NO. COA09-275

NORTH CAROLINA COURT OF APPEALS

Filed: 20 July 2010

FRONTIER LEASING CORPORATION,
Plaintiff,

v. Wayne County
No. 08 CVS 1767

HOWARD A. HUNT, individually, and d/b/a SOUTHERN WAYNE PRO SHOP,
Defendant.

Appeal by defendant from order entered 17 November 2008 by Judge John E. Nobles in Wayne County Superior Court. Heard in the Court of Appeals 16 September 2009.

Poyner Spruill LLP, by Julie W. Hampton, for plaintiff-appellee.

Fields & Cooper, PLLC, by Elizabeth H. Fairman, for defendant-appellant.

GEER, Judge.

Defendant Howard A. Hunt appeals from the trial court's order granting plaintiff Frontier Leasing Corporation's motion to enforce a foreign default judgment entered against Mr. Hunt in Iowa. The trial court found that the lease signed by Mr. Hunt contained a valid, enforceable forum selection clause providing for jurisdiction in Iowa and concluded that the Iowa judgment was entitled to full faith and credit in North Carolina. We hold that the trial court's findings of fact supporting that conclusion are

supported by the evidence and that those findings in turn support the trial court's ultimate decision to enforce the judgment.

Facts

Mr. Hunt, a resident of Wayne County, North Carolina, has worked as a golf pro and operated the pro shop at Southern Wayne Country Club since 2002. In November 2003, Mr. Hunt was approached by Duane Noll, a salesman for Royal Links, USA. Mr. Noll proposed that in exchange for Mr. Hunt's leasing a beverage cart bearing certain advertisements from C&J Vantage Leasing Co., Royal Links would make the lease payments on the cart. Mr. Hunt agreed to the proposal and signed the lease agreement with C&J. He also signed an "Unconditional Personal Guaranty" of the lease.

The lease agreement, a pre-printed form, contained the following choice of law and choice of forum clause: "This lease shall be governed by the laws of Iowa. Any legal action concerning this lease shall be brought in federal or state court located within or for Polk County, Iowa. You consent to the jurisdiction and venue of federal and state courts in Iowa." The guaranty also contained the following clause: "This guaranty shall be governed by the laws of Iowa. I consent to the personal jurisdiction and venue of federal and state courts in Iowa."

Royal Links shipped the beverage cart to Mr. Hunt, and, after receiving the cart, Mr. Hunt made several lease payments by mailing checks to C&J in Des Moines, Iowa. Even though Mr. Hunt did not notify Royal Links that he made the payments, whenever he mailed a check to C&J, he would receive a reimbursement check from Royal

Links. In October 2004, however, Royal Links notified Mr. Hunt that it would no longer reimburse him for the lease payments. Mr. Hunt, therefore, stopped sending payments to C&J.

C&J later sold and assigned the lease signed by Mr. Hunt to Frontier. On 28 June 2005, C&J nonetheless filed suit against Mr. Hunt in Iowa district court, seeking damages for breach of the lease in the amount of $13,179.03 plus interest, court costs, and attorneys' fees. Mr. Hunt was served on 17 November 2005, but did not respond or make an appearance. C&J obtained a default judgment against Mr. Hunt on 12 June 2006. On 25 March 2008, the judgment was amended to substitute Frontier as the plaintiff.

On 18 June 2008, Frontier filed in Wayne County Superior Court a notice of filing of a foreign judgment, seeking to enforce the Iowa default judgment pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA"), N.C. Gen. Stat. §§ 1C-1701 - 1C-1708 (2009). On 9 July 2008, Mr. Hunt was served with the notice of filing of foreign judgment. On 20 August 2008, Frontier filed a second notice of filing of foreign judgment and an amended foreign judgment affidavit with a copy of the judgment attached. On 18 September 2008, Frontier moved to enforce the foreign judgment. In response, Mr. Hunt argued that the Iowa court lacked personal jurisdiction in that the lease's forum selection clause was unenforceable, and he lacked minimum contacts with the State of Iowa.

On 17 November 2008, the trial court entered an order allowing Frontier's motion to enforce the foreign judgment. Mr. Hunt timely appealed to this Court.

