

AFFIRMED; Opinion Filed June 16, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00241-CV

NITIN JARIWALA AND CHETNA HIRA, Appellants

V.

ALL AMERICA BANK, AN OKLAHOMA DOMESTIC BANK, Appellee

**On Appeal from the 116th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-18218**

MEMORANDUM OPINION

Before Justices Schenck, Osborne, and Reichek
Opinion by Justice Schenck

Nitin Jariwala and Chetna Hira appeal the domestication of an Oklahoma judgment under the Uniform Enforcement of Foreign Judgments Act (“UEFJA”). TEX. CIV. PRAC. & REM. CODE ANN. § 35.001–.008. In a single issue, with three sub-issues, appellants urge the trial court erred in entering judgment because appellee failed to fulfill the affidavit and notice requirements of the UEFJA and because the underlying judgment does not appear to be final. For the reasons set forth herein, we affirm the trial court’s judgment. Because all issues are settled in the law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

We begin with some background on the procedure for domesticating foreign judgments in Texas. The United States Constitution requires each state to give full faith and credit to the judicial proceedings of all others. U.S. CONST. art. IV; *McCoy v. Knobler*, 260 S.W.3d 179, 181–82 (Tex. App.—Dallas 2008, no pet.). In Texas, the enforcement of foreign judgments is governed by the Texas version of the Uniform Enforcement of Foreign Judgment Act. CIV. PRAC. & REM. § 35.001–.008; *McCoy*, 260 S.W.3d at 182. Under that act, a copy of a foreign judgment authenticated in accordance with an act of congress or a Texas statute may be filed in the office of the clerk of any court of competent jurisdiction in Texas. CIV. PRAC. & REM. § 35.003(a).

At the time a foreign judgment is filed, the judgment creditor or its attorney must file with the clerk of the court an affidavit showing its address and the name and last known post office address of the judgment debtor. *Id.* § 35.004(a). The judgment creditor or its attorney is also required to promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address provided and file proof of mailing the notice with the clerk of the court. *Id.* § 35.004(b). The clerk is obliged to treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed. *Id.* § 35.003(b). A foreign judgment in this manner has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment

of the court in which it is filed. *Id.* § 35.003(c); *see also Russo v. Dear*, 105 S.W.3d 43, 46 (Tex. App.—Dallas 2003, pet. denied). When a foreign judgment is properly filed under the UEFJA, the filing has the effect of initiating an enforcement proceeding and instantly rendering a final judgment in Texas. *See Moncrief v. Harvey*, 805 S.W.2d 20, 22 (Tex. App.—Dallas 1991, no writ).

BACKGROUND

We turn to the facts of this case. On September 21, 2018, the Oklahoma District Court entered an agreed deficiency judgment in Case No. CJ-2017-1430, following a judgment determining an amount due and ordering the sale of certain real property, in which it awarded appellee a deficiency judgment against appellants and Bricktown Joint Venture, LLC¹ in the amount of \$1,236,369.71, plus continuing interest, costs and attorney’s fees.²

On December 6, 2018, appellee commenced proceedings in the trial court to domesticate the foreign judgment. In support of its efforts to domesticate the Oklahoma judgment, appellee filed a “Notice of Filing of Foreign Judgment,” signed by appellee’s counsel, and an “Affidavit of Names and Addresses,” signed by one

¹ Bricktown Joint Venture, LLC is not a party to this appeal.

² Case No. CJ-2017-1430 is styled, *Echo Property Upkeep, LLC, Plaintiff, vs. Bricktown Joint Venture, LLC, and All America Bank, Defendants, and All America Bank, Third-Party Plaintiff vs. Nitin Jariwala; Chetna Hira; Bricktown Capital, LLC, DBA Bricktown Hotel & Convention; Champion Supply Company, LLC; State of Oklahoma, ex rel Oklahoma Tax Commission; Forrest “Butch” Freeman, County Treasurer of Oklahoma County, Oklahoma; Board Of County Commissioners of Oklahoma County, Oklahoma; Kenneth Newton; State of Oklahoma, ex rel Oklahoma Employment Security Commission; and Prominent Hotels, LLC, Third-Party Defendants.*

of appellee's Executive Vice Presidents and stating the last known address of appellants is 4724 Byron Circle, Irving, Texas 75038. On the same date, appellee served copies of the "Agreed Journal Entry of Deficiency Judgment and Authenticated Certificate," "Affidavit of Names and Addresses," "Civil Case Information Sheet," "Application for Charging Orders and Turnover," and "Notice of Filing of Foreign Judgment" on appellants at the stated address. Appellee filed returns of service on December 11, 2018.

On December 19, 2018, appellants filed their Motion for New Trial. In their motion, appellants asserted: appellee failed to meet the statutory requirements to domesticate the judgment because the judgment filed and the affidavit submitted did not meet the requirements of section 35.004 of the Texas Civil Practice & Remedies Code; the State of Oklahoma did not have personal jurisdiction over appellants; and the judgment was the product of fraud. Appellants' motion was denied by operation of law, and this appeal followed.

