UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1270

September Term, 2014

AMANDA WINSTEAD, ET AL.

v.

STEPHANIE KENYON, ET AL.

Meredith,
Graeff,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: March 21, 2016

This case concerns whether a Louisiana court had personal jurisdiction over a Maryland auctioneering firm that allowed a Louisiana resident to participate remotely, by telephone, in an art auction that the firm conducted in Maryland.

Amanda Winstead, the Louisiana resident, submitted the winning bid on a painting. The Maryland auctioneering firm, Sloans & Kenyon, failed to deliver the painting, claiming to have lost it. Winstead and her company, Amanda Winstead Fine Art, LLC, responded by suing the auctioneer and its principal in Louisiana, where they obtained a default judgment. Nonetheless, when Winstead and the company enrolled the judgment in Maryland and took steps to enforce it, the Circuit Court for Montgomery County vacated the judgment on the ground that Louisiana lacked personal jurisdiction over the Maryland defendants.

Winstead and her company appealed. [1]

QUESTIONS PRESENTED

Winstead and her company present two questions, which we have rephrased for clarity:

1. Did the circuit court err in vacating the Louisiana judgment by incorrectly analyzing whether Louisiana had personal jurisdiction over Sloans & Kenyon and its principal?

[1] It is not clear from the record exactly which entities are involved here. The Louisiana judgment is against Stephanie Kenyon, individually and doing business as Sloans & Kenyon Auctioneers and Appraisers and Stephanie Kenyon & Associates, Inc. It appears that Stephanie Kenyon & Associates, Inc., does business under the trade name of Sloans & Kenyon. *See Winstead v. Kenyon*, 182 So. 3d 1087, 1088 n.5 (La. App. 2015). We shall use "Sloans & Kenyon" to refer to the organizational entities against which Winstead obtained the default Louisiana judgment. We shall use "Kenyon" to refer to the person who is the principal of Sloans & Kenyon.

2. Did the circuit court err in vacating the Louisiana judgment because Sloans & Kenyon and its principal had attacked the Louisiana judgment in Louisiana?[2]

We answer the first question in the negative. We conclude that Winstead and her company did not preserve the second question for appellate review, because they did not present that issue to the circuit court. Accordingly, we shall affirm.

FACTUAL AND PROCEDURAL HISTORY

Winstead is an art dealer who lives in New Orleans, Louisiana. On several occasions, beginning in 2001, Winstead bid on and occasionally acquired paintings through a Maryland auction house, Sloans & Kenyon. Neither Winstead nor any agent for her or her LLC ever traveled to Maryland to participate in these auctions. Instead, Winstead submitted requests to bid telephonically. Those requests included her name, address, credit card information, and the lot on which she wished to bid. Sloans & Kenyon approved these requests on a case-by-case basis.

Sloans & Kenyon maintained a website advertising its upcoming auctions, its prior sales, and any items remaining unsold after auction. The website allowed users to register in order to participate remotely in auctions.

[2] Winstead phrased her questions as follows:

1. Did the Circuit Court err in vacating Appellants' foreign judgment because it applied the wrong analysis in determining whether Louisiana had jurisdiction over Appellees?
2. Did the Circuit Court err in vacating the foreign judgment despite the fact that Appellees voluntarily filed an Action for Nullity in Louisiana prior to filing its [sic] Motion to Vacate and Stay Enforcement of a Foreign Judgment in Maryland?

In addition to advertising through its website, Sloans & Kenyon placed advertisements in several trade publications, mailed brochures to former customers, including Winstead, and sent email advertisements to website users and former customers. Winstead received email advertisements and may have learned of paintings through Sloans & Kenyon's online catalog, but she did not actually purchase any artwork through the website. Nor does Winstead claim to have consulted the website in connection with her decision to bid on the painting at issue in this case. Sloans & Kenyon communicated with Winstead by telephone, email, facsimile, and regular mail.

Anyone bidding, remotely or in person, on any of Sloans & Kenyon's items, agreed to Sloans & Kenyon's terms. Those terms included clauses in which the parties agreed that Maryland's substantive law would govern any dispute and that the bidders and purchasers could sue Sloans & Kenyon only in the state or federal courts in Maryland. The terms also included a clause that limited Sloans & Kenyon's liability to the "purchase price actually paid by the purchaser" and expressly excluded any liability for consequential damages.