Discussion

The UEFJA "provides one method whereby plaintiffs may seek the enforcement in North Carolina of judgments from other states." *Lust v. Fountain of Life, Inc.*, 110 N.C. App. 298, 300, 429 S.E.2d 435, 436 (1993). Under the UEFJA, a judgment creditor must file with the clerk of superior court an authenticated copy of a foreign judgment. N.C. Gen. Stat. § 1C-1703(a). The judgment creditor must then give notice of the filing to the judgment debtor. N.C. Gen. Stat. § 1C-1704(a). If the judgment debtor takes no action within 30 days of receipt of that notice, "the judgment will be enforced in this State in the same manner as any judgment of this State." N.C. Gen. Stat. § 1C-1704(b).

The judgment debtor, however, "may file a motion for relief from, or notice of defense to, the foreign judgment on the grounds that the foreign judgment has been appealed from, or enforcement has been stayed by, the court which rendered it, or on any other ground for which relief from a judgment of this State would be allowed." N.C. Gen. Stat. § 1C-1705(a). If such a motion is filed, enforcement of the judgment is stayed until the judgment creditor "move[s] for enforcement of the foreign judgment." N.C. Gen. Stat. § 1C-1705(b). If the judgment creditor moves for enforcement, the trial court holds a hearing and determines whether the foreign judgment is entitled to full faith and credit. *Id.*

At the hearing, the judgment creditor "shall have the burden of proving that the foreign judgment is entitled to full faith and credit." N.C. Gen. Stat. § 1C-1705(b). "The introduction into evidence of a copy of the foreign judgment, authenticated pursuant to Rule 44 of the Rules of Civil Procedure, establishes a presumption that the judgment is entitled to full faith and credit." *Lust*, 110 N.C. App. at 301, 429 S.E.2d at 437. The judgment debtor can rebut this presumption by "showing that the rendering court did not have subject matter jurisdiction, did not have jurisdiction over the parties, that the judgment was obtained by fraud or collusion, that the defendant did not have notice of the proceedings, or that the claim on which the judgment is based is contrary to the public policies of North Carolina." *Id.*

Frontier introduced a properly authenticated Iowa default judgment, which thus raised a presumption that the judgment was entitled to full faith and credit. When Mr. Hunt challenged the Iowa court's jurisdiction over him, the trial court found the lease contained a valid, enforceable forum selection clause and concluded the judgment was entitled to full faith and credit. In reviewing this decision to enforce the Iowa judgment, this Court must determine whether the evidence in the record supports the trial court's findings of fact, which in turn must support the trial court's conclusions of law. *Sec. Credit Leasing, Inc. v. D.J.'s of Salisbury, Inc.*, 140 N.C. App. 521, 528, 537 S.E.2d 227, 232 (2000).

I

Mr. Hunt first contends the trial court erred in giving full faith and credit to the Iowa default judgment because he lacked sufficient minimum contacts with Iowa to support the assertion of personal jurisdiction by the Iowa courts. Mr. Hunt concedes, however, that if the forum selection clause in the lease is upheld, a minimum contacts analysis is immaterial. We, therefore, turn first to the issue whether the trial court properly determined that the forum selection clause is valid and enforceable.

Since the judgment was entered in Iowa, its validity and effect must be determined by Iowa law. *See United Leasing Corp. v. Plumides*, 138 N.C. App. 696, 698, 531 S.E.2d 891, 893 (2000) ("'[T]he validity and effect of a judgment of another state must be determined by reference to the laws of the state wherein the judgement was rendered' . . . ." (quoting *Am. Inst. of Mktg. Sys., Inc. v. Willard Realty Co.*, 277 N.C. 230, 234, 176 S.E.2d 775, 777 (1970))). Further, defendant agrees with plaintiff that Iowa law applies in deciding whether the forum selection clause is enforceable.

Under Iowa law, "[f]orum selection clauses can constitute sufficient consent by a nonresident defendant to the exercise of personal jurisdiction by a foreign court." *Liberty Bank, F.S.B. v. Best Litho, Inc.*, 737 N.W.2d 312, 315 (Iowa Ct. App. 2007). "Forum selection clauses are 'prima facie valid and should be enforced unless enforcement is shown by the resisting party to be "unreasonable" under the circumstances.'" *Id.* (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10, 32 L. Ed. 2d 513, 520, 92

S. Ct. 1907, 1913 (1972), *superseded by statute as stated in Outokumpu Eng'g Enters. v. Kvaerner Enviropower*, 685 A.2d 724 (Del. Super. Ct. 1996)).

