (1935).

7. A similar clause was contained in the Articles of Confederation. See *Radin, The Authenticated Full Faith and Credit Clause: Its History*, 39 ILL. L. REV. 1, 1-7 (1944).

clause requires that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."⁸

This clause, as it pertains to judicial proceedings, has generally been interpreted to mean that a valid judgment based upon proper jurisdiction in one state must be recognized—without reexamining the merits of the claim—by all other states.⁹ Though separate sovereigns, states cannot ignore or slight the valid judgments of other states under our federal system.

Full faith and credit still has certain limitations.¹⁰ A state's judgment is not *self-executing* in every other state.¹¹ Regardless of the seemingly mandatory language of the Constitution and the enabling statute,¹² states have generally required a new lawsuit to *enforce* a foreign judgment.¹³ The increasing volume of modern litigation and resulting court congestion prompted a need for some kind of summary procedure¹⁴ to give effect to foreign judgments.¹⁵ The National Conference of Commissioners on Uniform State Laws (NCCUSL) responded in 1948 with a Uniform Enforcement of Foreign Judgments Act¹⁶ for

8. U.S. CONST. art. IV, § 1.

9. *Durfee v. Duke*, 375 U.S. 106, 110–11 (1963); *Milliken v. Meyer*, 311 U.S. 457, 462 (1940); *Fauntleroy v. Lum*, 210 U.S. 230 (1908). *Fauntleroy* is the classic full faith and credit case because it demonstrates that as long as the first court had proper jurisdiction, the second court must recognize the judgment even if the first court misinterpreted the law or plainly made an erroneous decision. The second court cannot reexamine the merits of the case. *Id.* at 237–38.

10. *See Sedler, Recognition of Foreign Judgments and Decrees*, 28 MO. L. REV. 432 (1963).

11. *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276 (1935).

12. 28 U.S.C. § 1738 (1976). Section 1738 states:

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in courts of such State, Territory or Possession from which they are taken.

13. *Lynde v. Lynde*, 181 U.S. 183, 187 (1901). *See also* OHIO LEGISLATIVE SERV. COMM., BILL ANALYSIS: S.B. 23 (AS REPORTED BY H. JUDICIARY) 1 (1983) [hereinafter cited as BILL ANALYSIS] (on file with University of Dayton Law Review).

14. A summary procedure is a short or simple procedure as opposed to a regular, full, formal proceeding. BLACK'S LAW DICTIONARY 1084 (5th ed. 1979).

15. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, 13 U.L.A. 173, 173 Commissioner's Prefatory Note (1964) [hereinafter cited as Prefatory Note].

16. 13 U.L.A. 173, 189 (1964). Arkansas, Illinois, Missouri, and Nebraska still use this version.

enactment by the states. Also in that year, Congress enacted a procedure for the registration of judgments in the federal court system.¹⁷ The federal law provided a simple way of recognizing a valid foreign judgment by permitting the filing of a certified copy of the judgment with the court in which it was to be enforced. The superiority of that procedure inspired the NCCUSL¹⁸ to promulgate a revised Uniform Enforcement of Foreign Judgments Act in 1964, for adoption by the states.¹⁹

Until 1983, Ohio had not enacted either Uniform Act or devised its own summary procedure for enforcing foreign judgments. Previous Ohio law required that a new lawsuit be brought to enforce judgments rendered in other states.²⁰ Such a procedure, although constitutionally sound, was in practical terms a waste of time and money for the parties and for the court system.²¹ The time and effort expended in filing, pleading, and docketing a new lawsuit unduly burdened what should have been a simple task.²²

Inadvertently, the requirement of a new lawsuit to enforce foreign judgments was theoretically eroded by an Ohio Attorney General's Opinion in 1979.²³ The attorney general interpreted Ohio law²⁴ to allow an Ohio sheriff to execute "process"²⁵ issued in other states as well as process issued by other counties and courts within Ohio.²⁶ The attorney

17. 28 U.S.C. § 1963 (1976). Section 1963 states:

A judgment in any action for the recovery of money or property now or hereafter entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.