Sloans & Kenyon did not offer shipping services to successful bidders, but instead provided bidders only with a list of local shipping companies. Sloans & Kenyon would store sold items for ten days before transferring them to a third party, who would charge for storage.

On February 11, 2013, Winstead submitted a request to bid telephonically on a painting that Sloans & Kenyon was to auction on February 17, 2013. The request included a signed form agreeing to abide by the terms of service.

At the auction, Winstead submitted the winning bid, of $18,000.00, on an Ellsworth Woodward painting of a fountain.[3] Winstead tendered a check for $21,510.00 (which included the auctioneer's commission). Sloans & Kenyon, however, claimed to be unable to locate the painting and did not cash the check.

Notwithstanding the forum-selection clause in which she agreed to litigate only in Maryland courts, Winstead filed suit in state court in Orleans Parish, Louisiana. Winstead served Kenyon and Sloans & Kenyon in Maryland pursuant to Louisiana law. Kenyon and Sloans & Kenyon had actual notice of the suit, but did not respond to the lawsuit, claiming to have believed it not to be "legitimate."

On October 31, 2013, the Louisiana court entered a default judgment in Winstead's favor. Although Sloans & Kenyon had not cashed Winstead's check, and although the parties' agreement expressly excluded any claim for consequential damages,

[3] An image of the painting is appended to this opinion. The fountain, like the painting, is hard to find. It apparently is or was located at the H. Sophie Newcomb Memorial College, now a part of Tulane University, in New Orleans. The painter, Ellsworth Woodward (1861-1939), was an artist and educator who, though born and formally educated in New England, spent most of his life in New Orleans, where he promoted Southern art and culture. https://en.wikipedia.org/wiki/Ellsworth_Woodward (last viewed Mar. 9, 2016).

the default judgment equaled $43,500.00, more than double the painting's purchase price.[4]

On February 25, 2014, Winstead enrolled the Louisiana judgment in the Circuit Court for Montgomery County. After Winstead took steps to garnish Sloans & Kenyon's bank accounts, Kenyon and Sloans & Kenyon moved to stay or to vacate the judgment under the Uniform Enforcement of Foreign Judgments Act (the "UEFJA"), Md. Code (1974, 2013 Repl. Vol.), §§ 11-801 to -807 of the Courts and Judicial Proceedings Article ("CJP").

Meanwhile, after Winstead had tried to garnish the bank accounts but before Kenyon and Sloans & Kenyon had moved to stay or to vacate the Louisiana judgment in Montgomery County, they filed what is called an "action for nullity" in Louisiana state court. In the action for nullity, Kenyon and Sloans & Kenyon challenged the Louisiana court's subject matter jurisdiction and argued that Winstead had procured the judgment by fraud.[5]

[4] It appears that the $43,500.00 figure represented the consequential damages that Winstead had agreed to forego. She told the Louisiana court that she could have sold the painting for $60,000.00, which would have earned her a profit of $38,490.00. The Louisiana court awarded her that sum, plus an additional $5,010.00 for "time lost." *Winstead v. Kenyon*, 182 So. 3d at 1090.

[5] Although Louisiana law is well known for the unique attributes that it derives from the Napoleonic Code, we were told at oral argument that an action for nullity bears some resemblance to a post-judgment revisory motion for fraud, mistake, or irregularity under Md. Rule 2-535(b).

After a hearing on July 15, 2014, the Circuit Court for Montgomery County granted the motion to stay or to vacate the Louisiana judgment, reasoning that the Louisiana court had no personal jurisdiction over either Kenyon or Sloans & Kenyon. At that hearing, the parties referred to the action for nullity, but Winstead did not raise the issue of whether Kenyon and Sloans & Kenyon had assented to the Louisiana court's exercise of personal jurisdiction over them when they filed the action for nullity in Louisiana.

