

No. 09-0389

*In the
Supreme Court of Texas*

HOWARD S. GROSSMAN, P.A., PETITIONER

VS.

MARK A. CANTU, RESPONDENT

On Review from the Fourteenth Court of Appeals
No. 14-06-00078-CV

BRIEF ON THE MERITS

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TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL ii

TABLE OF CONTENTS iii

INDEX OF AUTHORITIES v

STATEMENT OF THE CASE viii

STATEMENT OF JURISDICTION ix

ISSUE PRESENTED ix

 1. Whether a filing under the Uniform Act remains a post-judgment proceeding

 2. Whether venue, a pre-trial procedure, can be raised in a filing under the Uniform Act

STATEMENT OF FACTS 1

SUMMARY OF ARGUMENT 1

ARGUMENT 2

 I. Standard of Review 2

 II. The Petition should be granted to resolve significant questions of statutory construction. 3

 1. The majority ignored the language of the Uniform Act 5

 2. The majority also ignored the language of the Texas venue statute 10

 3. The majority renders §35.003(a) meaningless 13

 4. The majority renders §35.003(b) meaningless 13

5.	The majority renders §35.003(c) meaningless	14
6.	The majority also ignored the purpose of the Uniform Act and a filing pursuant to §35.003 as held by all Texas courts addressing the issue	15
7.	The majority’s reliance on cases from other states does not support its holding	16
	CONCLUSION	20
	CERTIFICATE OF SERVICE	21

INDEX OF AUTHORITIES

CASES

	<u>Page</u>
<i>Bancorpsouth Bank f/k/a Bank of Mississippi v. Prevot</i> , 256 S.W.3d 719 (Tex. App.–Houston[14th Dist.] 2008, no pet.)	6, 7, 15
<i>Bahr v. Kohr</i> , 928 S.W.2d 998 (Tex. App.–San Antonio 1996, writ denied)	6, 16
<i>Bard v. Charles R. Myers Ins. Agency, Inc.</i> , 839 S.W. 2d 791, 794 (Tex.1992)	2
<i>Brown v. Lanier Worldwide, Inc.</i> , 124 S.W.3d 883 (Tex. App.–Houston [14 th Dist.] 2004, no pet)	7, 8, 17
<i>Brown’s Inc. v. Modern Welding Co.</i> , 54 S.W.3d 450 (Tex. App.–Corpus Christi, 2001, no petition)	16, 19
<i>Dear v. Russo</i> , 973 S.W.2d 445 (Tex. App.–Dallas 1998, no pet.)	16
<i>Don Dockstader Motors, Ltd. v. Patel Enterprises, Ltd.</i> , 794 S.W.2d 760 (Tex. 1990)	5, 19, 20
<i>Enviropower, LLC v. Bear, Stearns & Co., Inc.</i> , 265 S. W.3d 16, (Tex. App.–Houston [1 st Dist.] 2008, no pet.)	1, 20
<i>Fleming v. Ahurmada</i> , 193 S.W.3d 704 (Tex. App.–Corpus Christi 2006, no pet.)	8
<i>Harbison-Fischer Mfg. Co., Inc. v. Mohawk Data Sciences Corp.</i> , 823 S. W. 2d 679 (Tex. App.–Ft. Worth 1991)	19
<i>Lawrence Sys., Inc. v. Superior Feeders, Inc.</i> , 880 S.W.2d 203 (Tex. App.–Amarillo 1994, writ denied)	5, 19, 20
<i>Lenchyshyn v. Pelko Elec., Inc.</i> , 281 A.D. 2d 42, 723 N.Y.S. 2d 285 (N.Y.App. Div. 2001)	11

<i>Markham v. Diversified Land & Exploration Co.</i> , 973 S.W.2d 437 (Tex. App.-Austin 1998, pet. denied)	6
<i>Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.</i> , 132 S.W.3d 477 (Tex. App.-Houston [14 th Dist] 2004, pet. denied)	6, 15
<i>Moncrief v. Harvey</i> , No. 05-90-01116-CV, 1991 WL 258684 (Tex. App.–Dallas Nov. 26, 1991, writ denied) (not designated for publication)	10
<i>Moncrief v. Harvey</i> , 805 S.W.2d 20, 23 (Tex. App.–Dallas 1991, no writ)	16
<i>Munn v. Mohler</i> , 251 S. W. 2d 801(Tex. Civ. App.–Waco 1952, no writ)	10
<i>Reading & Bates Constr. Co. v. Baker Energy Res. Corp.</i> , 976 S.W.2d 702 (Tex. App.-Houston [1 st Dist.] 1998, pet. denied)	6
<i>State v. Shumake</i> , 199 S.W.3d 279, 284 (Tex. 2006).	3
<i>Urso v. Lyon Fin. Servs., Inc.</i> , 93 S.W.3d 276 (Tex. App.-Houston [14 th Dist.] 2002, no pet.)	6, 15
<i>Walnut Equip. Leasing Co., Inc. v. Wu</i> , 920 S.W.2d 285 (Tex. 1996)	6, 9
<i>Ware v. Everest Group, LLC</i> , 238 S.W.3d 855 (Tex. App.–Dallas 2007, pet. denied)	15
<i>Wu v. Walnut Equipment Leasing Co.</i> , 909 S.W.2d 273 (Tex. App.–Houston [14 th Dist.] 1995) <i>rev'd</i> 920 S.W.2d 285 (Tex. 1996)	9

