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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ATTORNEY GENERAL OF CANADA, Plaintiff and Respondent, v. JOHN ANTHONY MALONE, Defendant and Appellant.	B276129 (Los Angeles County Super. Ct. No. BC562605)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frederick C. Shaller, Judge. Reversed and remanded with directions.

Richard J. Sullivan for Defendant and Appellant.

Law Offices of H. Michael Soroy, H. Michael Soroy and Katherine Hofmann for Plaintiff and Respondent.

John Anthony Malone failed to repay his Canadian student loans. A Canadian court entered a judgment against Malone and, 10 years later, entered an order renewing the judgment. The judgment creditor, Her Majesty the Queen In Right of Canada, by and through her representative, the Attorney General of Canada (Attorney General), filed this civil action in California to recognize the foreign judgment and moved for summary judgment.[1] The trial court granted the motion and entered judgment in favor of the Attorney General.

Malone contends the 10-year statute of limitations for an action to recognize a foreign judgment (Code Civ. Proc., § 1721)[2] bars the domestication of the Canadian judgment in California. We agree. Accordingly, summary judgment is reversed and the matter remanded for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

The parties do not dispute the facts. In January 1991, the Attorney General filed a civil action against Malone in Edmonton, Alberta, Canada to collect a debt on his unpaid student loans. Malone was served by registered mail at his last known address, in the City of Los Angeles, and answered the complaint.

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1 Actions to recognize a foreign judgment "are commonly called domestication actions because the relief they seek is entry of a California judgment for the amount of the foreign judgment." (*Manco Contracting Co. (W.L.L.) v. Bezdikian* (2008) 45 Cal.4th 192, 208.)

2 All undesignated statutory references are to the Code of Civil Procedure.

On June 25, 2003, the Canadian court entered a judgment against Malone in the amount of $38,841 Canadian dollars (CAD).

On May 7, 2013, the Attorney General filed an application for renewal of the judgment. A hearing was set for June 27, 2013. At Malone's request, the hearing was continued to July 11, 2013. Malone filed his opposition to the application on July 5, 2013.

On July 11, 2013, the Canadian court granted the Attorney General's application and filed an order renewing judgment in the amount of $54,125.30 CAD.

On October 31, 2014, the Attorney General filed a complaint in the present action under the Uniform Foreign-Country Money Judgments Recognition Act (Act; § 1713 et seq.) seeking recognition of the 2003 Canadian judgment and entry of judgment on the foreign judgment. The Attorney General alleged that on June 25, 2003, the Canadian court entered a final, conclusive, and enforceable judgment, and the judgment was renewed on July 11, 2013.

The Attorney General moved for summary judgment arguing the facts were undisputed and there were no grounds to deny recognition of the foreign judgment. In opposition, Malone argued the court should not recognize the foreign judgment because it was obtained by fraud, without due process, and the Canadian court lacked subject matter jurisdiction. Malone also argued the Attorney General's complaint was barred by the 10-year statute of limitations (§ 1721) because the Attorney General filed the complaint more than 10 years after the entry of the 2003

judgment.[3] In reply, the Attorney General asserted with respect to the statute of limitations defense that under California law a judgment can be renewed, and a renewal extends the limitations period for filing an action on the judgment (§§ 683.120, 683.220). The Attorney General posited that the same rule should apply to foreign judgments.

On January 27, 2016, the trial court filed a minute order granting the summary judgment motion.[4] The order stated, "This Court Recognizes the Canadian Judgment[.] [¶] 'The United States has no reciprocal treaty with any country requiring that it recognize judgments rendered abroad. Foreign country money judgments may be enforceable in California if they meet the requirements of the [Act] (. . . §§ 1713-1714) and the creditor brings an action in California or raises the issue in a pending action. [Citations.]['] [¶] 'The Act applies to the extent the judgment: grants or denies recovery of a sum of money; and is "final, conclusive, and enforceable" under the law[s] of the foreign country where rendered.'"

The trial court rejected Malone's arguments for nonrecognition and ruled against Malone on the statute of limitations defense, stating, "As [p]laintiff renewed the judgment prior to filing this instant action on 10/31/14, [p]laintiff's [*sic*]

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[3] The record shows the Canadian court filed an order for judgment on May 27, 2003, and entered judgment on June 25, 2003. The Attorney General filed her complaint in the present action on October 31, 2014, more than 10 years after entry of the Canadian judgment.

[4] We judicially notice the minute order filed on January 27, 2016. (Evid. Code, § 452, subd. (d).)

have met the time requirements of [section] 1714 [*sic*]."[5] On March 3, 2016, the court entered a judgment against Malone in the amount of $69,641.61 CAD, plus costs.[6] Malone timely appealed from the judgment.

