

CONSTRUCTION BLOG

Collecting Money Judgments Florida Courts Can Compel Foreign Assets

AUTHOR: ANDREA TRUE PARKER

Collecting on money judgments can be a frustrating process. One common problem judgment creditors face is judgment debtors moving assets around, often moving assets to foreign jurisdictions, making collection harder, if not impossible.

The recent Florida Supreme Court decision of *Shim v. Buechel* addressed this issue, ruling that a trial court undisputedly has broad authority to compel a judgment debtor to produce foreign assets to satisfy a judgment as long as the court has personal jurisdiction over the judgment debtor. The unanimous decision was issued by the Florida Supreme Court after the Fifth District Court of Appeal's certification of direct conflict between its decision in *Buechel* and the Fourth District Court of Appeal's decision in *Sargeant v. Al-Saleh*, 137 So. 3d 432 (Fla. 4th DCA 2014).

The underlying dispute in *Buechel* involved a licensing agreement between the parties and the proceeds from the sale of a medical device company. Creditors Buechel and Pappas prevailed at trial, and the trial court entered a judgment for damages in their favor. During proceedings supplementary, the judgment creditors asked for the trial court to compel the judgment debtor to turn over a \$4 million dollar check located at Shim's home in South Korea. The trial court found that Florida courts do not have jurisdiction over foreign property and denied the judgment creditors request.

On appeal, the Fifth District Court of Appeals reversed. In its decision, the 5th DCA found that F.S. 56.29, which governs the procedure for proceedings supplementary, plainly authorizes a trial court to "order a debtor, over whom the court has in personam jurisdiction, to act on assets located outside of the court's territorial jurisdiction" and "in no way limits the court's reach to its territorial boundaries." The 5th DCA also acknowledged a conflict with the Fourth District's ruling in *Sargeant*, which found that state courts could not act on a judgment debtor's property in a foreign country because Florida law did not give state courts in rem jurisdiction over foreign property.

The Florida Supreme Court began its analysis by explaining that trial courts have broad authority to carry out the execution of monetary judgments under §56.29(6). Further, as the *Buechel* court explained:

"It is well-established that a court's personal jurisdiction over a defendant gives the court the 'power to require a defendant 'to do or to refrain from doing anything beyond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory.' A court may "decree a conveyance of land situated in another jurisdiction, and even in a foreign country, and enforce the execution of the decree by process against the defendant."

The Court further explained:

"While a trial court has 'no inherent power . . . to annul a deed or to establish a title" for property outside its jurisdiction, the trial court may indirectly do so by compelling the defendant to act on such property pursuant to its in personam jurisdiction.

The court's "decree *does not operate directly upon the property nor affect the title, but is made effectual through the coercion of the defendant.*" A defendant's "obedience is compelled by proceedings in the nature of contempt, attachment, or sequestration." Such penalties are imposed against the defendant—not the property—and serve to hold the defendant accountable and prevent the defendant from relocating assets to avoid execution of a judgment." (internal citations omitted).

Accordingly, because the trial court undisputedly had in personam jurisdiction over the judgment debtor, the court explained that the trial court could compel him to act on his foreign assets under §56.29(6).

The *Buechel* decision provides clear law to aid judgment creditors in collecting a judgment against a debtor that the Florida court has personal jurisdiction over when the sought-after assets are in a foreign jurisdiction. In light of *Buechel*, a judgment debtor can no longer avoid satisfying a judgment by simply moving assets from foreign jurisdiction to foreign jurisdiction.