CONSTITUTIONS, STATUTES, AND RULES

U.S. Const. art. IV § 1.	2
Tex. Civ. Prac. & Rem. Code Ann. §15.002	ix, 1
Tex. Civ. Prac. & Rem. Code Ann. §15.002(a)	4, 10

Tex. Civ. Prac. & Rem. Code Ann. §35.003	ix, 3, 4, 5, 7, 8, 9, 11 13, 14, 15, 16, 20
Tex. Civ. Prac. & Rem. Code Ann. §35.003(a)	12, 13
Tex. Civ. Prac. & Rem. Code Ann. §35.003(b)	6, 13, 14
Tex. Civ. Prac. & Rem. Code Ann. §35.003(c)	6, 14
Tex. Civ. Prac. & Rem. Code Ann. §35.008	3, 7, 9
Tex. Civ. Prac. & Rem. Code Ann. §36.001 et seq.	11
Tex. Civ. Prac. & Rem. Code Ann. §36.0041	12
Tex Gov't Code Ann. §22.001(a)(1).	ix
Tex Gov't Code Ann. §22.001(a)(2).	ix
Tex Gov't Code Ann. §22.001(a)(3).	ix
Tex Gov't Code Ann. §22.001(e).	ix
Tex. R. Civ. P. 87(1)	4

OTHER AUTHORITIES

Elaine A. Grafton Carlson, 2 MCDONALD & CARLSON, TEXAS CIVIL PRACTICE §6:38 (2d ed. 2007)	14
Uniform Foreign Country Money-Judgment Recognition Act	11

STATEMENT OF THE CASE

Nature of Case: Grossman holds final Florida judgments against Cantu which were filed in Harris County, Texas pursuant to the Uniform Enforcement of Foreign Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. §35.001, et seq. (the “Uniform Act”).

Trial Court: Cause No. 2005-64630; *Howard S. Grossman, P.A. v. Mark A. Cantu*; In the 215th Judicial District Court of Harris County, Texas, Hon. Levi Benton, then presiding.

Trial Court’s disposition: Cantu’s motion to transfer venue and motion for new trial were both denied.

Court of Appeals: Case No. 14-06-00078-CV; *Mark A. Cantu v. Howard S. Grossman, P.A.*; In the Fourteenth Court of Appeals District of Texas, Houston Division

Case Citation: 251 S.W.3d 731 (Tex. App.–Houston [14th Dist.] 2008)

Court of Appeals Disposition: Reversed and remanded with instructions to transfer the case to Hidalgo County. Majority (Seymore, J., joined by Guzman, J.). The majority opinion is attached as Appendix A. Justice Kem Thompson Frost wrote a dissenting opinion which is attached as Appendix B.

Court of Appeals Rehearings: Grossman filed a timely motion for rehearing and a motion for rehearing *en banc* in the court of appeals. Before the court of appeals issued its rulings on those, Cantu filed bankruptcy. On January 27, 2009, the automatic stay was lifted to allow the appeal to continue. On February 3, 2009, Grossman filed a motion to reinstate the appeal and asked that its rehearing motions be submitted once again for a ruling. On March 26, 2009, the appeal was reinstated. On that same day, the motion for rehearing was denied (Frost, J. voting to grant) as was the rehearing *en banc* (Yates, J.; Anderson, J.; Frost, J.; and Brown, J. voting to grant).

STATEMENT OF JURISDICTION

This Court has jurisdiction over this petition for review on the following grounds: (1) disagreement among justices on the court of appeals on a material question of law, Tex. Gov't Code §22.001(a)(1); (2) the opinion holds differently from decisions from other courts of appeals, Tex. Gov't Code §22.001(a)(2) & (e); (3) the case involves the construction of statutes necessary to a determination of the case, Tex. Gov't Code §22.001(a)(3). Those statutes at issue are the Uniform Enforcement of Foreign Judgments Act, particularly Tex. Civ. Prac. & Rem. Code Ann. §35.003 (the "Uniform Act"), and the Texas venue statute, Tex. Civ. Prac. & Rem. Code Ann. §15.002.

ISSUE PRESENTED

1. Whether a filing under the Uniform Act remains a post-judgment proceeding.
2. Whether venue, a pre-trial procedure, can be raised in a filing under the Uniform Act.

STATEMENT OF FACTS

Grossman holds final Florida judgments which were filed in Harris County, Texas under the Uniform Act.(CR2-11). Cantu has already had his day in court, both at the trial and appellate levels in Florida.(2nd SuppCR1015-1016, 1018-1026). Cantu filed a motion to transfer venue and a motion for new trial in response to Grossman's filing in Harris County(CR12-54), both of which the trial court denied(CR116-118).²

On appeal, the Fourteenth Court of Appeals addressed only one issue, that being venue.³ For the majority's ruling to be correct it had to have determined either (1) that Grossman's filing was not a post-judgment proceeding or (2) that venue, despite being a pre-trial issue, can be raised in a post-judgment setting. This would appear to be the only time a Texas court has held either to be the case. The dissenting justice correctly disagreed with the majority's methodology, analysis, and conclusion.

