SD36233

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

BERMAN, DELEVE, KUCHAN & CHAPMAN, LLC,

Appellant,

vs.

417 RENTALS, LLC,

Respondent.

On Appeal from the Circuit Court of Greene County
Honorable Jason R. Brown, Circuit Judge
Case No. 1931-CC00096

BRIEF OF THE APPELLANT

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Jurisdictional Statement

This is an appeal from a judgment of the Circuit Court of Greene County setting aside a registration of a foreign judgment.

This case does not involve the validity of a Missouri statute or constitutional provision or of a federal statute or treaty, the construction of Missouri's revenue laws, the title to statewide office, or the death penalty. So, under Mo. Const. art. V, § 3, this case does not fall within the Supreme Court's exclusive appellate jurisdiction and jurisdiction of this appeal lies in the Missouri Court of Appeals. This case arose in Greene County. Under § 477.060, R.S.Mo., venue lies in the Southern District.

Statement of Facts

A. The Bankruptcy Court's Order

417 Rentals, LLC ("417") is a Missouri limited liability company (D6 p. 1). In 2017, 417 filed a proceeding in the U.S. Bankruptcy Court for the Western District of Missouri under Chapter 11 of the U.S. Bankruptcy Code, *In re 417 Rentals*, LLC, Case No. 17-60935-11 ("the Bankruptcy") (D6 p. 1; D8 p. 2; D16 p. 1). Berman Deleve Kuchan & Chapman, LLC ("BDKC"), a Missouri limited liability company and law firm, was 417's counsel in the Bankruptcy (D6 p. 1; D8 p. 2; D16 p. 2).

In November 2018, while the Bankruptcy was ongoing, BDKC filed an interim application for attorney fees and expenses under 11 U.S.C. § 331, in which it sought compensation through October 31, 2018 (D6 p. 1; D9 p. 3; D16 p. 3). On January 16, 2019, after a hearing (D16 p. 3), the Bankruptcy Court entered this order sustaining BDKC's application in part ("the Order"):

Order of the Court SUSTAINING IN PART the Application for Compensation for Ronald S. Weiss, Joel Pelofsky and the firm of Berman, DeLeve, Kuchan & Chapman, LLC, in the amount of - Fees: $146,848.50, Expenses: $13,980.57. It is so ORDERED by /s/ *Cynthia A. Norton.*

The moving party is to serve this order on parties not receiving electronic notice but entitled to notice pursuant to Fed. R. Bankr. P. 2002, Local Rule 2002-1 and other applicable law.
File the Certificate of Service and relate it to the **epo** category.
This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.

(Related document(s)[703] Application for Compensation) (Graham, Beth)

(D3 p. 2; App. A3). 417 did not appeal the Order (D16 pp. 3-4).

That same day, January 16, on the U.S. Trustee's motion the Bankruptcy Court dismissed the Bankruptcy (D6 p. 1; D9 pp. 1, 3).

B. BDKC's registration of the Order in Greene County

On January 18, 2019, BDKC filed the Order as foreign judgment in the Circuit Court of Greene County (D2). Its counsel submitted a sworn affidavit stating that BDKC was the judgment creditor, 417 was the debtor, and that he served the Greene County filing by U.S. Postal Service certified mail, return receipt request, to 417's registered agent in Brookline, Missouri (D2 pp. 1-2). Counsel also submitted a certified copy of the Order signed by the clerk of the Bankruptcy Court and the Honorable Cynthia Norton, the U.S. Bankruptcy Judge who had entered it (D3; App. A2-6).

That same day, January 18, the Greene County Circuit Clerk then registered the Order as a foreign judgment (D1 p. 5). He also sent a copy of BDKC's filings, along with a Notice of Filing Foreign Judgment, to 417's registered agent (D4).

The certified mail tracking number for BDKC's notice and materials to 417's registered agent was 70181830000234443626 (D2 p. 2). The U.S. Postal Service shows that 417's registered agent received it on January 24, 2019. *See* Report for Tracking Number 70181830000234443626, *available online at* https://tools.usps.com/go/TrackConfirmAction?qtc_tLabels1=70181830000234443626 (retrieved Nov. 7, 2019). 417 did not file anything in the Circuit Court within 30 days after January 24, nor did it file anything in the Circuit Court at all until July 2019 (D1 pp. 5-7).

In February through May 2019, BDKC began garnishment and execution proceedings against 417 to collect on the Order (D1 pp. 5-7).

C. BDKC's request to the Bankruptcy Court for an amendment

BDKC also requested to the Greene County Circuit Clerk that the Order operate as a judgment lien on 417's property (D8 p. 2). At some point, the Clerk stated it did not recognize the Order as a judgment, because "the word 'Judgment' does not appear in the Order" (D8 p. 2).

So, on January 25, 2019, BDKC moved the Bankruptcy Court to amend the Order *nunc pro tunc* so as to caption it a "judgment" (D8). The Bankruptcy court denied the motion January 28 (D9 pp. 2-3). It stated:

> Debtor's Counsel requests that the Court amend its Order to caption it instead as a "Judgment" so that Counsel can record the "Judgment" in state court. Counsel asserts that inserting the word "Judgment" would not change the content of the Court's Order. The Court disagrees. The word "judgment" is a legal term of art and a final judgment has legal ramifications, such as having res judicata effect. The Court is authorized to enter judgments in adversary proceedings under Rule 7058. Notably, Rule 7058 does not apply to contested matters under Rule 9014. Here, Counsel's application for compensation was an interim application under 11 U.S.C. Section 331 that sought compensation only through October 31 , 2018. The Order allowing interim compensation was not a final determination of the reasonableness and necessity of the services provides since interim fee awards are always reviewable pending the Court's determination of the final application for compensation. The fact that the case was dismissed before Counsel could submit a final application does not convert the Court's Order into a "Judgment." See In re Trigee Foundation, Inc., 2017 WL 4457409 (Bankr. D.C. Sept. 29, 2017). Changing the Order to a Judgment would change the content and legal ramifications thereof, and is thus not appropriate.

(D9 p. 3).

D. Proceedings below

In July 2019, nearly six months after BDKC registered the Order as a foreign judgment in Greene County, counsel for 417 entered an appearance in the foreign judgment case and moved the court to set the registration aside (D1 pp. 5-7; D6). 417 argued the Order was not a "foreign judgment" within the meaning of Rules 74.13 or 74.14 because it was not captioned "judgment" and was not entitled to full faith and credit in Missouri (D6 pp. 1-3).

Citing Rule 74.06(a), 417 first argued the registration should be set aside as a "clerical mistake … arising from oversight or omission" (D6 p. 2). Second, citing Rule 74.06(d), 417 argued the registration should be set aside "for fraud upon the Court" because BDKC knew the Bankruptcy Court's Order was not a "judgment" but registered it anyway with a false affidavit (D6 p. 3). Finally, citing "Chapter 511 of the Revised Missouri Statutes" and "Section 511.200 RSMo", 417 argued the registration should be set aside because 417's "sole member … and CEO … was the only individual authorized to receive service of process" for it and "accordingly [417] had no notice of the filing" of the Order in Greene County, which it argued was "good cause" under § 511.200 for setting aside the registration (D6 pp. 3-4).

