

# MASSACHUSETTS Lawyers Weekly

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JANUARY 13, 2022

## Dual proceedings don't violate state UEFJA

*Judgment domesticated in one court, enforceable in another*

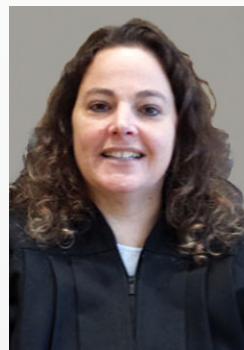
By: Eric T. Berkman

In what is apparently the first appellate decision interpreting the Massachusetts Uniform Enforcement of Foreign Judgments Act, the Appeals Court recently ruled that plaintiffs who secured a judgment in Florida against a Massachusetts defendant could domesticate that judgment in state District Court while seeking to enforce it in Superior Court.

Plaintiffs Deborah Berg and Karen Bedenbaugh, who inherited part of their mother's 50-percent interest in a family trust, obtained a state court judgment in Florida against their aunt, defendant Elaine Ciampa, who held the trust's other 50-percent interest and was its trustee. The suit charged that she took all the funds for her own use, leaving nothing for her sister and providing no accounting.

The plaintiffs subsequently sued Ciampa in Superior Court to reach and apply funds she had with Fidelity Investments.

In 2019, shortly after the plaintiffs filed that action, the Legislature enacted the Massachusetts UEFJA, G.L.c. 218, §4A, enabling a judgment creditor to domesticate a foreign judg-



Judge Amy Lyn Blake

ment by filing a certified copy of the judgment in the District Court where the debtor lives or works.

Pursuant to the UEFJA, the plaintiffs domesticated the judgment in Boston Municipal Court, as Ciampa was living in Massachusetts at the time.

A Superior Court judge denied Ciampa's subsequent motion to dismiss the Superior Court action, rejecting her argument that the act required the plaintiffs to choose between domesticating their foreign judgment in the District Court and bringing suit in Superior Court.

The Uniform Enforcement of Foreign Judgments Act states that a judgment creditor retains the right to bring an action to enforce a judgment "instead of" proceeding under the act.

The Appeals Court upheld the lower court.

"Ciampa's argument that the act cannot be read to provide for simultaneous attempts to enforce the judgment has some force. And we agree with her that the act should not be used to harass debtors, but that is not what happened here," Judge Amy Lyn Blake wrote, distinguishing the nature of the two different types of relief. "[I]n arguing that the plaintiffs cannot proceed in both courts in the manner in which they have, Ciampa parses the words of the statute too finely. Indeed, if the Legislature intended to limit the remedies available to judgment creditors, it could have explicitly done so. However, it did not."

### ***Berg, et al. v. Ciampa, et al.***



**THE ISSUE:** Could plaintiffs who secured a judgment in Florida against a Massachusetts defendant domesticate the judgment in state District Court while seeking to enforce it in Superior Court?

**DECISION:** Yes (Appeals Court)

**LAWYERS:** Joseph Perl of Watertown (plaintiffs)  
Robert J. O'Regan of Burns & Levinson, Boston (defense)



Thomas H. Curran

*“This ruling confirms that you can domesticate the judgment and then move forward in any forum that works best for you in terms of collection. Domestication is just the first step of essentially obtaining Massachusetts jurisdiction over the judgment.”*

The nine-page decision is *Berg, et al. v. Ciampa, et al.*, Lawyers Weekly No. 11-124-21. The full text of the ruling can be found [here](#).

### **Useful clarification**

Defense counsel Robert J. O’Regan of Boston said the result was disappointing and noted that Ciampa is of retirement age, cared for her late mother in Florida using all the money from the trust, and supplemented her mother’s care with her own funds.

“Unfortunately, she did not have a lawyer in the Florida case her nieces brought against her, but she made all financial records for the trust and her mother available to them,” O’Regan said. “She also suffered a stroke during the case. In retrospect, mistakes were made in the Florida state court proceedings, which regrettably she is unable to correct at this stage.”

The ruling appears to be the first appellate decision interpreting the Massachusetts Uniform Enforcement of Foreign Judgments Act.

More broadly, O’Regan said, if a plaintiff utilized the streamlined procedures to give full faith and credit to an out-of-state judgment under the UEFJA that the Legislature intended, then the Legislature also intended to protect Massachusetts citizens from multiple lawsuits to the same extent that already exists for judgments originating in Massachusetts courts.

