

1989

Pan Energy aka Energy Catalyst Company v. Carl Martin : Brief of Respondent

Utah Supreme Court

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Recommended Citation

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BRIEF

890400

IN THE SUPREME COURT
STATE OF UTAH

NOV 22 1989

PAN ENERGY, a/k/a ENERGY CATALYST)	
COMPANY,)	
)	
Plaintiff and Appellant,)	
)	
vs.)	
)	Case No. 890400
CARL MARTIN,)	
)	
Defendant and Respondent.)	

BRIEF OF RESPONDENT

Appeal from Decision in Favor of Defendant, June 12, 1989
Fourth Judicial District Court of Utah County
Honorable Ray M. Harding, District Judge

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
JURISDICTION	1
PROCEEDINGS IN THE DISTRICT COURT	1
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	2
Issue I	
Did the Utah Trial Court correctly afford full faith and credit to the Oklahoma Court's order declaring the judgment unenforceable?	2
Issue II	
Does Utah's borrowing statute, § 78-12-45, <u>Utah Code Annotated</u> , require dismissal of the action to enforce the judgment filed in Utah when that judgment is declared unenforceable in the rendering sister state?	2
Issue III	
Was it within the Utah Trial Court's discretion to afford comity to the Oklahoma decision that its judgment is unenforceable?	3
CONSTITUTIONAL PROVISIONS AND STATUTES	3
A. Constitutional Provisions.	3
B. Utah Code Annotated.	3
STATEMENT OF THE CASE	4
FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW.	5
SUMMARY OF THE ARGUMENT	7
Issue I	7
Issue II	8
Issue III	8

ARGUMENT	9
I. THE OKLAHOMA DECISION IS ENTITLED TO FULL FAITH AND CREDIT.	9
A. Pan Energy Ignores The Fact That The Utah Filing Did Not Save Its Judgment.	11
B. Instead Of Dealing With The Relevant Facts, Pan Energy Hides Behind Irrelevant And Misconstrued Case Law	12
II. DISMISSAL OF PLAINTIFF'S ACTION WAS REQUIRED UNDER UTAH'S BORROWING STATUTE . .	18
III. IT WAS WITHIN THE TRIAL COURT'S DISCRETION TO AFFORD COMITY TO THE OKLAHOMA DECISION.	21
CONCLUSION	23
CERTIFICATE OF SERVICE	25
APPENDIX	v

TABLE OF AUTHORITIES

A. CASES

<u>Alcaraz v. Block</u> , 746 F.2d 593 (9th Cir. 1984)	21
<u>Bruce v. United States</u> , 759 F.2d 755 (9th Cir. 1985)	21
<u>Data Management, Inc. v. E.D.P. Corporation</u> , 709 P.2d 377 (Utah 1985)	9
<u>Helvering v. Gowran</u> , 302 U.S. 238 (1937)	21
<u>Jackett v. L.A. Dept. of Water & Power</u> , 771 P.2d 1074 (Utah App. 1989)	21-23
<u>Jett v. Sunderman</u> , 840 F.2d 1487 (9th Cir. 1988)	21
<u>Keniston v. Roberts</u> , 717 F.2d 1295 (9th Cir. 1983)	21
<u>Lindsay v. Woodward</u> , 299 P.2d 619 (Utah 1956)	19
<u>M'Elmoyle v. Cohen</u> , 38 U.S. 312 (1839)	14
<u>Morris v. Adams-Millis Corp.</u> , 758 F.2d 1352 (10th Cir. 1985)	21
<u>Rhoades v. Wright</u> , 622 P.2d 343 (Utah 1980)	15-17
<u>Watkins v. Conway</u> , 385 U.S. 188 (1966)	11, 14, 15
<u>Wells v. Simonds Abrasive Co.</u> , 345 U.S. 514 (1953)	14

B. STATUTES

12, <u>Oklahoma Statutes</u> , § 735	20
Full Faith and Credit Clause -- Constitution of the United States, Article IV, Section 1	3, 7
<u>Utah Code Ann.</u> § 78-2-2(3) (1986 Supp.)	1
<u>Utah Code Ann.</u> § 78-12-45 (1987 Repl. Vol.)	2, 3, 8, 16, 18, 22
<u>Utah Code Ann.</u> § 78-12-46 (1987 Repl. Vol.)	18

<u>Utah Code Ann.</u> § 78-22a-1 <u>et seq.</u> , (Repl. Vol. 1987)	10, 12
<u>Utah Code Ann.</u> § 78-22a-8,	4, 8, 10, 11

C. OTHER

16 <u>Am. Jur.</u> 2d, Conflict of Laws, § 10 (1979)	21
RESTATEMENT (SECOND) CONFLICT OF LAWS	
§ 142 comment b (1971, 1988 Revisions)	17, 19

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PAN ENERGY, a/k/a ENERGY CATALYST)	
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CARL MARTIN,)	
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Defendant and Respondent.)	

BRIEF OF RESPONDENT

Appeal from Decision in Favor of Defendant, June 12, 1989
Fourth Judicial District Court of Utah County
Honorable Ray M. Harding, District Judge

JURISDICTION

As a basis for its appeal, Pan Energy relies on Utah Code Annotated § 78-2-2(3) (1986 Supp.).

