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Civil Procedure; Uniform Enforcement of Foreign Judgments Act

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FOOTNOTES

1. U.C.C. §9-401(1) (1978 version).
2. Compare 1973 Nev. Stats. ch. 569 §25, at 953 (NRS 104.9401(1)) and U.C.C. §9-401(1) (third alternative) (1978 version) with 1979 Nev. Stats. ch. 236 (hereinafter "Ch. 236") §1 (NRS 104.9401(1)) and U.C.C. §9-401(1) (second alternative) (1978 version).
3. NRS 104.9401(1)(b).
4. NRS 104.9401(1)(a).
5. Id.
6. NRS 104.9401(1)(b).
7. Id.
8. Ch. 236 §1 (amending NRS 104.9401(c)).
9. 1973 Nev. Stats. ch. 569 §25, at 953 (NRS 104.9401).

SEE GENERALLY:

- 1) R. ANDERSON, 4 ANDERSON ON THE UNIFORM COMMERCIAL CODE 436-448 (2d ed. 1971).

CIVIL PROCEDURE; UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Adds to NRS Chapter 17

SB 98 (Committee on Judiciary); STATS 1979, Ch. 656

Chapter 656 adds the Uniform Enforcement of Foreign Judgments Act, with a few variations,¹ to NRS Chapter 17 to provide for easier, faster and more economical enforcement of foreign judgments. Under the act, a foreign judgment entitled to full faith and credit and filed with a clerk of a district court of the state, is given the same effect and treated in the same manner as a judgment of a district court of the state.² Under prior law it was necessary to establish jurisdiction, file a new action and obtain a summary judgment based upon res judicata in order to enforce a foreign judgment.³

The provisions of the act are similar to those enacted by Congress requiring federal district courts to give full force and effect to the judgments of other

district courts upon registration of the judgments.⁴

Under the act, a three step procedure must be followed to obtain enforcement of a foreign judgment. The judgment creditor, or his or her attorney, must first file with the clerk of a district court an exemplified⁵ copy of the foreign judgment⁶ and an affidavit which gives the name and last known address of the judgment debtor and the judgment creditor and which states that the foreign judgment is valid and enforceable and the extent to which it has been satisfied.⁷ Second, the judgment creditor, or his or her representative, must promptly mail notice of the filing to the judgment debtor and his or her attorney of record, if any.⁸ A copy of the judgment and affidavit must be attached.⁹ Finally, the judgment creditor must file with the clerk of the court an affidavit setting forth the date the notice was mailed.¹⁰

Under the adopted version of the act, issuance of execution or other process for enforcement of judgment is delayed until thirty days after the date the notice is mailed.¹¹ The judgment, once filed, is otherwise subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a district court of this state and may be enforced or satisfied in the same manner.¹² In addition, a stay will be granted if the judgment debtor shows an appeal has been or will be taken or that there is a stay currently in effect in the foreign jurisdiction.¹³ The foreign judgment may also be stayed on any ground that a Nevada judgment could be stayed.¹⁴ Appropriate security must be posted for a stay.¹⁵

The definition of "foreign judgment" included in the act differs from the definition set forth in the official version adopted by other states.¹⁶ The official version defines "foreign judgment" as "any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit...."¹⁷ Although Chapter 656 originally contained the language of the official version, it was amended prior to adoption to exclude the words "decree and order."¹⁸ The wording raises the issue whether decrees and orders are covered by the act.

In the past, decrees were recognized as final determinations of suits in equity, distinguished from "judgments" which were recognized as final determinations of suits at law.¹⁹ Modernly, the term "judgment", is a general term which includes decrees,²⁰ particularly where the distinction between law and equity has been abolished.²¹ Nevada has abolished this distinction with the adoption of the federal rules.²² Additionally, in Elsman v. Elsman, the Nevada Supreme Court noted that the term "judgment", and other civil procedure terms, are often used in NRS without

regard to their old meanings.²³ It appears the legislature did not intend to exclude judicial determinations on equitable matters from application of the act.

