IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION

WIGWAM LAKE CLUB, INC., Plaintiff	:	
v.	:	No. 08-1900
GEORGE FETCH, Defendant	:	

Kevin A. Hardy, Esquire — Counsel for Plaintiff
David A. Martino, Esquire — Counsel for Defendant

Civil Law - Status of Judgment Transferred Interstate – Amendment by Issuing Court - Authority of Transferee Court to Amend

1. Courts of Common Pleas have the inherent power to correct or amend judgments issued by them. This power continues until such time as the judgment has been discharged or satisfied.
2. A judgment may not be increased in amount on the basis of facts which occur after its entry without comporting with the requirements of due process, namely notice and an opportunity to be heard.
3. A court of common pleas to which a judgment is transferred from another court of common pleas in this Commonwealth does not have the authority to inquire into the merits of the judgment, or to amend it. In general, its authority is limited to execution and revival of the judgment.
4. Notwithstanding the transfer to another court, the court of common pleas in which a judgment is first entered, the issuing court, retains control over the judgment, including the power to correct or amend it.
5. As between courts of coordinate jurisdiction, the intrastate transfer of a judgment between courts of common pleas does not empower the transferee court to modify, disregard or set aside the judgment of another court of competent jurisdiction.

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GEORGE FETCH, Defendant	:	

Kevin A. Hardy, Esquire — Counsel for Plaintiff
David A. Martino, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – July 30, 2009

On July 24, 2008, Wigwam Lake Club, Inc. (the "Association"), as plaintiff, transferred a judgment it obtained in Monroe County against George Fetch (the "Owner") to this County. *See* Pa.R.C.P. 3002. The Association now seeks to amend that judgment pursuant to its terms and the terms of the Uniform Planned Community Act (the "Act"), 68 Pa.C.S.A. §§ 5101-5414. At issue is whether this Court has the authority to do so and, if so, whether the Association has met its burden of proving the amount it requests. For the reasons which follow, our decision on the first issue obviates the need to address the second.

PROCEDURAL AND FACTUAL BACKGROUND

The Owner owns property in Wigwam Lake Club, Inc., a residential subdivision in Monroe County, Pennsylvania, and is subject to its rules and regulations, including the payment of

assessments made. When the Owner failed to pay these assessments, the Association filed a claim with a local magisterial district judge and obtained a judgment against the Owner in the amount of $798.67. In accordance with Pa.R.C.P.M.D.J. No. 402(D), this judgment was entered on the record of the Monroe County Prothonotary's Office on February 11, 2008, upon the filing of the magistrate's transcript.

Subsequently, on June 4, 2008, the Association petitioned the Court of Common Pleas for Monroe County to amend its judgment. That Court issued a Rule which the Owner failed to respond to, resulting in the Rule being made absolute and the motion granted. The text of the Order entered in Monroe County provides in its entirety:

> ORDER
>
> AND NOW, this 30th day of June, 2008, due to the absence of an Answer being filed by Defendant George Fetch to Wigwam Lake Club, Inc.'s, Motion to Amend Judgment, the Rule issued by the Court is made Absolute and the Motion is GRANTED. The Judgment entered against Defendant is amended to reflect the total amount due and owing to Plaintiff as of June 2, 2008 to be $2,035.86. The Judgment is also amended to reflect that interest is to accrue at the rate of 6% from June 2, 2008 and that Defendant is responsible for all attorney's fees and costs of suit incurred subsequent to June 2, 2008, provided the attorney's fees are reasonable under the Uniform Planned Community Act.
>
> BY THE COURT:
>
> /s/ Jerome P. Cheslock
> J.

It is this judgment which was transferred to this County on July 24, 2008.

On December 3, 2008, the Association filed a motion with this Court to again amend its judgment. In this motion, the Association seeks an amendment to increase the amount of its judgment from $2,035.86 to $3,940.46 to reflect the total amount claimed to be due and owing as of December 1, 2008. This figure consists of the base judgment of $2,035.86 entered in Monroe County, plus attorney fees accrued since June 2, 2008, of $1,843.69, plus accrued interest from June 2, 2008, of $60.91.

