DISSENT BY NAKAMURA, J.

I respectfully dissent from the decision not to amend or vacate the Memorandum Opinion because, upon reconsideration, I believe the reasoning we relied upon to affirm the Circuit Court of the First Circuit (circuit court) was incorrect. Nevertheless, I believe the result we reached in the Memorandum Opinion was correct and therefore I concur in the result.

I.

Having considered the arguments submitted by the parties in connection with the motion of Plaintiff-Appellant Beecher Limited (Beecher) for reconsideration of our Memorandum Opinion, I agree with Beecher that this court erred in concluding that the Uniform Foreign Money-Judgments Recognition Act (UFMJRA), Hawaii Revised Statutes (HRS) Chapter 658C, did not apply to Beecher's foreign judgment. The UFMJRA was enacted into law by the 1996 Legislature pursuant to Act 49 and took effect on April 24, 1996. 1996 Haw. Sess. L. Act 49, at 69-71. The Memorandum Opinion was based on Section 2 of Act 49 (Section 2), which provided:

> This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

Id., § 2, at 71. We concluded that because proceedings had been brought in Japan to obtain the foreign judgment and the judgment itself had become final before the effective date of the UFMJRA, Section 2 precluded the application of the UFMJRA to Beecher's attempt to register and enforce the foreign judgment in Hawai'i.

Upon further review, and in light of the Hawai'i Supreme Court's decision in Gov't Employees Ins. Co. v. Hyman, 90 Haw. 1, 975 P.2d 211 (1999), I do not believe that Section 2 operates to bar the application of the UFMJRA to this case. In Hyman, the court construed a similar "non-retroactive" provision in deciding whether a 1992 amendment made to the no-fault insurance law could be applied to claims that arose before the effective date of the amendment. The amendment at issue in Hyman modified HRS § 431:10C-212(a) by giving the provider of services

standing to contest an insurer's denial of no-fault benefits. Id. at 2, 975 P.2d at 212. The "non-retroactive" provision which the court construed stated:

> The provisions of this Act *do not affect rights, duties, or actions that are based upon events or acts which have taken place prior to the effective date of this Act*, or the effective date of any provision of this Act, nor to penalties that were incurred or proceedings begun before the effective date of this Act.

Id. at 6, 975 P.2d at 216 (emphasis in orginal).

The Hawai'i Supreme Court rejected the argument that the "non-retroactive" provision meant that none of the 1992 amendments made to the no-fault insurance law, including the amendment to HRS § 431:10C-212(a) giving standing to the provider of services, could be applied to claims that arose before the effective date of the amendments. Id. The court held:

> [T]he legislature's mandate that the 1992 amendments "not affect existing rights," by its terms, does not apply to "remedial or procedural" amendments that do not affect existing rights; and 2) the 1992 amendment to HRS § 431:10C-212(a) effected a mere "remedial or procedural" change in the law and thus applies to all pending claims, even those arising before the effective date of the amendments.

Id. (emphasis added). The court further explained:

> The legislature's "non-retroactive" mandate, by its terms, does not categorically foreclose the application of the 1992 amendments to previously arising claims, but only limits it to the extent that it "affects rights, duties, and actions" already existing. In this regard, this provision simply restates the default rule of construction that statutes shall not have retroactive effect, i.e., "impair existing rights, create new obligations or impose additional duties with respect to past transactions." . . . In the present case, however, we are still left with the question whether the 1992 amendment to HRS § 431:10C-212(a) "substantively" alters existing rights, or merely affects the means of "enforcing or giving effect" to those rights.

Id. (emphasis added).

I find crucial the supreme court's distinction between a new law that "substantively alters existing rights" and one that "merely affects the means of enforcing or giving effect to those rights." In Beecher's case, it is true that the foreign judgment became final and thus rights and duties under the judgment had matured before the UFMJRA was enacted. But Section 2 (the "non-retroactive" provision) only precludes the application of the UFMJRA if the statute would affect matured rights and duties. The application of the UFMJRA would not substantively affect the matured rights and duties embodied in Beecher's foreign judgment, but would only provide a procedural means of enforcing those rights and duties. See id.

The same analysis applies to whether applying the UFMJRA to Beecher's foreign judgment would affect "proceedings that were begun" before the statute's effective date. Even if Section 2's use of the term "proceedings" is construed as referring to the proceedings brought to obtain the judgements in the foreign countries, the use of the UFMJRA to enforce Beecher's foreign judgment in Hawai'i did not affect the proceedings previously begun in Japan to obtain the judgment. Accordingly, I conclude that Section 2 would not bar the application of the UFMJRA to Beecher's attempt to register and enforce the foreign judgment.

II.

Although I conclude that the UFMJRA was available to Beecher, I agree with Defendants-Appellees' argument that Beecher's registration of the judgment pursuant to the UFMJRA was untimely and that Beecher is barred from enforcing the foreign judgment by the six-year statute of limitation set forth in HRS § 657-1(2) (1993). The UFMJRA did not specifically repeal HRS § 657-1(2)'s six-year limitations period for the commencement of actions upon a foreign judgment. In my view, the provisions of the UFMJRA and HRS § 657-1(2) can be read together to give effect to both. See Richardson v. City and County of Honolulu, 76 Hawai'i 46, 55, 868 P.2d 1193, 1202 (1994) ("[W]here the statutes

simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored.") Reading the statutes together, I conclude that a judgment creditor has six years from the time the cause of action on the foreign judgment accrues to register the judgment under the UFMJRA.[1] If the registration is effected within the six-year period, then HRS § 657-1(2) is satisfied and the provisions of the UFMJRA are applicable. However, failure to register the judgment within the six-year period bars the judgment creditor from enforcing the judgment pursuant to the UFMJRA.[2]

I conclude that the cause of action accrued on Beecher's foreign judgment on March 31, 1995, when the Tokyo District Court upheld the judgment after a full hearing on the merits. At that time, the judgment was "final, conclusive, and enforceable, where rendered even though an appeal therefrom is pending or is subject to appeal" within the meaning of HRS § 658C-3 (Supp. 2007). See Korea Water Res. Corp. v. Lee, 8 Cal. Rptr. 3d 853, 857-60 (Cal. Ct. App. 2004); Societe Civile Succession Richard Guino v. Redstar Corp., 63 Cal. Rptr. 3d 224, 229-31 (Cal. Ct. App. 2007). Beecher was required to register the foreign judgment (or file suit to enforce the judgment) by March 31, 2001, in order to satisfy the six-year statute of

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[1] Alternatively, the judgment creditor could seek to enforce the foreign judgment without relying on the UFMJRA by filing suit to enforce the judgment within the six-year limitations period set forth in HRS § 657-1(2) (1993).

[2] Courts from other jurisdictions that have considered the statute of limitations question in the context of the Uniform Enforcement of Foreign Judgments Act (UEFJA), which is applicable to registration of sister-state judgments, have reached conflicting conclusions. See Potomac Leasing Co. v. Dasco Tech. Corp., 10 P.3d 972, 974 (Utah 2000) (noting the split among jurisdictions). I agree with the courts that have held that the forum state's statute of limitations for enforcing foreign sister-state judgments applies to the registration of such judgments under the UEFJA. E.g., id at 975; Lawrence Sys., Inc. v. Superior Feeders, Inc., 880 SW.2d 203, 205-08 (Tex. App. 1994).

limitations imposed under HRS § 657-1(2). Because Beecher failed to do so, the statute of limitations ran on its ability to enforce the foreign judgment. Thus, I concur in the result reached in the Memorandum Opinion.

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