18. Prefatory Note, *supra* note 15, at 174.

19. 13 U.L.A. 173, 176 (1964). This is the version adopted by Ohio in 1983. OHIO REV. CODE ANN. §§ 2329.021-.027 (Page Supp. 1983).

20. *Devou v. Devou*, 65 Ohio App. 508, 31 N.E.2d 159 (1939).

21. See Prefatory Note, *supra* note 15, at 173-74.

22. Interview with Sen. Richard C. Pfeiffer, Jr., Ohio State senator, in Columbus, Ohio (July 19, 1983) [hereinafter cited as Pfeiffer Interview] (on file with University of Dayton Law Review).

23. 79 Op. Ohio Att'y Gen. 105 (1979).

24. "[The county sheriff] shall execute all warrants, writs and other process directed to him by any proper lawful authority." OHIO REV. CODE ANN. § 311.07(A) (Page 1979).

25. "[T]hose documents issued in this state . . . and those documents issued in a state other than this state that conform to the laws of the state of issuance governing the issuance of process in that state." OHIO REV. CODE ANN. § 311.07(D) (Page Supp. 1982). Senate Bill 23 amends this section to exclude "executions of judgments or decrees, issued in a state other than this state . . ." OHIO REV. CODE ANN. § 311.07(D) (Page Supp. 1983).

26. That decision was essentially ratified and codified by H. 278 in 1980, which amended § 311.07. "He shall . . . execute all warrants, writs, and other process directed to him by any proper and lawful authority of this state, and those issued by a proper and lawful authority of any

general's decision and resulting legislation seemed harmless if an Ohio sheriff was only serving foreign subpoenas or summonses, but the definition of process used in the statute²⁷ could also have included writs of execution²⁸ issued in other states. Therefore, an Ohio sheriff would have been bound to serve and levy²⁹ upon foreign writs of execution as if they had been issued by an Ohio court. The previous section 311.07³⁰ thereby provided a loophole for foreign creditors to enforce their judgments in Ohio by simply sending a writ of execution to an Ohio sheriff—effectively bypassing a new lawsuit. If the loophole were used, a judgment debtor would have none of the constitutionally protected due process rights of notice or hearing that are guaranteed in a civil action.³¹ The first notice he would receive would be “the sheriff knocking on his door.”³²

The adoption of S. 23 then, is “preventive medicine”³³ by the legislature with two main purposes. First, by amending the previous section 311.07, the loophole was eliminated and constitutional problems were seemingly corrected before a court challenge to the old law could have been made.³⁴ Second, by adopting the UEFJA, the legislature has provided an efficient and streamlined alternative procedure for enforcing foreign judgments.³⁵

state.” OHIO REV. CODE ANN. § 311.07(A) (Page Supp. 1982). *Cf. id.* § 311.08(A), (B).

27. *See supra* note 25 and accompanying text.

28. “An execution is a *process* of a court, issued by its clerk, and directed to the sheriff of the county.” OHIO REV. CODE ANN. § 2327.01 (Page 1981) (emphasis added).

“The writ of execution against the property of a judgment debtor issuing from a court of record shall command the officer to whom it is directed to levy on the goods and chattels of the debtor. If no goods or chattels can be found, the officer shall levy on the lands and tenements of the debtor.” *Id.* § 2329.09.

29. OHIO REV. CODE ANN. § 2329.11 (Page 1981). In order for there to be a valid levy, the property must be seized or possessed by the sheriff. *In re Kerr's Estate*, 90 Ohio App. 1, 103 N.E.2d 7 (1950). The personal or real property levied upon is then eventually sold. OHIO REV. CODE ANN. § 2329.13, 2329.20 (Page 1981).

30. OHIO REV. CODE ANN. § 311.07(A) (Page Supp. 1982). The present § 311.07 excludes foreign writs of execution. *Id.* § 311.07(D) (Page Supp. 1983).

31. Interview with Professor Jean M. Mortland, former chairperson, Ohio State Bar Association Uniform State Laws Committee; Professor of Law, Capital University Law School, in Columbus, Ohio (July 19, 1983) [hereinafter cited as Mortland Interview] (on file with University of Dayton Law Review).