Being unsure of our authority to amend the judgment of another court in this Commonwealth, we issued a Rule on December 5, 2008, directed to the Owner. In his answer to the Rule, the Owner alleges that he had previously paid in full the amount due the Association before the entry of the magistrate's judgment and that the judgment should be marked satisfied. He also disputes the fairness, reasonableness, and necessity of the attorney fees claimed.[1]

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[1] **The Association's right to claim attorney fees is not in dispute. The Uniform Planned Community Act makes attorney fees incurred in connection with the collection of assessments a self-executing recoverable cost. Section 5315(a) of the Act creates a lien against property in a planned community for any assessments made by the association and the reasonable costs and expenses, including legal fees, incurred by the association in connection with the collection of such assessments; Section 5315(f) acknowledges the association's right to commence a separate action or suit to collect those amounts subject to lien; and Section 5315(g) provides that "a judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney fees for the prevailing party." As we read these subsections, the Association is entitled to recover reasonable attorney fees**

A hearing on the motion was held on March 16, 2009.[2] At the conclusion of that hearing, we directed the parties to brief various issues. These briefs were filed by the Owner and the Association on June 3, 2009, and June 10, 2009, respectively.

DISCUSSION

Jurisdiction to Amend a Final Judgment

At the outset, we first note that the Association is not asking us to open or strike the judgment entered in Monroe County. Instead, it seeks to supplement or mold that judgment based upon additional expenses it has incurred toward the collection of the judgment since its entry in Monroe County. Neither the validity nor the integrity of the underlying judgment is being questioned.

a) By the Issuing Court

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and costs (68 Pa.C.S.A. § 5315(g)) in its suit (68 Pa.C.S.A. § 5315(f)) against the Owner for unpaid assessments (68 Pa.C.S.A. § 5315(a)) provided the Association is the prevailing party. This right includes the right to collect attorney fees expended in collecting attorney fees. *See* Mountain View Condominium Association v. Bomersbach, 734 A.2d 468, 471 (Pa.Cmwlth. 1999), *appeal dismissed*, 768 A.2d 1104 (Pa. 2001). Further, as in Mountain View, any issue of entitlement appears to be foreclosed by the language in Judge Cheslock's Order holding the Owner responsible for all reasonable attorney fees incurred after June 2, 2008, thereby becoming part of the "law of the case." *See* id.

[2] On October 16, 2008, before the filing of its Motion to Amend the Judgment, the Association praeciped for the issuance of a writ of execution which was issued on the same date. In this writ, the amount due is stated to be $2,035.86, plus interest at the rate of six percent per annum from June 2, 2008, plus costs. Ownership of the property levied upon was claimed by and sustained in favor of the Owner's wife. *See* Pa.R.C.P. 3202, 3204. An objection to the sheriff's determination of ownership of property was filed by the Association on March 6, 2009. That objection was pending as of the date of the March 16, 2009, hearing.

As to the authority a court has over a judgment entered by it, "courts have inherent power to correct their own judgments, even after expiration of the appeal period, and this power extends to the correction of obvious or patent mistakes . . . ." Smith v. Philadelphia Gas Works, 740 A.2d 1200, 1204 (Pa.Cmwlth. 1999). This authority is not limited to undisputed facts, or to correcting obvious or patent mistakes appearing on the face of the record. It extends to events occurring after entry of the judgment. *Cf.* Stephenson v. Butts, 142 A.2d 319, 321 (Pa.Super. 1958) (affirming court order modifying a judgment after its entry to reflect changed circumstances which occurred after the original judgment became final; "[C]ourts have the right to control the enforcement of a judgment, and the manner of this control is within the discretion of the judges of the Courts of Common Pleas."). However, the power of a court to amend a judgment after its entry ceases once the judgment has been discharged or satisfied. *See* Union National Bank v. Ciongoli, 595 A.2d 179, 180-81 (Pa.Super. 1991).

After a judgment has been entered, any amendment to reflect additional charges since its entry must comport with due process. *See* id. at 181-82. At a minimum, this requires notice and an opportunity to be heard. *See* id. A petition to amend the judgment, accompanied by proper service on the defendant with an opportunity to defend, meets this standard. *See e.g.*,

Nationsbanc Mortgage Corporation v. Grillo, 827 A.2d 489, 492 (Pa.Super. 2003) ("A mortgagee is required to petition the court and to provide notice and an opportunity to be heard to mortgagors if mortgagee wants to increase the amount of a judgment before it is satisfied."), *appeal denied*, 842 A.2d 407 (Pa. 2004). In addition, "[a] petition to modify may be regarded as an equitable application for relief where the judgment is unpaid." Stephenson, 142 A.2d at 321.

