

COURTS: A foreign judgment filed for registra-
JUDGMENTS: tion under the provisions of Supreme
CIRCUIT CLERK: Court Rule 74.79 is not a final judg-
CIRCUIT COURT: ment required to be abstracted under
FOREIGN JUDGMENTS: the provisions of Supreme Court Rules
74.76 and 74.77 until the court in
which said foreign judgment is filed for registration shall en-
ter a final judgment as provided under Rule 74.79.

OPINION NO. 140

March 27, 1974



Honorable James P. Mulvaney
Representative, District 61
Room 317, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Mulvaney:

This is in response to your request for an opinion from this office as follows:

"This question is for abstracting a foreign judgment.

"If a foreign judgment is registered in this state from another state, is it abstracted immediately in the abstract of judgments book kept by the Circuit Clerk of the county in which it has been registered, or should the Clerk of the Circuit Court wait until the final rendition of the judgment? According to our Statutes, Section 511.510, which I have enclosed for your inspection, a judgment must be abstracted five days after the rendition of any final judgment.

"Also, enclosed is our Statute Section 511.760 - Uniform enforcement of foreign judgment."

Section 511.510, RSMo, has been superseded by Supreme Court Rule 74.77, and Section 511.760, RSMo, has been superseded by Supreme Court Rule 77.79 under provisions of Supreme Court Rule 41.02. Rule 41.02 provides as follows:

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"Rules 41 to 101, inclusive, are promulgated pursuant to authority granted this Court by Section 5 of Article V of the Constitution of Missouri and supersede all statutes and existing court rules inconsistent therewith."

Supreme Court Rule 74.77 applies only to judgments rendered by a court in a city having over 100,000 inhabitants or in a county having over 60,000 inhabitants.

Supreme Court Rule 74.76 provides that no judgment rendered by any court in a city having over 100,000 inhabitants or in any county having over 60,000 inhabitants shall be a lien on real estate situated in such city or county until an abstract of such judgment shall be entered in a book kept by the clerk of the circuit court having jurisdiction of civil causes within such city or county.

Rule 74.77 provides in part as follows:

"It shall be the duty of each of the clerks of all courts of record in such city or county, within five days after the rendition of any final judgment in their respective courts, to furnish an abstract thereof, as provided above, to the clerk of such circuit court, who shall immediately upon the same day enter the same on his abstract as aforesaid; and it shall be the duty of the clerk or clerks of the circuit courts in such counties, within five (5) days after the rendition of any final judgment in their respective courts, to prepare and enter such abstract, as above provided; . . ."

Under the rule only final judgments rendered by a court of record in such city or county are required to be abstracted under the above rules.

You inquire whether a foreign judgment registered under the provisions of Section 511.760 is to be abstracted as provided in Sections 511.500 and 511.510 immediately when it is filed for record. In other words, your question is when does a foreign judgment filed for record in a court in this state become a final judgment under Section 511.760 and to be abstracted under Sections 511.500 and 511.510. Section 511.760 has been superseded by Supreme Court Rule 74.79.

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Supreme Court Rule 74.79, in substance, provides that any person entitled to bring an action on a foreign judgment may file a verified petition for registration of such judgment by setting forth a copy of the judgment to be registered, the date of its entry, and the record of any subsequent entries affecting it, duly authenticated in the manner authorized by law in any court of this state having jurisdiction of such action. It provides that any time after its registration a petitioner shall be entitled to have summons issued and served upon the judgment debtor. If jurisdiction of the person of the judgment debtor cannot be obtained, a notice reciting the fact of registration shall be sent by the clerk of the registering court by registered mail to the last known address of the judgment debtor. It further provides:

"(f) Levy. At any time after the registration and regardless of whether jurisdiction of the person of the judgment debtor has been secured or final judgment has been obtained, a levy may be made under the registered judgment upon any property of the judgment debtor which is subject to execution or other judicial process for satisfaction of judgments.

