FILED
United States Court of Appeals
Tenth Circuit

August 4, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor - Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant,

and

AVON CAPITAL, LLC, a Wyoming limited liability company,

Intervenor.

No. 21-6044
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor - Appellee,

v.

AVON CAPITAL, LLC,

No. 21-6049
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

Respondent/Judgment Debtor,

ASSET SERVICING GROUP, LLC,

Respondent/Garnishee,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee,

and

AVON CAPITAL, LLC, a Wyoming limited liability company,

Intervenor - Appellant.

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor - Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

ASSET SERVICING GROUP,

Respondent/Garnishee,

and

SDM HOLDINGS, LLC,

Respondent/Garnishee - Appellant.

No. 21-6133
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

AVON CAPITAL, LLC, a Wyoming limited liability company,

Intervenor.

UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor - Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP, et al.,

Respondents/Garnishees.

AVON CAPITAL, LLC, a Wyoming limited liability company,

Intervenor - Appellant.

No. 21-6134
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

ORDER

Before **EID**, **BALDOCK**, and **CARSON**, Circuit Judges.

These matters are before the court on the *Petition for Rehearing of Appellant SDM Holdings, LLC*; *Intervenor/Appellant Avon Capital, LLC, A Wyoming Limited Liability*

Company's Petition for Panel Rehearing; and the *Partially Opposed Motion for Leave to Include a One-Document Appendix to the Petition for Rehearing by Appellant SDM Holdings, LLC*. Upon careful consideration, we direct as follows.

SDM Holdings, LLC's motion to include a one-document appendix to its petition for rehearing is GRANTED. Pursuant to Fed. R. App. P. 40, both petitions for panel rehearing are GRANTED IN PART to the extent of the modifications in the attached revised order and judgment. The court's July 13, 2023 order and judgment is withdrawn and replaced by the attached revised order and judgment, which shall be filed as of today's date.

Entered for the Court,

CHRISTOPHER M. WOLPERT, Clerk

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UNIVERSITAS EDUCATION, LLC,

Petitioner/Judgment Creditor - Appellee,

v.

AVON CAPITAL, LLC,

Respondent/Judgment Debtor,

and

ASSET SERVICING GROUP; SDM HOLDINGS, LLC,

Respondents/Garnishees.

AVON CAPITAL, LLC, a Wyoming limited liability company,

Intervenor - Appellant.

No. 21-6134
(D.C. No. 5:14-FJ-00005-HE)
(W.D. Okla.)

ORDER AND JUDGMENT[*]

Before **EID**, **BALDOCK**, and **CARSON**, Circuit Judges.

[*] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Appellee Universitas Education, LLC ("Universitas") seeks to enforce a judgment obtained in New York against Appellant Avon Capital, LLC ("Avon"), and its subsidiary, Appellant SDM Holdings, LLC ("SDM"), in the Western District of Oklahoma. Universitas alleges that it was unable to recover the full judgment amount from Avon in New York, so it seeks to pierce Avon's corporate veil and collect a garnishment from SDM, an Oklahoma LLC that nominally holds legal title to one of Avon's potential assets, an insurance portfolio.

The district court adopted the magistrate judge's ("MJ") Report and Recommendation finding that Avon's Wyoming-based LLC ("Avon-WY") had fraudulently acquired the SDM insurance portfolio using stolen funds, as well as the MJ's conclusion that the insurance portfolio was subject to garnishment because it was beneficially owned by Avon-WY. The district court then granted Universitas summary judgment and placed Avon-WY into a receivership pursuant to Oklahoma Statute ("O.S.") § 12-1551.

Avon-WY and SDM appealed to this Court, and their appeals were consolidated on April 27, 2021. We vacate the district court's February 11, 2021 order for lack of jurisdiction; we find the underlying dispute was moot at the time of decision due to the expiration of Universitas's Western District of Oklahoma judgment. We remand the case to the district court to conduct further proceedings.

I.

Between 2006 and 2007, three Avon LLC entities were formed: a Nevada LLC ("Avon-NV") in June 2006, a Connecticut LLC ("Avon-CT") in November 2006, and Avon-WY in May 2007. Each of these Avon entities was ninety-nine percent owned by Carpenter Financial and one percent owned by Caroline Financial—both of which were controlled by Daniel Carpenter.

Universitas was the sole beneficiary of two life insurance policies totaling $30 million. Carpenter dispersed Universitas's $30 million in life insurance policies among his shell entities via a complex series of transactions. One of these transactions was a $6,710,065.92 transfer from Grist Mill Capital, a shell entity controlled by Carpenter, to Avon-NV's TD Bank account. Although Avon-NV's tax identification number was used to open the TD Bank account, "Avon-CT was the entity involved with the . . . transactions." Aplt. App'x Vol. X at 1743.