BDKC opposed 417's motion to set aside the registration (D16). After going over the history of the Bankruptcy (D16 pp. 1-3), it argued that the Order was "binding, non-appealable and enforceable as to the rights and liabilities of the parties" (D16 pp. 3-4). It also argued that under federal and Missouri law, the Order was entitled to full faith and credit in Missouri, and therefore was registrable as a foreign judgment under § 511.760, R.S.Mo.,

and Rule 74.14 regardless of how it was denominated (D16 pp. 4-5). Finally, it argued that none of the procedures 417 invoked had merit, as there was no "clerical error" within the meaning of Rule 74.06(a), 417 had not pleaded "fraud" under Rule 74.06(d), and § 511.200 was a procedure for setting aside a default judgment that did not apply here and, in any case, 417 had not complied with § 511.200 by showing a meritorious defense (D16 pp. 6-7).

The trial court held a hearing on July 24, though in chambers and not on the record (D1 p. 9). It allowed the parties to file supplemental briefs (D1 p. 9).

In its supplemental brief, BDKC argued that while the Order granted an interim request for payment, which ordinarily would be amendable by the Bankruptcy Court during the rest of the Bankruptcy, federal law is that it became final – and enforceable and collectable – once the Bankruptcy was dismissed (D17 pp. 2-4). Because of this, the Order was entitled to full faith and credit and was registrable as a foreign judgment against 417 under § 511.760 and Rule 74.14 (D17 pp. 2-4).

In response, 417 again argued that the Order was not a "judgment" within the meaning of Rule 74.14 because it was not denominated a "judgment" and the Bankruptcy Court had refused to denominate it a "judgment" (D19 pp. 1-3). 417 also argued that the federal cases BDKC cited were distinguishable (D19 pp. 4-5). Finally, 417 argued that an interim award of fees and costs under 11 U.S.C. § 331 is never final or enforceable (D19 p. 5).

On July 31, 2019, the trial court entered a judgment setting aside the registration of the Order (D20 p. 1; App. A1). It stated:

> Court further reviews briefs of counsel, Exhibit(s) and caselaw cited. Court notes the subject Order sought to be registered does not state as to whom or which party the Order applies; does not order any party to pay any amount; has not been affirmed or approved by any other court; was subsequently described by the Bankruptcy Judge as "not a final determination" and "reviewable," pending a subsequent determination. The Order is not entitled to any greater weight in this Court than it has or had in the Bankruptcy Court which rendered it.
>
> The Court thus finds Plaintiffs caselaw is distinguishable from the procedural facts here. The subject Order is thus not entitled to full faith and credit. For these and other reasons cited by Defendant, Plaintiffs petition for registration of foreign judgment is now respectfully set aside and otherwise denied.

(D20 p. 1; App. A1). In a footnote, the court also stated, "The Court makes no determination as to whether Defendant would be bound by the amount stated in the subject order in the event Plaintiff sued Defendant for the same subject matter in this court" (D20 p. 1; App. A1).

BDKC then timely appealed to this Court (D25).

Points Relied On

I. The trial court erred in setting aside the registration of the Order as a foreign judgment *because* this misapplied the law, as under § 511.760, R.S.Mo., and Rule 74.14, after 30 days from service of notice on the judgment debtor, a trial court only has power to set aside such a registration for one of the reasons allowed in Rule 74.06, which the debtor must specifically plead and prove, Rule 74.06(a) only concerns clerical errors that do not effect a substantive change to a party's rights, "fraud" under Rule 74.06(d) is limited to extrinsic fraud and requires pleading and proving all elements of fraud, and § 511.200, R.S.Mo. is an obsolete procedure for setting aside a default judgment *in that* the only procedures 417 invoked six months after service on it to seek to set aside the registration of the Order as a foreign judgment was "clerical error" under Rule 74.06(a), "fraud" under Rule 74.06(d), and "good cause" under § 511.200, but the error alleged was not "clerical", 417 did not plead or prove extrinsic fraud, and § 511.200 is inapplicable and 417 did not comply with it anyway.

Sentinel Acceptance, Ltd. v. Hodson Auto Sales & Leasing, Inc.,
45 S.W.3d 464 (Mo. App. 2001)

Phillips v. Fallen, 6 S.W.3d 862 (Mo. banc 1999)

§ 511.760, R.S.Mo.

Rule 74.06

Rule 74.14

II. The trial court erred in holding that the Order was not entitled to full faith and credit and so was not registrable in Missouri as a foreign judgment in favor of BDKC and against 417 *because* this misapplied the law, for as a matter of federal law, an order granting counsel's motion for an interim allowance of fees in a bankruptcy case under 11 U.S.C. § 331 is final and enforceable by the counsel against the debtor once the bankruptcy case has been dismissed, at which point the order is entitled to full faith and credit under U.S. Const. art. IV, § 1 and is enforceable in state court by the counsel against the debtor regardless of how the order is denominated *in that* in the Order, the Bankruptcy Court granted BDKC's motion for interim fees and costs, after which the Bankruptcy was dismissed, making the Order final and enforceable by BDKC against 417 and requiring Missouri to give it full faith and credit.

Wolf v. Sweports, Ltd., No. 1-18-0584, 2019 WL 2000555 (Ill. App. May 2, 2019)

Koresco & Assocs., P.A. v. Farley, 826 A.2d 6 (Pa. Super. 2003)

In re Iannochino, 242 F.3d 36 (1st Cir. 2001)

In re Boddy, 950 F.2d 334 (6th Cir. 1991)

11 U.S.C. § 330

11 U.S.C. § 331

11 U.S.C. § 349

Argument

Standard of Review as to All Points

This Court reviews a judgment setting aside the registration of a foreign judgment under "the third prong of *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)" and so "determine[s] whether the trial court erroneously declared or applied the law." *Doctor's Assocs., Inc. v. Duree*, 30 S.W.3d 884, 887 (Mo. App. 2000).

> The trial court's decision … is a legal conclusion and as such is not binding on appeal. *Anchor Centre Partners, Ltd. v. Mercantile Bank, N.A.*, 803 S.W.2d 23, 32 (Mo. banc 1991). [This Court], therefore, review[s] the judgment de novo after independently considering the evidence and reaching [its] own conclusions. *Landvatter Ready Mix, Inc. v. Buckey*, 963 S.W.2d 298, 301 (Mo. App. 1997).

Id.; *see also Blanchette v. Blanchette*, 476 S.W.3d 273, 277 (Mo. banc 2015) ("[a] circuit court's decision whether to register a foreign judgment is a legal conclusion so [appellate] review is *de novo*").

