

JONATHAN D. BISHOP AND CONNIE M. BISHOP V. JAMES JOSEPH MURPHY AND LINDA JEANNINE MURPHY, Franklin County Branch, C.P., No. A.D. 1989-145

*Civil Action-Mortgage Foreclosure-Petition to Intervene-Uniform Enforcement of Foreign Judgments Act*

1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State
2. The Uniform Enforcement of Foreign Judgment Act, 42 Pa.C.S.A. Section 4306, codifies the Constitutional determinations of foreign states by establishing a methodology for the entry on the records of the Commonwealth of such foreign decisions.
3. The statutory definition of "foreign judgment" entitled to recognition by the Commonwealth is limited to those determinations which are entitled to full faith and credit in this Commonwealth.
4. When the court of another state has purported to act on the merits of case, its jurisdiction to do so and the regularity of its proceedings are presumptively valid. The party challenging the validity of the judgment, therefore, bears the burden of showing any irregularity in the proceedings.

*Janice M. Hawbaker, Esquire, Attorney for Petitioner*  
*Thomas J. Finucane, Esquire, Attorney for Defendants*  
*Barbara B. Townsend, Esquire, Attorney for Plaintiffs*

### OPINION AND ORDER

KAYE, J., June 5, 1995:

#### OPINION

The instant case was begun as a mortgage foreclosure proceeding, but later came to involve the matter currently before the Court for disposition, i.e. whether Elizabeth V. Bishop, also known as Louise V. Bishop ("petitioner") should be permitted to intervene in the underlying action. This case has a complex procedural history, which we will hereafter set forth, and which involves multiple litigation in Pennsylvania and Maryland.

Initially, it should be noted that the nominal petitioner herein was adjudicated an incompetent person by the Circuit court of Montgomery County, Maryland on February 25, 1988, and Maria A. Vacchio, Esquire, a Maryland attorney, was appointed guardian of her property. In related litigation in this Court, filed

in Equity Docket Volume 7, Page 499, we set forth much of the background of the case, albeit from a slightly different context than is currently before the Court for decision. The factual background of the instant case is set forth in significant detail therein, and while it is not necessary to set forth all the details as stated therein, we will reiterate a portion thereof to assist in understanding the current litigation. In the previous case, it was noted that petitioner, then 86 years of age, had conveyed a 70 acre tract of real estate in Antrim Township, Franklin County to her grandson, Jonathan Bishop, and his wife, Connie, ("the Bishops"), by deed dated January 12, 1987, "in consideration of natural love and affection". The Bishops, on April 22, 1988, re-conveyed the real estate to Linda and James Murphy for \$110,000. Of this sum, \$10,000 was paid in cash, and the balance was financed through a mortgage note given by the Murphys to the Bishops. Payment was secured by a mortgage against the real estate. Between the two conveyances, i.e. on March 10, 1988, petitioner's guardian filed suit in Montgomery County, Maryland, to declare the conveyance to the Bishops null and void as the product of duress and undue influence, in breach of the Bishops' confidential relationship with petitioner. On August 22, 1988, the Montgomery County, Maryland Circuit Court declared the conveyance from petitioner to the Bishops null and void, enjoined the Bishops from taking any further action concerning the real estate, imposed a constructive trust on the real estate, directed re-conveyance of the real estate by the Bishops to petitioner, and directed the filing by petitioner of a motion to collect counsel fees.

On July 6, 1989, the August 22, 1988 court order was modified to impose a constructive trust on the proceeds from the sale of the real estate.

In the prior litigation in this jurisdiction, we, in effect, found that the Murphys were bona fide purchasers of the real estate, which relieved them of any direct liability to petitioner, but indicated that petitioner could proceed against the Bishops for appropriate relief.

Subsequently, it would appear that the Murphys defaulted in the mortgage payments, and the instant mortgage foreclosure

proceeding, and attempted intervention therein by petitioner, was commenced.

On March 21, 1991, Attorney Vattio caused the Maryland Circuit Court's order to be registered in the Office of the Prothonotary of Franklin County pursuant to the Uniform Enforcement of Foreign Judgments Act, 42 Pa.C.S.A. §4306.

Subsequent to the foregoing, and to the litigation previously referred to, we presided over a hearing which lasted for portions of two days on whether petitioner should be permitted to intervene in this mortgage foreclosure litigation. The issue before this Court for resolution involves whether the Court should give full faith and credit to the Maryland Court's orders as registered in this Court. The Bishops take the position that we should not do so, and that such ruling would deprive petitioner of standing to intervene in the mortgage foreclosure proceeding.

We heard testimony, that we accepted as accurate in the instant proceeding, from Attorney Vacchio regarding the difficulty that she had in the Maryland litigation in effecting service of process upon the Bishops, who were then Maryland residents. As a result of difficulties in achieving personal service of process in the Maryland injunction action, Attorney Vacchio was required to secure an order from the Court permitting alternate service, which involved the filing of an affidavit of evasion of service by the Bishops. Ultimately, service was achieved, the Bishops fully participated in the litigation, and thereafter sought to have the Circuit Court strike the judgment which it had entered. However, that effort was not successful, and the judgment was sustained. A subsequent effort to secure reconsideration similarly was denied. No appeal was taken from the Maryland Court's decision in that proceeding.