SUMMARY OF ARGUMENT

If the majority decision below is not reversed by this Court, complete confusion will result concerning the procedures under both the Uniform Act and the Texas venue statute, Tex. Civ. Prac. & Rem. Code Ann. §15.002. The issues are pure questions of law to be

²Although Grossman does not deny that Cantu's motion to transfer venue was denied by the trial court, Cantu did not include the trial court's order denying his motion to transfer venue in the record filed with the court of appeals. At this Court's request, Grossman's Petition for Review was supplemented with a copy of that order on the day it was filed.

³ Although the majority does not address the trial court's other ruling which denied Cantu's "Motion for New Trial, Alternatively, Motion for Denial of Recognition of Foreign State Judgment," the dissent did and held that it should also be affirmed (Dissenting Opinion, p. 22). The recent holding by the First Court of Appeals in the case of *Enviropower, LLC v. Bear, Stearns & Co., Inc.*, 265 S.W.3d 16(Tex. App.–Houston [1st Dist.] 2008, no pet.) supports the dissent's position under similar facts.

determined by a straightforward construction of the language of the Uniform Act and the Texas venue statute. This is a significant recurring issue because of the regularity of such filings and the obligation to apply full faith and credit to sister-states' judgments. U.S. Const. art. IV § 1; *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W. 2d 791, 794 (Tex.1992).

The trial court correctly ruled that the Florida final judgment was entitled to full faith and credit, that it immediately became a Texas judgment upon its filing, and that venue is not an issue in post-judgment proceedings. The majority's reversal of that decision, as the dissent analyzes in considerable detail, is error. The majority below incorrectly held that Cantu, having already contested and lost at both the trial court and appellate levels in Florida, could attack Grossman's filing of those final judgments under the Uniform Act as if it were a new lawsuit, rather than a post-judgment proceeding. Texas cases have, however, consistently recognized that a filing under the Uniform Act creates a post-judgment proceeding, and it is well settled Texas law that a venue challenge is a pre-trial issue which can not be raised after judgment. For those reasons, this petition should be granted. The impact of the majority's decision on these statutes, the disagreement among the panel members, and the conflict with other decisions of this Court and other Texas courts make a compelling case for this Court to review the decision.

ARGUMENT

I. Standard of Review. The questions presented in this petition for review are very narrow. They are also questions one would not have perceived as unsettled until the

decision below. These issues require this Court to construe the language of the Uniform Act and the Texas venue statute. Statutory construction is a question of law which is reviewed de novo. *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006).

II. The Petition should be granted to resolve significant questions of statutory construction. The Court was not reviewing a lawsuit but rather a post-judgment proceeding which the Uniform Act specifies can be filed in any county in Texas. The majority erred because a proceeding pursuant to Tex. Civ. Prac. & Rem. Code Ann. §35.003 is not a lawsuit. Such a proceeding can not be a lawsuit because there are no claims to resolve. A §35.003 proceeding begins at the post-judgment stage. The plain language of the Uniform Act confirms §35.003 filings are not subject to venue challenges and that the filing can be made in any Texas court with the necessary jurisdictional parameters. Every subdivision of §35.003, as set forth below, confirms that procedural reality:

- (a) A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state may be filed in the office of the clerk of ***any court of competent jurisdiction of this state.***
- (b) The clerk shall treat the foreign judgment in the same manner as a ***judgment of the court in which the foreign judgment is filed.***
- (c) A filed foreign judgment has the same effect and is ***subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.*** (emphasis added).

The distinction between lawsuits and a §35.003 filing is further amplified by the clear language of Tex. Civ. Prac. & Rem. Code Ann. §35.008 under the heading “Optional

Procedure”, which states: “A judgment creditor retains the right to bring an action to enforce a judgment *instead of proceeding under this chapter.*” (emphasis added).

Venue, on the other hand, is a pre-trial procedure. Thus, the majority also erred because, even if §35.003 did not plainly state that the judgment may be filed in any court of competent jurisdiction in this state, the Texas venue statute specifies that a venue challenge is a pre-trial procedure which can only be raised in the context of a lawsuit. Tex. Civ. Prac. & Rem. Code Ann. §15.002(a) provides in clear language that:

- (a) Except as otherwise provided by this subchapter or Subchapter B or C, all *lawsuits* shall be brought:
 - (1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
 - (2) in the court of defendant’s residence at the time the cause of action accrued if defendant is a natural person;
 - (3) in the county of the defendant’s principal office in this state, if the defendant is not a natural person; or
 - (4) if Subdivisions (1), (2), and (3) do not apply, in the county in which the plaintiff resided at the time of the accrual of the cause of action. (emphasis added).

Tex. R. Civ. P. 87(1) requires the motion to transfer to be heard “within a reasonable time prior to commencement of the trial on the merits.” To be timely, the challenge must be made before judgment. Venue is not a consideration in a §35.003 filing because such a filing results in entry of a Texas judgment instantly upon the instant of filing.

The majority addressed both of the issues presented for review in this petition incorrectly, side-stepping Texas law and instead basing their methodology and interpretation of their perceived intent of the Uniform Act on other state's rulings. (Majority Opinion, p. 5-7, 8-12). The dissent disagreed with that methodology, analysis, and conclusion.