"(g) Final Judgment. If the judgment debtor fails to plead within thirty days after jurisdiction over his person has been obtained, or if the court after hearing has refused to set the registration aside, the registered judgment shall become a final personal judgment of the court in which it is registered.

"(h) Defenses--Counterclaims. Any defense, set-off or counterclaim which under the law of this state may be asserted by the defendant in an action on the foreign judgment, may be presented by appropriate pleadings and the issue raised thereby shall be tried and determined as in other civil actions. Such pleadings must be filed within thirty days after personal jurisdiction is acquired or within thirty-five days after the mailing of the notice prescribed in paragraph (e).

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"(i) Appeal Pending. If the judgment debtor shows that an appeal from the original judgment is pending or that he is entitled to, and intends to appeal therefrom, the court shall, on such terms as it deems just, postpone the trial for such time as appears sufficient for the appeal to be concluded, and may set aside the levy upon proof that the defendant has furnished adequate security for satisfaction of the judgment.

"(j) Order Setting Aside Registration--Final Judgment. An order setting aside a registration constitutes a final judgment in favor of the judgment debtor.

"(k) Appeal. An appeal may be taken by either party from judgment or order sustaining or setting aside a registration on the same terms as an appeal from a judgment or order of the same court.

"(l) Quasi in Rem Judgment. If personal jurisdiction of the judgment debtor is not secured within thirty days after the levy and he has not, within thirty-five days after the mailing of the notice prescribed by paragraph (e), acted to set aside the registration or to assert a set-off or counterclaim the registered judgment shall be a final judgment quasi in rem of the court in which it is registered, binding upon the judgment debtor's interest in property levied upon, and the court shall enter an order to that effect.

"(m) Sale Under Levy. Sale under the levy may be held at any time after final judgment, either personal or quasi in rem, but not earlier except as otherwise provided by law for sale under levy on perishable goods. Sale and distribution of the proceeds shall be made in accordance with the laws of this state.

"(n) Interest--Costs. When a registered foreign judgment becomes a final judgment of this state, the court shall include as part of the judgment interest payable on the foreign judgment under the law of the state in which

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it was rendered, and the cost of obtaining the authenticated copy of the original judgment. The court shall include as part of its judgment court costs incidental to the proceedings in accordance with the laws of this state."
(Emphasis added)

It is our opinion that a foreign judgment filed for registration in a court in this state having jurisdiction over such action under the provisions of Rule 74.79 is not a final judgment required to be abstracted under the provisions of Rules 74.76 and 74.77 until it becomes a final judgment under the provisions of Rule 74.79 in a court of this state. It is not a final judgment under the provisions of Rules 74.76 and 74.77 on the date it is filed for registration under the provisions of Rule 74.79. It is not a final judgment until it becomes a final judgment as provided for in Rule 74.79.

Rules 74.76 and 74.77 provide the method and manner in which a judgment rendered by a court in a city or county having over a certain number of inhabitants shall be a lien on real estate situated in such county or city. Under these rules, the only purpose of having such judgment abstracted is for the purpose of creating and protecting a lien on real estate in such city or county.

It is our view that a final judgment under the provisions of Rules 74.76 and 74.77 means a final judgment of the court in this state in which a foreign judgment is registered under the provisions of Rule 74.79. It does not become a final judgment when filed in a court until the court in which it is filed enters a final judgment although such judgment is a final judgment of the foreign state in which it was rendered.

A judgment in this state is not a final judgment as long as it remains under the control of the court in which it is rendered. Sterling v. Parker-Washington, 170 S.W. 1156 (St.L.Ct.App. 1914). It does not become a final judgment under Rule 74.79 until the court in which a judgment is filed for registration enters a final judgment.

CONCLUSION

It is the opinion of this office that a foreign judgment filed for registration under the provisions of Supreme Court Rule 74.79 is not a final judgment required to be abstracted under the provisions of Supreme Court Rules 74.76 and 74.77 until the court in which said foreign judgment is filed for registration shall enter a final judgment as provided under Rule 74.79.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH
Attorney General