PROCEEDINGS IN THE DISTRICT COURT

Appellant, Pan Energy, appealed from the final order rendered by the Honorable Ray M. Harding, Judge of the Fourth Judicial District Court, in and for Utah County. On appeal, Pan Energy claims that the Utah Trial Court erred by dismissing

its action to enforce a judgment declared unenforceable by the rendering court and vacating the judgment.¹

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Respondent, Martin, disagrees with Pan Energy's characterization of the issues presented for review and, therefore, submits the following:

Issue I

Did the Utah Trial Court correctly afford full faith and credit to the Oklahoma Court's order declaring the judgment unenforceable?

Issue II

Does Utah's borrowing statute, § 78-12-45, Utah Code Annotated, require dismissal of the action to enforce the judgment filed in Utah when that judgment is declared unenforceable in the rendering sister state?

¹ A copy of the Memorandum of Decision and Order are marked Exhibits 1 and 2, respectively, and are contained in the Addendum attached hereto and incorporated herein by this reference.

Issue III

Was it within the Utah Trial Court's discretion to afford comity to the Oklahoma decision that its judgment is unenforceable?

CONSTITUTIONAL PROVISIONS AND STATUTES

Pan Energy's brief does not cite controlling constitutional provisions or statutes. Nonetheless, Martin relies on the following:

A. Constitutional Provisions.

Full Faith and Credit Clause -- Constitution of the United States, Article IV, Section 1.

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

B. Utah Code Annotated.

1. Utah Borrowing Statute -- Section 78-12-45
Action barred in another state barred here.

When a cause of action has arisen in another state or territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state, except in favor of one who has been a citizen of this state and who has held the cause of action from the time it accrued.

2. Applicable provision of the Utah Foreign Judgment Act -- Section 78-22a-8, Uniformity of interpretation.

This chapter shall be construed to effectuate the general purpose to make uniform the law of those states which enact it.

STATEMENT OF THE CASE

Pan Energy initiated its action in the Fourth Judicial District Court for Utah County (the "Utah Trial Court"), on August 20, 1987, by filing a judgment rendered by the United States District Court, for the District of Oklahoma, Northern Division (the "Oklahoma Court" or the "rendering court") on September 21, 1982. (Record at 1).² Though Pan Energy obtained its Oklahoma judgment on September 21, 1982, it took no action to save that judgment as required by Oklahoma law. (Record at 136).

After the Utah filing of the foreign judgment, Martin moved to stay the Utah proceedings to challenge the enforceability of the judgment in the Oklahoma Court. (Record at 11). The Utah Trial Court granted Martin's motion and

² Pursuant to Rule 24(e) of the Rules of the Supreme Court, Martin has referenced pertinent pages of the original record. Though the facts of this case should not be disputed, Pan Energy has not made reference to the record and it is not clear how Pan Energy supports its abbreviated version of the facts. For purposes of this brief, Martin assumes Pan Energy agrees with Martin's citations to the record.

stayed the enforcement proceedings pending a determination of Martin's challenges by the Oklahoma Court. (Record at 17).

Martin successfully challenged the validity of the judgment in the Oklahoma Court, which, on July 14, 1988, ruled that the judgment was dormant and unenforceable.³ (Record at 133).

Martin then asked the Utah Trial Court to vacate the judgment and dismiss Pan Energy's Utah action. (Record at 121). On June 12, 1989, the Honorable Ray M. Harding granted Martin's motion, vacated the judgment and dismissed Pan Energy's action. (Record at 161-63). Pan Energy appeals from that decision.

FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW.

1. In 1982, Pan Energy, a Montana corporation, obtained a judgment against Mr. Martin, in the United States District Court for the District of Oklahoma. Almost five years after the judgment was rendered by the Oklahoma Court, Pan Energy filed its judgment in Utah. (Record at 1).

³ A copy of the Order entered by the Oklahoma Court is marked Exhibit 3 and is contained in the Addendum attached hereto and incorporated herein by reference.

2. During the intervening period, Pan Energy's only effort to enforce the judgment consisted of having a writ of execution issued in the State of Idaho. Though this writ was issued, it was not executed or filed with any court. (Record at 133).

3. Mr. Martin then sought to challenge the validity of Pan Energy's judgment in the Oklahoma Court and enforcement in Utah was stayed pending the Oklahoma Court's decision. (Record at 11-18).

4. The rendering Oklahoma Court found that Pan Energy did not take steps sufficient to enforce its judgment as required by law. Even the Utah filing was not sufficient to save the judgment. (Record at 133). Accordingly, the Oklahoma Court held that the judgment was not enforceable. (Record at 136).

5. Pursuant to Martin's motion, the Utah Trial Court ruled that "where the judgment has been held to be unenforceable in the sister state, in effect, there is nothing in existence to which full faith and credit can be given. The Motion to Dismiss and to Vacate is therefore granted." (Record at 161).

6. Pan Energy now appeals from the ruling of the Utah Trial Court dismissing the action and vacating the judgment filed in Utah. (Record at 161-63).

SUMMARY OF THE ARGUMENT

Issue I

Article IV, Section 1 of the United States Constitution requires that full faith and credit be given to the laws and judicial proceedings of sister states. On July 14, 1988, the Oklahoma Court held that Pan Energy's judgment is unenforceable. Full faith and credit must be given to that decision.