Where in deciding a motion to set aside the registration of a foreign judgment "the trial court based its decision on the docket entries and documents in the court file", "[o]n appeal" this Court "independently review[s] those entries and documents to reach [its] own conclusions about their legal effect." *The Cadle Co. II, Inc. v. Hubbard*, 329 S.W.3d 706, 709 (Mo. App. 2010).

I. The trial court erred in setting aside the registration of the Order as a foreign judgment *because* this misapplied the law, as under § 511.760, R.S.Mo., and Rule 74.14, after 30 days from service of notice on the judgment debtor, a trial court only has power to set aside such a registration for one of the reasons allowed in Rule 74.06, which the debtor must specifically plead and prove, Rule 74.06(a) only concerns clerical errors that do not effect a substantive change to a party's rights, "fraud" under Rule 74.06(d) is limited to extrinsic fraud and requires pleading and proving all elements of fraud, and § 511.200, R.S.Mo. is an obsolete procedure for setting aside a default judgment *in that* the only procedures 417 invoked six months after service on it to seek to set aside the registration of the Order as a foreign judgment was "clerical error" under Rule 74.06(a), "fraud" under Rule 74.06(d), and "good cause" under § 511.200, but the error alleged was not "clerical", 417 did not plead or prove extrinsic fraud, and § 511.200 is inapplicable and 417 did not comply with it anyway.

Preservation Statement

This point is preserved for appellate review. BDKC raised this argument below in its opposition to 417's motion to set aside the registration of the Order as a foreign judgment (D16 pp. 6-7).

* * *

Under Rule 74.14 and § 511.760, R.S.Mo., a registration of a foreign judgment becomes a final Missouri personal judgment against the judgment debtor 30 days after service the judgment debtor. At that point, the trial

court only has power to set the registration aside under the terms of Rule 74.06, an independent action that the judgment debtor must plead and prove. Here, 417 waited some six months after service to move to set aside the registration. But the only reasons it gave were that the registration was a "clerical error" under Rule 74.06(a) or was "fraud" under Rule 74.06(d). The law of Missouri is that registering a judgment the debtor believes should not be registered is not a "clerical error", and 417 did not remotely plead or prove fraud. Nonetheless, the trial court set aside the registration of the Order anyway. This exceeded the court's power and was error.

A. Under Rule 74.14 and § 511.760, R.S.Mo., 30 days after service on a judgment debtor, a registration of a foreign judgment becomes a final Missouri personal judgment against the judgment debtor, after which the trial court only has power to set it aside under the terms of Rule 74.06(b), an independent action that the judgment debtor must plead and prove.

Two Missouri legal instruments provide for and govern the registration in a Missouri Circuit Court of a judgment obtained in another state's court or a federal court: § 511.760, R.S.Mo., enacted in 1951 (App. A7-9), and Rule 74.14, effective 1988 (App. A11-12). Both define a "foreign judgment" as "any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state." § 511.760.1(1) (App. A7); Rule 74.14(a) (App. A11).

This procedure stems from "the Full Faith and Credit Clause of the Federal Constitution, Art. 4, § 1." *Campbell v. Campbell*, 780 S.W.2d 89, 91 (Mo. App. 1989). This clause provides, "Full Faith and Credit shall be given

in each State to the Public Acts, Records, and Judicial Proceedings of every other State." U.S. Const. art. IV, § 1.

> Legal historians have inferred that the Constitutional Framers' purpose of including the Full Faith and Credit Clause in the Constitution was to "impose … mandatory comity on the states in the hope that treating the judicial proceedings of other states with appropriate deference would lessen friction among the states in the new and fragile union."

Sentinel Acceptance, Ltd. v. Hodson Auto Sales & Leasing, Inc., 45 S.W.3d 464, 467 (Mo. App. 2001) (Breckenridge, J.) (quoting William L. Reynolds, *The Iron Law of Full Faith and Credit*, 53 MD. L.REV. 412, 413 (1994)). The U.S. Supreme Court "has held that the Full Faith and Credit Clause demands rigorous obedience." Reynolds, 53 MD. L.REV. at 413 (citing *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908)).

"There are only a few recognized exceptions to this long-standing Constitutional requirement of according full faith and credit to judgments of sister states." *Sentinel*, 45 S.W.3d at 467. Specifically, "Missouri is obligated to give full faith and credit to a judgment of a sister state unless that judgment is void for lack of jurisdiction over the person or over the subject matter, or is obtained by fraud." *Phillips v. Fallen*, 6 S.W.3d 862, 864 (Mo. banc 1999).

In registering foreign judgments, § 511.760 and Rule 74.14 work in tandem. In § 511.760, the General Assembly adopted the "Uniform enforcement of foreign judgments law" (App. A9) ("UEFJA"). In Rule 74.14, the Supreme Court then helped implement the statute procedurally. Rule 74.14 provides that its procedure "shall be so interpreted and construed as to

effectuate its general purpose to make uniform the law of those states that adopt the 'Uniform Enforcement of Foreign Judgments Law.'" Rule 74.14(f) (App. A12).

Both the statute and the rule require the judgment creditor to make a verified application attaching a certified copy of the foreign judgment and then serve a copy on the judgment debtor. *See* § 511.760.2-.4 (App. A7); Rule 74.14(c)(1) (App. A11). Both then require the clerk to give notice to the judgment debtor of the filing of the foreign judgment. *See* § 511.760.5 (App. A7); Rule 74.14(c) (App. A11). Rule 74.14 also allows the judgment creditor to effect that notice:

> the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. **Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.**

Id. at (c)(2) (App. A11) (emphasis added).

The statute then gives the judgment debtor 30 days in which to challenge the registration of the foreign judgment:

> Any defense, setoff or counterclaim which under the law of this state may be asserted by the defendant in an action on the foreign judgment, may be presented by appropriate pleadings and the issues raised thereby shall be tried and determined as in other civil actions. Such pleadings must be filed within thirty days after personal jurisdiction is acquired or within thirty-five days after the mailing of the notice ….

§ 511.760.8 (App. A8).

But after those 30 days, the judgment is final and executable against the judgment creditor just as if it were a judgment of the court in which it is

registered. "If the judgment debtor fails to plead within thirty days after jurisdiction over his person has been obtained, … the registered judgment shall become a final personal judgment of the court in which it is registered." § 511.760.7 (App. A7). The rule echoes this:

> The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner.

Rule 74.14(b) (App. A11).

This means that once those 30 days have passed, the only way to challenge the registration of the foreign judgment is by an action under Rule 74.06(b) attacking the registration, not the foreign judgment itself. *Sentinel Acceptance*, 45 S.W.3d at 467-68. "The statement in Rule 74.14 that a foreign judgment registered in Missouri is subject to the same defenses as a judgment entered in Missouri refers only to the Missouri judgment registering the foreign judgment, … and not to the actual judgment entered in the foreign state." *Id.* "Once the plaintiff has procured an order of registration and … personally served the defendant …, then absent a plea of an affirmative defense supported by proof, the plaintiff's foreign judgment becomes a final judgment in this state subject to execution and enforcement as any other judgment." *First Nat'l Bank of Colo. Springs v. Mark IV Co.*, 591 S.W.2d 63, 68 (Mo. App. 1979).

