

Affirmed and Memorandum Opinion filed March 30, 2010.



In The
Fourteenth Court of Appeals

NO. 14-09-00855-CV

GARETH LINDSEY, Appellant

V.

RGK CONSULTANTS, LLC, Appellee

**On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Cause No. 09CV0532**

MEMORANDUM OPINION

Appellant Gareth Lindsey challenges the trial court's order denying his special appearance. *See* Tex. Civ. Prac. & Rem. Code Ann. § 51.014(a)(7) (Vernon 2008). We affirm.

Background

In 2008, Lindsey and RGK Consultants, LLC signed a contract in which RGK agreed to provide expert legal witness services for a personal injury case being litigated in

Alabama. Lindsey is an Alabama resident and a licensed Alabama attorney. RGK is a Texas company that provides expert legal witness services regarding bus, automobile, and truck collisions. The contract contains a clause (the “Clause”) stating as follows: “Venue: For any litigation regarding this contract the venue will be Galveston, Texas.”

RGK sued Lindsey on April 16, 2009, alleging Lindsey breached the contract. Lindsey filed a special appearance on August 10, 2009. After holding a hearing, the trial court denied Lindsey’s special appearance in an order signed on September 11, 2009. The trial court did not sign findings of fact or conclusions of law.

Standard of Review

Determining whether a trial court has personal jurisdiction over a defendant presents a question of law subject to *de novo* review. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

Trial courts frequently must resolve fact questions before deciding the jurisdictional question. *Id.* If the trial court does not sign findings of fact and conclusions of law, all facts necessary to support the trial court’s ruling and supported by the evidence are implied in favor of the trial court’s decision. *Id.* at 794-95. When the appellate record includes the reporter’s record and the clerk’s record, parties may challenge the legal and factual sufficiency of these implied findings. *Id.* If the appellate court determines that the trial court’s findings are supported by sufficient evidence, or if the material facts are undisputed, then the appellate court decides as a matter of law whether those facts negate all bases for personal jurisdiction. *Id.*

The plaintiff bears the initial burden of pleading sufficient allegations to bring a nonresident within the provisions of the Texas long-arm statute. *Id.*; *Cerbone v. Farb*, 225 S.W.3d 764, 766-67 (Tex. App.—Houston [14th Dist.] 2007, no pet.). The burden then shifts to the nonresident defendant to negate all bases of personal jurisdiction asserted

by the plaintiff. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007); *Cerbone*, 225 S.W.3d at 767.

The court will not resolve merits-based questions on appeal regarding a special appearance. *Pulmosan Safety Equip. Corp. v. Lamb*, 273 S.W.3d 829, 839 (Tex. App.—Houston [14th Dist.] 2008, pet. denied).

Analysis

RGK asserts that personal jurisdiction is established with respect to Lindsey because he consented to jurisdiction in Texas pursuant to a forum selection clause. Alternatively, RGK argues that Lindsey waived his special appearance by “invoking the jurisdiction of the Galveston district court by pleading a defense to non-payment of RGK based on RGK’s inadequate expert witness services”

A mandatory forum selection clause is one of several ways a litigant may consent to personal jurisdiction in a forum. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n. 14 (1985). If a litigant signs a contract containing a mandatory forum selection clause, then that litigant has either consented to personal jurisdiction or waived the requirements for personal jurisdiction in that forum. *Id.*; *Tri-State Bldg. Specialties, Inc. v. NCI Bldg. Sys., L.P.*, 184 S.W.3d 242, 248 (Tex. App.—Houston [1st Dist.] 2005, no pet.). The Clause states that “[f]or any litigation regarding this contract the venue will be Galveston, Texas.” Lindsey argues that the Clause merely consents to Texas “for the purposes of venue” but does not “waiv[e] personal jurisdiction in [Texas].” Lindsey asserts that there must be an express waiver of his right to challenge personal jurisdiction, and that the Clause contains no express consent by Lindsey to the exercise of personal jurisdiction over him by Texas courts in Galveston.

Although the Clause does not contain language expressly consenting to personal jurisdiction, no such language is needed. The Clause is a mandatory forum selection clause, and even if such a clause does not contain an express consent by the parties to the

exercise of personal jurisdiction by courts in the selected forum, such consent is implied. *See Burger King Corp.*, 471 U.S. at 473 n. 14 (a forum selection clause is one of several ways a litigant may consent to personal jurisdiction in a forum); *Kevlin Servs., Inc. v. Lexington State Bank*, 46 F.3d 13, 14–15 (5th Cir. 1995) (reversing dismissal for lack of personal jurisdiction and relying on mandatory forum selection clause that did not contain express language consenting to the exercise of personal jurisdiction by courts in the selected forum); *Tri-State Bldg. Specialties, Inc.*, 184 S.W.3d at 248 (if a party signs a contract containing a forum selection clause, then that party has either consented to personal jurisdiction or waived the requirements for personal jurisdiction in that forum).¹

A trial court must enforce a mandatory forum selection clause unless the party opposing enforcement clearly shows that: (1) the clause is invalid for reasons of fraud or overreaching; (2) enforcement would be unreasonable or unjust; (3) enforcement would contravene a strong public policy of the forum where the suit was brought; or (4) the selected forum would be seriously inconvenient for trial. *In re Int’l Profit Assocs., Inc.*, 274 S.W.3d 672, 675 (Tex. 2009); *see M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15-17 (1972). Lindsey does not argue that the Clause is invalid or unenforceable for any of these enumerated reasons.

Under the Clause, Lindsey consented to the exercise of personal jurisdiction over him by courts in Galveston, Texas for litigation regarding the contract. Therefore, the trial court did not err in denying Lindsey’s special appearance.

¹ Lindsey also argues that the Clause does not state that Galveston is the “exclusive” venue. Parties need not use this word to agree to a mandatory forum selection clause. *See Kevlin Servs., Inc.*, 46 F.3d at 14–15; *In re Fireman’s Fund Ins. Co.*, 588 F.2d 93, 94–95 (5th Cir. 1979). The parties specified a single venue in Galveston, Texas, and they required that Galveston will be the venue for any litigation regarding the contract. Under the plain meaning of the Clause, it is a mandatory forum selection clause. *See Kevlin Servs., Inc.*, 46 F.3d at 14–15; *In re Fireman’s Fund Ins. Co.*, 588 F.2d at 94–95.

Conclusion

We affirm the trial court's September 11, 2009 order denying Lindsey's special appearance.²

/s/ William J. Boyce
Justice

Panel consists of Justices Frost, Boyce, and Sullivan.

² Because we conclude that Lindsey consented to jurisdiction in Texas under the contract's mandatory forum selection clause, we need not address RGK's argument that Lindsey waived his special appearance. *See Moki Mac River Expeditions*, 221 S.W.3d at 574; *Cerbone*, 225 S.W.3d at 767.