Pan Energy's claim that full faith and credit only can be given to the Oklahoma Court's original judgment, and not the laws defining the scope of that judgment or the subsequent judicial proceedings invalidating that judgment, is contrary to both the intent and express letter of the Full Faith and Credit clause. The Utah Trial Court ruled correctly when it applied full faith and credit to the Oklahoma Court's decision and thereby dismissed the action to enforce Pan Energy's unenforceable judgment. Indeed, it would be unjust to enforce a judgment in Utah that cannot be enforced in the rendering jurisdiction.

Issue II

While Pan Energy attempts to clothe its appeal in generalized theorems of conflict of laws analysis, Pan Energy has failed to address the implications of the Utah borrowing statute on the facts of this case. Conflict of laws analysis requires consideration of Utah's borrowing statute, Utah Code Annotated § 78-12-45, because the borrowing statute prevents Pan Energy from using Utah law to add life to a claim otherwise prohibited by the laws of the forum in which the claim arose.

The borrowing statute must be read in conjunction with the Utah Foreign Judgment Act. The intent of the Foreign Judgment Act, inter alia, is "to effectuate the general purpose of making uniform the law of those states which enact it." Utah Code Ann. § 78-22a-8. The Utah Trial Court's decision is a proper use of the Utah borrowing statute and effectuates the general intent of the Utah Foreign Judgment Act.

Issue III

The Utah Trial Court has the discretion to afford comity to the order of the Oklahoma Court. General principles of comity allow courts of one state to recognize the rulings of the courts of another state as a matter of courtesy. Such

courtesy is not mandatory under comity principles, but is advisable for the development and continuation of harmonious relationships between the states. The decision to afford comity is a matter of discretion, and such a decision only can be overruled when it can be shown that the court clearly abused its discretion. The Utah Trial Court afforded comity to the decision of the Oklahoma Court. Absent a showing of abuse of this discretion, the Utah Trial Court's order must be upheld.

ARGUMENT

I. THE OKLAHOMA DECISION IS ENTITLED TO FULL FAITH AND CREDIT.

Martin agrees with Pan Energy that full faith and credit applies in this case. The real question, however, involves the manner of application of this principle, rather than the fact of its application. One must apply the law to the facts.

Pursuant to the Constitution of the United States, Utah accords full faith and credit to the final determinations of sister states. Data Management, Inc. v. E.D.P. Corporation, 709 P.2d 377 (Utah 1985). In this respect, the Oklahoma judgment, in conjunction with all its rights, obligations and restrictions, is entitled to full faith and credit in Utah. If the Oklahoma judgment was enforceable, Utah would be required to accord that judgment full faith and credit, absent a valid

constitutional challenge to the judgment. Utah Foreign Judgment Act, § 78-22a-1 et seq., Utah Code Ann. (Repl. Vol. 1987).

In the case at bar, however, the Oklahoma Court determined that, under the laws of Oklahoma, the Oklahoma judgment is not enforceable. That Court's final determination regarding its own judgment must be given full faith and credit in Utah. Any other decision would create the peculiar situation where a judgment declared invalid by the rendering court continues to be enforced despite that court's ruling. The Utah Foreign Judgments Act is designed to avoid such an odd result.

Section 78-22a-8, Utah Code Annotated, states that "[t]his chapter shall be construed to effectuate the general purpose to make uniform the law of those states which enact it." To give a uniform effect to the Oklahoma laws, Utah must recognize the Oklahoma decision rendering the judgment unenforceable. If it does not, the Oklahoma statute of limitation regarding the enforcement of judgments is rendered meaningless and this Court denies full faith and credit to Oklahoma judgments and statutes.

The original Oklahoma judgment was granted in conjunction with all that state's laws effecting its validity and enforceability. Utah should give full faith and credit to the Oklahoma judgment; it should not add rights to the judgment that Oklahoma would not provide. The Utah Trial Court held: After consideration of the memoranda submitted in this matter, the Court finds that the Oklahoma judgment which is the basis for this action has been held to be unenforceable in Oklahoma. The Constitution of the United States requires that Utah give full faith and credit to the judgments of sister states. Where the judgment has been held to be unenforceable in the sister state, in effect, there is nothing in existence to which full faith and credit can be given. The motion to dismiss and to vacate is therefore granted.

Memorandum Decision of May 17, 1989, Fourth Judicial District Court for Utah County, Judge Ray M. Harding. (Record at 161).

The Utah Trial Court's ruling insures a consistent and uniform interpretation of laws of both Utah and Oklahoma. The Oklahoma determination is not circumvented and the purpose of Utah Code Annotated § 78-22a-8 is achieved. "Thus, full faith and credit is insured, rather than denied, the law of the judgment State." Watkins v. Conway, 385 U.S. 188, 191 (1966).

A. Pan Energy Ignores The Fact That The Utah Filing Did Not Save Its Judgment.

In the present case, the Oklahoma Court ruled that the judgment was not enforceable, even though the Court knew that the judgment had been filed in Utah. Apparently, Pan Energy presumes that once the Oklahoma judgment is filed in Utah, the

penumbra of rights, obligations and restrictions within that judgment lose all significance.

A valid foreign judgment does become a Utah judgment upon filing because Utah accords that judgment full faith and credit under the Foreign Judgment Act. Utah Code Ann. § 78-22a-1, et seq. The underlying premise for recognizing this judgment in Utah, however, is that full faith and credit is accorded the final determinations of a sister state, nothing less and nothing more. Utah will recognize valid foreign judgments and enforce them in this state only to the extent that the rendering state would do so.