In *Sentinel Acceptance*, for example, a judgment creditor registered in Missouri what it alleged was an enforceable California judgment. *Id.* at 465.

The judgment debtor did not respond. *Id.* Ten months later, the judgment creditor sought a garnishment against the judgment debtor. *Id.* The judgment debtor responded to that by moving to quash the registration under Rule 74.06(b)(1) on the basis that the California judgment constituted undue surprise or was subject to excusable neglect because its California counsel had abandoned it. *Id.* at 465-66. The trial court agreed and quashed the registration of the California judgment. *Id.* at 466.

This Court, with now-Supreme-Court Judge Patricia Breckenridge writing, reversed and remanded with instructions to re-register the California judgment. *Id.* at 467-69. While after the 30 days in § 511.760.7 and Rule 74.14(b) had passed Rule 74.06(b) could be used to challenge the Missouri registration of the foreign judgment, it could not be used to attack the foreign judgment itself. *Id.* at 467-68.

> To find otherwise … would significantly broaden the exceptions to the Full Faith and Credit Clause. [A] Missouri court could refuse to register a foreign judgment if it finds mistake, inadvertence, surprise, excusable neglect, intrinsic or extrinsic fraud, misrepresentation, or misconduct of an adverse party; or that the judgment is irregular, void, or has been satisfied, released, or discharged, or that a prior judgment upon which it is based has been reversed or vacated; or it is no longer equitable that the judgment remain in force. Rule 74.06(b).
>
> Broadening the exceptions to the registering of a foreign judgment to include all of the grounds for obtaining relief under Rule 74.06 is not compatible with Missouri Supreme Court case law applying the deeply-rooted Constitutional principle that courts of this state are obligated to give full faith and credit to a foreign judgment unless the judgment is void for lack of personal or subject matter jurisdiction, or it was obtained by fraud.

Id. at 468 (internal citation omitted).

Generally, in Missouri a party's "only means of seeking relief from [a] judgment is pursuant to Rule 74.06(b) …." *Willis v. Placke*, 903 S.W.2d 219, 220 (Mo. App. 1995) (quoting Rule 74.06(b)) (App. A10)). Rule 74.06(b) provides:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is irregular; (4) the judgment is void; or (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment remain in force.

Rule 74.06(b) (App. A10).

And a Rule 74.06(b) motion filed more than 30 days after entry of the judgment from which it seeks relief is an independent action subject to all the requirements of a new lawsuit. This is because a "trial court [does] not have any jurisdiction after thirty days to set aside [a] judgment on its own motion …." *Universal Credit Acceptance, Inc. v. Randall*, 541 S.W.3d 726, 730 (Mo. App. 2018). Instead, after 30 days from the entry of judgment, a party must proceed by a "motion to set aside" a judgment, which "trigger[s] the start of an independent proceeding in which the trial court" then has a new "basis of jurisdiction to set it aside under Rule 74.06 …." *Id.*

Each of the grounds listed in Rule 74.06(b) – mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation, other misconduct, irregularity, voidness, satisfaction, release, discharge, reversal, and inequity

(App. A10) – are separate claims with separate standards, each of which must be specifically pleaded in the Rule 74.06(b) motion and then proven. *Grasse v. Grasse*, 254 S.W.3d 174, 181 (Mo. App. 2008) (party alleging fraud in Rule 74.06(b) proceeding to set aside judgment had to specifically plead and then prove her allegations of fraud; she did not, judgment reversed).

B. 417's motion more than 30 days after service of BDKC's registration on it failed to plead or prove any lawful reason for setting aside the registration, so the trial court lacked power to do so.

Here, like the judgment debtor in *Sentinel Acceptance*, 417 did not file anything within 30 days of receiving notice of BDKC's registration of the Order in Greene County, making the registration final at that time.

On January 18, 2019, the same day the Circuit Clerk registered the Order (D1 p. 5), BDKC's counsel submitted an affidavit stating he served the foreign-judgment-registration filing by U.S. Postal Service certified mail, return receipt request, to 417's registered agent (D2 pp. 1-2). 417's registered agent received the mailing on January 24, 2019. *Supra* at p. 11. Therefore, BDKC was served effective January 24, 2019. Rule 74.14(c)(2). 30 days later was February 25, 2019. (The actual 30th day, February 23, was a Saturday. *See* Rule 44.01(a).) 417 did not file anything by that point, and did not file anything at all until July 2019, months later (D1 pp. 5-7).

Therefore, after February 25, 2019, the Order became "a final personal judgment of the" Circuit Court of Greene County, and court in which it is registered," § 511.760.7 (App. A7), and "ha[d] the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or

staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner." Rule 74.14(b).

At that point, the Order's registration only could be challenged by Rule 74.06(b) motion directed at the registration, not the Order itself. *Sentinel Acceptance*, 45 S.W.3d at 467-68. And 417 would have to fully plead and prove any legally applicable Rule 74.06(b) claims. *Grasse*, 254 S.W.3d at 181.

417 failed this requirement. The motion to set aside the registration of the Order that 417 ultimately filed in July 2019 did not rely on Rule 74.06(b) at all, let alone pleading and proving any viable claims under it. Accordingly, as in *Sentinel Acceptance*, the trial court lacked any lawful procedural basis to set aside the registration of the Order, and so lacked power to set it aside.

1. Rule 74.06(a)'s provision for correcting a clerical error was not a lawful basis for setting aside the registration of the Order.

First, 417's motion cited Rule 74.06(a) and argued that the registration of the Order as a foreign judgment should be set aside as a "clerical mistake … arising from oversight or omission" (D6 p. 2).

This is without merit. Rule 74.06(a), the *nunc pro tunc* correction rule for clerical errors, cannot apply to substantively change BDKC's rights.

"Rule 74.06(a) governs nunc pro tunc judgments." *McGuire v. Kenoma, LLC*, 447 S.W.3d 659, 662 (Mo. banc 2014). It provides, "Clerical mistakes in judgments … and errors therein arising from oversight or omission may be corrected by the court at any time …." Rule 74.06(a) (App. A10).

> Nunc pro tunc emerged as a common law power to allow a court that has lost jurisdiction over a case to maintain jurisdiction over its records to correct clerical mistakes in the judgment arising from either scrivener's errors or from omissions that are

> indicated in the record but are not recorded in the original judgment.

McGuire, 447 S.W.3d at 663. Rule 74.06(a) "codif[ies]" this concept. *In re Marriage of McIntosh*, 126 S.W.3d 407, 411 (Mo. App. 2004).

