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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CHOICE HOTELS INTERNATIONAL, INC., Plaintiff and Respondent, v. BHUPENDRA BHAKTA et al., Defendants and Appellants.	2d Civ. No. B282898 (Super. Ct. No. 56-2017-00495193-CU-EN-VTA) (Ventura County)

Defendants Bhupendra Bhakta and Arvind Patel appeal a $40,837.57 judgment entered against them in favor of plaintiff Choice Hotels International, Inc. (Choice). This judgment originated from a Maryland state court and was filed in the Ventura County Superior Court under the Sister State Money Judgments Act (SSMJA). (Code Civ. Proc., § 1710.10 et seq.)[1] We conclude, among other things, that 1) Bhakta and Patel did not comply with or exhaust the statutory procedures for

[1] All statutory references are to the Code of Civil Procedure.

challenging a sister-state judgment that were available for them in the Ventura County Superior Court; and 2) they have not shown that the judgment the superior court entered was invalid, incorrect or that the SSMJA statutory procedure violated their constitutional rights. We affirm.

FACTS

On April 14, 2017, the Ventura County Superior Court filed a notice of entry of judgment on sister-state judgment against Bhakta and Patel. The judgment was entered in favor of Choice for $40,837.57. This judgment was "based upon a sister-state judgment" from a state of Maryland court.

The notice of entry contained the following notice to Bhakta and Patel of their procedural rights: "A sister-state judgment has been entered against you in a California court. *Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final. . . .*" (Italics added.)

Bhakta and Patel also received a Ventura County Superior Court notice of case assignment, which notified them, "Your case *has been assigned for all purposes to the judicial officer indicated below*"; "*[c]ontact the clerk's office to reserve a date for a law and motion matter*." (Italics added.)

Bhakta and Patel did not file a motion to vacate the judgment in the Ventura County Superior Court. Instead, on May 25, 2017, they filed a notice of appeal. In the notice of appeal, they said, "The Judgment is void on its face, and as applied to Defendants, as the statutory scheme under California Code of Civil Procedure section 1710.25 is unconstitutional under the Due Process and Equal Protection Clauses [of the federal and state Constitutions]."

DISCUSSION

The SSMJA Statutory Procedure

Bhakta and Patel contend the SSMJA statutory procedure (§ 1710.10 et seq.) is invalid and therefore the sister-state judgment entered against them in the Ventura County Superior Court must be vacated.

Choice contends: 1) Bhakta and Patel failed to exhaust the required statutory procedure for challenging this sister-state judgment, 2) they did not request a hearing in the trial court as authorized by statute, 3) they failed to develop a trial court record, 4) they have not set forth a sufficient statement of facts, and 5) their failure to make a showing that the judgment the trial court entered is invalid or incorrect requires an affirmance. We agree.

Bhakta and Patel appealed from the judgment filed in the trial court without first following the SSMJA procedure for challenging the sister-state judgment. They claim the SSMJA statute is invalid because it does not provide a constitutionally adequate procedure to protect the rights of defendants named in sister-state judgments.

But courts have held the SSMJA procedure provides constitutional safeguards for defendants to challenge these judgments. (*Washoe Development Co. v. Guaranty Federal Bank* (1996) 47 Cal.App.4th 1518, 1523; *Magalnick v. Magalnick* (1979) 98 Cal.App.3d 753, 758-759.)

Under the SSMJA, the clerk of the superior court enters a judgment after the filing of an application for the entry of a sister-state judgment. (§ 1710.25.) Then the notice of entry of that judgment must be served on the judgment debtor. (§ 1710.30.)

The statute includes the following procedures to protect the defendant's rights: 1) a defendant who receives a notice of entry of a sister-state judgment has 30 days to file a motion to vacate that judgment in the superior court (§§ 1710.20, subd. (a), 1710.40, subd. (b)); 2) the defendant may seek to vacate that judgment "*on any ground* which would be a defense to an action in this state on the sister state judgment . . . ." (§ 1710.40, subd. (a), italics added); 3) a defendant who timely files the motion is entitled to a hearing in the trial court (*id.*, subd. (c)); 4) the trial court has the authority to vacate the judgment (*ibid.*); 5) "under no circumstances may property of the debtor be taken from him until such time as he has been able to establish, if he can, any of those defenses which remain available to him in the litigation" (*Magalnick v. Magalnick*, *supra*, 98 Cal.App.3d at p. 758); and 6) the trial court's order "on the motion to vacate" is appealable (*Fishman v. Fishman* (1981) 117 Cal.App.3d 815, 819).