Pan Energy's theory in this action cannot be correct because Pan Energy ignores the fact that the Utah filing did not save the Oklahoma judgment. The final determination of the Oklahoma Court is that plaintiff's judgment is unenforceable and cannot be revived. Consequently, the Utah Trial Court's dismissal of the action was proper.

B. Instead Of Dealing With The Relevant Facts, Pan Energy Hides Behind Irrelevant And Misconstrued Case Law

Rather than deal with the relevant facts of the case, Pan Energy argues points of law which are irrelevant and in some instances incorrect. Pan Energy's procedural argument

regarding the Utah statute of limitations disregards the basic facts of the case.

Pan Energy argues for enforcement of its invalid Oklahoma judgment by clothing that judgment as a Utah judgment and invoking an Erie-like doctrine regarding procedural enforcement of a valid judgment. Pan Energy might be correct if there was a valid foreign judgment to which Utah should give full faith and credit. As the Utah Trial Court held, however, no such judgment exists. (Record at 161).

Pan Energy dogmatically recites Utah case law which indicates that a foreign judgment cannot be collaterally attacked on the merits. (Brief of Appellant at 6-9). Pan Energy misconstrues Martin's position.⁴ Martin attacked the Oklahoma judgment in the rendering court on the grounds that the judgment was unenforceable. No collateral, or direct, attack on the merits was made.⁵

⁴ Perhaps Pan Energy confuses Martin's position on the enforceability of the judgment with the fact that Martin did pay Pan Energy the full amount of the obligation upon which Pan Energy obtained its Oklahoma judgment. (Record at 46, 48-49, 64). Clearly, Martin's payment of the underlying obligation cannot serve as a defense at this point in the Utah proceedings.

⁵ Indeed, Martin's attack on the merits has never been decided by any court.

Pan Energy also misconstrues the holdings of cases decided by the United States Supreme Court. For example, Pan Energy cites M'Elmoyle v. Cohen, 38 U.S. 312 (1839), as the United States Supreme Court's "clear expression" of the "policies for the enforcement of foreign judgments in a sister state." (Appellate brief at 13-14). Far from being the Supreme Court's clear expression on the matter, the reasoning of M'Elmoyle has been questioned by the High Court. Watkins v. Conway, 385 U.S. at 189, n.1. As the Court in Watkins points out, the issue in M'Elmoyle "concerned the power of the states to impose any statute of limitation upon foreign judgments." Id. The very language cited by Pan Energy "must be read against this argument." Id. M'Elmoyle simply stands for the proposition that states may impose their own statutes of limitation on the judgments of sister states, nothing more.

Again, in citing Wells v. Simonds Abrasive Co., 345 U.S. 514 (1953), for the proposition "that the forum state's procedures for enforcement should be used rather than the foreign state's", Pan Energy ignores the intent of the High Court. Wells specifically states that

We are not concerned with the reasons which have led some states for their own purposes to adopt the foreign limitation, instead of their own, in such situations. The question here is whether the Full Faith and Credit clause compels them to do so. Our prevailing rule is that the Full Faith and Credit clause does not compel the forum state to use the period of limitation of the foreign state.

The Court's point is that the Full Faith and Credit clause does not compel one state to adopt the statute of limitation of another, but, a state may do so.

Indeed, that is exactly what happened in Watkins. There the Supreme Court upheld a Georgia Court's use of a Florida statute of limitation in the Georgia Court's enforcement of a Florida judgment. The Supreme Court case law cited by Pan Energy stands for the proposition that states which impose their own statutes of limitation on foreign judgments do not violate the Full Faith and Credit clause. These cases do not find that one state must impose its own statute of limitation. They indicate that one state may use statutes of limitation from other states. Utah's borrowing statute does just that. (See Argument II. Dismissal of Plaintiff's Action was Required Under Utah's Borrowing Statute, pages 16-19).

Pan Energy cites the case of Rhoades v. Wright, 622 P.2d 343 (Utah 1980), in support of its procedural claims. Even a cursory reading of Rhoades indicates that the case was determined on the egregiousness of its facts. There, a Utah widow whose husband had been gunned down by the couple's Colorado landlord, was caught in a procedural bind between decisions of Colorado and Utah courts. Both the Utah federal court and the Colorado state court procedurally barred this plaintiff's claims prior to a hearing on the merits.

Recognizing the severity of the facts, the Utah Supreme Court stated:

The implicit interest of Utah is, of course, in assuring that heirs, either individually or through a personal representative, have the opportunity to recover compensation for the wrongful death of a Utah resident.... Utah's interest is even stronger in this case because Utah must be viewed as the last forum available to the plaintiff.

Id. at 347.

The Utah Supreme Court, recognizing the fact that this was the Utah widow's last opportunity to be heard, used Utah procedural law to give that plaintiff a forum. If anything, Rhoades supports the proposition that conflict of laws analysis requires consideration of a state's interests, and to that end, Utah law should be construed to protect Utah residents from those who would manipulate procedural laws to their unfair advantage. Pan Energy is not a Utah corporation.

