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## How To Domesticate a Sister-State Judgment in New York When the Judgment Was Entered on Default in the Underlying Proceeding

This article provides an overview of the steps needed to domesticate sister-state judgments in New York depending on how the sister-state judgment was obtained, with a particular focus on domestication of sister-state judgments entered on default.

By **Jason S. Giaimo and Chester R. Ostrowski** | February 05, 2020



Litigators are commonly presented with the same scenario: Your client (or referral) has obtained a judgment in another state, and subsequently discovers that the judgment debtor may have assets in New York and wants to enforce its judgment against those New York assets. In order to attach against the judgment debtor's New York assets, you will need to first domesticate that judgment in New York.

Under New York state law, the procedure for domestication of a sister-state judgment is very straightforward where the underlying judgment was entered after an appearance by the defendant. However, the process becomes more nuanced when the foreign judgment was entered on default, which is often the case. This article provides an overview of the

steps needed to domesticate sister-state judgments in New York depending on how the sister-state judgment was obtained, with a particular focus on domestication of sister-state judgments entered on default.

**Sister-State Judgments Entered After the Defendant Appeared in the Underlying Proceeding.** Both the Full Faith and Credit Clause of Article IV of the United States Constitution and applicable New York law generally require the courts of New York to enforce judgments rendered in other states. See U.S. Const. art. IV, §1 (providing, in relevant part, that “Full Faith and Credit shall be given in each State to the ... judicial Proceedings of every other State”); N.Y. CPLR §5402(a)-(b) (providing, in relevant part, that “[a] copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed ... in the office of any county clerk of the state” and “[t]he clerk shall treat the foreign judgment in the same manner as a judgment of the supreme court of this state”). Where the underlying sister-state judgment was entered after the defendant filed an answer or otherwise appeared, Article 54 of the New York Civil Practice Law and Rules provides a streamlined procedure for domestication of the foreign judgment in New York. More specifically, the judgment creditor need only file a certified or exemplified copy of the sister-state judgment, together with an affidavit setting forth the name and last known address of the judgment debtor and stating that the judgment was not obtained by default in appearance or by confession, that it is unsatisfied in whole or in part, the amount remaining unpaid, and that its enforcement has not been stayed. See N.Y. CPLR §5402(a). Once registered and domesticated in New York, the judgment will have the effect of a New York judgment and can be enforced just like any other New York money judgment. See N.Y. CPLR §5402(b).

**Sister-State Judgments Entered on Default in the Underlying Proceeding.** Although out-of-state judgments obtained by default are entitled to full faith and credit, they may not be simply registered under Article 54. Rather, a plenary action must be commenced, either by filing a summons and complaint, or through the more streamlined procedure set forth in CPLR §3213, i.e., a motion for summary judgment in lieu of complaint. Section 3213 provides, in pertinent part, that “when an action is based upon ... any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment in lieu and the supporting papers in lieu of a complaint.” See N.Y. CPLR §3213. Although a judgment creditor may commence a plenary action via summons and complaint, the more efficient approach—and the more common approach—is to file a motion for summary judgment in lieu of complaint, which allows a judgment creditor to obtain a judgment while avoiding any discovery, often the most expensive and time-consuming phase of litigation.

Indeed, motions for summary judgment in lieu of complaint seeking domestication of sister-state judgments are and should be routinely granted. See, e.g., *Susquehanna Commer. Fin. v. Rapid Portable X-Ray Ser.*, No. 603162/15, 2015 N.Y. Misc. LEXIS 5461, at \*2 (Sup. Ct. Nassau Cty. 2015) (granting motion for summary judgment in lieu of complaint based on underlying judgment entered in Pennsylvania against defendants after entry of default); *Ho v. McCarthy*, 90 A.D.3d 710, 711 (2d Dept. 2011) (affirming trial court’s decision granting summary judgment in lieu of complaint to domesticate a New Jersey judgment); *Buckeye Retirement Co., L.L.C., Ltd. v. Lee*, 41 A.D.3d 183, 183 (1st Dept. 2007) (holding that the trial court erred in denying the plaintiff’s motion for summary judgment in lieu of complaint to domesticate a Florida judgment); *Cadle Co. v. Tri-Angle Assocs.*, 18 A.D.3d 100, 103-04 (1st Dept. 2005) (reversing the trial court’s denial of the plaintiff’s motion for summary judgment in lieu of complaint pursuant to CPLR §3213 to domesticate a Connecticut judgment entered on default).

However, the procedural requirements of CPLR §3213—specifically, those governing return dates—has been a source of confusion to judgment creditors, and failure to observe such requirements may result in the denial of a motion for summary judgment in

lieu of complaint. More specifically, as with all motions in New York state courts, a plaintiff seeking to move for summary judgment in lieu of complaint must choose a return date on which the motion will be presented to the court. If a plaintiff fails to set a valid return date in the notice of motion or provide the defendant with sufficient time to respond, the motion may be denied.

In setting the return date on a motion for summary judgment in lieu of complaint, plaintiffs should be wary of the potential difficulties in serving the judgment debtor, particularly when the judgment debtor defaulted in the underlying proceeding. Where service is to be effectuated via personal delivery, the motion must be returnable at least 20 days after the motion is *actually delivered* to the defendant. See N.Y. CPLR §320(a). Thus, if a plaintiff sets the return date only 20 days after the filing of the motion itself, the plaintiff runs the risk of dismissal unless it is able to effectuate service that same day.

Setting a return date on a motion for summary judgment in lieu of complaint becomes even trickier when service is expected to be effectuated in a manner other than personal delivery, such as delivery to a person of suitable age and discretion pursuant to CPLR §308(a)(2) or “nail-and-mail” service pursuant to CPLR §308(a)(4). In such cases, the plaintiff must set a return date of at least 30 days after the completion of service, and service is not deemed complete until 10 days after proof of service is filed. See N.Y. CPLR §§308(a)(2) and (4). Thus, if a plaintiff is using either of these two methods of service, the plaintiff must set a return date of at least 40 days after filing their opening motion papers. Again, however, it may take a few days or even weeks after the filing of the motion to deliver the motion papers. This is particularly true when the underlying judgment was obtained on default since, in such a case, one can expect that the judgment debtor may be difficult to locate or purposefully evasive. As such, litigants are advised to select a return date greater than 40 days after the filing, and significantly greater than 40 days after filing when serving through “nail-and-mail”, which requires that a plaintiff first try diligently to serve the defendant by personal delivery or to a person of suitable age and discretion.

Ultimately, domestication of a sister-state judgment in New York may be an effective—and sometimes necessary—tool to enforce a judgment. While domestication of a sister-state judgment is straightforward when the underlying judgment was entered after an appearance by the defendant, domestication may be somewhat more difficult when the underlying judgment was entered on default. Counsel should become well-versed in the requirements of CPLR §3213, including those that affect the timing of service, as this issue often arises in the commercial litigation landscape.

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