1. **The majority ignored the language of the Uniform Act** . Under the majority's view of the Uniform Act there is no longer a "short-cut" procedure available to the holder of a judgment from another state. The Uniform Act's purpose is to provide speedy, more effective and efficient enforcement of other states' judgments by eliminating the need for multiple lawsuits (Dissenting Opinion, p. 5, n.7). *Don Dockstader Motors, Ltd. v. Patel Enterprises, Ltd.*, 794 S.W.2d 760, 761 (Tex. 1990); *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 206 (Tex. App.–Amarillo 1994, writ denied). The impact of the majority's ruling, which ignores that purpose, is far reaching and significant.

The damage done to the Uniform Act by the majority is so broad that all three subdivisions of §35.003 are eviscerated. The majority fails to acknowledge the distinction between a common law action to enforce a judgment and a §35.003 proceeding. Thus, according to the majority, a §35.003 filing can be no different than a new lawsuit filed to recognize a judgment. The majority said it this way in their holding:

It would therefore be inconsistent to hold that, by electing the procedure set forth in section 35.003, a judgment debtor could deprive the debtor of the opportunity he would otherwise possess to challenge the creditor's choice of venue.

(Majority Opinion, p. 8). That statement ignores the procedure established by the Uniform Act which is described in Justice Seymore's own words in his more recent opinion in *Bancorpsouth Bank f/k/a Bank of Mississippi v. Prevot*, 256 S.W.3d 719, 722 (Tex. App.-Houston[14th Dist.] 2008, no pet.), as follows:

Under the UEFJA, filing a foreign judgment in a Texas court instantly creates an enforceable, final Texas judgment. See Tex. Civ. Prac. & Rem. Code Ann. §35.003(b), (c); *Walnut Equip. Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996); *Urso v. Lyon Fin. Servs., Inc.*, 93 S.W.3d 276, 277, 279 (Tex. App.-Houston [14th Dist.] 2002, no pet.); *Bahr v. Kohr*, 928 S.W.2d 998, 100 (Tex. App.-San Antonio 1996, writ denied). ***The burden then shifts to the debtor to prove the foreign judgment should not be given full faith and credit.*** *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 484 (Tex. App.-Houston [14th Dist] 2004, pet. denied); *Reading & Bates Constr. Co. v. Baker Energy Res. Corp.*, 976 S.W.2d 702, 712 (Tex. App.-Houston [1st Dist.] 1998, pet. denied); *Markham v. Diversified Land & Exploration Co.*, 973 S.W.2d 437, 439 (Tex. App.-Austin 1998, pet. denied). ***The debtor is empowered with all procedural devices for reopening, vacating, or staying the judgment that any post-judgment debtor is allowed.*** Tex. Civ. Prac. & Rem. Code Ann. §35.003(c); *Mindis Metals*, 132 S.W.3d at 485; see *Urso*, 93 S.W.3d at 279; *Markham*, 973 S.W.2d at 440; *Bahr*, 928 S.W.2d at 100. (emphasis added).

The majority also ignores the fact that an alternative common-law action *is* a lawsuit and that the Texas venue statute applies only to the common-law action for that very reason. In fact, when called upon to recognize that difference in another case, the same court noted:

When a common-law action is pursued as the method of enforcement, the proceeding has the same character as any other civil proceeding; ***thus the judgment creditor, as plaintiff,***

initiates the action, the judgment debtor, as defendant, can assert his defenses, and an appealable judgment results.

Brown v. Lanier Worldwide, Inc., 124 S.W.3d 883, 902 (Tex. App.–Houston [14th Dist.] 2004, no pet). (emphasis added).⁴ And finally, the majority ignores the fact that “[t]he debtor is empowered with all procedural devices for reopening, vacating, or staying the judgment that ***any post-judgment debtor is allowed.***”⁵ (emphasis added).

It is unclear why the majority did not apply the principles that had guided them and other Texas courts in Uniform Act cases. The plain language of §35.008 allows, *but does not require*, a new lawsuit to enforce a sister-state judgment. The majority’s approach in requiring consistency between a new lawsuit, as §35.008 *allows*, and a filing pursuant to §35.003 fails to apply the procedures established by the Uniform Act for a §35.003 filing, whereas it does not do so for a new lawsuit. §35.008 simply allows the judgment holder to “bring an action to enforce a judgment ***instead of*** proceeding under [Chapter 35] (emphasis added).” §35.008 should have been an additional reason to uphold the distinction between a §35.003 filing and a lawsuit, not a standard with which §35.003 actions must comply.⁶

⁴ These are Justice Guzman’s words in the *Brown* case.

⁵ These are also Justice Seymore’s words. *Bancorpsouth Bank*, 256 S.W. 3d at 723.

⁶ The majority cites authority requiring a court to consider the statute as a whole, to not give one provision meaning inconsistent with the other provisions, and to not give strained readings to statutes (Majority Opinion, p. 5-6). Then the majority ignores all of those requirements in its attempt to link §35.003 and §35.008 in ways in which the Uniform Act does not appear to have intended. The dissent recognized inconsistency by the majority. (Dissenting Opinion, p. 5, 8, 15-17).

