

Pushing the Limits: Nielson v. Schmoke Clarifies the Outer Limits of Domesticating Foreign Judgments

Written By **Thomas C. Wolff** (tcw@wardandsmith.com)
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The North Carolina Court of Appeals issued a decision recently, providing clarity on how much time creditors have to domesticate a foreign judgment to North Carolina.

While the current statutory framework may appear straightforward at first glance, there has been plenty of room for dispute leading up to this significant decision.

If you have read my previous article on foreign judgments ([here](#)), you will recall that there are certain steps that need to be taken in order to enforce an out-of-state judgment to North Carolina, a process called "domestication." Until a judgment has been domesticated within North Carolina's borders, it will have no effect on any property owned by the judgment debtor in the state. The domestication process is simple enough but is complicated by the interplay of the laws of two different states: North Carolina and the foreign jurisdiction where the judgment was originally obtained.

North Carolina's statutes seem relatively clear: Judgments are valid and enforceable for ten years "from the date of entry," and may be renewed for an additional ten years by filing a second independent lawsuit prior to the expiration of that time. But when exactly is the "date of entry" for the purpose of calculating the statute of limitations, when the judgment has been entered in two different states?

The Court in *Nielson v. Schmoke* sought to demystify the process and clear up some of that confusion. In *Nielson*, a judgment was entered in Michigan on December 29, 2003, and domesticated to North Carolina on June 28, 2013, just shy of the ten-year deadline. Once the judgment-creditor began the enforcement process in late 2019, the judgment-debtor objected, claiming the ten-year statute of limitations had expired, rendering the judgment unenforceable. The Court of Appeals disagreed, holding that the ten-year period of enforcement actually begins to accrue on the date the foreign judgment is filed with the North Carolina court, and that domesticated judgment constitutes the filing of a "new" judgment.

As a result, so long as a foreign judgment is domesticated to North Carolina within ten years of its entry in the foreign state, the domestication process will result in a "new judgment" being entered in North Carolina, and with it, the beginning of a new ten year enforcement period. In *Nielson*, this meant that the foreign judgment was deemed entered on June 28, 2013, and valid through June 28, 2023.

While this holding represents great news for creditors in North Carolina, it does leave one question

unanswered: Once the "new" ten-year enforcement period expires, is the judgment-creditor entitled to renew that judgment for another ten years?

While the *Nielson's* Court's opinion does not address this question, it does rely heavily on the holding of a Fourth Circuit case that does consider the issue: *Wells Fargo v. Asterbadi*. *Asterbadi*. In that case, the Fourth Circuit Court of Appeals considered a Virginia Judgment (obtained on October 4, 1993) that was domesticated to Maryland ten years after it was initially entered. The Court deemed the domestication was timely, as it was completed within Maryland's twelve-year statute of limitations. Critically, the Court upheld the enforceability of that judgment, which was subsequently renewed for an additional twelve years, through and including August 26, 2027. Despite Virginia's twenty-year statute of limitations, the Fourth Circuit held the renewed judgment was valid and enforceable, resulting in a valid judgment lien in Maryland, thirty-four years after it was initially entered!

In short, the *Nielson* holding makes it clear that so long as a foreign judgment is domesticated within North Carolina's ten-year statutory framework, it will result in a new judgment being entered in this state, with the start of a new ten-year statute of limitations. But, the holding stops short of making it clear that domesticated judgments may also be renewed for an additional ten-year period, despite what the laws of the foreign jurisdiction indicate.

While we can look to *Asterbadi* for guidance on the issue, we may have to wait until a North Carolina Court fully resolves the remaining ambiguity. In the meantime, if a creditor obtains a foreign judgment against a North Carolina citizen, or a party that owns property in North Carolina, we recommend discussing the situation with your attorney to ensure that appropriate actions are timely carried out. While the decision in *Nielson* provides some guidance, it does not address every issue that may spring up in the process. But by developing a detailed strategy and plan to enforce the judgment, a creditor can increase its chances of securing a valid lien for an extended period of time.

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