In the instant case, we are asked to give full faith and credit to the Maryland Court's decision. This issue is one of constitutional dimensions as it is provided at U.S.Const. Art. IV, §1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State ...

As noted in an opinion by Mr. Justice Stone,

The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin ...

*Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-277, 56 S.Ct. 229, 234, 80 L.Ed. 220, 228 (1935).

The Uniform Enforcement of Foreign Judgments Act, 42 Pa.C.S.A. §4306, codifies the Constitutional determinations of foreign states by establishing a methodology for the entry on the records of the Commonwealth of such foreign decisions. See preface to the Uniform Enforcement of Foreign Judgments Act, cited in *Nobell Well Service, Inc., v. Penn Energy*, 348 Pa.Super. 267, 274-275, 502 A.2d 200f 204-205 (1985). However, the statutory definition of "foreign judgment" entitled to recognition by the Commonwealth is limited to those determinations which "[are] entitled to full faith and credit in this Commonwealth."

If we understand their position correctly, it would appear that the Bishops argue that the Maryland decision is not entitled to full faith and credit for a number of reasons, including their assertions of 1/ lack of service and due process, 2/ that a Maryland Court may not adjudicate issues of title to Pennsylvania realty and, 3/ even if the second reason cited is incorrect, the Maryland Court would have to apply Pennsylvania law to determine the validity of the conveyance of the real estate, and it did not do so in rendering its decision.

In considering the related questions of service and due process, from the testimony presented, it would appear that Maryland counsel made numerous attempts to secure service of process on the Bishops, who made efforts to evade service. Ultimately, it would appear that the Bishops received notice of the pending proceedings in Montgomery County, Maryland, fully participated with counsel in contested litigation in that jurisdiction, and made numerous efforts to secure an overturning of that Court's decision. It is clear that this Court may properly inquire into questions of the foreign court's jurisdiction and whether the

judgment rendered therein was obtained in derogation of the debtor's due process rights (defined as whether the debtor had an opportunity to appear and defend), *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236, 51 L.Ed. 345 (1907), *In re Higbee's Estate*, 372 Pa. 233, 93 A.2d 467 (1953), cited in *Nobell Well Service, Inc. v. Penn Energy*, id. at 277, 502 A.2d at 205. From the evidence presented, it is clear that the Bishops were afforded their due process rights by the Maryland Court. They were both notified of the pendency of the litigation, and fully participated in it with the assistance of legal counsel.

However, when "the court of another state has purported to act on the merits of a case, its jurisdiction to do so and the regularity of its proceedings are presumptively valid." *Barnes v. Buck*, 464 Pa. 357, 364, 346 A.2d 778, 782 (1975). The party challenging the validity of the judgment, therefore, bears the burden of showing any irregularity in the proceedings. *Commonwealth, DeRartment of TransRortation v. Granito*, 70 Pa.Cmwth. 123, 127, 452 A.2d 889, 891 (1982).

*Noetzel v. Glasg w, Inc.*, 338 Pa.Super. 458, 466, 487 A.2d 1372, 1377-1378 (1985), appeal denied, certiorari denied 475 U.S. 1109, 106 S.Ct. 1517, 89 L.Ed.2d. 915.

The Bishops' remaining attack on the Maryland Court's determination of the validity of petitioner's deed conveying her interest in the real estate is based upon the Court's alleged misapplication of Maryland law to an issue affecting real estate situate in the Commonwealth of Pennsylvania. While it is correct that the law of Pennsylvania is determinative of questions relating to the transfers of title to real estate, *Commonwealth v. Miklowitz*, 41 D&C 2d 719, 86 Dauph. 284 (C.P. Dauphin Cty. 1966), citing *Quarture v. C.P. Mayer Brick Co.*, 363 Pa. 349, 69 A.2d 422 (1949), there is nothing before this Court to suggest that the Maryland adjudication was the product of an improper application of the law. Moreover, it is noted that petitioner seeks enforcement of a Maryland judgment over the *proceedi* from the sale of the real estate which is not an attack on the title to the real estate whose sale generated those proceeds. Given the presumption of validity of that Court's proceedings, and the burden placed on the Bishops to show an irregularity in those

proceedings, *Noetzel v. Glasgow, Inc.*, *surra*, there is no basis to overturn the decision of the Maryland Court, as the Bishops failed to sustain their burden of proof.

Based upon the foregoing analysis, this Court will give full faith and credit to the decision of the Circuit Court of Montgomery County, Maryland which was rendered in this matter. This ruling will permit petitioner to intervene in the mortgage foreclosure proceeding.

#### ORDER OF COURT

NOW, June 5, 1995, after an evidentiary hearing and upon consideration of counsell's arguments and briefs, it is hereby ordered and decreed that the petition to intervene filed by Elizabeth V. Bishop, also known as Louise V. Bishop, is hereby GRANTED.