The Texas cases cited by the majority to support its contradictory position are *Brown v. Lanier Worldwide, Inc.*, 124 S.W.3d 883 (Tex. App.–Houston [14th Dist.] 2004, no pet) and *Fleming v. Ahurmada*, 193 S.W.3d 704 (Tex. App.–Corpus Christi 2006, no pet.). The *Fleming* case is not supportive of the majority’s position because it does not deal with a §35.003 filing. In fact, the *Fleming* case deals with a dispute between an attorney and his former client that resulted in two competing lawsuits so it does not even involve a procedure that could be compared to a §35.003 filing. *Fleming*, 193 S.W. 3d 709. The issue of whether one lawsuit can be used to frustrate the venue considerations in another has no bearing on the issues in this case which do not involve a lawsuit. The *Brown* case does involve recognition of a foreign judgment but through a lawsuit, not a §35.003 filing, and its holding is much more specific than the majority states. Indeed, the *Brown* case even addresses the differences between a common-law action and a §35.003 filing *Brown*. 124 S. W. 3d 902. (“When a common-law action is pursued as the method of enforcement, the proceeding has the same character as any other civil proceeding; thus, the judgment creditor, as plaintiff, initiates the action, the judgment debtor, as defendant, can assert his defenses, and an appealable judgment results.”). The problem with the majority’s reliance on the *Brown* case is that Grossman, of course, did not file a common-law action. Grossman filed a §35.003 action.⁷

⁷ As the dissent correctly noted, there is no question that Grossman complied properly with all the requirements of a §35.003 filing under the Uniform Act (Dissenting Opinion, p. 9).

If the legislature had not intended to provide the relief set forth in §35.003 to a creditor who had already litigated their claims in another state, that provision of the Uniform Act would not have been written as it is. Moreover, had the legislature not intended the procedure afforded by §35.003 to be something different from filing a new lawsuit, §35.008 would not have been needed. That is the only interpretation which allows the entire Uniform Act to have meaning and which prevents inconsistency within the Uniform Act.

In fact, this Court reversed the Fourteenth Court of Appeals in the case of *Walnut Equipment Leasing Co., Inc. v. Wu*, 920 S.W.2d 285, 286 (Tex. 1996), thus negating a similar merger of Uniform Act procedures with those which would be applicable to a common-law action. The reversal by this Court in the *Walnut Equipment Leasing* case prevented lawsuit procedures, which had been used mistakenly by a creditor long after a filing pursuant to §35.003, from overriding the short-cut procedures of the Uniform Act. This Court reversed the Fourteenth Court of Appeals in that case also and found the §35.003 filing to be the one which was effective. *See Wu v. Walnut Equipment Leasing Co.*, 909 S.W.2d 273 (Tex. App.–Houston [14th Dist.] 1995) *rev'd* 920 S.W.2d 285 (Tex. 1996). The majority below has erred by applying lawsuit procedures—in this case a venue challenge-- to a short-cut proceeding under the Uniform Act.

As the dissent noted, there is no Texas authority on which to base such a return to the pre-Uniform Act days (Dissenting Opinion, p. 8). Moreover, the exact issue had already been addressed differently by the Dallas Court of Appeals, in an unpublished opinion

recognized but brushed aside by the majority⁸ as being based on an “unpersuasive” argument that venue had been waived. *Moncrief v. Harvey*, No. 05-90-01116-CV, 1991 WL 258684, at *2 (Tex. App.–Dallas Nov. 26, 1991, writ denied) (not designated for publication) (Majority Opinion, p. 12). The *Moncrief* decision is sound, however, and directly on point with this case. The dissent recognized that *Moncrief*, while mentioning waiver, was really based upon the concept that venue is a pre-trial matter and a Uniform Act proceeding is a post-judgment proceeding. (Dissenting Opinion, p. 7, n. 14). *Id.* Instead of following the reasoning in the *Moncrief* case, the majority relied on a 1952 Waco case interpreting the rights then associated with filing a Fair Labor Standards Act lawsuit.[Majority Opinion, p. 13, citing *Munn v. Mohler*, 251 S. W. 2d 801(Tex. Civ. App.–Waco 1952, no writ)]. That case is not instructive in a Uniform Act filing which is not a lawsuit.

2. The majority also ignored the language of the Texas venue statute. The majority also ignored the language and effect of the venue statute.⁹ Even if venue could be a consideration, venue must be raised in a timely manner. Tex. Civ. Prac. & Rem. Code Ann. §15.002(a) applies to where *lawsuits* will be brought, and as the dissent also correctly notes, the procedure relating to pre-trial venue in Texas can not even be implemented in the setting

⁸ The majority’s treatment of the Dallas court of appeals decision is inexplicable when the majority makes the assertion that it is agreeing with “every state which has addressed the issue.” (Majority Opinion, p. 14, n.8).