As stated in *Magalnick*, "we find *no valid constitutional objection inherent* in the creation of a procedure to enter a California judgment based on that of a sister state, when before the proposed California judgment is effective through execution to divest a judgment debtor of any assets, the judgment debtor is *afforded the right to nullify* its effect in this state . . . ." (*Magalnick v. Magalnick*, *supra*, 98 Cal.App.3d at p. 759, italics added.)

Here Bhakta and Patel received a "notice of entry of judgment on sister-state judgment" with a notice of their procedural rights. That notice provided, in relevant part, "Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final."

They were "afforded the right to nullify" this judgment. (*Magalnick v. Magalnick*, *supra*, 98 Cal.App.3d at p. 759.)

But as Choice correctly notes, Bhakta and Patel bypassed the trial court procedures. They did not file the motion, assert defenses, request a hearing, make a record, or obtain a superior court order on a motion to vacate. They simply filed this appeal.

The failure to pursue the available trial court procedures "before seeking relief from the appellate court[] is improper." (*California Casualty Indemnity Ins. Co. v. Mendoza* (1995) 36 Cal.App.4th 678, 681.) "The attempt to bypass the trial court to challenge the necessity of court appearances[] is akin to failure to exhaust administrative remedies." (*Ibid.*) Appellate courts usually deny relief to parties who bypass their available statutory remedies in the trial court. (*Ibid.*; see also *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291; *Newton v. Clemons* (2003) 110 Cal.App.4th 1, 11 ["'a reviewing court will ordinarily not consider claims made for the first time on appeal which could have but were not presented to the trial court'"]; *Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486 ["The general rule of exhaustion 'forbids a judicial action when administrative remedies have not been exhausted, even as to constitutional challenges'"]; *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74, 88 [defendant must file a motion to vacate and "show by a preponderance of the evidence" in the trial court "why it was entitled to relief"]; § 1710.40, subd. (c) [sister-state judgment may be vacated *after* a motion to vacate is filed "[u]pon the *hearing on the motion to vacate*" (italics added)].)

SSMJA Void on Its Face for Uncertainty?

Bhakta and Patel contend the SSMJA statute is void on its face for uncertainty and unconstitutional because those who have defenses to sister-state judgments do not know which defenses to assert in a motion to vacate. They suggest the omission of a list of the defenses set forth in the statute renders it constitutionally infirm.

Choice claims Bhakta and Patel have waived this constitutional challenge because they are making general, hypothetical assertions in a "vacuum" without a showing of a particular factual context. There is merit to Choice's claim. "[I]n evaluating challenges based on claims of vagueness, . . . '[t]he particular context is all important.'" (*People v. ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1116; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084; *Bockover v. Perko*, *supra*, 28 Cal.App.4th at p. 486.)

But even on the merits, the result does not change. There is "'the strong presumption that legislative enactments "must be upheld unless their unconstitutionality clearly, positively, and unmistakenly appears."'" (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 568.) "'"To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future *hypothetical* situation constitutional problems *may possibly arise* as to the particular *application* of the statute . . . ."'" (*Tobe v. City of Santa Ana*, *supra*, 9 Cal.4th at p. 1084, some italics added.) "'"Rather, petitioners must demonstrate that the act's provisions *inevitably pose a present total and fatal conflict with the applicable constitutional prohibitions*."'" (*Ibid.*, italics added.) "'"[A statute] cannot be held void for uncertainty if any reasonable and

practical construction can be given to its language.'"'" (*Williams*, at p. 568.)

Here the statute is deliberately broad in scope to allow defendants the right to assert "*any ground which would be a defense* to an action in this state on the sister state judgment." (§ 1710.40, subd. (a), italics added.) Choice claims this language is not ambiguous. It notes, "[T]he judgment debtor need only 'crack the law books' and determine, based on the specific facts surrounding its peculiar circumstance, what defenses exist at common law and apply to its case. Being required to conduct legal research is hardly unconstitutional."

We agree. Courts have held the statute allows defendants to assert that they have '"'"a meritorious case, i.e., a good claim or defense which, if asserted in a new trial, would be likely to result in a judgment favorable to [them].'"'" (*Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.*, *supra*, 12 Cal.App.4th at pp. 89-90.) In *Washoe Development Co. v. Guaranty Federal Bank*, *supra*, 47 Cal.App.4th at page 1523, the court held it provides "a reasonable opportunity to present every defense which under the law of the rendering state the judgment debtor is entitled to present."

