

Florida's Gambling Debt Collection Process: Play There, Collect Here

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WHILE FLORIDA DOES NOT ALLOW original actions for the collection of gambling debts, case law has demonstrated that final judgments based upon gambling debts from other states and countries may be domesticated and collected in Florida. For example, in *Young v. Sands, Inc.*,¹ the court based its refusal to award relief on an original action to enforce a gambling debt upon Florida Statutes §849.26, which states:

... repayment of money lent or advanced at the time of a gambling transaction for the purpose of being laid, betted, staked or wagered, are void and of no effect.

The court held that a gambling obligation although valid in the state where created cannot be enforced with an original action in Florida because enforcement would be contrary to public policy. Similarly, in *Froug v. Carnival Leisure Industries, Ltd.*,² the court did not allow a Bahamian casino to bring an original action in a Florida Court to collect a legally incurred gambling debt. The court stated that "the underlying debt is unenforceable in Florida as a matter of law."³

A different outcome results when invoking the Full Faith and Credit Clause of the United States Constitution to allow foreign gambling judgments to be enforced in Florida. "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."⁴ In *GNLV Corp. v. Feather-*

erstone,⁵ the debtor sued to invalidate the foreign judgment against him and to have the Florida Enforcement of Foreign Judgments Act, contained in §55.501, declared unconstitutional. The court held that under the Full Faith and Credit Clause, Florida was required to recognize a valid Nevada judgment based on gambling debts and responded to debtor's claim by declaring §55.501 to be constitutional.

In *Trauger v. A.J. Spagnol Lumber Co., Inc.*,⁶ this point is illustrated, by the court:

An action to recover on a foreign judgment is completely independent from the original cause of action. It is the judgment from the state which forms the basis for the cause of action, and the validity of the claim on which the foreign judgment was entered is not open to inquiry.⁷

Likewise, in *Boardwalk Regency Corp. v. Hornstein*,⁸ the court held that "Florida courts are obligated by the Full Faith and Credit Clause to recognize judgments which have been validly rendered in courts of sister states, including those based on gambling debts."⁹ Sim-

¹ *Young v. Sands, Inc.*, 122 So.2d 618 (Fla.App. 3 Dist. 1960).

² *Froug v. Carnival Leisure Industries, Ltd.*, 627 So.2d 538 (Fla.App. 3 Dist. 1993).

³ *Id.* at 538.

⁴ U.S. CONST. art. IV, § 1.

⁵ *GNLV Corp. v. Featherstone*, 504 So.2d 63 (Fla.App. 4 Dist. 1987).

⁶ *Trauger v. A.J. Spagnol Lumber Co., Inc.*, 442 So.2d 182 (Fla. 1983).

⁷ *Id.* at 183.

⁸ *Boardwalk Regency Corp. v. Hornstein*, 695 So.2d 471 (Fla.App. 4 Dist. 1997).

⁹ *Id.* at 471.

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ilarly, in *M & R Investments, Co., Inc. v. Hacker*,¹⁰ the court ruled that a trial court could not, in accordance with the Full Faith and Credit Clause, refuse to enforce a valid Nevada judgment enforcing a gambling debt, on the ground that the debt was contrary to the public policy of Florida.

Finally, in a case argued by the author, *Desert Palace, Inc. v. Kaye*,¹¹ a trial court refused enforcement of a valid Nevada judgment because it was based on a gambling debt. On appeal, the court cited to *Boardwalk Regency* and reversed, holding that the Full Faith and Credit Clause of the Constitution requires enforcement of the judgment. The procedure for enforcing foreign judgments in Florida is set forth in the Florida Enforcement of Foreign Judgments Act.¹² Florida Statutes § 55.502 states: "'foreign judgment' means any judgment, decree, or order of a court of any state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state."