Meanwhile, Avon-WY acquired a one hundred percent membership interest in SDM. The payments for the acquisition were made from Avon-NV's TD Bank account on behalf of Avon-WY. Although Avon-WY was administratively dissolved for failure to maintain a registered agent during the transactions, Avon-WY was the signatory on the SDM purchase agreement.[1]

When Universitas's benefits came due, its claim to the benefits was denied by the insurer. Universitas obtained a favorable award in arbitration. Although the plan

[1] Avon-WY was later reinstated.

trustee sought to vacate the award in the U.S. District Court for the Southern District of New York, the award was confirmed on August 15, 2014. The Southern District of New York found that Carpenter fraudulently transferred the $30 million in life insurance policies to hundreds of shell entities under his control. Avon was one of these entities. Thus, the Southern District of New York entered judgment for Universitas in the amount of $30,181,880.30. $6,710,065.92 of the judgment was against Avon.

Of Universitas's $6,710,065.92 judgment against Avon, it alleges that it was only able to recover $6 million in funds. Universitas filed the New York judgment in the Western District of Oklahoma on November 7, 2014.[2] The Western District of Oklahoma traced the fraudulently transferred funds to Avon-WY's acquisition of SDM's life insurance portfolio and pierced Avon-WY's corporate veil to allow Universitas to execute the judgment against the insurance portfolio. Universitas then attempted to collect a garnishment from SDM.

The parties disputed whether Avon-NV and Avon-WY were alter egos of Avon-CT, the named debtor in the New York judgment. The district court referred the matter to the MJ, who issued a Report and Recommendation finding that the entities were "one and the same for purposes of their liability to Universitas." *Id.* at 1794. The MJ also determined that, because Avon-WY fraudulently acquired the SDM insurance portfolio using stolen funds, the insurance portfolio was subject to

[2] This Order and Judgment uses the terms "register" and "file" interchangeably.

garnishment. The district court reviewed the MJ's recommendations de novo and agreed with all of them, granting summary judgment to Universitas on February 11, 2021. The district court subsequently placed Avon-WY into a receivership pursuant to O.S. § 12-1551.

SDM filed a motion to alter the judgment, relying on O.S. § 12-735(B), which states, "[a] judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date . . . [t]he last garnishment summons was issued." The district court denied SDM's motion and upheld the judgment in an order dated April 8, 2021. Avon-WY and SDM appealed to this Court; their appeals were consolidated by the Court on April 27, 2021. Universitas alleges that it re-filed the New York judgment in the Western District of Oklahoma on December 9, 2021. Aple. Supp. App'x Vol. I at 32; Oral Argument, No. 21-6044, at 16:54–17:00 (Sept. 27, 2022).

II.

a.

28 U.S.C. § 1963 instructs the following regarding registration of judgments for enforcement in other districts:

> A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment

> entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

Additionally, Federal Rule of Civil Procedure ("F.R.C.P.") 69(a)(1) states:

> A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

This indicates that the statute of limitations period for a judgment is based on the law of the state where the judgment is filed, not the limitations period of the state where the federal district court that issued the judgment is located. As Universitas is attempting to enforce the judgment in Oklahoma, we must apply Oklahoma law on the registration of judgments.

O.S. § 12-735(B) states the following regarding judgments registered in the state:

> A judgment shall become unenforceable and of no effect if more than five (5) years have passed from the date of:
> 1. The last execution on the judgment was filed with the county clerk;
> 2. The last notice of renewal of judgment was filed with the court clerk;
> 3. The last garnishment summons was issued; or
> 4. The sending of a certified copy of a notice of income assignment to a payor of the judgment debtor.

The Oklahoma Supreme Court held in *Taracorp, Ltd. v. Dailey*, 419 P.3d 217 (Okla. 2018), that "when a judgment creditor seeks to enforce a Colorado judgment a

second time in Oklahoma, after Oklahoma's limitation period has lapsed on the original judgment, the underlying original Colorado judgment which is enforceable for twenty years may be enforced in Oklahoma." *Id.* at 218. In *Taracorp*, the plaintiffs received a default judgment from the Colorado District Court in 2007 and filed it in Oklahoma District Court three days later. *See id.* at 218–19. Nine years lapsed before they re-filed the judgment in Oklahoma. *See id.* at 219. The defendant filed a Motion to Quash, arguing that it had been more than five years since the Colorado judgment was entered, in violation of § 12-735(B). *See id.* The Oklahoma Supreme Court concluded that "[a]lthough the Act does not address re-filing of sister-state judgments, a judgment creditor may enforce a domesticated judgment in Oklahoma. Enforcement may be done, even if Oklahoma's limitation period for enforcement of judgments has run on the original domesticated foreign judgment." *Id.* at 223.

b.