32. Briefing Paper for Senator Richard C. Pfeiffer Jr., prepared by Robert Fletcher, legislative counsel, Ohio State Bar Association [hereinafter cited as Briefing Paper] (on file with University of Dayton Law Review).

33. Pfeiffer Interview, *supra* note 22.

34. *Id.* A debtor could have attacked the execution on procedural due process grounds, presumably after a default judgment in the original state. Mortland Interview, *supra* note 31.

35. Pfeiffer Interview, *supra* note 22.

III. IMPORTANT PROVISIONS

Senate Bill 23 defines a foreign judgment as "any judgment, decree, or order of a court of the United States or of any court of another state, that is entitled to full faith and credit in this state."³⁶ It sets out a simplified and straightforward method of filing and enforcing the foreign judgment in Ohio.³⁷ An authenticated copy of the judgment must first be filed with the clerk of courts.³⁸ Included with the copy of the foreign judgment must be an affidavit stating the names and last known addresses of the judgment debtor and judgment creditor.³⁹

Along with the filing of the authenticated judgment and affidavit, the judgment creditor must file a praecipe⁴⁰ with the clerk instructing him or her to send notice to the debtor of the filing.⁴¹ For extra protection, a judgment creditor may also mail his or her own notice in addition to the clerk's notice.⁴² If the creditor can prove that he or she mailed his or her own notice, the failure of the clerk to mail notice will not affect the enforcement proceedings.⁴³

Upon the filing of the judgment, any execution upon it is automatically stayed for thirty days.⁴⁴ Enforcement may be stayed further if the debtor shows that an appeal is pending in the state of original judgment,⁴⁵ or if he or she "shows the court of common pleas any ground upon which enforcement of a judgment of a court of common pleas would be stayed."⁴⁶ A properly filed judgment is treated in the same way as a judgment of an Ohio common pleas court, and is subject to the "same procedures, defenses, and proceedings for reopening, vacating or staying"⁴⁷ and "may be enforced or satisfied in same manner."⁴⁸

36. OHIO REV. CODE ANN. § 2329.021 (Page Supp. 1983).

37. *Id.* §§ 2329.021-.025.

38. *Id.* § 2329.022.

39. *Id.* § 2329.023(A).

40. A praecipe is a signed, written order addressed to the clerk of courts requesting him or her to issue a particular writ. BLACK'S LAW DICTIONARY 1055-56 (5th ed. 1979).

41. OHIO REV. CODE ANN. § 2329.023(B) (Page Supp. 1983). The requirement of a praecipe deviates from the Uniform Act. It was the result of an amendment to S. 23 requested by the Clerk of Courts Association to put the bill into accord with other procedures for issuing process. Letter from Lawrence A. Belskis, lobbyist for Ohio Clerk of Courts Association, to Senator Richard C. Pfeiffer Jr. (Mar. 4, 1983) (on file with University of Dayton Law Review). The general requirement of a praecipe for issuance of process is found at OHIO REV. CODE ANN. § 2303.11 (Page 1981).

42. OHIO REV. CODE ANN. § 2329.02(B) (Page Supp. 1983).

43. Practitioners would be strongly advised to take advantage of this protection and send extra notice. If they do so, it is a double check upon the clerk's office, and a safeguard against later due process notice arguments that a debtor may make.

44. OHIO REV. CODE ANN. § 2329.023(C) (Page Supp. 1983).

45. *Id.* § 2329.024(A).

46. *Id.* § 2329.024(B).

47. *See infra* text accompanying notes 83-93. *See also* OHIO R. CIV. P. 60(B).

Finally, the law provides for interpretation of the law consistent with the interpretation given to it by other states.⁴⁹ The right of a judgment creditor to bring a new action in lieu of using the new procedure is also retained.⁵⁰ Therefore, the new summary procedure is merely optional.