Winstead filed this timely appeal.[6]

THE CIRCUIT COURT CORRECTLY VACATED THE JUDGMENT

A. Full Faith and Credit and the Issue of Personal Jurisdiction

Article IV, section 1, of the United States Constitution provides, in relevant part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

Under the Full Faith and Credit Clause, a judgment from another state is, except in *very* limited circumstances, entitled to enforcement in this or any other state. We must even enforce another state's meritless judgment that works a harsh injustice and violates

[6] On December 6, 2014, while the appeal was pending, the Louisiana court dismissed the action for nullity. *See Winstead v. Kenyon*, 182 So. 3d at 1090. After oral argument in this case, a Louisiana appellate court reversed the dismissal of the allegations that Winstead had obtained the judgment by fraud and remanded the case for further proceedings. *Id.* at 1088. Although the appellate court mentioned the Montgomery County court's decision that Louisiana could not assert personal jurisdiction over Kenyon and Sloans & Kenyon, the appellate court did not otherwise discuss the question of personal jurisdiction.

public policy. *See*, *e.g.*, *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908) (holding that in a dispute between two Mississippi citizens over application of a Mississippi law to a contract made in Mississippi, a Mississippi court must enforce a Missouri court's judgment, obtained through questionable procedural tactics, which misinterpreted Mississippi law and reached a result a Mississippi court would never have reached).

We may, however, deny enforcement of a foreign judgment if the rendering court lacked jurisdiction, and the jurisdictional question was not "fully and fairly litigated and finally decided." *See Legum v. Brown*, 395 Md. 135, 147 (2006) (quoting *Durfee v. Duke*, 375 U.S. 106, 111 (1963)). "'[A] judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits – had jurisdiction, that is, to render the judgment.'" *Legum*, 395 Md. at 144 (quoting *Durfee*, 375 U.S. at 110) (citations omitted); *accord Imperial Hotel, Inc. v. Bell Atlantic Tri-Con Leasing Corp*., 91 Md. App. 251, 270-71 (1992) ("[i]f the foreign court did not have jurisdiction, full faith and credit need not be given").

In other words, "[i]n a suit to enforce the judgment of another state the jurisdiction of the foreign court is open to judicial inquiry." *Imperial Hotel,* 91 Md. App. at 270 (citation omitted).

B. The UEFJA and the Mechanism for Evaluating Whether the Forum Court Could Constitutionally Exercise Personal Jurisdiction Over the Defendants

The UEFJA sets forth the mechanism for obtaining full faith and credit of a foreign judgment. The act expressly contemplates a judicial inquiry into the validity of an out-of-state judgment, because it defines the term "foreign judgment" as a judgment,

order, or decree "that is entitled to full faith and credit in this State." CJP § 11-801; *see Imperial Hotel*, 91 Md. App. at 272.

Under the UEFJA, a judgment creditor may file an authenticated copy of the foreign judgment with the circuit court, as Winstead did in this case. CJP § 11-802(a). If properly authenticated and filed, a copy of the foreign judgment "has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed." CJP § 11-802(b); *see Legum*, 395 Md. at 143. Furthermore, "when a foreign judgment is properly authenticated and it appears on the face of the judgment that the court was a court of record of general jurisdiction, 'jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence or by the record itself.'" *Legum*, 395 Md. at 145 (quoting *Adam v. Saenger*, 303 U.S. 59, 62 (1938)) (citations omitted); *see Imperial Hotel*, 91 Md. App. at 271-72 ("an authenticated copy of a record is *prima facie* evidence of jurisdiction and the judgment or decree must be presumed valid until it is declared invalid by a competent court") (citation omitted).

"[I]t follows from the presumption, at least as a general matter, that, when a properly authenticated copy of a foreign judgment is presented for recording and enforcement, the burden is on a resisting party to establish that the rendering court lacked either subject matter or personal jurisdiction." *Legum*, 395 Md. at 145-46. If the resisting party "asserts a lack of . . . personal jurisdiction and offers some competent evidence to support the attack, the forum court must make an inquiry and determine from

the evidence whether jurisdiction existed." *Id.* at 147. The forum court "cannot give full faith and credit to the judgment based solely on the presumption of regularity once competent and persuasive evidence is presented that is facially sufficient to rebut the presumption." *Id.* Here, Kenyon and Sloans & Kenyon dispelled the presumption of regularity when they submitted an affidavit and other evidence, including the contract with Winstead.