DISCUSSION

A. *Standard of Review*

Summary judgment is appropriate only if there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 415.) A plaintiff moving for summary judgment satisfies the moving party's initial burden by presenting evidence sufficient to establish each element of the cause of action. (§ 437c, subd. (p)(1).) If the plaintiff satisfies this initial burden, the burden shifts to the defendant to present evidence creating a triable issue of material fact as to either the cause of action or an affirmative defense. (*Ibid.*) Alternatively, a defendant may oppose the motion by establishing an affirmative defense as a matter of law based on undisputed facts.

We review the trial court's ruling de novo, liberally construing the evidence in favor of the party opposing summary judgment and resolving all doubts concerning the evidence in

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[5] The trial court apparently meant to cite section 1721, which states the 10-year statute of limitations.

[6] The Uniform Foreign-Money Claims Act (§ 676 et seq.) provides for a California judgment denominated in a foreign currency in certain circumstances and conversion into United States dollars for purposes of provisional remedies or payment.

favor of the opponent. (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017-1018.)

B. *The Act*

The Act provides for the recognition of money judgments rendered by courts in foreign countries.[7] (§§ 1714, subds. (a), (b), 1715, subd. (a).) The Act applies to judgments that grant or deny recovery of a sum of money, and that are final, conclusive, and enforceable under the laws of the foreign countries where the judgments were rendered. (§ 1715, subd. (a).) Certain types of judgments are excluded from the application of the Act, including judgments for taxes, fines, or other penalties and judgments for divorce, support, or maintenance. (§ 1715, subd. (b).)

A party may seek recognition of a foreign money judgment by filing a complaint or cross-complaint or by raising the issue as an affirmative defense in its answer. (§ 1718.) The party seeking recognition has the burden to show the judgment qualifies for enforcement under the Act. (§ 1715, subd. (c).) If the party seeking recognition meets this burden, the court must recognize the judgment unless a party opposing recognition establishes one of the statutory grounds for nonrecognition. (§ 1716.) Grounds for nonrecognition include, but are not limited to, the judgment was not rendered by an impartial tribunal, the foreign court had no personal jurisdiction or no subject matter jurisdiction, the

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[7] The Act was modeled on the 2005 Uniform Foreign-Country Money Judgments Recognition Act (13 pt. II West's U. Laws Ann. (2017 Supp.)) and applies to all recognition actions filed on or after January 1, 2008. (See *Manco Contracting Co. (W.L.L.) v. Bezdikian*, *supra*, 45 Cal.4th at p. 195, fn. 1; *Hyundai Securities Co., Ltd. v. Lee* (2013) 215 Cal.App.4th 682, 688.)

judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case, and the judgment is repugnant to the public policy of California or the United States. (*Id.*, subds. (b), (c).) If the court grants recognition, the foreign money judgment is conclusive between the parties to the same extent as a judgment by a sister state and is enforceable in the same manner and to the same extent as a judgment by a California court. (§ 1719; see *Hyundai Securities Co., Ltd. v. Lee*, *supra*, 215 Cal.App.4th at p. 689.)

The Act includes its own statute of limitations. Section 1721 states: "An action to recognize a foreign-country judgment shall be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country." Thus, a foreign money judgment cannot be domesticated in California more than 10 years after the judgment became effective in the foreign country.

C. *The Trial Court Erred by Granting Summary Judgment in Favor of the Attorney General*

In her complaint filed on October 31, 2014, the Attorney General sought recognition of the June 25, 2003 judgment. The complaint defined the 2003 judgment as "'THE JUDGMENT'" and alleged that "'THE JUDGMENT'" was "final, conclusive and enforceable." The complaint also alleged that the 2003 judgment was renewed on July 11, 2013.

The Attorney General moved for summary judgment arguing the 2003 judgment was final, conclusive, and enforceable, and there were no grounds to deny recognition of the judgment. When Malone argued in opposition to the motion that

the 10-year statute of limitations barred the complaint, the Attorney General replied that the 2013 renewal of the judgment extended the time to file an action on the judgment. The trial court agreed and concluded the renewal extended the time to file this recognition action. In this regard, the trial court erred.

Section 1721 provides that a foreign money judgment cannot be domesticated in California more than 10 years after the judgment became effective in the foreign country. The renewal of a foreign judgment may extend the time to enforce the judgment in the country where the judgment was rendered, but California law does not provide that the renewal of a foreign judgment extends the limitations period for a recognition action in California beyond the 10-year period under section 1721.

