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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARK BRUBAKER, *Plaintiff/Appellee*,

v.

ENGINES DIRECT DISTRIBUTORS, LLC, et al., *Defendants/Appellants*.

No. 1 CA-CV 15-0503
FILED 9-29-2016

Appeal from the Superior Court in Maricopa County
No. CV2015-091402
The Honorable Margaret Benny, Judge *Pro Tempore*

REVERSED AND VACATED

COUNSEL

Guinn Sen & Walton, PLLC, Mesa
By Chad Walton
Counsel for Plaintiff/Appellee

Nye Ltd. Attorneys, Scottsdale
By Richard Q. Nye, Benjamin J. Branson
Counsel for Defendants/Appellants

MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Samuel A. Thumma joined.

CATTANI, Judge:

¶1 Daniel Ricehouse, Steven Ricehouse, and Engines Direct Distributors, LLC, (collectively, “Appellants”) appeal from the superior court’s final judgment domesticating a Pennsylvania judgment. For reasons that follow, we reverse and vacate the order domesticating the judgment in Arizona.

FACTS AND PROCEDURAL BACKGROUND

¶2 Engines Direct sells remanufactured engines throughout the United States, taking orders by telephone or over the internet. Daniel and Steven Ricehouse were employed by Engines Direct when Mark Brubaker purchased an engine from the company in March 2014 and had it delivered to Pennsylvania (Brubaker’s home state). In October 2014, Brubaker filed a warranty claim, and the following month Engines Direct sent him a replacement engine.

¶3 In early November 2014, Brubaker filed a lawsuit in Pennsylvania alleging that Appellants had failed to honor a written warranty. The complaint listed all of the Appellants, citing their address as a warehouse used by Engines Direct, but with an incorrect zip code. Appellants never responded to the complaint, and Brubaker obtained a default judgment against them.

¶4 In March 2015, Daniel Ricehouse received at his residence a “Notice of Filing A Foreign Judgment” in Maricopa County Superior Court, and he notified the other Appellants of the judgment entered by default in Pennsylvania. Appellants filed a motion to vacate the foreign judgment, alleging that the Pennsylvania court did not have personal jurisdiction over them and that they were denied due process because Brubaker never served them with the complaint or otherwise provided notice of his lawsuit. The superior court denied the motion. Appellants then filed a motion to deny domestication of the foreign judgment, which the court denied, and the court subsequently certified its ruling as a final judgment. Appellants

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timely appealed, and we have jurisdiction under Arizona Revised Statutes § 12-2101(A)(1).¹

DISCUSSION

¶5 Brubaker failed to file an appearance or submit an answering brief on appeal. Although we may consider these failures as a confession of reversible error, we generally prefer to address cases on the merits, and we exercise our discretion to do so here. *See DeLong v. Merrill*, 233 Ariz. 163, 166, ¶ 9 (App. 2013).

¶6 Appellants argue that the Pennsylvania judgment should not be entered in Arizona because they were never given notice of the Pennsylvania lawsuit, in violation of their due process rights.² We review de novo claims asserting due process violations. *Savord v. Morton*, 235 Ariz. 256, 260, ¶ 16 (App. 2014).

¶7 Foreign judgments are presumed valid, and the party challenging the foreign judgment bears the burden of proof in challenging the judgment. *Oyakawa v. Gillet*, 175 Ariz. 226, 229 (App. 1993). “A duly authenticated judgment of a sister state is prima facie evidence of that state’s jurisdiction to render it and of the right which it purports to adjudicate.” *Id.* But foreign judgments are subject to the same procedures, defenses, and proceedings as are local judgments, and they “may be attacked if the . . . judgment was obtained through lack of due process.” A.R.S. § 12-1702; *Phares v. Nutter*, 125 Ariz. 291, 293 (1980). And “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

¶8 In determining whether to honor a foreign judgment, we consider whether the judgment was lawfully obtained under the laws of the state where judgment was entered. *See Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Greene*, 195 Ariz. 105, 108, ¶ 11 (App. 1999) (noting that foreign states

¹ Absent material revisions after the relevant date, we cite a statute’s current version.

² Because we vacate domestication on due process grounds, we do not address Appellants’ argument that Pennsylvania lacked personal jurisdiction over them.

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do not have to comply with Arizona procedures for a foreign judgment to be honored); *see also Ibach v. Ibach*, 123 Ariz. 507, 510–11 (1979) (recognizing that the validity of foreign judgments is determined by the laws of the state where judgment was entered). Therefore, we consider whether the record shows that Brubaker provided Appellants notice as required by Pennsylvania law.

¶9 Under the Pennsylvania Rules of Civil Procedure, service of process on foreign parties may be accomplished by (1) personally delivering a copy of the summons and complaint to the defendant, an adult member of the defendant’s family, or the defendant’s agent, (2) mailing, provided the mail “requir[es] a receipt signed by the defendant or his authorized agent,” or (3) the manner allowed in the jurisdiction where the party resides. *See* Pa.R.C.P. 402, 403, 404. For corporations, notice may be given to an executive officer, partner or trustee, a person in charge at the regular place of business, or an agent authorized by the corporation to receive service on its behalf. Pa.R.C.P. 424. Return of service (for in person service) or proof of service (for service by mail) must be filed with the court, unless the defendant accepts service. Pa.R.C.P. 405.

¶10 Our review of the record does not reveal the method, if any, Brubaker used to serve process on Appellants. Moreover, Daniel and Steven Ricehouse stated under oath that they were “never served any complaint or lawsuit from the State of Pennsylvania.” In addition, the only address identified in the complaint and default judgment is for Engines Direct’s warehouse, using an incorrect zip code, and the Ricehouses averred that they lived at different addresses than the address listed in the Pennsylvania complaint and judgment. There is no evidence that Appellants were personally served, and there is no evidence of a signed receipt as required for service by mail. Therefore, based on Appellants’ sworn statements, and in the absence of evidence to the contrary, Appellants have met their burden to show they were not given notice of the Pennsylvania lawsuit. This lack of notice violated Appellants’ due process rights, and we thus reverse the superior court’s order and vacate the order domesticating the Pennsylvania judgment.

¶11 Finally, Appellants request an award of attorney’s fees on appeal under A.R.S. § 12-341.01. In an exercise of our discretion, we award reasonable attorney’s fees upon compliance with ARCAP 21(a). Additionally, as the prevailing parties, Appellants are entitled to their costs on appeal upon compliance with ARCAP 21(a).

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CONCLUSION

¶12 For the foregoing reasons, we reverse the superior court's ruling and vacate the order domesticating the judgment.



AMY M. WOOD • Clerk of the Court
FILED: AA