In *McGuire*, the Supreme Court explored the history and proper use of "nunc pro tunc" corrections in detail:

> The label "clerical mistake" is not intended to designate who made the mistake, but what type of mistake was made. As such, a clerical mistake can be committed by a judge or clerk. **But the correction of the mistake must be clerical insofar as it *must not effect a substantive change to the party's rights.*** A nunc pro tunc correction is confined to "that which was *actually done* ... **it may not be used** to order that which was *not* actually done, or **to change or modify the action which was taken.**"
>
> … This Court has narrowly defined "a clerical mistake" as "a mistake in writing or copying." The narrowly proscribed purpose of nunc pro tunc is to allow the trial court to amend its judgment so that the judgment will conform to what is actually evidenced in the record.

447 S.W.3d at 663 (internal citations omitted; emphasis in the original).

In other words, "It is improper to use a nunc pro tunc order to correct judicial inadvertence, omission, oversight or error, or to show what the court might or should have done as distinguished from what it actually did, or to conform to what the court intended to do but did not do." *Javier v. Javier*, 955 S.W.2d 224, 225-26 (Mo. App. 1997) (internal quotation omitted).

Here, 417 was not arguing that a "clerical error" had occurred – a scrivener's error or a misstatement of what was in the record that would not change any party's substantive rights (D6 p. 2). Instead, it was arguing the court had erred in registering the Order because the Order legally did not

constitute an enforceable judgment (D6 p. 2). It sought to change BDKC's substantive rights then in effect under the registration of the Order (D6 p. 2).

Rule 74.06(a) has no application here. If the trial court relied on it in setting aside the registration of the Order, it misapplied the law.

2. 417 neither adequately pleaded nor proved "fraud".

Second, 417's motion cited Rule 74.06(d) and argued that the registration of the Order as a foreign judgment should be set aside "for fraud upon the Court" because BDKC knew the Bankruptcy Court's Order was not a "judgment" but registered it anyway with a false affidavit (D6 p. 3).

Notably, the trial court did not rely on this as a reason for setting aside the registration of the Order (D20 p. 1; App. A1). It did not suggest that BDKC somehow had committed "fraud" (D20 p. 1; App. A1).

This is because plainly, 417 neither correctly pleaded nor proved fraud. 417 cited Rule 74.06*(d)*, not 74.06*(b)*. Rule 74.06(d) provides for "an independent action to relieve a party from a judgment or order or to set aside a judgment for fraud upon the court" (App. A10). But unlike a Rule 74.06*(b)* action, Rule 74.06(d) is limited to "demonstrat[ing] *extrinsic* fraud …." *Cody v. Old Republic Title Co.*, 156 S.W.3d 782, 748 (Mo. App. 2004) (emphasis added). "Extrinsic fraud is limited to the fraudulent procurement of a judgment; it must relate to the manner in which the judgment was obtained and not the merits of the judgment itself." *T.B. III v. N.B.*, 478 S.W.3d 504, 509 (Mo. App. 2015). And to bring such an action, the complaining party must specifically allege the extrinsic fraud and must "plea[d and] prov[e] he was free of fault, neglect, or inattention" to the case. *Id.* The failure specifically to allege any one part of this "is fatal to the action." *Id.*

And even in the Rule 74.06 context, pleading and proving fraud requires pleading and proving nine elements: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of the falsity or awareness that he or she lacks knowledge of its truth or falsity; (5) the speaker's intent that the other party act on the statement in the manner contemplated; (6) that party's ignorance of the falsity; (7) that party's reliance on the statement; (8) that party's right to rely on it; and (9) injury. *Hewlett v. Hewlett*, 845 S.W.2d 717, 719-22 (Mo. App. 1993).

Here, 417 failed even to allege most of this. Its motion did not allege materiality, intent that another party rely on a false statement in a manner contemplated, the other party's ignorance, reliance on the statement, or right to rely on that statement, or any injury (D6 p. 3). It does not allege it was free of fault, neglect, or inattention (D6 p. 3).

Moreover, what 417's motion would be arguing is *in*trinsic fraud not cognizable under Rule 74.06(d), not *ex*trinsic. "False averments in court pleadings, perjured testimony in court, and fabricated evidence before a court are *intrinsic* fraud." *T.B. III*, 478 S.W.3d at 509 (emphasis added). Rule 74.06(d) does not allow relief from a judgment for that. *Id.*

Finally, even if 417 somehow adequately pleaded fraud, its brief suggestion of "fraud" was never proven. BDKC denied 417's allegation (D16 pp. 6-7). But there was no hearing at which evidence was taken.

Therefore, 417 failed to plead or prove its Rule 74.06(d) "fraud" allegation. *Grasse*, 254 S.W.3d at 181. That claim did not furnish the trial court power to set aside the registration of the Order either.

3. Section 511.200, R.S.Mo., is obsolete and irrelevant.

Finally, citing "Chapter 511 of the Revised Missouri Statutes" and "Section 511.200 RSMo", 417 argued the registration of the Order should be set aside because 417's "sole member … and CEO … was the only individual authorized to receive service of process" for it and "accordingly [417] had no notice of the filing" of the Order in Greene County, which under § 511.200 is "good cause" for setting aside the registration (D6 pp. 3-4).

This, too, is without merit. First, § 511.200 no longer is in effect. It and its surrounding statutes, part of the old Civil Code, previously stated the procedure for seeking to set aside a default judgment: by petition showing good cause and a meritorious defense. *Rook v. John F. Oliver Trucking Co.*, 505 S.W.2d 157, 160 (Mo. App. 1973). When the responsibility for stating the rules of civil procedure passed to the Supreme Court in 1945, *see* Mo. Const. art. V, § 5, what today is Rule 74.05 superseded those statutes. Rule 41.02.

Second, even if it were in effect, § 511.200 would not apply here. There was no default judgment against 417, nor did 417 identify one. Apparently, 417 was arguing that there was inadequate service of BDKC's registration on it (D6 pp. 3-4). But its argument that only its CEO could receive process is without merit. "Personal service within [Missouri] shall be made … On [a] Corporation, Partnership or Other Unincorporated Association … by delivering copies to its registered agent …." Rule 54.13. That is exactly what BDKC did (D2 pp. 1-2). And 417's registered agent received it. *Supra* at p. 11. There was no "default", let alone one for lack of lawful service.

Finally, even if § 511.200 somehow applied to this non-default, 417 failed to argue any meritorious defense in its motion (D6 pp. 3-4), which the

statute requires. So, not only is this statute obsolete, it is irrelevant. It, too, did not give the trial court power to set aside the registration of the Order.

As of February 25, 2019, the Order was a final personal judgment of the Circuit Court of Greene County, and its registration only could be set aside in the manner that a judgment of the State of Missouri could be set aside. § 511.760.7 (App. A8); Rule 74.14(b) (App. A11). All of 417's only three stated procedural bases for challenging the registration of the Order – a "clerical error" under Rule 74.06(a), "fraud" under Rule 74.06(d), and the long-dead § 511.200 – were meritless and failed to provide the trial court power to set aside the registration of the Order.