Bhakta and Patel claim the statute is ambiguous, and consequently there are disputes about which defenses may be valid in challenging sister-state judgments. (See, e.g., *Liquidator of Integrity Ins. Co. v. Hendrix* (1997) 54 Cal.App.4th 971, 978, disagreeing with *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.*, *supra*, 12 Cal.App.4th 74.)

That there are such controversies, however, is not unusual in civil litigation. (See, e.g., *Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 255-256; *Li v. Yellow*

Cab Co. of California (1975) 13 Cal.3d 805, 821; *Green v. Superior Court* (1974) 10 Cal.3d 616, 619.) Appellate courts may disagree on particular aspects of a statute's application. But Bhakta and Patel have not shown how *they* were prevented from presenting *their defenses* in the superior court.

"'"[A] statute is not void simply because there may be difficulty in determining whether some marginal or hypothetical act is covered by its language."'" (*People v. Morgan* (2007) 42 Cal.4th 593, 606.) "Many, probably most, statutes are ambiguous in some respects and instances invariably arise under which the application of statutory language may be unclear." (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1201.) "So long as a statute does not threaten to infringe on the exercise of . . . constitutional rights, however, such ambiguities, even if numerous, do not justify the invalidation of a statute on its face." (*Ibid.*) "'[A] party must do more than identify some instances in which the application of the statute may be uncertain or ambiguous . . . .'" (*People v. White* (2016) 3 Cal.App.5th 433, 454.)

Here, the Legislature reasonably did not want to limit the scope of available defenses by setting forth a list that might be incomplete, become outdated, or might inhibit the development of new defenses. (*People ex rel. Gallo v. Acuna*, *supra*, 14 Cal.4th at p. 1117.) "'[M]ost statutes deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions.'" (*Ibid.*)

Consequently, statutes involving defenses in civil litigation usually contain general language. There are practical reasons for this. Many defenses do not originate from statutes; they are

often developed as part of the common law in court decisions. (See, e.g., *Li v. Yellow Cab Co. of California*, *supra*, 13 Cal.3d at p. 821; *Green v. Superior Court*, *supra*, 10 Cal.3d at p. 619.) The Legislature cannot predict the future development of such defenses. For this reason, for example, the statute describing affirmative defenses in an answer to a complaint provides, in general terms, that the defendant may raise "any new matter constituting a defense." (§ 431.30, subd. (b)(2).) But defendants may not reasonably claim they are excused from filing answers because that statute does not list the defenses or that there may be disputes as to the validity of some defenses. Yet this is essentially the position Bhakta and Patel assert here.

The Legislature used broad language in the SSMJA regarding defenses for the benefit of the judgment debtors. The judgment debtors have the ability to raise their defenses in their motion, and they have a forum to decide the legal and factual validity of each defense in the superior court. The procedure consequently provides defendants due process by giving them ""reasonable notice and a reasonable opportunity to be heard."" (*Jonathan Neil & Associates, Inc. v. Jones* (2004) 33 Cal.4th 917, 936, fn. 7; *Bockover v. Perko*, *supra*, 28 Cal.App.4th at p. 486.) As with all litigation, there may be uncertainty about whether a particular defense may prevail on the facts or the law. But there is no uncertainty about the SSMJA statutory procedure and the proper forum to assert and litigate defenses.

Courts have held there are numerous common defenses to sister-state judgments including: 1) the judgment is "'not final and unconditional,'" 2) it was obtained by "'extrinsic fraud,'" 3) it was "'rendered in excess of jurisdiction,'" 4) it is "'not enforceable in the state of rendition,'" 5) the plaintiff "'is guilty of

misconduct,'" 6) the judgment "'has already been paid,'" and 7) "'suit on the judgment is barred by the statute of limitations in the state where enforcement is sought.'" (*Magalnick v. Magalnick*, *supra*, 98 Cal.App.3d at p. 758; see also *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes. Ltd.*, *supra*, 12 Cal.App.4th at p. 94 ["The court may set aside the judgment on the ground of mistake, inadvertence, or excusable neglect because a conflict in representation deprived a party of a fair trial"].) Here Bhakta and Patel failed to make the required showing that *they have any defenses* to this judgment.

The statutory scheme vests initial jurisdiction in the superior court to decide all legal and factual disputes. It permits defendants to develop a record for an appeal. It provides them with the right to appeal after a ruling on a motion to vacate. (*Fishman v. Fishman*, *supra*, 117 Cal.App.3d at p. 819.)

Here Bhakta and Patel did not develop a factual record in the trial court. They have made no showing that the judgment entered in the superior court is invalid or incorrect.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded in favor of the respondent.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Kent M. Kellegrew, Judge

Superior Court County of Ventura

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