⁹ The dissent begins its analysis with the Texas venue statute and its use of the term lawsuit. The dissent found through that analysis that the majority erred. Because both the Uniform Act and the Texas venue statute plainly state that what the majority holds is erroneous, a logical analysis reaches the same conclusion no matter which statute is examined first.

of a §35.003 filing because there is no petition from which to derive venue facts (Dissenting Opinion, p. 10). The Dissenting Opinion points out that no Texas case has ever applied venue to a post-judgment proceeding or held that a post-judgment proceeding is a lawsuit (Dissenting Opinion, p.8). Indeed, a §35.003 filing has none of the indicia of a lawsuit, as the dissenting opinion's analysis discusses at length.¹⁰

As is also noted by the dissent, a lawsuit necessarily occurs prior to the entry of a final judgment and, in fact, culminates in a final judgment (Dissenting Opinion, p. 13). One can not enforce the relief it seeks in its lawsuit until entry of a final judgment, and once at the enforcement stage, venue is foreclosed (Dissenting Opinion, p. 7). In fact, as the Dissenting Opinion also points out, the issue of personal jurisdiction over the judgment debtor, a much more significant issue than venue, is not even something which can be contested in connection with a §35.003 filing. (Dissenting Opinion, p. 13-14, citing *Lenchyshyn v. Pelko Elec., Inc.*, 281 A.D. 2d 42, 723 N.Y.S. 2d 285, 289-90(N.Y.App. Div. 2001).

While the *Lenchyshyn* case deals not with the Uniform Act at issue in this case, but with the Uniform Foreign Country Money-Judgment Recognition Act, Tex. Civ. Prac. & Rem. Code Ann. §36.001 et seq., a review of that act confirms just how specific the

¹⁰ Holdings that state a §35.003 filing is more than a registration act because it is also an enforcement proceeding do not make it a lawsuit, as the dissent also explains in much detail by outlining the requirements of a lawsuit which are missing from a §35.003 proceeding. Those include petitions (Dissenting Opinion, p. 9); citations or service of process (Dissenting Opinion, p. 11); answers (Dissenting Opinion, p. 12); claims (Dissenting Opinion, p. 12); trials or other dispositions (Dissenting Opinion, p. 13); and the need for trial court to assert in personam jurisdiction (Dissenting Opinion, p. 13).

legislature is when it intends to apply venue requirements to one of these acts. Tex. Civ. Prac. & Rem. Code Ann. §36.0041 which outlines the requirements for filing the judgment of another country states:

A copy of a foreign country judgment authenticated in accordance with an act of congress, a statute of this state, or a treaty or other international convention to which the United States is a party **may be filed in the office of the clerk of a court in the county of residence of the party against whom recognition is sought or in any other court of competent jurisdiction as allowed under the Texas venue laws.** (emphasis added).

The difference between that provision and Tex. Civ. Prac. & Rem. Code §35.003(a) which addresses the requirements for filing the judgment of a sister state makes it clear the venue laws are not to be applied to the Uniform Act before this Court and thus supports a reversal of the majority decision below. Section 35.003(a) reads as follows:

A copy of a foreign judgment authenticated in accordance with an act of congress or a statute of this state **may be filed in the office of the clerk of any court of competent jurisdiction of this state.** (emphasis added).

The majority states at one point that the exclusion of venue is more consistent with the Uniform Act's purposes (Majority Opinion, p.6). That statement is one of the few statements made by the majority with which Grossman agrees. In an apparent contradiction of its own view, however, the majority thereafter states that the general venue rule applies.(Majority Opinion, p. 7). The case upon which the majority attempts to rely for this application of the general venue statute to the Uniform Act, however, is not a Uniform Act

case but a case that involves a lawsuit. Venue cannot be addressed in a §35.003 proceeding because a judgment has already been entered. The majority never provides a legal basis for stating that the general venue statute would apply to a post-judgment matter, but even if venue did apply, the Uniform Act also addresses where the §35.003 filing can be made.

3. The majority renders §35.003(a) meaningless. The majority fails to explain its position that the Uniform Act is silent on where the action can be filed in the face of the language indicating otherwise.(Majority Opinion, p. 6). The dissent analyzes this issue at length and determines that if venue does apply, it is addressed by the Uniform Act in what would constitute a permissive venue provision. Tex. Civ. Prac. & Rem. Code Ann. §35.003(a) (Dissenting Opinion, p. 17-21). The majority also fails to deal with the loss of the purpose of the statutory language they ignore. The plain language of the Uniform Act clearly says the judgment can be filed in *any* county in Texas. The Uniform Act does not say in any county in which the general venue statute allows it to be filed. It says in *any* county in Texas. Once again the dissent recognizes and explains how rendering this language useless frustrates the true purpose of the Uniform Act (Dissenting Opinion, p. 13-14, n.21).

4. The majority renders §35.003(b) meaningless. In reaching its decision, the majority also had to ignore the language of §35.003(b) which states that the filed judgment shall be treated “in the same manner as a judgment of the court in which the foreign judgment is filed.” Tex. Civ. Prac. & Rem. Code §35.003(b). Again, the majority does not attempt to address language rendered useless by their holding. Instead, the majority asserts

it is protecting this language. Without providing a single example of how Grossman's position would be elevating a foreign judgment to rights not afforded a Texas judgment, the majority instead *demotes* the Florida judgment by allowing challenges to the Florida judgment which would not be allowed to a Texas judgment. A motion to transfer venue must be filed before the plaintiff has a judgment, even a default judgment. *See* Elaine A. Grafton Carlson, 2 MCDONALD & CARLSON, TEXAS CIVIL PRACTICE §6:38 (2d ed. 2007). Under the plain language of the Uniform Act, a foreign judgment entered in another state—and considered entered in Texas immediately upon its filing—can not be subject to a venue challenge if a Texas counterpart would not be. Tex. Civ. Prac. & Rem. Code Ann. §35.003(b). Because a Texas judgment is not subject to a venue challenge, Grossman's Florida judgment is actually being treated in a manner inferior to a Texas judgment.