IV. DUE PROCESS ANALYSIS OF KEY PROVISIONS

In terms of due process protection, the most important provision of the law is the automatic thirty-day stay of execution.⁵¹ The stay gives the debtor time to prepare and respond, fairly balancing the creditor's interests with the debtor's. The debtor is protected because the first notice that he or she receives is not "the sheriff knocking on the door."⁵² Even though a creditor must wait at least thirty days, his or her rights are guarded in the interim because a lien attaches upon the debtor's real property as soon as the judgment is filed.⁵³ If there is a danger that the debtor will leave the state or destroy the property, the creditor may use attachment or garnishment to protect his or her interests.⁵⁴

The automatic thirty-day stay also guarantees the due process rights of notice and hearing to the debtor. The UEFJA has been upheld against constitutional attack on just such grounds in *Gedeon v. Gedeon*.⁵⁵ In that case, a father facing Colorado enforcement of a New Mexico judgment for civil contempt fines and attorney's fees relating to a child custody agreement challenged the Colorado UEFJA⁵⁶ as providing inadequate notice and hearing requirements. However, as the court noted, "[i]t is not entirely clear what precisely due process requires by way of procedures for postjudgment filings such as this. . . . While these [UEFJA] procedures may not comply with the strict requirements of [*Fuentes v. Shevin*,⁵⁷] those procedures are not required in post-judgment proceedings. We find that the procedures of the Act amply protect the appellant's due process rights."⁵⁸

48. OHIO REV. CODE ANN. § 2329.022 (Page Supp. 1983).

49. *Id.* § 2329.027.

50. *Id.* § 2329.026.

51. *Id.* § 2329.023(C).

52. See *supra* note 32 and accompanying text.

53. OHIO REV. CODE ANN. § 2329.02 (Page 1981). A certificate from the clerk must also be filed at the county recorder's office. *Id.*

54. These statutes and the applicable procedures are found at OHIO REV. CODE ANN. §§ 2715, 2716 (Page Supp. 1983). For an explanation of these procedures and their recent revision, see Note, *H.B. 254: Changes in Ohio's Attachment, Replevin and Garnishment Statutes*, 8 U. DAYTON L. REV. 407 (1983).

55. — Colo. —, 630 P.2d 579 (1981), *appeal dismissed*, 454 U.S. 1050 (1982).

56. COLO. REV. STAT. §§ 13-53-101-108 (1973).

57. 407 U.S. 67 (1972).

58. — Colo. at —, 630 P.2d at 583 (citations and footnotes omitted).

An analysis of the possible due process problems in the UEFJA must start with *Endicott Johnson Corp. v. Encyclopedia Press Inc.*⁵⁹ In that case, the United States Supreme Court held that a New York statute allowing an ex parte issuance of a garnishment order upon the debtor's wages did not violate the due process clause.

[T]he established rules of our system of jurisprudence do not require that a defendant who has had his day in court, should, after a judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment. Thus, in the absence of a statutory requirement, it is not essential that he be given notice before the issuance of an execution against his tangible property; after the rendition of the judgment he must take "notice of what will follow," no further notice being "necessary to advance justice."⁶⁰

The Supreme Court later clouded the issue in *Griffin v. Griffin*.⁶¹ In that case, the Court held that a defendant spouse was entitled to notice and hearing when an alimony decree was to be entered on the docket, and that the docketing of that decree to finalize arrearages had cut off his right to a retroactive modification of the decree.⁶² The holding of *Griffin* seems to require notice and hearing in some postjudgment situations:

While it is undoubtedly true that the original decree . . . gave petitioner notice at the time of its entry that further proceedings might be taken . . . we find in this no ground for saying that due process does not require further notice of the time and place of such further proceedings, inasmuch as they undertook substantially to affect rights in ways in which the original decree did not.⁶³

Courts are faced with the clash between *Endicott* and *Griffin* when they try to determine what is required in the postjudgment context.⁶⁴

59. 266 U.S. 285 (1924).

60. 266 U.S. at 288 (citations omitted).

61. 327 U.S. 220 (1946).

62. *Id.* at 224-32.