Instead, the argument 417 *really* wanted to make – that the Order should not have been registered because it was not entitled to full faith and credit (D6 pp. 1-3; D19 pp. 1-3) – was a defense to registration, and so had to be pleaded timely within 30 days of service of notice of the registration. *Gentry v. Rush Truck Leasing, Inc.*, 124 S.W.3d 490, 491-92 (Mo. App. 2003) (applying § 511.760.7); *see also Kilgore v. Kilgore*, 666 S.W.2d 923, 928 (Mo. App. 1984) (applying identical language to § 511.760.7 in former Rule 74.79). Because 417 did not plead this timely, and instead did nothing for those 30 days, as of February 25 the Order "bec[a]me a final personal judgment of" the Circuit Court of Greene County. § 511.760.7 (App. A7); *see Gentry*, 124 S.W.3d at 491-92. 417's argument was waived. *Id.* at 492.

As in *Sentinel Acceptance*, the trial court lacked power to set aside the registration of the Order. This Court should reverse the trial court's judgment and remand this case with instructions to re-register the Order.

II. The trial court erred in holding that the Order was not entitled to full faith and credit and so was not registrable in Missouri as a foreign judgment in favor of BDKC and against 417 *because* this misapplied the law, for as a matter of federal law, an order granting counsel's motion for an interim allowance of fees in a bankruptcy case under 11 U.S.C. § 331 is final and enforceable by the counsel against the debtor once the bankruptcy case has been dismissed, at which point the order is entitled to full faith and credit under U.S. Const. art. IV, § 1 and is enforceable in state court by the counsel against the debtor regardless of how the order is denominated *in that* in the Order, the Bankruptcy Court granted BDKC's motion for interim fees and costs, after which the Bankruptcy was dismissed, making the Order final and enforceable by BDKC against 417 and requiring Missouri to give it full faith and credit.[1]

Preservation Statement

This point is preserved for appellate review. BDKC raised this argument below in its opposition to 417's motion to set aside the registration of the Order as a foreign judgment (D16 pp. 1-5) and its supplemental brief (D17 pp. 2-4).

* * *

[1] This point is an alternative to Point I, supra. If despite 417's failure to file any pleading in opposition to BDKC's registration of the Order within 30 days of service on it, the trial court nonetheless somehow had power to determine whether the Order was entitled to full faith and credit as an enforceable judgment by BDKC against 417, then it misapplied the law in holding the Order was not registrable.

An order of another American court is entitled to full faith and credit in Missouri, and therefore is registrable as a foreign judgment in Missouri, if it is final and enforceable by one party against the other where entered, regardless of how it is denominated. As a matter of federal law, an interim order granting counsel's motion for allowance of fees in bankruptcy case becomes final and enforceable against the debtor in the bankruptcy once the bankruptcy case has been dismissed. Nonetheless, here, the trial court held that the Bankruptcy Court's Order granting BDKC an allowance of fees against 417 was not entitled to full faith and credit. This was error.

A. Any judgment, decree, or order of an American federal, state, or territorial court that is enforceable by the judgment creditor against the judgment debtor under the laws of that court, regardless of how the order is denominated is entitled to full faith and credit and is registrable as a foreign judgment in Missouri.

Both § 511.760.1(1), R.S.Mo., and Rule 74.14(a) define a "foreign judgment" that is subject to registration in Missouri as "any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state." (App. A7, A11). Therefore, "[a] 'foreign judgment' entitled to registration under" Missouri law "is a judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state." *Corning Truck & Radiator Serv. v. J.W.M., Inc.*, 542 S.W.2d 520, 524 (Mo. App. 1976).

This means that if a judgment, decree, or order of an American federal, state, or territorial court awards relief to one party and is enforceable by the that party against another party under the laws of the court that entered it,

it is registrable in Missouri. *In re Matter of Shipley v. Trustee for Child Support Payment*, 472 S.W.3d 609, 612-13 (Mo. App. 2015). This is because "[r]egistry in [Missouri] can give the foreign judgment no greater effect than it would receive from the courts in rendering state." *Id.* at 613; see also *Flexter v. Flexter*, 684 S.W.2d 589, 591 (Mo. App. 1985).

But as long as the judgment creditor shows this, then "[u]nder Article IV, § 1 of the United States Constitution …, Missouri *is required* to give full faith and credit to judicial proceedings in other states unless there was: (1) lack of jurisdiction over the subject matter; (2) failure to give due notice to the defendant; or (3) fraud in the procurement of the judgment." *Blanchette*, 476 S.W.3d at 281 (emphasis added). Indeed, the Full Faith and Credit Clause of U.S. Const., art. IV, § 1, even "precludes any inquiry into the merits of a cause of action, logic or consistency of decision, or validity of legal principles on which" the foreign judgment is based. *Gibson v. Epps*, 352 S.W.2d 45, 47 (Mo. App. 1961). In fact, "[a] judgment is entitled to full faith and credit and is conclusive even though the judgment is inconsistent with the findings or decision on which it is based." *Id.*

Below, 417 argued that the fact the Order in this case was not denominated a "judgment" made it unregistrable in Missouri (D19 pp. 1-3). This is without merit.

While Missouri requires some final judgments in cases to be denominated "judgment" or "decree", Rule 74.01(a), § 511.760.1(1) and Rule 74.14(a) plainly account for the fact that other jurisdictions do not necessarily require this. They allow for "any judgment, decree **or order** … which is

entitled to full faith and credit" to be registered. § 511.760.1(1); Rule 74.14(a) (App. A7, A10) (emphasis added). And many "orders" entitled to full faith and credit have been properly registered in Missouri. *See, e.g.*, *Siegel v. Mosier*, 632 S.W.2d 76, 77 (Mo. App. 1982) (post-judgment "orders" from California concerning child support); *Estate of Angevine v. Evig*, 675 S.W.2d 440, 442 (Mo. App. 1984) ("order" from Illinois granting summary judgment); *Ritterbusch v. New London Oil Co.*, 927 S.W.2d 873, 875-76 (Mo. App. 1996) ("order" from Pennsylvania awarding money).

Indeed, the Supreme Court of Missouri itself recently held that even in Missouri, non-final orders that are statutorily enforceable and appealable do not need to be denominated "judgment", either. *See Meadowfresh Solutions USA, LLC v. Maple Grove Farms, LLC*, 578 S.W.3d 758, 760-61 (Mo. banc 2019). Only an "order that fully resolves at least one claim in a lawsuit and establishes all the rights and liabilities of the parties with respect to that claim" needs to be denominated a "judgment." *Id.* at 760. Therefore, in *Meadowfresh Solutions*, the Court held that an order refusing to set aside a receivership, while statutorily enforceable and appealable, was not a final judgment, and so could be denominated "order" and still be enforced and appealed. *Id.* at 760-61.

B. An order granting counsel's motion for an interim allowance of fees in a bankruptcy case under 11 U.S.C. § 331 is final and enforceable by the counsel against the debtor once the bankruptcy case has been dismissed.