b) By Another Court

The inherent and equitable power of a court to amend a judgment so long as the substantive rights of the defendant are not impaired is, the Owner argues, confined to the court in which the judgment is originally obtained. As a general rule, "[t]he court to which [a judgment] is transferred has no power over it, except for purposes of execution, and cannot inquire into its validity, or make any order affecting its operation." Guffy v. Nelson, 18 A. 1073, 1074 (Pa. 1890); *see also* Tabas v. Robert Development Co., 297 A.2d 481, 484 (Pa.Super. 1972). "The judgment may not be retried in the transferee court, except for the limited purpose of determining whether the transferor court had jurisdiction to enter the judgment and whether the judgment was obtained without derogating the judgment debtor's due process rights." Andrews v. Wallace, 657 A.2d 24, 27

(Pa.Super. 1995) (Wieand, J., dissenting); *see also* Joshi v. Nair, 614 A.2d 722, 732 (Pa.Super. 1992). Barring this exception, as well as one for judgments by confession, we have no right to inquire into the validity or merits of a final judgment transferred to this County from another court of common pleas.[3]

The rationale for this rule lies, in part, in understanding that "the judgment entered in the county to which the record is transferred does not become a 'judgment,' in the common interpretation of the word, of the county in which it is entered. It is record evidence of the existence of the judgment in the county where it was obtained." Guffy, 18 A. at 1074.

> Such a transferred judgment is merely 'a *quasi* judgment, and that too only for limited purposes.' It has been held time and again that the court of the county to which the judgment is transferred has no power over it except for purposes of execution, and cannot inquire into its merits. That can be done only by the court in which it was originally obtained.

Williams v. Van Kemp, 88 A.2d 49, 52 (Pa. 1952) (citation omitted).

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[3] **The Rules of Civil Procedure distinguish between confessed judgments and other judgments transferred from one county to another. In this respect, Rule 2959(a)(1) provides:**

> **Relief from a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.**

Pa.R.C.P. 2959(a)(1).

In Guffy, the Pennsylvania Supreme Court further stated:

> The court in which the judgment was entered loses none of its jurisdiction or power by the transfer, and, if the original judgment be set aside for any reason, the judgment entered in another county falls with it. It is thus apparent that the proceeding in the county to which the record is transferred is ancillary and dependent. The original power of the court in which the judgment was entered is not restrained or modified in the slightest degree by the transfer, nor by any proceedings based upon the copy of record filed in another county. The transfer is for purposes of lien and execution only, and the judgment, when recorded in the county to which it is transferred, does not rise above its source, or confer any other power than that which the filing of the copy of record conferred. For all purposes, except execution, the original judgment continues to be the measure of the plaintiff's demand against the defendant, and the evidence of what has been passed upon by the court. All inquiries into its regularity or effect, and all applications for relief from its operations, must be made to the court that pronounced it. The derivative judgment is the basis of process in the county in which it is entered. The regularity and execution of such process must be determined by the court that issues it, but its control extends no further than its own process.

18 A. at 1074-75 (citations omitted).[4]

To the extent the Association asks us to change and increase the Monroe County judgment – to in effect open the judgment - to include recovery for new or different assessments

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[4] **Guffy v. Nelson was decided under the Act of April 16, 1840 (P.L. 410, Sec.1), 12 P.S. § 891, since repealed by the Judiciary Act Repealer Act (JARA) in 1978. 42 P.S. § 20002(a)(169). Nevertheless, the practice and procedure provided by this Act remained as part of the common law of this state to the extent not superseded by general rule. 42 P.S. § 20003(b); *see also* 42 Pa.C.S.A. § 1722(b). Though general rules now exist on the topic of the intrastate transfer of judgments (*see* Pa.R.C.P. 3001-3003), thereby abolishing the former law to the extent governed by these rules, we find the reasoning of Guffy and other cases discussing this former law relevant and insightful in understanding the rules and their application.**

than those ruled upon by the court in Monroe County, we have no authority to do so.[5] To the extent the Association seeks to mold the judgment to include, in addition to interest,[6] attorney fees incurred since the judgment was transferred to this County, the Association has provided us with no authority to do so. The case of Noetzel v. Glasgow, Inc., 487 A.2d 1372 (Pa.Super. 1985), which the Association cites to us as authority for one court to amend a judgment issued by another, is distinguishable and non-dispositive.