63. *Id.* at 229 (footnote omitted). The most exasperating part of the majority opinion in *Griffin* is its failure to ever mention or cite *Endicott*. Dunham, *Post-Judgment Seizures: Does Due Process Require Notice and Hearing?*, 21 S.D.L. REV. 78, 81 (1976).

64. The United States Supreme Court has continually avoided resolving the question of what due process protections are required in postjudgment situations. *Moya v. DeBaca*, 286 F. Supp. 606 (D.N.M. 1968), *cert. denied*, 395 U.S. 825 (1969) (per curiam) (Harlan, J., and Brennan, J., dissenting); *Knight v. DeMarcus*, 102 Ariz. 105, 425 P.2d 837 (1967), *cert. dismissed sub nom.* *Hanner v. DeMarcus*, 390 U.S. 736 (1968) (Douglas, J., dissenting). *Gedeon v. Gedeon*, ___ Colo. ___, 630 P.2d 579 (1981), provided another opportunity to do so but the appeal was dismissed at 454 U.S. 1050 (1982). The jurisdictional statement of the appellant in that case specifically raised this issue as the main basis for appeal. Jurisdictional Statement for Appellant at 13-15, *Gedeon v. Gedeon*, 454 U.S. 1050 (1982) (on file with University of Dayton Law Review).

Many have questioned the continued viability of *Endicott*, reconsidered in the light of *Griffin* and the recent line⁶⁵ of prejudgment due process cases.⁶⁶ Lower courts have split on the question—some unequivocally holding that postjudgment proceedings do not require notice and hearing,⁶⁷ others holding that there is such a mandate.⁶⁸

In light of the problems involved in this area, the Ohio statute takes the safest course by including the notice requirement, easy access to a hearing, and an automatic thirty-day stay of execution. Other states which have enacted the UEFJA have deleted the automatic stay.⁶⁹ Some states have inserted stay time periods as short as five days.⁷⁰ Statutes which leave the debtor little or no time to prepare defenses to enforcement, however, tip the balance of interests in favor of the creditor and increase the risk of mistaken seizure of the debtor's property.⁷¹

Senate Bill 23 adequately protects the debtor's interests because notice must be given the debtor.⁷² He or she is given at least thirty days to prepare defenses to or claim exemptions from execution.⁷³ A further stay can be acquired by the debtor upon proper grounds.⁷⁴ Upon motion, the debtor can obtain a hearing in accordance with procedures for staying, opening, or vacating a judgment.⁷⁵ Since execution does not follow immediately upon the filing of the judgment, the risk of erroneous seizure is also reduced.

65. *Mathews v. Eldridge*, 424 U.S. 319 (1976); *North Ga. Finishing Co. v. Di-Chem, Inc.*, 419 U.S. 601 (1975); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969).

66. This view has been advanced by the following commentators: Alderman, *Default Judgments and Postjudgment Remedies Meet the Constitution: Effectuating Sniadach and its Progeny*, 65 GEO. L.J. 1 (1976); Dunham, *Post-Judgment Seizures: Does Due Process Require Notice and Hearing?*, 21 S.D.L. REV. 78 (1976); Greenfield, *A Constitutional Limitation on the Enforcement of Judgments—Due Process and Exemptions*, 1975 WASH. U.L.Q. 877.

67. *First Nat'l Bank v. Hasty*, 410 F. Supp. 482 (E.D. Mich. 1976); *Katz v. Ke Nam Kim*, 379 F. Supp. 65 (D. Hawaii 1974); *Wanex v. Provident State Bank*, 53 Md. App. 409, 454 A.2d 381 (1983); *Bittner v. Butts*, 514 S.W.2d 556 (Mo. 1974) (upholding the 1948 UEFJA Act against a similar kind of due process attack).

68. *E.g.*, *Finberg v. Sullivan*, 634 F.2d 50 (3d Cir. 1980); *Simler v. Jennings*, 23 Ohio Op. 3d 554 (S.D. Ohio 1982); *Betts v. Tom*, 431 F. Supp. 1369 (D. Hawaii 1977).

69. *E.g.*, KAN. CIV. PROC. CODE ANN. § 60-3004 (Vernon Supp. 1983); 42 PA. CONS. STAT. ANN. § 4306(d) (Purdon 1981).