Pan Energy cites the Restatement of Conflicts as demonstrating that "the prevailing thinking in this area of law is that the forum state applies its own procedures to enforce a judgment that is correctly filed in the forum state." (Pan Energy's Brief at 12). Pan Energy, however, fails to identify that Utah, the forum state, determines whether to enforce a judgment by looking to its borrowing statute. See § 78-12-45, Utah Code Ann. (1987 Repl. Vol.). Further, while it may be the "traditional approach" of American Courts to distinguish

between substance and procedure, the trend is to weigh the interest of the forum against that of the rendering state.

The view that statutes of limitations should ordinarily be characterized as procedural has been abandoned in many recent decisions. Under these decisions, the question whether a statute bars the right and not merely the remedy has lost its significance. The forum will no longer entertain a claim with which it has otherwise no contact simply because the statute is not barred by its own statute of limitations. Entertainment of the claim under such circumstances would disserve the forum's general policy against the prosecution of stale claims and would not serve any other forum interest.

RESTATEMENT (SECOND) CONFLICT OF LAWS §142 comment b (1971, 1988 Revisions). See also, Rhoades, 622 P.2d at 347.

Pan Energy's "procedural" argument regarding enforcement of a valid foreign judgment is not applicable to this case. There is no valid foreign judgment to enforce. Pan Energy overlooks the fact that the judgment it seeks to enforce is invalid in every other state of the union. Pan Energy did obtain an Oklahoma judgment. Five years later, Pan Energy filed that judgment in Utah. The Utah Trial Court, however, stayed the proceeding to allow the Oklahoma Court to determine the enforceability of the judgment. The Oklahoma Court declared the judgment to be unenforceable. The Utah Trial Court recognized the unenforceability of Pan Energy's judgment and thereby gave the final determination of the Oklahoma court full faith and credit.

Accordingly, the Utah Trial Court properly dismissed Pan Energy's action and vacated Pan Energy's unenforceable judgment.

II. DISMISSAL OF PLAINTIFF'S ACTION WAS REQUIRED UNDER UTAH'S BORROWING STATUTE

Pan Energy's Brief is misleading in that no where in the brief does it distinguish or even disclose the relevant statute in this case. Presumably, this is because the statute destroys Pan Energy's claim. The governing statute in this case is Utah's borrowing statute.

When a cause of action has arisen in another state or territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state except in favor of one who has been a citizen of this state and who has held the cause of action from the time it accrued.

Utah Code Ann., § 78-12-45 (1987 Repl. Vol.) (emphasis added).⁶

Borrowing statutes were enacted to correct "some of the anomalies that resulted from treating statutes of limitations as procedural, including aggravated examples of forum

⁶ The term "action" as it is used in this section includes the type of post-judgment proceeding Pan Energy initiated in this case. Utah Code Ann., § 78-12-46 (1987 Repl. Vol.) ("the word 'action' as used in this chapter, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature").

shopping." See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 142 comment b (1971, 1988 Revisions).

Pan Energy cannot pursue its unenforceable Oklahoma judgment in Utah. The Utah statute specifically precludes Pan Energy from bringing its claim against defendant in Utah because that claim arose in Oklahoma and the time in which to bring that claim has expired under Oklahoma law. Under Utah law, Pan Energy cannot use a longer Utah statute of limitations to add life to a claim that would otherwise be governed by a shorter foreign limitations statute.

The Utah Supreme Court has interpreted Utah's borrowing statute in Lindsay v. Woodward, 299 P.2d 619 (Utah 1956). In Lindsay, the defendant was injured in an automobile accident in June of 1952. Plaintiff, an Idaho physician who attended the defendant, was not paid, and brought suit in a Salt Lake City Court. Plaintiff obtained a default judgment when the defendant failed to answer. The defendant appealed to the District Court. For the first time, he asserted a counterclaim based on malpractice and alleged fraud and breach of contract. The plaintiff's motion for summary judgment was granted and the defendant further appealed. The Supreme Court affirmed the judgment because the defendant's counterclaim was time-barred by the Idaho statute of limitations, and, therefore, necessarily was barred by Utah's borrowing statute.

In the case at bar, the Utah Trial Court correctly granted Martin's motion to dismiss. The Oklahoma Court held that its judgment was unenforceable because the Oklahoma statute of limitations had expired. Accordingly, Utah's borrowing statute required the Utah Trial Court to dismiss the action.

The Oklahoma statute of limitations is codified at 12, Oklahoma Statutes, § 735:

If execution is not issued and filed as provided in Section 759 of this title, within five (5) years after the date of any judgment that now is or may hereafter be rendered, in any court of record in this state, or if five (5) years has intervened between the date that the last execution on such judgment was filed as provided by Section 759 of this title and the date that writ of execution was filed as also provided in Section 759 of this title, such judgment shall become unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the judgment debtor....

(Record at 134). Since there was no execution on the Oklahoma judgment within five (5) years from the date of its rendering, the judgment was unenforceable. Merely filing the judgment in Utah before the limitations period expired could not save the judgment under Oklahoma law.

The Utah borrowing statute requires our courts to look to Oklahoma statutes to determine the enforceability of an Oklahoma judgment. Thus, dismissal of the Utah action to enforce the Oklahoma judgment was required.

III. IT WAS WITHIN THE TRIAL COURT'S DISCRETION TO
AFFORD COMITY TO THE OKLAHOMA DECISION.

Even if the Utah Trial Court's actions were not required under full faith and credit, it was a proper use of that court's discretion to afford comity to the Oklahoma Court's decision.⁷ Judicial comity is a principle in which a court of one state or jurisdiction gives effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect. See 16 Am. Jur. 2d, Conflict of Laws, § 10 (1979). "[T]he tendency of modern decisions is toward a broader comity in the enforcement of rights created by the legislatures of sister states. A state court, in conformity to state policy, may, by comity, give a remedy which the Full Faith and Credit clause does not compel." Id.