DISCUSSION

In their first and second sub-issues to their sole issue, appellants contend the trial court erred in denying their motion for new trial because appellee failed to comply with the affidavit requirements of section 35.004(a) of the Texas Civil Practice & Remedies Code and failed to direct the notice of filing of foreign judgment to the address identified in the affidavit. More particularly, with respect to appellants' contention appellee failed to comply with the affidavit requirements

set forth in section 35.004(a), appellants assert the affidavit appellee tendered is fatally defective and lacks probative value because the affiant did not swear that the facts presented in the affidavit reflect his personal knowledge or otherwise provide any basis to demonstrate his personal knowledge. Appellee contends appellants' motion for new trial did not sufficiently apprise the trial court of this issue to preserve their complaint on appeal.

We need not decide whether appellants had to apprise the trial court of their complaint concerning the affiant's personal knowledge to preserve their complaint for appeal, or whether the affidavit is sufficient, because the record before us demonstrates appellants received notice of the filing of the judgment and moved for a new trial. Appellants not only received notice and appeared, but admitted in their declaration regarding net worth that their address is 4724 Byron Circle, Irving, Texas. This is the same address listed in the Affidavit of Names and Addresses and identified on the Returns of Service. Thus, on this record, appellants cannot demonstrate any injury from an alleged deficiency in appellee's affidavit. *See Tri-Steel Structures, Inc. v. Hackman*, 883 S.W.2d 391, 395 (Tex. App.—Fort Worth 1994, writ denied) (technical failure to comply with UEFJA is harmless in absence of proof of injury to judgment debtor); *see also Nicholas v. Env. Sys. (Int'l) Ltd.*, 499 S.W.3d 888, 897 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (trial court did not err in recognizing judgment because debtor failed to show that he was harmed by any alleged technical violation of statute).

Appellants rely on this Court’s decision in *Tayob v. Quarterspot, Inc.*, in which this Court reversed a trial court’s domestication of a judgment after determining the affidavit in that case failed to comply with the UEFJA, but that reliance is misplaced. No. 05-15-00897-CV, 2016 WL 7163842 (Tex. App.—Dallas Nov. 28, 2016, no pet.) (mem. op.). That case was before us on a restricted appeal and, in that posture, we are constrained to consider only error apparent on the face of the record. No harm analysis is involved. TEX. R. APP. P. 30; *Pike–Grant v. Grant*, 447 S.W.3d 884, 886 (Tex. 2014) (per curiam) (To prevail in a restricted appeal, an appellant must establish that (1) he filed notice of the restricted appeal within six months after the judgment was signed; (2) he was a party to the underlying suit; (3) he did not participate in the hearing that resulted in the judgment complained of and did not timely file any post-judgment motions or requests for findings of fact and conclusions of law; and (4) error is apparent on the face of the record). Accordingly, we overrule appellants’ first sub-issue. TEX. R. APP. P. 44.1.

In appellants’ second sub-issue, they claim appellee failed to comply with the notice and mailing requirements of section 35.004(b) of the Texas Civil Practice & Remedies Code. Section 35.004(b) provides:

The judgment creditor or the judgment creditor’s attorney shall:

- (1) Promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address provided for the judgment debtor under Subsection (a); and
- (2) File proof of mailing of the notice with the clerk of the court.

CIV. PRAC. § 35.004(b). The record contains the Notice of Filing of Foreign Judgment that states appellee’s counsel mailed the notice to appellants at the address set forth in the affidavit. Accordingly, this complaint lacks merit and is overruled.

In their final sub-issue, appellants assert the judgment appellee sought to domesticate does not indicate that it is a final judgment and appears to concern only three of the fifteen listed parties and, thus, cannot be subject to domestication here.

In examining whether the judgment appears to be final and enforceable, we cannot rely on Texas law as it relates to the requirements for final judgments or any presumption that Texas law is the same as Oklahoma law. *See Dear v. Russo*, 973 S.W.2d 445, 447 (Tex. App.—Dallas 1998, no pet.). Nevertheless, our friends in Oklahoma have resolved this issue conclusively and we thus are honor bound to apply that law.

The Oklahoma Supreme Court has held that a deficiency judgment is part of the post-judgment process and that the “one” judgment in a foreclosure action is the order determining the amount due and ordering the sale. *FDIC v. Tidwell*, 820 P.2d 1338, 1341 (Okla. 1991); *see also* OKLA. STAT. tit. 12, § 686 (setting forth post-judgment deficiency procedure). The separate deficiency judgment or order simply allows a general execution to issue against property of the debtor other than that which has been foreclosed. *Neil Acquisition, LLC v. Wingrod Invest. Corp.*, 932 P.2d 1100, 1103–04 (Okla. 1996). Appellants do not assert that

the judgment determining the amount due on their indebtedness to appellee and ordering the sale of property from which the deficiency judgment at issue derives securing the indebtedness is not a final judgment. Because the deficiency order is part of the post-judgment process following a final judgment, appellants have failed to establish the deficiency order is not as enforceable here as part of the judgment as it would be in Oklahoma. We overrule appellants' third-sub issue.

CONCLUSION

We overrule appellants' sole issue and affirm the trial court's judgment.

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

NITIN JARIWALA AND CHETNA
HIRA, Appellant

No. 05-19-00241-CV V.

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Opinion delivered by Justice
Schenck. Justices Osborne and
Reichek participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee ALL AMERICA BANK, AN OKLAHOMA DOMESTIC BANK recover its costs of this appeal from appellant NITIN JARIWALA AND CHETNA HIRA.

Judgment entered this 16th day of June, 2020.