In evaluating the propriety of the Louisiana court's exercise of personal jurisdiction over Kenyon and Sloans & Kenyon under the UEFJA, a Maryland court must attempt to proceed as a Louisiana court would have proceeded. *See Imperial Hotel*, 91 Md. App. at 273. Ordinarily, in determining whether a Louisiana court could exercise personal jurisdiction over a non-resident defendant, a Maryland court would engage in a two-step process. *Imperial Hotel*, 91 Md. App. at 273. First, the Maryland court would determine whether Louisiana's law "purports to authorize the assertion of personal jurisdiction." *Id.* Second, the Maryland court would determine whether the exercise of jurisdiction "violates the due process clause of the fourteenth amendment." *Id.* at 274. In this case, however, the two steps collapse into one, because the Louisiana long-arm statute expressly extends to the limits of due process. La. Rev. Stat. § 13:3201 ("a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States"); *see ACG Mediaworks, L.L.C. v. Bruce Walter Ford*, 870 So. 2d 1097, 1103 (La. 2004) (quoting *A & L Energy, Inc. v. Pegasus Grp.*, 791 So. 2d 1266, 1270 (La.), *cert. denied*, 534 U.S.

1022 (2001)) ("'the sole inquiry into jurisdiction over a nonresident is a one-step analysis of the constitutional due process requirements'").[7]

"The defense of lack of personal jurisdiction . . . raises questions of law" (*Bond v. Messerman*, 391 Md. 706, 718 (2006)), which we review on a de novo basis. *Talbot Cnty. v. Miles Point Prop., LLC*, 415 Md. 372, 384 (2010).

C. Due Process and Minimum Contacts

On the issue of the constitutionality of a state court's assertion of personal jurisdiction over a nonresident, the governing principles are exceedingly well known and require little exposition. "[A] State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has 'certain minimum contacts with [the State] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ___, 131 S. Ct. 2846, 2853 (2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 326 (1945)).

[7] Winstead complains that, in evaluating whether Louisiana could assert personal jurisdiction over Kenyon and Sloans & Kenyon, the circuit court relied on Maryland cases rather than Louisiana cases. But because Louisiana's long-arm statute expressly extends to the limits of due process (La. Rev. Stat. § 13:3201(b)), and because Maryland courts interpret the Maryland long-arm statute to extend to the limits of due process (*see*, *e.g.*, *Bond v. Messerman*, 391 Md. 706, 721 (2006)), it makes little difference that the circuit court employed Maryland cases rather than Louisiana cases in analyzing the federal due process issue. The question of whether a Louisiana court could exercise personal jurisdiction over Kenyon and her company is ultimately a question of federal constitutional law, not Louisiana state law.

In explicating the constitutional limitations on the exercise of personal jurisdiction over nonresidents, courts have distinguished between "specific jurisdiction," in which "the commission of certain 'single or occasional acts' in a State may be sufficient to render a [defendant] answerable in that State with respect to those acts, though not with respect to matters unrelated to the forum connections," *Goodyear*, 131 S. Ct. at 2853 (quoting *Int'l Shoe Co.*, 326 U.S. at 318); and "general jurisdiction," in which the defendant's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id.* at 2853 (quoting *Int'l Shoe*, 326 U.S. at 318). At oral argument, Winstead correctly conceded that this case involves specific, not general, jurisdiction.[8]

In a case of specific jurisdiction, "[m]inimum contacts may be established by actions, or even just a single act, by the nonresident defendant whereby it 'purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Ford v. Mentor Worldwide, LLC*, 2 F. Supp. 3d 898, 903 (E.D. La. 2014) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), which quoted *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Nonetheless, "[t]he

[8] More specifically, Winstead conceded that, despite the parties' history of several prior transactions, the decisive factor in the jurisdictional analysis was that Sloans & Kenyon had permitted Winstead to participate remotely from Louisiana. In other words, Winstead agreed that, notwithstanding her prior course of dealing with the Maryland auctioneer, a Louisiana court could not have exercised personal jurisdiction over Kenyon and her company had they required Winstead to travel to Maryland for the auction.

unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson*, 357 U.S. at 253.

D. Louisiana Would Not Have Exercised Personal Jurisdiction Over Kenyon

As an initial matter, we have no basis to conclude that the Louisiana court had personal jurisdiction over Kenyon (as opposed to the company, Sloans & Kenyon). Louisiana recognizes the fiduciary shield doctrine, under which "the acts of a corporate officer in [her] corporate capacity cannot form the basis for jurisdiction over [her] in an individual capacity." *Escoto v. U.S. Lending Corp*., 675 So. 2d 741, 745 (La. App. 1996). Because the record contains nothing to suggest that Kenyon did anything other than in her corporate capacity as an officer or agent of Sloans & Kenyon, the Louisiana court would not have exercised personal jurisdiction over her had the issue been raised. For that reason, we conclude that the circuit court correctly vacated the judgment against Kenyon herself.