Iowa law provides that "[a] choice of forum made in an 'arm's-length negotiation by experienced and sophisticated businessmen' should be honored by the parties and enforced by the courts 'absent some compelling and countervailing reason.'" *Id.* (quoting *M/S Bremen*, 407 U.S. at 12, 32 L. Ed. 2d at 521, 92 S. Ct. at 1914). In *Liberty*, the court upheld the forum selection clause on the ground that "[t]here [wa]s nothing present in the record that would indicate the renters [we]re not experienced and sophisticated business people that entered into an arms-length transaction." *Id.* at 316. The court stressed that "[i]t is 'incumbent on the party seeking to escape his contract to show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court.'" *Id.* at 315 (quoting *M/S Bremen*, 407 U.S. at 18, 32 L. Ed. 2d at 525, 92 S. Ct. at 1917).

The Iowa Supreme Court applied these principles in *EFCO Corp. v. Norman Highway Constructors, Inc.*, 606 N.W.2d 297, 298 (Iowa 2000), a decision we believe controls in this appeal. After a dispute arose between the parties about how much the defendant owed EFCO under a lease, EFCO filed an action to recover unpaid lease payments. *Id.* The defendant moved to dismiss the action based on its lack of minimum contacts with the State of Iowa. *Id.* The district court, however, concluded that personal jurisdiction

existed as a result of a forum selection clause in the lease providing that "[a]ny action in regard to this agreement or arising out of its terms and conditions may be instituted and litigated in the Iowa District Court for Polk County, Iowa." *Id.* at 299.

On appeal, the Iowa Supreme Court first acknowledged that Iowa law recognizes the enforceability of agreements consenting to jurisdiction in Iowa. *Id.* The defendant, however, "[sought] to avoid the consequences of the choice-of-forum clause by asserting that this provision of the agreement was a contract of adhesion." *Id.* at 300. The Iowa Supreme Court noted the defendant urged "that the clause in question was contained on the reverse side of the form contract on which no signature lines appeared. In addition, the officer of the company executing the agreement testified that he had not read the choice-of-forum clause." *Id.* The Iowa Supreme Court held "that this evidence is insufficient to establish the invalidity of the choice-of-forum clause as a matter of law. Consequently, the issue was one of fact for the district court to resolve in ruling on the motion to dismiss." *Id.* The Iowa Supreme Court ultimately concluded that the district court did not err in assuming in personam jurisdiction over the defendant. *Id.*

Mr. Hunt argues that the forum selection clause in the lease he signed should not be enforced because the clause was not prominently displayed on the form, which was pre-printed; there was no bargaining over the terms of the lease; Mr. Hunt received no legal assistance before signing the lease; and there is no evidence Mr. Hunt read the clause. *EFCO*, however, established that such

evidence is insufficient, standing alone. Moreover, in contrast to *EFCO*, the clause in this case appeared in the second paragraph of the first page of the lease, and a second forum selection clause also was set out immediately before the signature line of the personal guaranty.

Mr. Hunt further argues that the forum selection clause was unenforceable because he was not a sophisticated businessman with experience in these matters. As in *Liberty*, however, Mr. Hunt has pointed to nothing in the record showing that he was anything but an experienced businessman. The trial court specifically found that Mr. Hunt had been employed as a golf pro and operated the pro shop at the Southern Wayne Country Club since 2002. Although Mr. Hunt submitted an affidavit, he did not present any evidence that he was nonetheless unsophisticated and unable to understand the terms of the lease. He simply did not address the issue.

Mr. Hunt also challenges the trial court's finding that neither Frontier nor its assignor, C&J, was a party to the agreement between Mr. Hunt and Royal Links providing that Royal Links would reimburse him for the lease payments made to C&J. Mr. Hunt, however, never clearly explains why this finding of fact is relevant to the enforcement of the judgment. Although Mr. Hunt contends that the lease itself was unenforceable because the Royal Links salesman fraudulently induced him to enter into the lease with C&J, Mr. Hunt represents in his brief that he "is not arguing that because the lease was induced by fraud, that the forum selection consent to jurisdiction clause is unenforceable." He

continues: "Rather, defendant appellant's position is that the inconspicuous forum selection consent to jurisdiction clause is invalid for overreaching and the enforcement of such has deprived him of his right to present the fraud claims, and other defenses, at trial."

