

STATE OF MICHIGAN
COURT OF APPEALS

KRISTIN CASSEN,

Plaintiff-Appellee,

v

RICHARD SLATER, d/b/a FIRE LAKE
FESTIVAL, L.L.C.,

Defendant-Appellant.

UNPUBLISHED

November 30, 2010

No. 291301

Oakland Circuit Court

LC No. 2008-096290-CZ

Before: TALBOT, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying his motion to quash a judgment. We affirm.

Defendant, a Michigan resident, invested in a South Carolina company whose purpose was to facilitate a four-day music festival in South Carolina. Plaintiff, operating out of her home in Virginia, was hired to work on behalf of the festival. She claimed that defendant breached various agreements related to her involvement in the festival and sued him in Virginia. The Virginia court entered a default judgment against him.

Defendant first argues that his appearance before a Virginia court to challenge the entry of the judgment against him for lack of personal jurisdiction did not thereby create jurisdiction for the Virginia court, and therefore, the Virginia judgment is not entitled to full faith and credit in Michigan.

This Court reviews jurisdictional issues de novo. See *Pontiac Food Ctr v Dep't of Cmty Health*, 282 Mich App 331, 335; 766 NW2d 42 (2008). The Uniform Enforcement of Foreign Judgments Act (UEFJA), MCL 691.1171 *et seq.*, is interpreted “to effectuate its general purpose to make uniform the law of those states which enact it.” MCL 691.1178. Pursuant to MCL 691.1173:

A copy of a foreign judgment authenticated in accordance with an act of congress or the laws of this state may be filed in the office of the clerk of the circuit court, the district court, or a municipal court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court, the district court, or a municipal court of this state. A judgment filed under this

act has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the circuit court, the district court, or a municipal court of this state and may be enforced or satisfied in like manner.

Under the UEFJA, a foreign judgment is “any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state.” MCL 691.1172. See *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 620; 692 NW2d 388 (2004).

“The Full Faith and Credit Clause, US Const, art IV, § 1, 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.’” *LME v ARS*, 261 Mich App 273, 285; 680 NW2d 902 (2004). “The purpose of the Full Faith and Credit Clause is to prevent the litigation of issues in one state that have already been decided in another.” *Id.* (internal citation and quotation marks omitted).

The res judicata effect of a judgment from another jurisdiction must be respected in Michigan courts. [The] constitutional provision relates to the effect of judicial proceedings of other states as evidence or as a bar to further litigation. [*Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 406; 509 NW2d 829 (1993), modified on other grounds by *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994) (internal citations and quotation marks omitted).]

Defendant, citing *Big Vein Coal Co of West Virginia v Read*, 229 US 31, 38; 33 S Ct 694; 57 L Ed 1053 (1913), argues that “an appearance may be made for the sole purpose of raising jurisdictional questions, without thereby submitting to the jurisdiction of the Court over the action.” Defendant concludes that his appearance before the Virginia court to challenge the entry of the judgment against him for lack of personal jurisdiction did not create jurisdiction for the Virginia court. Defendant further argues that Michigan need not give a foreign judgment full faith and credit where jurisdiction has been successfully attacked because, where there is a lack of jurisdiction over the parties, the action is void. Defendant concludes that the Michigan court erred in enforcing the judgment because the Virginia court did not, in fact, have jurisdiction. We are not persuaded by defendant’s arguments.

It is true that a collateral attack on a judgment of a sister state “may be made in the courts of this [s]tate by showing that the judgment sought to be enforced was void for want of jurisdiction in the court which issued it.” *Blackburne*, 264 Mich App at 620-621 (internal citations and quotation marks omitted). In other words,

[t]he United States Constitution does not compel Michigan courts to give a foreign judgment full faith and credit when the jurisdiction of the foreign court has been successfully attacked. Thus, to be enforceable under the UEFJA, the foreign judgment must have been entered by a court with jurisdiction over the parties and the subject matter. [*Id.* at 621 (citation omitted).]