E. Louisiana Could Not Have Exercised Personal Jurisdiction Over Sloans & Kenyon

In arguing that the Louisiana court could constitutionally exercise personal jurisdiction over Kenyon and her company, Winstead cites a total of one Louisiana case: *Crummey v. Morgan*, 965 So. 2d 497, 501-04 (La. App. 2007). *Crummey* does not support the assertion of personal jurisdiction in this case.

In *Crummey* the defendants, who were Texas residents, sold a defective recreational vehicle to the plaintiff, a resident of Louisiana. Although the defendants had

listed the vehicle on eBay, the online auction service, they were not the auctioneers; they had simply used the auction site to deliver a defective product into Louisiana and to extract payment for it from Louisiana. It is not at all surprising that the Louisiana court would exercise personal jurisdiction over persons who delivered a defective product into the stream of commerce, knowing and understanding that the product would cause damage in Louisiana.

Sloans & Kenyon, by contrast, did not sell a product to any Louisiana residents. Instead, Sloans & Kenyon provided a service – it created a market, in Maryland, in which it introduced the seller (the painting's owner) to potential purchasers, such as Winstead. For that reason, cases, like *Crummey*, concerning the jurisdiction over the sellers of defective products, are inapposite.

In cases involving the provision of services, like the auction services that Sloans & Kenyon provided in this case, Winstead's Louisiana residence "'is irrelevant and totally incidental to the benefits provided by the defendant at [its] own location.'" *Ford*, 2 F. Supp. 3d at 908 (quoting *Almeida v. Radovsky*, 506 A.2d 1373, 1376 (R.I. 1986)). It is similarly irrelevant that the defendant may have communicated with the out-of-state plaintiff about the services that the defendant would provide in its own state. Thus, for example, in *Ford*, where a Florida surgeon had allegedly committed malpractice on a Louisiana patient during a medical procedure that was performed in Florida, the Louisiana court could not exercise personal jurisdiction over the surgeon merely because

of the 22 emails that he had exchanged with the patient while she was in Louisiana. *Id.* at 906-07.

The decisive question in this case is whether Sloans & Kenyon "purposefully avail[ed] itself of the privilege of conducting activities" in Louisiana (*Hanson v. Denckla*, 357 U.S. at 253) when it entered into a contract, governed by Maryland law, and containing a Maryland forum-selection clause, in which it permitted Winstead to participate remotely, from Louisiana, in an auction that was conducted in Maryland. In our judgment, Sloans & Kenyon did not.

"'[E]ntering into a contract with an out-of-state party, without more, is not sufficient to establish minimum contacts.'" *Ford*, 2 F. Supp. 3d at 906 (quoting *Latshaw v. Johnston*, 167 F.3d 208, 211 (5th Cir. 1999)); *see Burger King*, 471 U.S. at 478 ("If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot"); *see also ACG Mediaworks*, 870 So. 2d. at 1104 ("[a]n individual's contract with an out-of-state party alone cannot establish minimum contacts in the home forum").

Similarly, "'[a]n exchange of communications in the course of developing and carrying out a contract . . . does not, by itself, constitute the required purposeful availment of the benefits and protections of [the forum state's laws].'" *Ford*, 2 F. Supp. 3d at 906 (quoting *Renoir v. Hantman's Assocs., Inc.*, 230 Fed. App'x 357, 360 (5th Cir. 2007)). "'Otherwise, jurisdiction could be exercised based only on the fortuity that one

of the parties happens to reside in the forum state.'" *Id.* (quoting *Renoir*, 230 Fed. App'x at 360).[9]

Looking beyond the fortuity of the services contract with a Louisiana resident, which is irrelevant to the minimum contacts analysis, we see nothing to suggest that Sloans & Kenyon purposefully availed itself of the privilege of conducting activities in Louisiana. Sloans & Kenyon did not agree to do anything in Louisiana; it simply allowed a Louisiana resident to participate remotely in a Maryland auction, thereby relieving the Louisiana resident of the burden of traveling to Maryland to submit her bids. *Ford*, 2 F. Supp. 3d at 907 (defendant's performance of services contract in Florida, not Louisiana, "significantly weakens the case for specific jurisdiction" in Louisiana). Furthermore, while it is not in itself decisive, the parties agreed that Maryland law would govern the contract and that they would litigate any disputes in Maryland courts. *Burger King*, 471 U.S. at 487 (due process permitted Florida to assert personal jurisdiction over franchisee who agreed to litigate disputes in Florida courts).