We have already addressed Mr. Hunt's arguments regarding the allegedly inconspicuous nature of the forum selection clause and whether the trial court erred in not finding that the clause was the result of overreaching. The fact that Mr. Hunt has not had an opportunity to present his fraud claims is not a basis for invalidating the forum selection clause, but rather a consequence of Mr. Hunt's choice not to defend the Iowa action.[1] In any event, we hold that there is evidence to support the trial court's finding of fact that C&J was never a party to the agreement between Royal Links and Mr. Hunt regarding reimbursement for payments. Although Mr. Hunt points to evidence that would support a contrary finding, the trial court's finding of fact, supported by competent evidence, is binding.

Mr. Hunt also compares this case to *Frontier Leasing Corp. v. Shah*, 931 A.2d 676, 681 (Pa. Super. 2007), in which a Pennsylvania Superior Court, applying Iowa law, concluded that enforcement of

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[1]Although Mr. Hunt contends that his fraud claims "could not be adequately tried in Iowa where he would have no subpoena power over the witnesses located in North Carolina," Mr. Hunt has not explained why he could not have taken depositions of his North Carolina witnesses and offered them into evidence under Rule 1.704(3) of the Iowa Rules of Civil Procedure, Rule 804(b)(1) of the Iowa Rules of Evidence, and Rule 28(d)(1) of the North Carolina Rules of Civil Procedure.

the forum selection clause at issue "would be unreasonable under the circumstances." That clause provided: "'You agree that this Lease shall be performed by lessee in Des Moines, Polk County, Iowa, and any suit on this Lease shall be proper if filed in Des Moines, Polk County, Iowa.'" *Id.* at 681-82. The court reasoned that "[a]lthough the forum selection clause is not drafted with clarity and precision, we believe the Iowa courts would uphold the validity of the clause in certain situations — such as if the clause had been bargained for by experienced businessmen." *Id.* at 682. The court declined enforcement as to the defendant because he was an immigrant with limited understanding of the English language. In addition, the clause at issue — appearing within boilerplate on the second page of the lease and not printed in bold — did not specifically reference jurisdiction or venue, but rather merely said that an action in Iowa would be "proper." *Id.* The court concluded that "if there is anything substantive to the notion that forum selection clauses should be vitiated if unreasonable, this is the case in which to apply that notion." *Id.*

Mr. Hunt, a golf pro and the operator of a pro shop in a country club, simply cannot be compared to the defendant in *Shah*. Further, the clause at issue specifically stated that by signing the lease, Mr. Hunt consented to Iowa jurisdiction. There is no indication in the record that had Mr. Hunt read the lease, he would not have understood the forum selection clause. We, therefore, believe that *EFCO* and *Liberty* compel the conclusion that this clause is enforceable. Because we hold that the trial court did

not err in enforcing the forum selection clause, we need not address the issue of minimum contacts.

II

Mr. Hunt also contends that since C&J assigned the lease to Frontier, C&J was not the real party in interest and lacked standing to bring the action in Iowa. Mr. Hunt acknowledges he did not make this argument before the trial court, but argues that standing, as a jurisdictional issue, can be raised at any time. While, under North Carolina law, standing is a question of subject matter jurisdiction that can be raised at any time, *Aubin v. Susi*, 149 N.C. App. 320, 324, 560 S.E.2d 875, 878-79, *disc. review denied*, 356 N.C. 610, 574 S.E.2d 474 (2002), it is well established that "[t]he validity and effect of a judgment of another state must be determined by the laws of that state." *Thomas v. Frosty Morn Meats, Inc.*, 266 N.C. 523, 527, 146 S.E.2d 397, 401 (1966).

In *Brentwood Subdivision Rd. Ass'n v. Cooper*, 461 N.W.2d 340, 342 (Iowa App. 1990) (quoting *Richards v. Iowa Dep't of Revenue*, 414 N.W.2d 344, 349 (Iowa 1987)), the Iowa Court of Appeals recognized that "'issues of subject matter jurisdiction can be raised at any time[,]'" but held that "'standing is not among these issues and must be raised from the outset in order to preserve error . . . .'" Under Iowa law, therefore, Mr. Hunt's argument is precluded by his failure to raise it below.

Consequently, we affirm the trial court's order enforcing the foreign default judgment.

Affirmed.

Judges STROUD and ERVIN concur.

Report per Rule 30(e).