As will be discussed below, however, Virginia’s jurisdiction has not been successfully attacked.

The case on which defendant relies held that a person could appear to challenge a court's jurisdiction for attachment proceedings without "submitting to the jurisdiction of the court over the action." *Big Vein Coal Co*, 229 US at 38. However, the Supreme Court also noted in that case that, "where the defendant appears by motion and objects to the jurisdiction, and also submits a question going to *the merits of the action*, it being one of which the court had jurisdiction, there is *a general appearance* in the case which gives jurisdiction" *Id.* (emphasis added). In addition to raising the jurisdictional issue, defendant raised issues in the Virginia court going to the merits of the action. Moreover, the issue of jurisdiction was litigated in Virginia, and this by itself precludes appellate relief for defendant.

As plaintiff points out, "a state court's final judgment determining its own jurisdiction ordinarily qualifies for full faith and credit, so long as the jurisdictional issue was fully and fairly litigated in the court that rendered the judgment." *Marshall v Marshall*, 547 US 293, 314; 126 S Ct 1735; 164 L Ed 2d 480 (2006) (emphasis removed). The general rule is that

a judgment is entitled to full faith and credit – even as to questions of jurisdiction – when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment. [*Durfee v Duke*, 375 US 106, 111; 84 S Ct 242; 11 L Ed 2d 186 (1963).]

As stated in *Tomai-Minogue v State Farm Mut Auto Ins Co*, 770 F2d 1228, 1233 (CA 4, 1985):

Where jurisdiction is in dispute, the choice between a default and *special appearance* is crucial for purposes of a subsequent challenge to enforcement. A default judgment has *res judicata* effect when rendered by a court having both subject matter and personal jurisdiction, under the full faith and credit requirement. *Morris v Jones*, 329 US 545, 550-51, 91 L Ed 488, 67 S Ct 451 (1947). Before a court is bound by a judgment rendered in another state, however, it may inquire into its jurisdictional basis, and if either personal or subject matter jurisdiction is lacking, full faith and credit is not owing. *Underwriters Nat'l Assurance Co v North Carolina Life & Accident & Health Ins Guaranty Assn*, 455 US 691, 705, 71 L Ed 2d 558, 102 S Ct 1357 (1982). Thus, a defendant sued in a foreign jurisdiction may, under *Baldwin v Iowa State Traveling Men's Assn*, 283 US 522, 525, 75 L Ed 1244, 51 S Ct 517 (1931), elect not to appear, thereby reserving the right to dispute jurisdiction subsequently, because the jurisdiction question has never been actually litigated.

In contrast, *where the defendant makes a special appearance, and the jurisdictional issue has been fully and fairly litigated and finally decided in the original forum, the resulting judgment is entitled to full faith and credit even as to the existence of personal and subject matter jurisdiction.* *Underwriters*, 455 US at 706; *Durfee v Duke*, 375 US 106, 111, 11 L Ed 2d 186, 84 S Ct 242 (1963); *Baldwin*, 283 US at 525-26. See also 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure*, §§ 4430, 4442 (1981). [Emphasis added.]

The pertinent question is whether the issue of personal jurisdiction was fully and fairly litigated in the Virginia court. On February 28, 2008, defendant filed an amended motion in the First Judicial Circuit of Virginia to set aside a default judgment entered in favor of plaintiff; defendant raised three grounds. Defendant asserted that (1) plaintiff committed fraud by suing defendant instead of Fire Lake L.L.C., (2) the judgment was void because of defective service of process under Va Code Ann 8.01-329, and (3) the judgment was void for lack of personal jurisdiction under Va Code Ann 8.01-328.1. Hearings on defendant's motion to set aside the default judgment were held on April 23, 2008, and June 2, 2008. Following the hearings, the parties also submitted memoranda of law to the court.