5. **The majority renders §35.003(c) meaningless.** In a similar vein, the majority ignored the true impact of its holding on the language of §35.003(c) which states that the judgment has the same “effect and is *subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying a judgment as a judgment of the court in which it is filed.*” (emphasis added). In essence, the Uniform Act repeats—as if for emphasis—that nothing can be done to contest a foreign judgment filed pursuant to §35.003, that could not be done to contest a Texas *judgment*. The standard is not, as the majority has held, what can be done to contest a Texas *lawsuit*. The standard is what can be done to contest a Texas *judgment*. A venue challenge is not on the list of

considerations for providing a judgment full faith and credit. Therefore, the only way the majority can achieve its apparent goal is to ignore the procedures established by §35.003 and instead impose requirements consistent with a lawsuit even though Grossman did not elect to file a common-law action and properly followed the procedures of the Uniform Act.

6. The majority also ignored the purpose of the Uniform Act and a filing pursuant to §35.003 as held by all Texas courts addressing the issue. Tex. Civ. Prac. & Rem. Code Ann. §35.003, as the Texas legislature adopted it and as Texas courts have consistently interpreted it, creates a post-judgment proceeding from its inception, because the final judgment obtained in another state creates a Texas judgment from the instant it is filed.¹¹ *Bancorpsouth Bank f/k/a Bank of Mississippi v. Prevot*, 256 S.W.3d 722-723; *Ware v. Everest Group, LLC*, 238 S.W.3d 855, 861 (Tex. App.–Dallas 2007, pet. denied) (a §35.003 filing initiated an enforcement proceeding, but also instantly creates a Texas judgment that is enforceable, with that judgment being considered entered on the date of the filing); *Mindis Metals, Inc. v. Oilfield Motor & Control, Inc.*, 132 S.W.3d 477, 483 (Tex. App.–Houston [14th Dist.] 2004, pet. denied) (if a judgment creditor follows the procedures of the Uniform Act, the judgment becomes “enforceable as a Texas judgment on the date it is filed.”); *Urso v. Lyon Fin. Servs., Inc.*, 93 S. W. 3d 276, 279 (Tex. App.–Houston[14th

¹¹ This is admittedly not what happens when a new lawsuit is filed—even one to recognize a foreign judgment as §35.008 allows. But as §35.008 clearly states, and as seemed to be correctly recognizes in the *Brown* case, a §35.003 proceeding is an alternative to a new lawsuit, not a new lawsuit as the majority in this case contends. *Brown v. Lanier Worldwide, Inc.*, 124 S.W.3d 902.

Dist.] 2002, no pet.) (“[a] properly filed foreign judgment has the effect of initiating an enforcement proceeding and instantly rendering a valid Texas judgment”); *Brown’s Inc. v. Modern Welding Co.*, 54 S.W.3d 450, 453 (Tex. App.–Corpus Christi, 2001, no petition) (the Uniform Act “establishes a procedure for enforcing a foreign judgment by merely filing an authenticated copy of the judgment with the clerk of any court in Texas with competent jurisdiction” and “has the effect of initiating an enforcement proceeding and rendering a final Texas judgment simultaneously.”); *Dear v. Russo*, 973 S.W.2d 445, 448 (Tex. App.–Dallas 1998, no pet.) (“challenges to foreign judgments filed under the Uniform Act are generally in the nature of postjudgment proceedings because the filing of the foreign judgment instantly creates a judgment enforceable in Texas.”); *Bahr v. Kohr*, 928 S.W.2d 98, 100 (Tex. App.–San Antonio 1996, writ denied) (“the filing of a valid foreign judgment not only initiates the enforcement proceedings, but also automatically creates an enforceable Texas judgment.”); *Moncrief v. Harvey*, 805 S.W.2d 20, 23 (Tex. App.–Dallas 1991, no writ) (because the filing of a foreign judgment has the effect of initiating an enforcement proceeding and entering a final Texas judgment simultaneously, a judgment debtor has all those defenses and proceedings for reopening, vacating or staying judgment that any judgment debtor may bring post judgment and that “the debtor’s position in a 35.003 proceeding is the position of one who has suffered a no-answer default judgment.”).

7. **The majority’s reliance on cases from other states does not support its holding.** Instead of following these Texas holdings which adhere to the language and

obvious intent of the Uniform Act, the majority searched for the rulings of other states in an effort to support the apparent result sought. The majority even used and misused other states' authority to fashion its own version of the purpose of the Uniform Act. For example, the majority stated, *based upon federal authority from Kentucky*, that the purpose of the Uniform Act is "to give the holder of foreign judgment the same rights and remedies as holders of domestic judgments, and to make foreign judgments just as easy to enforce." Grossman does not disagree with that stated purpose, although it is unclear why the majority only felt it could be supported with federal authority from Kentucky. What the majority has done, however, has violated that stated purpose. The majority has created an "inferior status" for a non-Texas judgment. That is clearly not what was intended by the Uniform Act, nor does full faith and credit allow it. *Brown v. Lanier Worldwide, Inc.*, 124 S.W.3d at 902.