"Fees in a bankruptcy proceeding are governed by federal, not state, law." *In re 5900 Assocs., Inc.*, 468 F.3d 326, 329 (6th Cir. 2006). Here, as a matter of federal law the Bankruptcy Court's Order awarding BDKC fees

plainly is enforceable against 417, and so is entitled to full faith and credit in Missouri. The trial court erred in holding otherwise.

Three federal statutes govern an award of fees to a debtor entity in a Chapter 11 bankruptcy case. First, 11 U.S.C. § 327(a) allows the bankruptcy court to authorize the employment of an attorney to represent the debtor. 11 U.S.C. § 330(a)(1) then allows the bankruptcy court to "award to a … professional person employed under section 327 … reasonable compensation for actual, necessary services rendered by the … professional person … and reimbursement for actual, necessary expenses" (App. A13).

Finally, 11 U.S.C. § 331 provides for a bankruptcy court to award the debtor's attorney fees *during* the course of a bankruptcy case:

> A … debtor's attorney … may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

(App. A16). It is this statute under which the Bankruptcy Court entered the Order awarding BDKC fees (D3 p. 2; D6 p. 1; D9 p. 3; D16 p. 3; App. A3).

After a Chapter 11 bankruptcy is dismissed, an award of fees to the debtor's attorney no longer is enforceable against the estate because the estate is "defunct." *In re Sweports, Ltd.*, 777 F.3d 364, 366 (7th Cir. 2015). Instead, at that point the fee award "create[s] a debt of [the debtor] to [the attorney], and if [the debtor] refuse[s] to pay, [the attorney] c[an], like any other creditor, sue [the debtor] in state court." *Id.* at 367 (holding bankruptcy

court could authorize fees even after dismissal of bankruptcy, which becomes enforceable by the attorney against the debtor). This is because "on dismissal a bankrupt is reinvested with the estate, subject to all encumbrances which existed prior to the bankruptcy. After an order of dismissal, the debtor's debts and property are subject to the general laws, unaffected by bankruptcy concepts." *Id.* at 366 (quoting *In re Income Prop. Builders, Inc.*, 699 F.2d 963, 965 (9th Cir. 1982)); *see also* 11 U.S.C. § 349(b)(3) ("a dismissal of a case … revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title").

Generally, "'an interim award of attorney's fees under 11 U.S.C. § 330(a)(1) and 331 is not final' because the order does not fully resolve the attorney's claim, leaving open the possibility that the claim will later be enlarged through future fee applications." *In re Iannochino*, 242 F.3d 36, 44 (1st Cir. 2001) (quoting *In re Spillane*, 884 F.2d 642, 644 (1st Cir. 1989). But an interim "fee award that determines all of the compensation owed to an attorney under section 330 may be considered final." *Id.* (citing *Spillane*, 884 F.3d at 644).

In *Iannochino*, for example, the First Circuit held that an interim order for attorney fees under § 331 was a final award because the attorney thereafter was discharged, meaning his fees would not stand a chance to continue. 242 F.3d at 43-45; *see also In re Yermakov*, 718 F.2d 1465, 1469 (9th Cir. 1983) (same); *In re Pericone*, No. 10-152, 2010 WL 11541706 at *5 (E.D. La. Feb. 25, 2010) (same); *In re Delta Petroleum (P.R.), Ltd.*, 193 B.R. 99, 105 (D.P.R. 1996) (same). And in *Spillane*, which *Iannochino* followed,

the First Circuit held an interim fee award final because the attorney was employed to handle an appeal, and once the appeal was dismissed for lack of jurisdiction the attorney's services were terminated and no further fee applications would be forthcoming. 884 F.2d at 644-45.

Similarly, in *In re Boddy*, the Sixth Circuit held that an interim order for attorney fees under § 331 was a final award because the debtors' plan had been confirmed, and so their attorneys' compensation has been conclusively determined. 950 F.2d 334, 336 (6th Cir. 1991). The point was that "an order of interim fees becomes final when it is no longer subject to modification by the bankruptcy court." *Id.* And in *In re Dahlquist*, the Eighth Circuit noted that this occurred when the bankruptcy was dismissed, too: "dismissal of the underlying bankruptcy proceeding in this case … makes the order" affirming payment of interim compensation final. 751 F.2d 295, 297 (8th Cir. 1985).

Once the interim order becomes final in this manner, and the bankruptcy estate no longer exists, the order is enforceable as a matter of law by the attorney against the debtor. *Sweports*, 777 F.3d at 366-67. Simply put, "[a]fter dismissal" of the bankruptcy estate, "the order" for fees "obligates the debtors to pay the fees." *In re Salazar*, No. 15-13194, 2016 WL 7377043 at *3 (Bankr. D.N.M. Dec. 19, 2016).

C. Once the order for interim fees is final and enforceable by counsel against the debtor, it is entitled to full faith and credit under U.S. Const. art. IV, § 1 regardless of how the order is denominated, and is registrable in state court.

Because after dismissal of a Chapter 11 bankruptcy an interim order for fees under § 331 is final compensation under § 330 that is enforceable by the attorney against the debtor, the law of the United States is that it is

entitled to full faith and credit under U.S. Const. art. IV, § 1. It states the relief to which the attorney is entitled and the identity of the debtor is known. It creates a debt from the debtor to the attorney that the attorney is entitled to enforce.

For this reason, **every** state court faced with such an order has held that it is entitled to full faith and credit and therefore is registrable and enforceable in by the attorney against the debtor in state court.

In *Koresco & Assocs., P.A. v. Farley*, counsel represented two debtors in Chapter 11 bankruptcy proceedings and received interim fee orders for $41,000. 826 A.2d 6, 7 (Pa. Super. 2003). After the bankruptcy proceedings ended, counsel registered the orders as foreign judgments against the debtors in Pennsylvania state court under Pennsylvania's UEFJA, 42 Pa.C.S.A. § 4306, which also allows registration of any order entitled to full faith and credit. *Id.* at 7-8. On the debtors' petitions, the trial court struck the registrations, concluding the interim orders were not final orders compelling payment that were entitled to full faith and credit. *Id.* at 7.

The Pennsylvania Superior Court reversed. *Id.* at 8-9. Citing the Sixth Circuit's decision in *Boddy*, *supra*, the court held that the interim orders were final and enforceable against the debtors because the bankruptcy was over. *Id.* "[T]he trial court erred in concluding that the orders in this case were not final for purposes of the UEFJA." *Id.* Because other claims remained in the lower court that the trial court had not considered, including that "that [counsel] did not have standing to enforce the order as it concerned [his prior

firm] and, further, that the fees in fact have been paid," the court remanded for further proceedings only on those claims. *Id.* at 9, 9 n.2.

The same thing happened just this year in Illinois in *Wolf v. Sweports, Ltd.*, No. 1-18-0584, 2019 WL 2000555 (Ill. App. May 2, 2019). There, counsel represented the debtor in a Chapter 11 bankruptcy, and after the bankruptcy was over the bankruptcy court ordered nearly $1 million in fees under § 330. *Id.* at *2. Thereafter, counsel register the bankruptcy court's fee order as a foreign judgment against the debtor in Illinois state court under Illinois' UEFJA, 735 ILCS § 5/12-650, *et seq.* *Id.* at *4-5.