The Utah Court of Appeals has held that the decision to apply comity rests within the sound discretion of the trial court. Jackett v. L.A. Dept. of Water & Power, 771 P.2d 1074

⁷ "In the review of judicial proceedings the rule is settled that if the decision below is correct, it must be affirmed, [even if] the lower court relied upon a wrong ground or gave a wrong reason". Keniston v. Roberts, 717 F.2d 1295, 1300 n.3 (9th Cir. 1983) (citing Helvering v. Gowran, 302 U.S. 238, 245 (1937)). Also, Jett v. Sunderman, 840 F.2d 1487, 1493 (9th Cir. 1988); Bruce v. United States, 759 F.2d 755 (9th Cir. 1985); Morris v. Adams-Millis Corp., 758 F.2d 1352 (10th Cir. 1985); Alcaraz v. Block, 746 F.2d 593, 602 (9th Cir. 1984).

(Utah App. 1989). In Jackett, the plaintiff, Jackett, was injured in a helicopter emergency landing in Utah. The helicopter was owned and operated by the defendant, L.A. Water, a California governmental entity. Jackett brought suit for injury against L.A. Water and gave timely notice under California's Governmental Claims Act. He failed to file his complaint against L.A. Water, however, within the two-year statute of limitations required by the Act. Jackett's claim was time-barred in California and subsequently he filed suit in Utah.

L.A. Water moved to dismiss Jackett's suit arguing that as a matter of comity, Utah should apply the California two-year statute of limitations. Jackett argued that the Utah Court should apply the Utah four-year tort statute of limitations because normal conflict of laws analysis asserts that the forum's statute of limitations governs.⁸ The trial court agreed with L.A. Water and dismissed Jackett's complaint. Jackett, 771 P.2d at 1075.

The issue on appeal was whether the trial court erred in applying, as a matter of comity, California's two-year statute of limitations. The Utah Court of Appeals held that "although

⁸ Apparently, Utah's borrowing statute, § 78-12-45 of the Utah Code, was not applicable because it governs cases where the claim arose in a foreign jurisdiction. Because the injury occurred in Utah, the claim would be deemed to have arisen in Utah, rather than the foreign state of California.

we agree with Jackett's analysis, the trial court may, nevertheless, apply the discretionary doctrine of comity to avoid the result otherwise compelled by a general conflict of laws analysis." Jackett, 771 P.2d at 1076.⁹

In the present case, it clearly was within the trial court's discretion to apply the Oklahoma statute of limitations.

CONCLUSION

The Court should affirm the ruling of Judge Harding which vacated Pan Energy's judgment and dismissed Pan Energy's action. The trial court properly gave full faith and credit to the decision of the Oklahoma Court. The rendering court has ruled that the judgment is unenforceable. That order must be accorded full faith and credit.

Applying full faith and credit to the Oklahoma Court's ruling does not create an unconstitutional dual standard for the enforcement of local and foreign judgments. Indeed, through the use of Utah's borrowing statute, the Utah Trial Court properly adhered to the intent of the Utah Foreign Judgment Act. A decision to enforce the otherwise

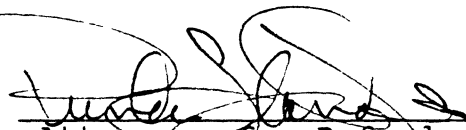
⁹ "[C]ourts have consistently found that the decision to apply comity rests within the sound discretion of the trial court." Jackett, 771 P.2d at 1075 (citations omitted).

unenforceable Oklahoma judgment would create inconsistent rulings under inconsistent applications of law. The Utah Trial Court avoided such inconsistency. Its order should be upheld.

If for no other reason, the Utah Trial Court's ruling should be affirmed as a proper use of discretion to apply comity to the decision of a sister state court. General principles of comity grant the Utah Trial Court the discretion to recognize the rulings of a sister state court as a matter of courtesy. The Utah Trial Court did not abuse its discretion in applying principles of comity. Its ruling should be affirmed.

DATED this 22nd day of November, 1989.


VAN WAGONER & STEVENS
Brenda L. Flanders
Alexander H. Walker III
Kristin G. Brewer

By: 
~~Attorneys for Defendant/~~
~~Respondent, Carl Martin~~

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 1989,
I served four copies of the foregoing BRIEF OF RESPONDENT by
depositing the same in the United States mail, postage prepaid,
addressed as follows:

ZABRISKIE, PATTON & PETRO
Michael J. Petro
3507 North University Ave.
Jamestown Square, Suite 370
Provo, Utah 84604

_____

IN THE SUPREME COURT
STATE OF UTAH

PAN ENERGY, a/k/a ENERGY CATALYST)	
COMPANY,)	
)	
Plaintiff and Appellant,)	
)	
vs.)	
)	Case No. 890400
CARL MARTIN,)	
)	
Defendant and Respondent.)	