70. IDAHO CODE § 10-1303(C) (1979); WYO. STAT. § 1-17-704 (1979).

71. *See Betts v. Tom*, 431 F. Supp. 1369, 1375-77 (D. Hawaii 1977).

72. Mortland Interview, *supra* note 31; BILL ANALYSIS, *supra* note 13, at 1-2.

73. OHIO REV. CODE ANN. § 2329.023(C) (Page Supp. 1983). The exemptions from execution are codified at OHIO REV. CODE ANN. § 2329.66 (Page 1981).

74. A stay will be granted if an appeal is pending or will be taken, or if a stay of execution was granted in the foreign jurisdiction. Security is still required to be deposited with the Ohio court. *Id.* § 2329.029(A), (B) (Page Supp. 1983).

75. OHIO R. CIV. P. 60(B).

V. PRACTICAL USE OF THE LAW

One of the prime advantages of the Uniform Enforcement of Foreign Judgments Act procedure is that it is easier and less costly for the creditor to use because a new lawsuit is not required.⁷⁶ Upon the filing of the foreign judgment, it becomes a lien upon the debtor's real property.⁷⁷ After execution, the creditor then receives the proceeds; the costs involved are for filing and execution.⁷⁸

Execution, however, may not be the most satisfactory way for the creditor to satisfy his or her judgment.⁷⁹ Creditors might also want to look to garnishment or attachment and the applicable statutory procedures.⁸⁰ Such procedures may be necessary if the debtor tries to leave the jurisdiction, or to dispose of, conceal, or convert his or her property.⁸¹ There are also additional remedies and procedures which can be used to aid in execution.⁸²

The debtor is given the opportunity to raise any of the defenses, proceedings, or procedures which a judgment debtor can use to defend against enforcement.⁸³ Most of these defenses pertain to whether "full faith and credit" should be extended to the foreign judgment.⁸⁴ As one example, full faith and credit need not be granted when the original court lacked personal or subject-matter jurisdiction over the debtor and the cause of action in the other state.⁸⁵ As long as the original court had proper jurisdiction, however, the courts in Ohio cannot reexamine the claim or the merits again or refuse enforcement, even if it believes

76. See *supra* text accompanying notes 20-22.

77. See *supra* note 53 and accompanying text.

78. For execution against property in general, see OHIO REV. CODE ANN. §§ 2329.01-.86 (Page 1981 & Supp. 1982). For a listing of applicable fees, see *id.* §§ 311.17, 2303.20 (Page 1981 & Supp. 1982). The fee for filing under the UEFJA is at OHIO REV. CODE ANN. § 2329.025 (Page Supp. 1983).

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

80. *Id.*

81. OHIO REV. CODE ANN. § 2715.01(A) (Page Supp. 1982).

82. These are found at OHIO REV. CODE ANN. §§ 2333.01-.27 (Page 1981 & Supp. 1982). A Connecticut court has also held that the UEFJA does not preclude a creditor from pursuing equitable remedies such as a creditor's bill. *Burchett v. Roncari*, 181 Conn. 125, 434 A.2d 941 (1980).

83. OHIO REV. CODE ANN. § 2329.022 (Page Supp. 1983).

84. For an examination of the entire range of full faith and credit defenses, see Sedler, *supra* note 10. See also Kirgis, *The Roles of Due Process and Full Faith and Credit in Choice of Law*, 62 CORNELL L. REV. 94 (1976); Whitten, *The Constitutional Limitations on State-Court Jurisdiction: A Historical-Interpretative Reexamination of the Full Faith and Credit and Due Process Clauses* (pts. 1 & 2), 14 CREIGHTON L. REV. 499, 14 CREIGHTON L. REV. 734 (1981).