The majority also stated that, *based upon a New Jersey case*, the Uniform Act was "designed merely as a facilitating device and was not intended to alter any substantive rights of the parties in an action for enforcement of a foreign judgment." (Majority Opinion, p. 6). Again Grossman agrees. Based upon that stated purpose, however, the majority should not have interpreted the Uniform Act in a manner that would alter the substantive rights afforded to judgment holders who have already completed their litigation against the debtor. The majority not only diminished Grossman's rights by requiring Grossman to, in essence, file a new lawsuit to have its judgments recognized, it enhanced Cantu's rights as judgment

debtor by giving him a post-judgment venue challenge, something that debtors do not have in connection with a Texas judgment.

Based upon an Illinois case, the majority found the purpose of the Uniform Act was “to facilitate the interstate enforcement of judgments in any jurisdiction where the judgment debtor is found.” (Majority Opinion, p. 6). Grossman certainly agrees with this as a stated purpose, but, as previously discussed, that purpose has also been frustrated, if not completely eliminated, by the majority’s holding.

The majority also found, *based upon a South Carolina case*, that a purpose of the Uniform Act was “to provide a simpler, more expedient procedure to enforce foreign judgments; it is not [intended] to endow foreign creditors with substantive rights not otherwise available in the forum state.” (Majority Opinion, p. 6). The suggestion by the majority is that its holding prevents the Uniform Act from creating a “super venue statute.” Instead of preventing the creation of a “super venue statute,” however, the majority has created an inferior status of judgments—those from another state.

Based upon an Arkansas case, the majority stated the Uniform Act was intended primarily “to allow a party with a favorable judgment an opportunity to obtain prompt relief.” (Majority Opinion, p. 6). Grossman certainly agrees with that intent. The majority stated that, as with domestic judgments, this can be accomplished in accordance with Texas venue statutes, but the majority does not explain how venue is a part of the equation in Texas judgment enforcement, nor does it seem to grasp the fact that the holding can only be logical

if a Texas court would have to allow a venue challenge *after* it has entered its own judgment. The majority does not provide a single case which allows a venue challenge to a Texas judgment after it has been entered. As the dissent correctly notes, that is because there are none. (Dissenting Opinion, p. 8).

The majority also looked to other states' cases to justify its allowance of a venue challenge in this post-judgment proceeding (Majority Opinion, p. 8-12). The dissent points out ways in which those cases can be distinguished (Dissenting Opinion, p. 21).

The purpose of the Uniform Act is indeed to create a short-cut for the enforcement of a judgment that another state has already entered. The majority did not have to search other states' cases to support that proposition. *Don Dockstader Motors, Ltd. v. Patel Enterprises, Ltd.*, 794 S.W.2d 760, 761 (Tex. 1990); *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 206 (Tex. App.–Amarillo 1994, writ denied). Nor does the reliance by the majority on other states' authorities change the fact that Chapter 35 does not require another lawsuit and, in fact, was enacted to prevent the very requirements the majority now imposes upon it. *Brown's Inc. v. Modern Welding Co.*, 54 S.W.3d 450, 453 (Tex. App.–Corpus Christi, 2001, no petition) (the Uniform Act “establishes a procedure for enforcing a foreign judgment by merely filing an authenticated copy of the judgment with the clerk of any court in Texas with competent jurisdiction”). *Harbison-Fischer Mfg. Co., Inc. v. Mohawk Data Sciences Corp.*, 823 S. W. 2d 679, 685(Tex. App.–Ft. Worth 1991), *judgment set aside by agr* 840 S.W. 2d 383(Tex. 1992) (the Uniform Act does not require pleadings or the

introduction of evidence for the enforcement of a judgment of a sister state.) Therefore, the procedures in the §35.003 (non-lawsuit) procedure are purposefully streamlined and summary. *Don Dockstader Motors, Ltd. v. Patel Enterprises, Ltd.*, 794 S.W.2d 760, 761 (Tex. 1990); *Lawrence Sys., Inc. v. Superior Feeders, Inc.*, 880 S.W.2d 203, 206 (Tex. App.–Amarillo 1994, writ denied). At least they were until the majority’s holding in the court below in this case.

CONCLUSION

For the reasons stated in this motion, Grossman asks the Court to grant his Petition for Review, reverse the decision of the Fourteenth Court of Appeals, affirm the trial court ruling in all respects,¹² and for such other and further relief to which it may show itself entitled.

¹² Although the majority does not address the trial court’s other ruling which denied Cantu’s “Motion for New Trial, Alternatively, Motion for Denial of Recognition of Foreign State Judgment,” the dissent did and held that it should also be affirmed (Dissenting Opinion, p. 22). The recent holding by the First Court of Appeals in the case of *EnviroPower, LLC v. Bear, Stearns & Co., Inc.*, No. 01-04-01111-CV (Tex. App.–Houston [1st Dist.] February 21, 2008) supports the dissent’s position under similar facts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Certified Mail, Return Receipt Requested, on the 20th day of November, 2009, as follows:

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