If the renewal or revivor of a judgment is considered a new judgment, rather than an extension of the time to enforce the original judgment, the statute of limitations for an action to domesticate the foreign judgment begins to run when the renewal or revivor becomes effective. (See *Union National Bank v. Lamb* (1949) 337 U.S. 38, 43-45 [69 S.Ct. 911, 93 L.Ed 1190]; *Jacobs v. Sprague* (1955) 131 Cal.App.2d Supp. 885, 886.) The law of the state that rendered the judgment determines whether a renewal or revivor constitutes a new judgment or only extends the time to enforce the original judgment. (*Union National Bank*, at p. 44 [the law of the State of Colorado determined whether a 1945 judgment by a Colorado court reviving a 1927 Colorado judgment was a new judgment or only an extension of the original judgment for purposes of the statute of limitations in a domestication action brought in the State of Missouri]; *Jacobs*, at p. 887 [the law of the State of Oregon, rather than California law, determined whether an order renewing an Oregon judgment

created a new judgment or only extended the time to enforce the original judgment for purposes of the statute of limitations in a domestication action brought in California]; see 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 60, p. 132 ["Whether the [revival] proceeding is to be considered a new action or a continuation of the old action in which the judgment was rendered is determined by the law of the state that rendered the judgment, not the foreign forum in which the revived judgment is sought to be enforced"]; Rest.2d Conflict of Laws, § 118, com. c, pp. 342-343.)

On the other hand, if a renewal extends the time to enforce the judgment but is not a new judgment, the judgment is enforceable in the jurisdiction where it was issued and renewed, but an action to recognize the judgment in another state where the statute of limitations on an action to recognize a foreign judgment has expired will be time-barred. (*Jacobs v. Sprague*, *supra*, 131 Cal.App.2d Supp. at pp. 887-889 [the renewal order was not a new judgment under Oregon law, so the California domestication action was time-barred].)

The plain and dispositive fact is that the Attorney General sought to domesticate the 2003 judgment, not the 2013 renewal order as a new judgment. By failing to allege in her complaint or establish, based upon Canadian law, that the renewal constituted a new judgment, the Attorney General's cause of action to domesticate the 2003 judgment is barred by the 10-year statute of limitations. When Malone asserted the statute of limitations in opposition to the summary judgment motion, the Attorney General did not argue the renewal was a new judgment, nor did she present Canadian law in support of such a position. Instead, the Attorney General relied on the erroneous argument that

under California law the renewal of a foreign judgment extends the time to file an action in California to recognize the foreign judgment.

We asked for supplemental briefing to clarify several issues. We asked the parties to address the following question: "Must a California court apply Canadian law to determine whether the Order Renewing Judgment was a new judgment or only extended the time to enforce the original judgment?" The Attorney General answered, "The weight of the authority provides Canadian law shall apply, which supports the renewal is not a new order, but rather an extension of the time to enforce the original judgment." This concession highlights the operative point that the 2013 renewal order was an extension, not a new judgment.

Accordingly, because the Attorney General filed the complaint to domesticate the 2003 judgment more than 10 years after it became effective and has not shown that the renewal order is a new judgment under Canadian law, she fails to overcome the statute of limitations defense and is not entitled to summary judgment.[8]

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[8] Malone requests the entry of judgment in his favor based on the statute of limitations defense. We have no jurisdiction to enter judgment for Malone because he did not move for summary judgment. (*Dvorin v. Appellate Dept.* (1975) 15 Cal.3d 648, 650 ["On appeal from summary judgment, an appellate court lacks jurisdiction to reverse with instruction to enter judgment for the opposing party if the latter failed to move for summary judgment"].) The trial court had no authority to grant summary judgment in Malone's favor for the same reason. A trial court may not grant summary judgment in favor of a party opposing summary judgment unless that party also moved for summary

DISPOSITION

The judgment is reversed. The trial court is directed to vacate its order granting summary judgment and enter a new order denying summary judgment. The matter is remanded for further proceedings. Malone is entitled to costs on appeal.

BENSINGER, J.*

We concur:

PERLUSS, P. J. SEGAL, J.

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judgment. (*Cuff v. Grossmont Union High School Dist.* (2013) 221 Cal.App.4th 582, 596 ["A party opposing a motion for summary judgment is *not* seeking affirmative relief; rather, he or she is simply seeking to prevent the other party from obtaining a judgment in his or her favor, which is the affirmative relief sought in the motion for summary judgment. In order to seek 'the opposite relief,' i.e., a judgment entered in one's own favor, a party must make its *own affirmative motion for summary judgment,* and cannot simply rely on its opposition to the opposing party's motion for summary judgment" (fn. omitted)]; *Schubert v. Reynolds* (2002) 95 Cal.App.4th 100, 108 [§ 473c, subd. (c), does not authorize a judgment in favor of the party opposing a summary judgment motion, and the court may not grant summary judgment sua sponte].)

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.