The debtor moved to strike the registration, arguing the fee order was not final, did not constitute a "judgment," and was not enforceable against it because the order did not name the debtor. *Id.* at *4-5. In response, the counsel sought the bankruptcy court to clarify the order, but the bankruptcy court refused. *Id.* at *1. In a strikingly similar order to the trial court here, the Illinois trial court agreed and struck the registration of the fee order reasoning, "The plain language of the Bankruptcy Court's order provides that [counsel] is entitled to fees, but does not provide which party is to pay said fees. [The Bankruptcy Court's] repeated refusals to modify the order indicate that it was intended to do no more the plain language dictates." *Id.* at *5.

The Illinois Appellate Court reversed and ordered the fee order to be registered as a foreign judgment. *Id.* at *7-9. The fee order was final because the bankruptcy was over, and by operation of federal law it constituted a debt from the debtor to its counsel. *Id.* at *7. "The Fee Order was entered in connection with [the debtor]'s bankruptcy proceedings to determine the

amount of debt that [the debtor] had incurred [to its counsel] during the proceedings. There was no other possible entity that could have been responsible for the fees." *Id.* "Although the Fee Order here does not specifically state that it is a 'judgment' or that it is enforceable 'against [the debtor]' it nonetheless sets forth the relief to which [counsel was] entitled" and so "was therefore a judgment" for purposes of the UEFJA. *Id.* at *9. The fee order "is therefore an enforceable judgment entered against the debtor, … which may be registered against [the debtor] in state court." *Id.*

> Thus, the Fee Order was entered in connection with a Chapter 11 bankruptcy proceeding in which [the debtor] was the debtor and the language of the Fee Order sets forth the relief to which [counsel was] entitled. The Fee Order is therefore a judgment creating a debt of [the debtor] to [counsel], which [counsel] may collect upon by registering the judgment in state court. The circuit court thus erred in vacating [counsel's] registrations of the Fee Order.

Id.

The only two other decisions on the enforceability of a bankruptcy court fee order in state court have held it is. *See*:

- *Morgan & Bley, Ltd. v. Victoria Group, Inc.*, No. 14-C-06567, 2015 WL 2258416 at *4-5 (N.D. Ill. May 11, 2015) (Even where bankruptcy court refused to call interim fee order a "judgment", the interim fee order became final and enforceable by counsel against the debtor on dismissal of Chapter 11 proceedings, and therefore registrable and enforceable in Illinois state court. "It is the language of the fee order – not the bankruptcy court's intent – that is controlling." "[A]lthough the order was not a 'final judgment' in the sense that it did not end the

case, it was an appealable order (once the bankruptcy was dismissed) and thus a 'judgment' under applicable bankruptcy rules.")

- *Woodley v. Myers Capital Corp.*, 835 P.2d 239, 244 (Wash. App. 1992) (Reversing trial court's dismissal of enforcement action predicated on bankruptcy court's interim fee order, holding the order of interim compensation became a final order enforceable by counsel against debtor once Chapter 11 bankruptcy was dismissed. The fee order was *res judicata* with respect to the claim for attorney fees, and counsel could enforce it against the debtor in Washington state court.)

D. The Bankruptcy Court's Order for interim fees is final and enforceable by BDKC against 417, is entitled to full faith and credit, and is registrable in Missouri.

This case is the same as all these other cases. The Bankruptcy Court authorized BDKC to be employed as counsel for 417 under 11 U.S.C. § 327. BDKC filed an interim application for attorney fees and expenses under 11 U.S.C. § 331, and after a hearing the Bankruptcy Court awarded BDKC $146,848.50 in fees and $13,980.57 in expenses (D3 p. 2; D6 p. 1; D9 p. 3; D16 p. 3; App. A3). 417 did not appeal the Order, and the Bankruptcy Court then dismissed the Bankruptcy (D6 p. 1; D9 pp. 1, 3; D16 pp. 3-4).

At that point, the "order of interim fees bec[a]m[e] final," as the dismissal rendered it "no longer subject to modification by the bankruptcy court." *Boddy*, 950 F.2d at 336. And by pure operation of federal law, "the order" then "obligate[d] [417] to pay the fees." *Salazar*, 2016 WL 7377043 at *3; *see also Sweports*, 777 F.3d at 366-67; 11 U.S.C. § 349(b)(3).

Therefore, regardless of how the Bankruptcy Court denominated the Order, on the dismissal of the Bankruptcy BDKC had the right to enforce it against 417. This made it registrable in Missouri, as it was an "order of a court of the United States … which is entitled to full faith and credit in this state. § 511.760.1(1); Rule 74.14(a) (App. A7, A11). It is an order of an American federal court that awards relief to BDKC and is enforceable by BDKC against 417 under federal law, so it is registrable in Missouri. *Shipley*, 472 S.W.3d at 612-13.

"The Fee Order was entered in connection with [417]'s bankruptcy proceedings to determine the amount of debt that [417] had incurred [to BDKC] during the proceedings. There was no other possible entity that could have been responsible for the fees." *Wolf*, 2019 WL 2000555 at *7. "Although [it] does not specifically state that it is a 'judgment' or that it is enforceable 'against [417]' it nonetheless sets forth the relief to which [BDKC was] entitled" and so "was therefore a judgment" for purposes of the UEFJA. *Id.* at *9. The fee order "is therefore an enforceable judgment entered against [417], … which may be registered against [417] in state court." *Id.*

> Thus, the Fee Order was entered in connection with a Chapter 11 bankruptcy proceeding in which [417] was the debtor and the language of the Fee Order sets forth the relief to which [BDKC was] entitled. The Fee Order is therefore a judgment creating a debt of [417] to [BDKC], which [BDKC] may collect upon by registering the judgment in state court. The circuit court thus erred in vacating [BDKC's] registrations of the Fee Order.

Id.

As in *Koresco* and *Wolf*, this Court should reverse the trial court's judgment and remand this case with instructions to re-register the Order.

Conclusion

The Court should reverse the trial court's judgment setting aside the registration of the Order as a foreign judgment.

Respectfully submitted,

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Certificate of Compliance

I certify that I prepared this brief using Microsoft Word for Office 365 in 13-point, Century Schoolbook font, which is not smaller than 13-point, Times New Roman font. I further certify that this brief complies with the word limitations of Supreme Court Rule 84.06(b), as this brief contains 11,273 words.

/s/Jonathan Sternberg
Attorney

Certificate of Service

I certify that I signed the original of this brief of the appellant, which is being maintained by Jonathan Sternberg, Attorney, P. C. per Rule 55.03(a), and that on November 7, 2019, I filed a true and accurate Adobe PDF copy of this brief of the appellant and its appendix via the Court's electronic filing system, which notified the following of that filing:

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