The process of domestication is governed by Florida Statutes §§ 55.503-55.509. Under the statute, the procedure to domesticate a foreign judgment must be followed to the letter. Significantly, the specific procedure in each county may vary according to local rules. A copy of a certified foreign judgment is recorded in the office of the clerk of the circuit court of any county or counties. The clerk then files, records, and indexes the foreign judgment in the same manner as a judgment of a circuit or county court of Florida. The person recording the foreign judgment pays the clerk of the circuit court a service charge for filing an original action demanding the relief granted in the foreign judgment. Along with the recording of the foreign judgment, the judgment creditor makes and records with the clerk an affidavit setting forth the name, social security number, if known, and last known address of the debtor and creditor. Once both the foreign judgment and the affidavit have been recorded, the clerk will mail notice to the debtor by registered mail with return receipt requested to the address provided in the affidavit and will make a note of the mailing in the docket. The mailing date is important because pursuant to §55.507, the foreign judgment does not operate as a lien until 30 days after the mailing of the notice by the

clerk. The creditor may also record a judgment lien certificate.

Judgment lien certificates are relatively new in Florida and are provided for in Florida Statutes §55.202. The judgment lien certificate, when recorded, serves as a lien on a judgment debtor's interest in all non-exempt personal property in the state. Pursuant to §55.203, a judgment lien certificate must include the legal name of each judgment debtor and, if a recorded legal entity, the registered name and document filing number as shown in the records of the Department of State, and the last known address and the social security number or federal employer identification number of each judgment debtor if shown on the judgment itself. The judgment lien certificate must also include the legal name of the judgment creditor and, if a recorded legal entity, the registered name and document filing number as shown in the records of the Department of State, and the name of the judgment creditor's attorney or duly authorized representative, if any, the address of the judgment creditor, the identity of the court which entered the judgment and the case number and the date the written judgment was entered, the amount due on the money judgment and the applicable interest rate, and the signature of the judgment creditor or the judgment creditor's attorney or duly authorized representative. The judgment lien certificate gives the judgment creditor the right to proceed against the property of the debtor through writ of execution, garnishment, or other judicial process. Without the judgment lien certificate, many county clerks will not permit execution.

While statutes and case law do allow for domestication of foreign judgments and a judgment lien certificate grants one the right to collect, Florida Statutes § 55.605 sets forth some grounds for non-recognition of a foreign judgment:

- (a) The judgment was rendered under a system which does not provide impartial tri-

¹⁰ *M & R Investments, Co., Inc. v. Hacker*, 511 So.2d 1099 (Fla.App. 5 Dist. 1987).

¹¹ *Desert Palace, Inc. v. Kaye*, 700 So.2d 802 (Fla.App. 4 Dist. 1997).

¹² FLA. STAT. Chapter 55.

bunals or procedures compatible with the requirements of due process of law.

- (b) The foreign court did not have personal jurisdiction over the defendant.
- (c) The foreign court did not have jurisdiction over the subject matter.
- (d) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend.
- (e) The judgment was obtained by fraud.
- (f) The cause of action or claim for relief on which the judgment is based is repugnant to Florida public policy.
- (g) The judgment conflicts with another final conclusive order.
- (h) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court.
- (i) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.
- (j) The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state.

Based upon the foregoing, it is extremely important that all service of process provisions in the home and domesticating state be strictly followed to insure no jurisdictional challenges. For example, in *Montaner v. Big Show Productions, S.A.*,¹³ the court held that "a foreign judgment will not be recognized and enforced by a Florida court unless jurisdictional and due pro-

cess standards required by Florida law are observed in the foreign proceeding."¹⁴ In *Montaner*, a Venezuelan company desired to domesticate an injunction. The Florida court ruled that the appellant had received inadequate notice of the action against him. Not only was the alleged notice given two months after the injunction but the notice was by publication which was insufficient under Florida's due process rights. In Venezuela, service by publication may be considered proper due process. However, based on §55.605, the Florida court found that the defendant in the foreign court proceedings did not receive notice in sufficient time to enable him to defend. Thus, the court held the injunction was non-recognizable under Florida law.

Extreme caution should be used when attempting to domesticate a judgment based on an action served on the defendant by publication, certified mail, or any other non-personal service methodology. These methods may be acceptable in the home state, but where the defendant makes no appearance in the litigation, a default judgment may be challenged during domestication in another state based on lack of notice.

After a judgment is fully domesticated, a creditor may then enforce the judgment in a variety of ways including execution on real and personal property, garnishment of wages, and garnishment of bank accounts.

¹³ *Montaner v. Big Show Productions, S.A.*, 620 So.2d 246 (Fla.App. 3 Dist. 1993).

¹⁴ *Id.* at 248.