85. *Lugot v. Harris*, 499 F. Supp. 1118 (D. Nev. 1980); *Stevens v. Stevens*, 44 Colo. App. 252, 611 P.2d 590 (1980); *National Equip. Rental Ltd. v. Taylor*, 225 Kan. 58, 587 P.2d 870 (1978); *Litsinger Sign Co. v. American Sign Co.*, 11 Ohio St. 2d 1, 227 N.E.2d 609 (1967).

the foreign court's decision was erroneous.⁸⁶ Courts have also held that in order for a foreign judgment to be enforceable, it must be final, definite, and certain.⁸⁷ If a judgment could later be retroactively modified in the first state, it would thereby be unenforceable in Ohio.⁸⁸ An additional ground for attacking the foreign judgment is extrinsic fraud.⁸⁹ If a creditor exercised extrinsic fraud in obtaining a judgment, an Ohio court must refuse to enforce the judgment.⁹⁰ Therefore, if the court in the original state could set aside the judgment because of extrinsic fraud, Ohio can refuse to recognize it as well.

Another possible defense is a statute of limitations on the enforcement of foreign judgments. Courts in states adopting the UEFJA are split on whether and when such statutes of limitation should apply.⁹¹ One of the questions in controversy seems to be when such a time limit begins to run. Specifically, it has not been resolved whether the statute should toll when the cause of action arises, when a suit is filed in the original state, when judgment is rendered in that state, or when the action is filed in the second state. In any event, the relatively infrequent use of this defense in normal debtor-creditor litigation will probably postpone consideration of this issue for some time.⁹²

Outside of the full faith and credit attacks, the most common defenses to be raised will be statutory exemptions to execution, garnishment, or attachment.⁹³ These defenses apply even when the foreign

86. See *supra* note 9 and accompanying text. See also *Concannon v. Hampton*, 584 P.2d 218, 222 (Okla. 1978).

87. *Greenhouse v. Hargrave*, 509 P.2d 1360 (Okla. 1973).

88. *Id.* See also *Mittenthal v. Mittenthal*, 99 Misc. 2d 778, 417 N.Y.S.2d 175 (Sup. Ct. 1979); *Harold v. Paradise*, 36 Ohio App. 2d 71, 302 N.E.2d 902 (1973); *Salmeri v. Salmeri*, 554 P.2d 1244 (Wyo. 1976).

89. "Extrinsic" refers to fraud "collateral to the issues tried in the case," such as fraud used in obtaining jurisdiction. BLACK'S LAW DICTIONARY 595 (5th ed. 1979).

90. *Miller v. Eloie Farms, Inc.*, 128 Ariz. App. 269, 625 P.2d 332 (1980); *Diners Club, Inc. v. Makoujy*, 110 Misc. 2d 870, 443 N.Y.S.2d 116 (Civ. Ct. 1980); *Schwartz v. Schwartz*, 113 Ohio App. 275, 173 N.E.2d 393 (1960).

91. *Alexander Constr. Co. v. Weaver*, 3 Kan. App. 2d 298, 594 P.2d 248 (1979). See also *Johnson Bros. Wholesale Liquor Co. v. Clemmons*, 233 Kan. 405, 661 P.2d 1242 (1983). *Contra Producer's Grain Corp. v. Carroll*, 546 P.2d 285 (Okla. Ct. App. 1978).

92. Present Ohio law considers an action to enforce a foreign judgment an action upon a specialty and therefore subject to the fifteen-year limitation of OHIO REV. CODE ANN. § 2305.06 (Page 1981). *Blumberg v. Saylor*, 100 Ohio App. 479, 137 N.E.2d 696 (1955). The various limitations on actions are at OHIO REV. CODE ANN. §§ 2305.06-.37 (Page 1981 & Supp. 1982).

93. OHIO REV. CODE ANN. §§ 2715.11, 2329.66 (Page 1981 & Supp. 1983). Some of the exemptions in § 2329.66 include workers' compensation benefits, unemployment compensation, and up to \$400 of cash on hand or money on deposit. Section 2329.66 exemptions apply to execution as well as garnishment and attachment.

Another defense that does not attack the substance of the judgment but its form is improper authentication. *Hull v. Hull*, 661 P.2d 1049 (Wyo. 1983) (Ohio certificate of judgment filed rather than a copy of the actual judgment). See OHIO REV. CODE ANN. § 2329.022 (Page Supp.

judgment is valid and the underlying obligation or debt is admitted or stipulated by the debtor.