BRIEF OF RESPONDENT

Appeal from Decision in Favor of Defendant, June 12, 1989
Fourth Judicial District Court of Utah County
Honorable Ray M. Harding, District Judge

APPENDIX

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

1989 MAY 19 PM 2:32
lf

PAN ENERGY, f/k/a
ENERGY CATALYST COMPANY,

Plaintiff,

CASE NUMBER CV 87-1916

-vs-

RAY M. HARDING, JUDGE

CARL W. MARTIN,

Defendant.

MEMORANDUM DECISION

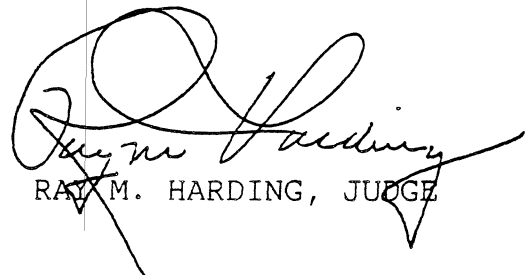
The Court, having considered defendant's motion to dismiss and motion to vacate, will grant that motion.

After consideration of the memoranda submitted in this matter, the Court finds that the Oklahoma judgment which is the basis for this action has been held to be unenforceable in Oklahoma. The Constitution of the United States requires that Utah give full faith and credit to the judgments of sister states. Where the judgment has been held to be unenforceable in the sister state, in effect, there is nothing in existence to which full faith and credit can be given. The motion to dismiss and to vacate is therefore granted.

Counsel for defendant to prepare an order incorporating the terms of this decision and submit it to opposing counsel for approval as to form prior to filing with the Court for signature.

Dated this 17th day of May, 1989.

BY THE COURT:


RAY M. HARDING, JUDGE

cc: Mark O. Van Wagoner, Esq.
Michael J. Petro, Esq.

FILED
FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY STATE OF UTAH

1988 JAN -4 AM 8:43

WILLIAM F. HUGHES, CLERK

~~37-1916-100~~

FRANK R. PIGNANELLI 4392
GUSTIN, GREEN, STEGALL & LIAPIS
Attorneys for Defendant
48 Post Office Place
Third Floor, New York Building
Salt Lake City, Utah 84101
Telephone: (801) 532-6996

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR UTAH COUNTY, STATE OF UTAH

-----oo0oo-----

PAN ENERGY f/k/a
ENERGY CATALYST CO.,

Plaintiff,

v.

CARL W. MARTIN,

Defendant.

:
:
:
:
:

ORDER

Civil No. CV-87-1916

-----oo0oo-----

The parties, by and through their respective counsel of
Jeril B. Wilson for the Plaintiff, and Frank R. Pignanelli for
the Defendant, having entered into a Stipulation in the above
entitled matter, and said Stipulation being filed with the Court,
and for such good cause shown,

IT IS HEREBY ORDERED:

1. That the bond required for Defendant's Motion to Stay
Execution proceedings in the above entitled matter is in the
amount of \$57,000.00.
2. That said requirement of \$57,000.00 bond for Defendant's
Motion to Stay Execution proceedings is hereby satisfied by a
letter of credit from a Utah banking institution, filed by

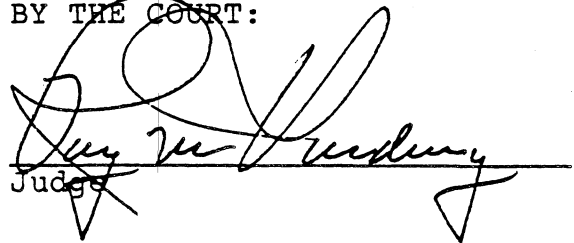
EXHIBIT 2

Defendant, and draws against said letter of credit by plaintiff, will be effective upon dismissal by this Court as against Defendant's Motion to Stay Execution by any Court of appropriate jurisdiction over Defendant's Motion to Stay Execution.

3. That Defendant will execute, on an annual basis, additional letters of credit in an amount equal to the amount stated above in addition to the interest accrued for a year based upon statutory interest as required by the laws of the State of Oklahoma as necessary during the pendency of these proceedings.

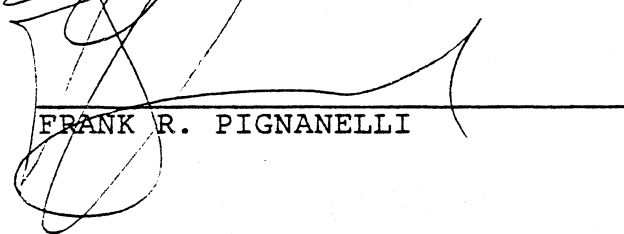
DATED this 4th day of January, 1988.

BY THE COURT:


Judge

APPROVED AS TO FORM:


JERRI E. WILSON


FRANK R. PIGNANELLI

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA JUL 14 1988.

No. 82-C-496-B

EXHIBIT 3

7 Pt. 2 Moore's Federal Practice ¶69.04[3], citing Fink v. O'Neill, 106 U.S. 272, 1 S.Ct. 325, 27 L.Ed. 196 (1882). The court determines that no federal statute is applicable. Therefore, state law governs on this issue before the court.

The effective duration of a judgment is limited by the state's dormancy statute. Oklahoma's dormancy statute is codified at 12 O.S. 1981 §735:

"If execution is not issued and filed as provided in Section 759 of this title, within five (5) years after the date of any judgment that now is or may hereafter be rendered, in any court of record in this state, or if five (5) years has intervened between the date that the last execution on such judgment was filed as provided by Section 759 of this title and the date that writ of execution was filed as also provided in Section 759 of this title, such judgment shall become unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the judgment debtor...."

and §739:

"A. When a general execution is issued and placed in the custody of a sheriff for levy, a certified copy of such execution shall be filed in the office of the county clerk of the county whose sheriff holds such execution and shall be indexed the same as judgments.