At the hearing, in opening statements, defense counsel argued, among other things, that the court did not have jurisdiction to enter the default judgment against defendant. Defendant gave testimony, including testimony that he had never met plaintiff, he never personally entered into any contracts with her, he never promised to pay her certain sums of money, and any payments that were made were made by Fire Lake. Furthermore, defendant stated that he never came to Virginia on behalf of Fire Lake and he never did any business in Virginia on behalf of Fire Lake or as an individual. Defendant admitted on cross-examination, however, that Fire Lake had a bank account in Michigan that he set up, and he wired money from it to plaintiff in Virginia. Defendant signed the requisite paperwork for the wire transfers as an individual and not in any capacity for Fire Lake. He also sent email to plaintiff directing her to forward contracts for his review and signature. In addition, defendant sent checks to plaintiff that were drawn on the Fire Lake account, but signed by him as an individual. Finally, defendant admitted that he gave plaintiff direction in her activities, but that he was not the only one.

The Virginia court found personal jurisdiction proper pursuant to Virginia's long-arm statute, Va Code Ann 8.01-328.1, which states, in relevant part:

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting *any* business in this Commonwealth;
 2. Contracting to supply services or things in this Commonwealth
- [Emphasis added.]

The Virginia court explained that, as held in *Glumina Bank dd v DC Diamond Corp*, 259 Va 312, 316; 527 SE2d 775 (2000), "any money judgment rendered without personal jurisdiction over the defendant is void." The court went on to note that

where the questioned judgment is rendered by default, the factual allegations contained in the pleadings are deemed true by the operation of the court's rules of procedure. Therefore, when determining if the trial court had personal jurisdiction over the defendant at the time of the questioned judgment, the court uses those factual allegations deemed true by default.

The court concluded that there was a sufficient basis to uphold the assertion of personal jurisdiction:

The complaint alleged that [defendant], a resident of Michigan, as the major investor reached several agreements with plaintiff regarding business she was to conduct on his behalf within the Commonwealth. Additionally, the motion for default judgment and/or summary judgment asked the trial court to deem her requests for admissions, which defendant received along with the complaint, admitted. The court did so finding that the “defendant is in default as alleged in plaintiff’s motion for default and/or summary judgment” and incorporating those admissions into the findings of the court. Those deemed admissions further bolster plaintiff’s case and provide a stronger basis for the court’s exercise of long-arm jurisdiction. In addition, plaintiff testified that her services were engaged for the purpose of negotiating and hiring musical acts for the festival from her home in Chesapeake, Virginia, as well as securing advertising and promotion for said festival while operating from the Chesapeake location.

The court also concluded that plaintiff did not commit fraud on the court and that service of process was proper. Accordingly, the court denied defendant’s motion to set aside the default judgment.

Generally, for an issue to be fully and fairly litigated, the party against whom estoppel is asserted must have had an opportunity, as a matter of law, to obtain review of the initial judgment. *Monat v State Farm Insurance Co*, 469 Mich 679, 685; 677 NW2d 843 (2004). Defendant makes no claim that he was unable to appeal the Virginia circuit court’s decision on personal jurisdiction to the Virginia Court of Appeals, and therefore, based on the above discussion, this issue was fully and fairly litigated and entitled to full faith and credit. Accordingly, the Michigan court did not err in denying defendant’s motion to quash entry of the Virginia judgment.

Defendant next argues that the Virginia court’s exercise of personal jurisdiction did not satisfy an applicable long-arm statute or the requirements of due process. However, because it was not error to give the Virginia judgment full faith and credit, and the Virginia court found that Virginia had personal jurisdiction over defendant, there is no basis for this Court to review the Virginia court’s decision.

The Full Faith and Credit Clause requires that a foreign judgment be given the same effect that it has in the state of its rendition. The res judicata effect of a judgment from another jurisdiction must be respected in Michigan courts. This constitutional provision relates to the effect of judicial proceedings of other states as evidence or as *a bar to further litigation*. [*Jones*, 202 Mich App at 406 (internal citations and quotation marks omitted; emphasis added).]

Affirmed.

/s/ Michael J. Talbot
/s/ Patrick M. Meter
/s/ Pat M. Donofrio