[9] Although it is the policy of this Court not to cite any unreported federal or state court opinion for persuasive value (*Kendall v. Howard Cnty.*, 204 Md. App. 440, 445 n.1 (2012)), it is worth noting that in *Renoir* the Fifth Circuit held that the Constitution did not permit Texas to assert personal jurisdiction over a Maryland-based auctioneer that allegedly breached its obligations to a Texas client. In *Renoir* the auctioneer had far more relevant contacts with Texas than Sloans & Kenyon had with Louisiana – the auctioneer had traveled to Texas to meet the client, and the auctioneer's agreement was governed by Texas law. *Renoir*, 230 Fed. App'x at 359. Nonetheless, the court held that because the auctioneer "never established minimum contacts with the forum state," it was unnecessary to "consider whether the exercise of personal jurisdiction would offend traditional notions of fair play and substantial justice." *Id.* at 360. Notably, the Texas long-arm statute, like its Louisiana counterpart, extends to the limits of due process. *Id.* at 359.

In this regard, it is instructive to consider the Louisiana Court of Appeal's decision in *ACG Mediaworks*. In that case, an automobile dealership in Kentucky engaged a Louisiana consultant to assist in marketing and promotional activities in Kentucky. *ACG Mediaworks,* 870 So. 2d at 1100. Kentucky law governed the contract, and the parties selected a Kentucky forum. *Id.* at 1100-01. When the consultant sued for breach in Louisiana, the trial court dismissed the case for lack of personal jurisdiction, and the Court of Appeal affirmed. In reaching its decision, the appellate court reasoned that, "[a]though the contract negotiations involved communications in Louisiana, the contemplated future consequence[] of the contract was the sales event in Kentucky, the terms of the contract provided that Kentucky law [would apply] and the forum would be Kentucky, and the parties' actual course of dealing was aimed at the event in Kentucky." *Id.* at 1104. The court added that "[t]he only reason that Louisiana was involved was because it is the location of the Plaintiff's business." *Id.* Accordingly the court concluded that the Kentucky defendants did not purposely avail themselves of the privilege of conducting activities with Louisiana and that there were "insufficient contacts with Louisiana" for the state "to obtain personal jurisdiction" over them. *Id.*

Here, the contemplated future consequence of the contract was the auction in Maryland, the contract called for the application of Maryland law and required a Maryland forum, and the parties' course of dealing was aimed at the auction in Maryland. Under the analysis of *Mediaworks*, therefore, Sloans & Kenyon had insufficient contacts with Louisiana for that state to obtain personal jurisdiction over it. *Id.* As in

Mediaworks, the only reason that Louisiana is involved is that it is the location of the plaintiff's business. *Id.*

Winstead argues that because Sloans & Kenyon allegedly has what she calls a "highly interactive" website that Louisiana residents can view, it has subjected itself to personal jurisdiction in Louisiana. Strictly speaking, however, Winstead's claims do not involve her use of the website; they involve Sloans & Kenyon's failure to deliver the painting on which she successfully bid at the auction in Maryland. Furthermore, while Winstead suggests that she may have consulted the website in connection with other purchases from Sloans & Kenyon, she conspicuously does not claim to have viewed the website before bidding on the painting at issue in this case. Because the website, therefore, has nothing to do with Winstead's claims in this case, it has no bearing on the analysis of whether Sloans & Kenyon had minimum contacts with Louisiana. *See Ford*, 2 F. Supp. 3d at 905 (although Louisiana plaintiff learned of Florida surgeon from website and communicated with him using contact information from website, Louisiana court could not exercise specific jurisdiction over surgeon, because plaintiff's claims arose from alleged malpractice in Florida, not from use of website).