The deletion of the term "order" appears to restrict application of the act since Elsman distinguishes "judgments," defined as final determinations, from "orders," defined as directives of courts which are incidental or preliminary to a final determination.²⁴ Under prior law, as stated in Baker v. Leavy²⁵ no cause of action accrued on a foreign judgment until the judgment was final, that is, no longer subject to appeal.²⁶ Under the act a judgment may be obtained prior to expiration of the period for appeal or actual appeal as long as it is valid and enforceable;²⁷ however, execution or process may not issue if the judgment debtor shows that the foreign judgment is not final.²⁸

The act expressly reserves the right of a judgment creditor to bring an action to enforce a foreign judgment instead of proceeding under the act.²⁹

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FOOTNOTES

1. Compare 1979 Nev. Stats. ch. 656 (hereinafter "Ch. 656") with UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (1964 version), 13 U.L.A. (1975).
2. Ch. 656 §4 (adding to NRS Ch. 17).
3. See Phelps v. Duffy, 11 Nev. 80, 81 (1876) and NRCP 56 (summary judgment rule). See generally F. JAMES & G. HAZARD, CIVIL PROCEDURE 638 (2d ed. 1977).
4. Compare Ch. 656 with 28 U.S.C. §1963 (registration of judgments in other federal districts).
5. In re Box's Will, 106 N.W. 1063, 1065 (Wisc. Sup. Ct. 1906) ("exemplified" means under seal of the issuing court and certified by the records custodian).
6. Ch. 656 §4 (adding to NRS Ch. 17).
7. Id. §5 ¶1 (adding to NRS Ch. 17).
8. Id. §5 ¶2 (adding to NRS Ch. 17).
9. Id.
10. Id.
11. Id. §5 ¶3 (adding to NRS Ch. 17).

12. Id. §4 (adding to NRS Ch. 17).
13. Id. §6 ¶1 (adding to NRS Ch. 17).
14. Id. §6 ¶ 2 (adding to NRS Ch. 17).
15. Id. §6 ¶ ¶1, 2 (adding to NRS Ch. 17).
16. Compare Ch. 656 §3 (adding to NRS Ch. 17) with UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT §1 (1964 version), 13 U.L.A. (1975).
17. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENT ACT §1 (1964 version), 13 U.L.A. (1975).
18. Compare SB 98 (Jan. 24, 1979 print) with SB 98 (second reprint). See generally, Senate Judiciary Committee Minutes of February 1, 1979.
19. Elsman v. Elsman, 54 Nev. 20, 26 2 P.2d 139, 141 (1931) (dictum: "under the old practice, when actions at law and suits in equity were separate and distinct, the final determination of action at law was called a judgment, while in suits in equity it was designated a decree"); accord Coleman v. County of Los Angeles 180 Cal. 714, 720, 182 P.440, 442 (1919) ("it is accurate to use the word 'judgment' as applied to courts of law and 'decree' to courts of equity, although the former term is now used in a larger sense to include both," quoting Bouvier's Law Dictionary).
20. Id.
21. See Henderson v. Arkansas, 176 P. 751, 753 (Okla. Sup. Ct. 1918).
22. See NRCP 2 (effective 1953).
23. 54 Nev. at 27, 2 P.2d at 141.
24. Id.
25. 70 Nev. 152, 261 P.2d 1013 (1953).
26. Id. at 154, P.2d at 1014.
27. Ch. 656 §5 ¶1 (adding to NRS Ch. 17).
28. Id. §§5 ¶ 3, 6 ¶ ¶1, 2 (adding to NRS Ch. 17).
29. Id. §8 (adding to NRS Ch. 17).

CIVIL PROCEDURE; PREJUDGMENT INTEREST,
LEGAL INTEREST RATE

Amends NRS 17.115, 17.130, 37.175, 99.040, 147.220
AB 255 (Committee on Judiciary); STATS 1979, Ch 448