The MJ and the district court found that Universitas was entitled to enforce the judgment in Oklahoma under 28 U.S.C. § 1963. But they incorrectly failed to consider Oklahoma state procedural rules on the subject, as required by F.R.C.P. 69(a). Under O.S. § 12-735(B), a judgment becomes unenforceable after five years unless one of the subsequent actions specified in the statute is taken. Universitas's last relevant act was the issuance of a writ of garnishment to SDM on December 3, 2015. This means that Universitas's Oklahoma judgment expired five years later, on December 3, 2020. Contrary to the district court's statement in its

order denying SDM's motions to alter and amend the judgment, Universitas's active attempts to enforce the judgment in Oklahoma were insufficient to render the judgment enforceable under § 12-735(B). There is no specified exception for active attempts at enforcement anywhere in the text of § 12-735(B), and this Court declines to read one in.[3]

Universitas cites *Taracorp* for the proposition that it may enforce the judgment in Oklahoma anyway because the judgment has not yet expired in New York. However, the critical distinction between *Taracorp* and this case is that in *Taracorp*, the expired judgment was re-filed in Oklahoma prior to the attempt at enforcement. *See Taracorp*, 419 P.3d at 218 ("We retained this cause to address the dispositive issue of whether a Colorado judgment, which is enforceable in Colorado for twenty years after the judgment is entered, is also enforceable in Oklahoma when the first attempt is abandoned and it is *re-filed* after Oklahoma's five year limitation period lapsed." (emphasis added)). The *Taracorp* court explained that "[t]he filing of a foreign judgment creates a new local judgment which is governed by the local statute of limitations." *Id.* at 221. This language suggests that even though the Oklahoma Supreme Court permitted Taracorp to enforce its expired judgment after it had been

[3] Universitas invokes *Wishon v. Sanders*, 467 P.3d 721 (Okla. Civ. App. 2020), to argue that "active attempts at enforcement[] of a judgment" are sufficient to satisfy the requirements of § 12-735(B). *Id.* at 724. However, the next sentence of the opinion specifies that "[a] party must execute on his judgment, obtain a garnishment summons, send a certified copy of an income assignment, or file a renewal of judgment within five years of the judgment." *Id.* This explanation makes clear that the *Wishon* court intended to limit "active attempts at enforcement" to one of the four methods specified in § 12-735(B).

re-filed, the court would not have allowed Taracorp to enforce its expired judgment without first utilizing one of the four methods specified in O.S. § 12-735(B). Moreover, neither *Taracorp* nor any of the cases it cites involves an attempt to do what Universitas seeks to do here—enforce a judgment that had previously been filed and expired in a particular state without re-filing said judgment in the same state. Because the re-filing of the judgment in *Taracorp* was a critical component of the Oklahoma Supreme Court's analysis, we cannot extrapolate its holding to encompass this case without further instruction from the Oklahoma Supreme Court.

The district court attempted to circumvent Universitas's failure to re-file by stating that:

> [T]o the extent that plaintiff wishes to refile its judgment as a protective matter and views leave of court as necessary to do so, leave is granted . . . . In the event of such re-refiling, all prior orders of this court addressing the substantive issues in this case will be deemed re-entered *instanter* as to the renewed filing.

Aplt. App'x Vol. XI at 2098–99. However, this blanket statement claiming that the order would extend to Universitas's potential future re-filing rendered the district court's judgment a legally impermissible advisory order. Though the district court initially had jurisdiction over this case, Universitas did not re-file its expired judgment before the district court entered its February 11, 2021 order. For the reasons explained above, that failure to re-file was fatal—there was no longer a judgment in existence for the district court to enforce at the time it entered the order. "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for

purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up). As the issue in this case was no longer live and Universitas lacked a legally cognizable interest in the outcome once its judgment expired in December 2020, the case became moot and the district court lacked Article III jurisdiction to enter its order, rendering the order void.[4]

We therefore vacate the district court's February 11, 2021 judgment because the district court did not have jurisdiction to enter its order.[5] And we remand the case to the district court to conduct further proceedings.

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[4] This Court is obligated to consider questions of Article III jurisdiction sua sponte. *See Tandy v. City of Wichita*, 380 F.3d 1277, 1290 n.15 (10th Cir. 2004) ("[T]his court has an affirmative obligation to consider th[e] question [of Article III mootness] sua sponte."); *see also Frias v. Chris the Crazy Trader, Inc.*, 604 F. App'x 638, 641 (10th Cir. 2015) (unpublished) ("We are obligated to raise and resolve [] questions of Article III jurisdiction sua sponte."). Thus, it is of no consequence whether Universitas is correct that SDM lacks standing to appeal the district court's judgment on jurisdictional grounds.

[5] For this reason, we also DENY SDM's March 17, 2022 Motion for Leave to File a Second Supplemental Appendix as moot.

III.

For the foregoing reasons, we find that Universitas's expired judgment was unenforceable and the case was moot at the time the district court entered its order. Thus, we VACATE the district court's February 11, 2021 order for lack of jurisdiction due to mootness and REMAND the case to the district court to conduct further proceedings.

Entered for the Court

Allison H. Eid
Circuit Judge