VI. PROBLEMS IN INTERPRETATION

The UEFJA statute is unique for Ohio in that it provides a legislative mandate⁹⁴ calling for uniform interpretation by Ohio's courts in accordance with the interpretations of other states' courts. Such interpretation "effectuate[s] the general purpose to make uniform the law of those states that enact a Uniform Enforcement of Foreign Judgments Act."⁹⁵ Although the statute's procedures are relatively simple, courts should be wary when looking to other states for precedent or examples of how the law should be construed.

For example, although a uniform law, some states when enacting the UEFJA have substantially changed major provisions, making their statutes materially different from Ohio's version of the Act. Moreover, interpretation of analogous provisions has not always been uniform.⁹⁶ One of the major areas of legislative adjustment in other states has been the third section of S. 23, concerning filing and the automatic stay.⁹⁷ A great many states have excluded or modified the automatic stay provision.⁹⁸ Some states allow counterclaims or set-offs to be raised during enforcement proceedings.⁹⁹ A number of states specifically exclude default judgments in other states from enforcement.¹⁰⁰ Another problem has been the existence of the first version of the Uniform Act, drafted in 1948.¹⁰¹ Although this Act could be referred to for guidance on full faith and credit problems, its procedural system and terminology are substantially different and more complex than the 1964 counterpart that Ohio adopted.¹⁰²

1983). Of course, prior payment of the judgment is also a defense. *Jones v. Roach*, 118 Ariz. 146, 575 P.2d 345 (Ct. App. 1978).

94. Pfeiffer Interview, *supra* note 22.

95. OHIO REV. CODE ANN. § 2329.027 (Page Supp. 1983).

96. See, e.g., *supra* note 91 and accompanying text.

97. OHIO REV. CODE ANN. § 2329.023 (Page Supp. 1983).

98. See, e.g., IDAHO CODE § 10-1303(C) (1979); KAN. STAT. ANN. § 60-3003 (1976).

99. WASH. REV. CODE ANN. § 6.36.025 (Supp. 1983). For the prevailing interpretation of the unamended Act concerning this section, see *Landon v. Artz*, 6 Kan. App. 617, 631 P.2d 1237 (1981) (counterclaims, cross-claims, and set-offs cannot be brought under the UEFJA procedure).

100. CONN. GEN. STAT. § 52-604 (Supp. 1983); N.Y. CIV. PRAC. LAW § 5401 (McKinney 1978).

101. UNIF. ENFORCEMENT OF FOREIGN JUDGMENTS ACT, 13 U.L.A. 173, 189 (1964).

102. *Id.* at 175. The 1948 act allows the debtor's property to be immediately levied upon even though a registered judgment does not become a final judgment in the enforcing state until 60 days after jurisdiction is obtained over the debtor. *Id.* §§ 6, 7, 12, at 198, 200, 204. The older act also provides for set-offs. *Id.* § 8, at 201. It also makes distinctions in procedure for the type of jurisdiction obtained in the enforcing state. *Id.* §§ 4, 5, 12, at 197, 198, 204.

VII. CONCLUSION

Ohio's new Enforcement of Foreign Judgments Act performs a much needed function by providing a new, simplified method for enforcing foreign judgments in Ohio. If a creditor chooses to use it, he or she no longer has to bring a new lawsuit to enforce those judgments.

The new law has many strengths. It provides an efficient, timely procedure which fairly balances the interests of debtors and creditors. Due process rights are also effectively guaranteed. This new law puts Ohio in line with a growing number of states which have enacted this law to simplify procedures for those who use and administer the court system. The new procedures will not only save time and money, but also help to ensure that Ohio's courts can properly and speedily assure full faith and credit to foreign judgments.

Gregory A. Harrison

Code Sections Affected: To amend section 311.07, and to enact sections 2329.021-.027.

Effective Date: July 29, 1983.

Sponsor: Pfeiffer (S)

Committees: Judiciary (S)

Judiciary and Criminal Justice (H)