Plaintiffs’ counsel Joseph Perl of Watertown could not be reached for comment, but other attorneys said the ruling provides useful clarification for practitioners while furthering the legislative intent behind the UEFJA.

Boston attorney Thomas H. Curran noted that before passage of the statute, parties seeking to enforce an out-of-state judgment against a Massachusetts resident had to file suit in a Massachusetts court, creating opportunities for the debtor to attack the validity of the judgment, forcing a creditor to “prove up” the judgment a second time just to get it domesticated.

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“This ruling confirms that you can domesticate the judgment and then move forward in any forum that works best for you in terms of collection,” he said. “Domestication is just the first step of essentially obtaining Massachusetts jurisdiction over the judgment. Then you choose your remedies from there and choose your court accordingly. For example, a reach-and-apply action is only available in Superior Court or the Supreme Judicial Court.”

J. Mark Dickison of Boston said a ruling the other way would have unnecessarily constrained options for creditors.

“By liberally interpreting the new act so that it achieves its obvious goal of more efficient and quicker collection of foreign judgments, the court has wisely allowed attorneys to be able to choose the options that best fit the needs of the case without having to remain wary of a procedural misstep that would just delay the collection of a lawful judgment,” he said.

Westboro attorney David S. Katz said the court was putting its imprimatur on the procedural framework of the statute so no other debtor could try and come up with creative arguments to defeat the statute's enforcement.

"The case was easy for the Appeals Court to decide, given that the language of the [UEFJA] is clear and other state courts have decided similar cases over the past several years," he said. "Perhaps the court's decision in taking this case rested more on placing its imprimatur on ... the need for a uniform process of domesticating foreign judgments in Massachusetts consistent with the terms of the full faith and credit clause of the U.S. Constitution."

### **Dual proceedings**

The plaintiffs' mother, Mary Birmingham, and her sister, the defendant, both held a 50-percent beneficial interest in a trust from their parents. Ciampa was trustee.

According to the plaintiffs, Ciampa took all the funds for her own use, depleting the \$1.9 million trust and providing no accounting.

When Birmingham passed away, the plaintiffs inherited a portion of her interest in the funds.

Ciampa lived in Florida part of the time she was spending the trust fund money. The plaintiffs brought suit against her in Florida and obtained a judgment for \$243,000 apiece.

On March 5, 2019, the plaintiffs sued Ciampa, now living in Massachusetts, in Suffolk Superior Court. They styled the claim as a trustee process claim but sought to reach and apply funds she held with Fidelity.

In May 2019, they domesticated the Florida judgment in the BMC pursuant to the newly enacted act.

That July, the BMC issued a writ of execution on behalf of each plaintiff.

In December 2019, Ciampa moved to dismiss the Superior Court action, asserting that the court lacked subject-matter jurisdiction. Specifically, she contended that because the UEFJA authorizes creditors to bring an action to en-

force a judgment "instead of" proceeding under the act, the Superior Court claim was rendered moot when the plaintiffs domesticated the judgment in the BMC.

Judge Douglas H. Wilkins denied Ciampa's motion, granting the plaintiffs' motion for summary judgment instead.

Ciampa appealed.

### **Non-exclusive remedies**

The Appeals Court affirmed Wilkins' decision, similarly rejecting Ciampa's contention that the term "instead of" in the act should be read to mean that domestication of a judgment under the UEFJA is an "alternative" or "substitute" for bringing an enforcement action against the judgment debtor.

"Our view of the act is consistent with the way that other States have interpreted their versions of the act," Blake said, emphasizing that while the plaintiffs may have domesticated the foreign judgment in the BMC, at no time did they actually seek to enforce the act there. "[I]mportantly, the act itself does not preclude other available remedies for a judgment creditor, provided that the creditor does not seek duplicative relief."

The court further emphasized that the plaintiffs could not, in fact, have sought to enforce the judgment in the BMC against funds in Fidelity's possession.

"Here, even if the cause of action is more in the nature of a trustee process than a reach and apply action, the plaintiffs were required to sue the trustee defendant in order to collect Ciampa's funds it held," Blake said. "Because the trustee defendant was not a party to the Florida judgment, and the act provides no relief against non-parties to the foreign judgment, the plaintiffs cannot be limited to relief from the BMC in the action under the act."

Additionally, Blake said, even if the plaintiffs had a remedy in the BMC, the amount in controversy would exceed the procedural amount for money damages in that court.

Accordingly, the panel concluded, the judgment should be affirmed.