In summary, Sloans & Kenyon did not acquire minimum contacts with Louisiana by entering into a contract, governed by Maryland law, in which it both permitted a Louisiana resident to participate by telephone in an auction that was conducted in Maryland and required the Louisiana resident to litigate any ensuing disputes in

Maryland courts. Accordingly, the circuit court correctly vacated the judgment against Sloans & Kenyon.

F. Winstead Did Not Preserve the Issue of Whether Kenyon and Sloans & Kenyon Submitted to Personal Jurisdiction in Louisiana By Filing the Action for Nullity

On appeal, Winstead argues, with some force, that by filing the action for nullity in Louisiana after the entry of the Louisiana judgments against them, Kenyon and Sloans & Kenyon voluntarily subjected themselves to personal jurisdiction in Louisiana. In the circuit court, however, Winstead did not raise that issue. Instead, at oral argument before the circuit court, she appears to have attempted to persuade the court to await the adjudication of the action for nullity before deciding whether to vacate the Louisiana judgments. Similarly, in her opening brief, she argued that the circuit court should have stayed its decision pending the Louisiana court's decision on the action for nullity.

We cannot fault the circuit court for not accepting Winstead's arguments on an issue that she failed to raise. In the circuit court, Winstead did not raise the issue of whether Kenyon and her company had submitted to the jurisdiction of the Louisiana court by filing the action for nullity and asking a Louisiana court to set aside the Louisiana judgment on grounds of fraud and a lack of subject matter jurisdiction. Consequently, Winstead has failed to preserve that issue for appeal. Md. Rule 8-131(a).[10]

[10] Insofar as Winstead argued that the circuit court should have awaited the Louisiana court's decision on the action for nullity, her argument has no merit. Winstead relies on CJP § 11-804(a), a provision of the UEFJA that requires a Maryland court to stay the enforcement of a foreign judgment if the judgment debtor has appealed from the foreign judgment, or will appeal from it, or has obtained a stay of (continued…)

G. Res Judicata Does Not Preclude Sloans & Kenyon from Asking a Maryland Court to Vacate the Louisiana Judgment for Lack of Personal Jurisdiction

Winstead argues that res judicata bars Sloans & Kenyon from "relitigating" the "issue" of personal jurisdiction in Maryland. She is incorrect, because the issue of personal jurisdiction has never been litigated anywhere but in Maryland.

Technically, Winstead is not invoking res judicata, which bars the relitigation of claims (*see, e.g.*, *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 106-07 (2005)), but the related doctrine of collateral estoppel, which precludes parties from relitigating issues that have been actually litigated. *See, e.g.*, *Thacker v. City of Hyattsville*, 135 Md. App. 268, 287-89 (2000). Collateral estoppel cannot apply to a default judgment, because in a default judgment "none of the issues is actually litigated." Restatement (Second) of Judgments § 27 cmt. e (1982).

Winstead argues that in the action for nullity Sloans & Kenyon chose to litigate jurisdiction in Louisiana. She neglects to note, however, that the only jurisdictional issue decided in that action concerned the Louisiana court's *subject matter* jurisdiction. The Circuit Court for Montgomery County is the sole court to have decided the issue of whether Louisiana could assert personal jurisdiction over Sloans & Kenyon, and it

execution, and has furnished the security required by the state in which the judgment was entered. That statute does not apply here, as the judgment-debtors (Kenyon and Sloans & Kenyon) had neither appealed the Louisiana judgment, nor expressed an intention to appeal it, nor obtained a stay of execution, nor furnished the required security. In any event, CJP § 11-804(a) is not designed to benefit a judgment-creditor like Winstead; it is designed to protect judgment-debtors from execution on a foreign judgment that the foreign court has stayed pending an appeal.

concluded that Louisiana could not. In these circumstances, neither res judicata nor collateral estoppel barred Sloans & Kenyon from challenging the Louisiana court's ability to assert personal jurisdiction over it when Winstead sought to enforce her judgment in Montgomery County.

CONCLUSION

On the basis of the issues that were raised below, the circuit court correctly concluded that Louisiana could not constitutionally exercise personal jurisdiction over Kenyon and Sloans & Kenyon. Accordingly, the circuit court did not err in vacating the judgments against them.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANTS TO PAY COSTS.