In Noetzel, the defendant's petition to strike/open a judgment for $300,000.00 rendered in West Virginia and transferred to Montgomery County, Pennsylvania, pursuant to the

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[5] At the time of the hearing, the Association claimed that the current amount it was owed from the Owner was $6,249.90. This amount includes delinquent assessment charges accruing since the earlier Monroe County judgment.

For similar reasons, we also have no authority to direct that the judgment be marked satisfied, as requested by the Owner in his answer to the Rule issued on December 5, 2008, based on events which occurred prior to the entry of the judgment. Additionally, the doctrine of *res judicata* demands that we uphold the Monroe County judgment in this regard. "When a court of competent jurisdiction has determined a litigated cause on its merits, the judgment entered and not reversed on appeal is, forever and under all circumstances, final and conclusive as between the parties to the suit and their privies, in respect to every fact which might properly be considered in reaching a judicial determination of the controversy, and in respect to all points of law there adjudged, as those points relate directly to the cause of action in litigation." Noetzel v. Glasgow, Inc., 487 A.2d 1372, 1376 (Pa.Super. 1985), *cert. denied*, 475 U.S. 1109 (1986).

[6] The right to collect interest at the legal rate, six percent per annum, on the transferred judgment is not disputed by the Owner. *See* 42 Pa.C.S.A. § 8101. This right is also recognized by case law in the entering of a revival judgment, a proper subject for inquiry by the court of the county to which a judgment is transferred. *See* Bailey v. Bailey, 12 A.2d 577, 578 (Pa. 1940) ("[I]t is firmly established that, when a judgment is revived by a writ for *scire facias*, the creditor has the right, in entering the revival judgment, to charge interest on the aggregate amount of principal and interest embodied in the previous judgment."). Consequently, we recognize, as does our order accompanying this opinion, the Association's right to add interest, at the legal rate, in executing on its Monroe County judgment in this County. *See* Pa.R.C.P. 3103, 3251.

Uniform Enforcement of Foreign Judgments Act, 42 Pa.C.S.A. § 4306, was denied by the trial court and affirmed, on appeal, by the Superior Court with one exception. In the pleadings it was admitted and undisputed that after the West Virginia judgment was entered, $218,811.54 had been collected by the plaintiff on account of the judgment. Consequently, while no defect existed justifying that the entire judgment be stricken, the Superior Court remanded to the trial court with directions that the judgment entered in Pennsylvania be amended and reduced by those amounts which were received and were to be applied against the unpaid judgment, citing the principle that "a court has an inherent power to correct the amount of a judgment and may do so on its own motion." 487 A.2d at 1379.

Noetzel was decided under the Uniform Enforcement of Foreign Judgments Act which appears to grant to the transferee court the same authority to act with respect to a transferred foreign (out of state) judgment as it has with respect to any judgment entered by it, limited by the doctrine of *res judicata*, "a part of the 'national jurisprudence' by virtue of the full faith and credit clause of the federal constitution." 487 A.2d at 1376.[7] This authority nevertheless is broader than that

[7] **The Uniform Enforcement of Foreign Judgments Act provides in part:**
(b) Filing and status of foreign judgments.--A copy of any foreign judgment including the docket entries incidental thereto authenticated in accordance with act of Congress or this title may be filed in the office of the clerk of any court of common pleas of this Commonwealth.

provided to the common pleas court in the intrastate transfer of a judgment between counties – equally bound by *res judicata* – by Rule 3003 which states:

> Rule 3003.Execution.Lien.Revival
>
> When a judgment is transferred to another county, execution and revival of the judgment may be had in the transferee county, except that no execution may issue in the transferee county directed to the sheriff of another county.

Pa.R.C.P. 3003. More importantly, the facts in Noetzel were undisputed and the amendment granted acknowledged partial satisfaction of an existing judgment. From a jurisdictional standpoint, payment of a transferred judgment after its entry, whether in whole or in part, may properly be considered by the transferee county and applied in reduction of the judgment in response to a writ of revival under Rule 3003. *See* Federico DiNunzio, Inc. v. DiNunzio, 185 A.2d 637, 638 (Pa.Super. 1962).

Dramatically different, we believe, is the Association's request here seeking to amend and increase the judgment of another county on disputed facts. Central to Guffy on why this cannot be done is the control which the issuing court alone has over its judgments. 18 A. 1073. This control

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> **The clerk shall treat the foreign judgment in the same manner as a judgment of any court of common pleas of this Commonwealth. A judgment so filed shall be a lien as of the date of filing and shall have the same effect and be subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of any court of common pleas of this Commonwealth and may be enforced or satisfied in like manner.**

42 Pa.C.S.A. § 4306(b).

would be lost, even if only in part, if we were to amend the judgment to provide for additional attorney fees; it could conceivably result in different amounts found to be due if we set a certain figure for the disputed attorney fees claimed, and the Monroe County Court thought differently.

