

STATE OF MICHIGAN
COURT OF APPEALS

PHILLIP C. HOWELL,

Plaintiff-Appellee,

v

AQUA-GOLD, INC.,

Defendant-Appellant.

UNPUBLISHED

August 26, 1997

No. 190561

Oakland Circuit Court

LC No. 94-487931-CZ

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant appeals as of right the order denying its motion to vacate a default judgment entered against it. The default judgment was entered on an arbitration award rendered by the American Arbitration Association in favor of plaintiff. We affirm.

Defendant, a Nevada corporation, and plaintiff entered into an employment contract providing that plaintiff would assist defendant in the operation of its mining business. The contract was signed at 330 Hamilton Row, Birmingham, Michigan, where defendant's president maintained an office. While defendant asserts this was not an office of the corporation, the records of the Nevada Corporations Security Commission list the address of defendant's officers as 330 Hamilton Row, Birmingham, Michigan. The contract provided that Michigan law would apply to any disputes and that "proper jurisdiction for all disputes shall be the state of Michigan." The contract also provided that any disputes would be submitted to the American Arbitration Association, whose decision would be binding on the parties.

After a dispute arose between the parties, the matter was submitted to arbitration. Following a hearing in Michigan at which defendant did not appear, the association rendered an award in the amount of \$46,494 in favor of plaintiff. Plaintiff filed a complaint in circuit court to enter a judgment on the award. Plaintiff mailed a copy of the summons and complaint to defendant at 330 Hamilton Row, using return receipt service. The signed and dated receipt was returned to plaintiff's counsel. The circuit court eventually entered a default judgment in the amount of \$51,289.79, which included interest and

costs. Defendant filed a limited appearance and moved to set aside the judgment, arguing that the court did not have jurisdiction over it. The trial court denied the motion.

Defendant first argues that the court did not have jurisdiction over it because plaintiff failed to strictly comply with the service of process rules. We disagree. MCR 2.105(D) specifies four methods of serving process on a foreign corporation. While we agree that plaintiff did not strictly comply with any of these methods, strict compliance is not required. MCR 2.105(J)(3) provides that an action which does not comply with the provisions of the rule will not be dismissed unless service failed to inform defendant of the action within the time required. *In re Gordon Estate*, 222 Mich App 148, 157-158; 564 NW2d 497 (1997). Defendant does not argue that it was not informed of the action, but that plaintiff was required to strictly comply with the rule to confer jurisdiction. However, the rule cautions that while service of process and jurisdiction are related concepts, the rules' provisions concerning service of process are not intended to limit jurisdiction over a defendant. MCR 2.105(J)(1). Therefore, the court did not abuse its discretion by refusing to vacate the default judgment on this ground.

Second, defendant argues that the court lacked personal jurisdiction over defendant, a Nevada corporation. We disagree.

MCL 600.711; MSA 27A.711 permits a Michigan court to exercise general personal jurisdiction over a defendant corporation and enables the court to render personal judgments against the corporation if the corporation consents to jurisdiction. Parties may enter written agreements which establish that any action on a controversy may be brought in this state. MCL 600.745; MSA 27A.745. Four requirements must be satisfied before a court can enforce an agreement that provides the basis for jurisdiction:

- (a) The court has power under the law of this state to entertain the action.
- (b) This state is a reasonably convenient place for the trial of the action.
- (c) The agreement as to the place of the action is not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
- (d) The defendant is served with process as provided by the court rules. [MCL 600.745(2); MSA 27A.745(2).]

Defendant contends that neither the second nor the fourth requirement was satisfied. Defendant asserts that Michigan is not a reasonably convenient forum because the corporation's business is carried on in Nevada. However, Nevada records list the address of defendant's officers as 330 Hamilton Row, Birmingham, Michigan. Correspondence between the American Arbitration Association and defendant was sent to that address. The contract was executed and signed by the parties at this address. Given these facts, we conclude that Michigan is a reasonably convenient forum, especially where defendant prepared the document containing the jurisdictional provision. Defendant also argues that the fourth requirement was not met. However, as already discussed, defendant satisfied MCR

2.105(J)(3). Therefore, the requirements of MCL 600.745; MSA 27A.745 have been satisfied, and the trial court did not abuse its discretion in denying

defendant's motion to vacate the default judgment. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).¹

Affirmed.

/s/ Michael R. Smolenski

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

¹ Because defendant consented to jurisdiction in Michigan, it is unnecessary to determine whether defendant has sufficient contacts with the state to permit the exercise of jurisdiction. *Potomac Leasing Co v The French Connection Shops, Inc*, 172 Mich App 108, 111-112; 431 NW2d 214 (1988).