"B. If a general or special execution is levied upon lands and tenements, the sheriff shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property so levied on, upon actual view; and such disinterested persons shall return to the officer their signed estimate of the real value of said property.

"C. To extend a judgment lien beyond the initial or any subsequent statutory period, prior to the expiration of such period, a certified copy of a general execution thereon shall be filed and indexed in the same manner as judgments in the office of the county clerk

in the county in which the judgment was rendered and in the office of the county clerk in each county in which the judgment was filed and the lien thereof is sought to be retained."

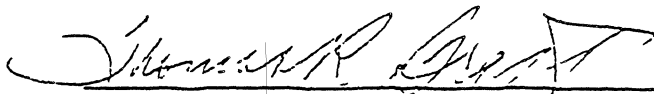
Any Oklahoma judgment may become unenforceable if not executed upon within five years from rendition of the judgment. First of Denver Mortgage Investors v. Riggs, 692 P.2d 1358, 1361 (Okla. 1984). A judgment creditor who files but does not execute the judgment in Oklahoma cannot revive the judgment after it has become dormant by making a second filing. Id. at 1362. A judgment becomes dormant when the judgment creditor fails to obtain a writ of execution on a judgment within five years of date of original judgment, even though the judgment debtor had made several attempts to satisfy the judgment by garnishment. Chandler-Frates & Reitz v. Kostich, 630 P.2d 1287 (Okla. 1981). Oklahoma strictly applies her dormancy statutes to foreign judgments. First of Denver Mortgage Investors v. Riggs, 692 P.2d 1358 (Okla. 1984). Oklahoma's dormant judgment statutes are to be strictly construed and the courts generally refuse to engraft exceptions to them other than those contained in the statutes themselves. Thomas v. Murray, 49 P.2d 1080 (Okla. 1935).

If the judgment is not executed on within the five-year period prescribed by statute, it becomes dormant and is not subject to being revived. Oklahoma's revivor statutes, 12 O.S. 1961, §§ 1071, 1072 and 1077 were repealed in 1965 by Laws, 1965, Ch. 299, p. 535, and an attempted revivor after that date is a nullity, except to the extent of 12 O.S. 1971, §1081(b). Palmer v. Belford, 527 P.2d 589, 590 (Okla. 1974).

The evidence before the Court reveals a writ of execution was issued in Minidoka County, Idaho on May 5, 1983, but was never filed in Idaho nor in Oklahoma. Plaintiff shows the execution was placed in the sheriff's hands but was returned with no property found. The writ was never filed.

The Tenth Circuit affirms the application of Oklahoma's dormant judgment statutes. Ingerton v. First National Bank & Trust Co., 291 F.2d 662 (10th Cir. 1961). The statute is clear on its face that a writ of execution must be issued and filed in the State of Oklahoma within five years from the date of judgment. The Plaintiff has not complied with the requirements of 12 O.S. 1981 §§ 735 and 759. Therefore, the judgment entered against Defendant on September 21, 1982 is unenforceable.³ Defendant's Motion to Declare Judgment Dormant is sustained.

IT IS SO ORDERED this 14th day of July, 1988.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

³The Court does not rule on the enforceability of the judgment in Utah or Idaho. That issue is determined by Utah's and Idaho's law regarding foreign judgments and their enforceability.

78-2-2. Supreme Court jurisdiction [Effective until January 1, 1988].

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) a judgment of the Court of Appeals;
- (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;
- (c) discipline of lawyers;
- (d) final orders of the Judicial Conduct Commission;
- (e) final orders and decrees in cases originating in:
 - (i) the Public Service Commission;
 - (ii) the State Tax Commission;
 - (iii) the Board of State Lands;
 - (iv) the Board of Oil, Gas, and Mining; and
 - (v) the state engineer;
- (f) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;
- (g) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;
- (h) appeals from the district court involving a conviction of a first degree or capital felony; and

(i) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except for the following matters:

- (a) first degree and capital felony convictions;
- (b) election and voting contests;
- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) general water adjudication;
- (f) taxation and revenue; and
- (g) those matters described in Subsections (3)(a) through (h).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

78-12-45. Action barred in another state barred here.

When a cause of action has arisen in another state or territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this state, except in favor of one who *has been a citizen of this state and who has held the cause of action from the time it accrued.*

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-12-45.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved. and the Effect thereof.

78-22a-8. Uniformity of interpretation.

This chapter shall be construed to effectuate the general purpose to make uniform the law of those states which enact it.

History: C. 1953, 78-22a-8, enacted by L.
1983, ch. 169, § 1.

12, Oklahoma Statutes, § 735:

If execution is not issued and filed as provided in Section 759 of this title, within five (5) years after the date of any judgment that now is or may hereafter be rendered, in any court of record in this state, or if five (5) years has intervened between the date that the last execution on such judgment was filed as provided by Section 759 of this title and the date that writ of execution was filed as also provided in Section 759 of this title, such judgment shall become unenforceable and of no effect, and shall cease to operate as a lien on the real estate of the judgment debtor....