In Andrews v. Wallace, the court's authority to modify a judgment entered by another court was discussed by the dissent but not by the majority. There, the creditor on the judgment obtained a judgment in New Jersey for $3,000.00 against the debtor. The judgment was transferred to this state. The creditor filed a petition to reassess the Pennsylvania judgment to add interest and attorney fees available under New Jersey law. A default was taken for the debtor's failure to answer the petition and the Pennsylvania judgment was increased to about $6,700.00. The debtor challenged the reassessment of the original judgment, claiming that the Philadelphia Court of Common Pleas was without jurisdiction to reassess damages. *See* Andrews, 657 A.2d at 24-25.

A majority of the Superior Court affirmed the trial court's decision upholding the validity of the judgment entered by default. *See* id. at 26. The reasoning of the majority, however, never addressed the issue here – the jurisdiction of the court to alter the amount of a judgment entered by another court – instead addressing questions of *in personam* and *in rem*

jurisdiction. The dissent, dealing precisely with the issue, found a want of jurisdiction to reassess the amount of damages awarded by the judgment in New Jersey, stating: "The courts in Pennsylvania lack jurisdiction to alter the amount of a judgment which has been entered in New Jersey and transferred to Pennsylvania under the Uniform Enforcement of Foreign Judgments Act . . . ." Id. (Wieand, J., dissenting).

The debtor's allowance of appeal in Andrews, relying heavily on Judge Wieand's dissent, was granted by the Pennsylvania Supreme Court but never decided, the debtor having filed a voluntary petition for bankruptcy in the Eastern District of Pennsylvania. *See* Andrews v. Campbell, 1997 WL 186322 at *1 (Ed.Pa. April 14, 1997). This notwithstanding, in addition to the open-ended result at the Supreme Court level in Andrews, the strength of the reasoning in Guffy and the following language from King v. Nimick – both decisions of our state Supreme Court, both discussing the deference accorded a judgment entered in one county and transferred to another – require us to deny the Association's Motion to Amend.

> A judgment that is transferred from one county to another, under the Act of 16th April 1840, bears a very strong analogy to a *testatum* execution. It is transferred only to facilitate its enforcement, but with a right to all the writs of *scire facias* that may be needed for that purpose. The primary judgment is still the principal one, and the court where that is, can alone take any action operating on the judgment itself, in any other way than by satisfaction, in the proper

> sense of the term. The court having the certified and secondary judgment, cannot inquire into its merits at all. And because it is a secondary judgment, it can stand only for its own costs, at the most, if the primary judgment be satisfied or set aside. And if the court having the primary judgment, order it to be satisfied, or set aside, the further process on the secondary judgment is peremptorily to be arrested, except for its own costs, in a proper case. Among equal courts, that which has the primary control of a question has the absolute control, and it alone, or its superiors, can correct its errors.

34 Pa. 297, *2 (1859). Simply stated, in this Commonwealth "[o]ne court cannot modify, disregard, or set aside the judgment of any other court of coordinate jurisdiction." Lehigh & N.E.R. Co. v. Hanhauser, 70 A. 1089, 1090 (Pa. 1908).

CONCLUSION

As a matter of deference, the practice and procedure in this Commonwealth precludes courts of coordinate jurisdiction from altering the judgments of one another. The Association chose Monroe County as the forum county to try its case and Monroe County properly assumed jurisdiction over the Association's claim. In consequence, we have neither the power nor the authority to alter the Monroe County judgment as requested by the Association.

BY THE COURT:

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P.J.

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David A. Martino, Esquire — Counsel for Defendant

ORDER OF COURT

AND NOW, this 30th day of July, 2009, upon consideration of the Plaintiff's, Wigwam Lake Club, Inc.'s, Motion to Amend Judgment, the Defendant's, George Fetch's, Answer thereto, the briefs of the parties, and hearing held, and in accordance with our Memorandum Opinion of this same date, it is hereby

ORDERED and DECREED that the Motion to Amend Judgment is denied, it being understood nevertheless that the Association may add interest, at the legal rate, in executing on the Monroe County Judgment in this County.

BY THE COURT:

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P.J.