

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

DAVIS DAVIS ATTORNEYS

Appellant

v.

CONTINUANT, INC.

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 895 WDA 2012

Appeal from the Order Entered May 24, 2012  
In the Court of Common Pleas of Allegheny County  
Civil Division at No(s): GD-11-014544

BEFORE: BOWES, J., DONOHUE, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

Filed: May 1, 2013

Appellant, Davis Davis Attorneys (Davis), appeals from the May 24, 2012 order, denying Davis's emergency petition to strike a foreign judgment in the amount of \$83,094.27 entered in favor of Appellee, Continuant, Inc. (Continuant), arising from an action originally filed in Pierce County, Washington. After careful review, we affirm.

The trial court summarized the relevant factual and procedural history of this case as follows.

[Davis] is a Pennsylvania professional corporation, and [Continuant] is a communications business in the State of Washington. The judgment in question [in this case] was entered in the State of Washington. In its [e]mergency [p]etition to [s]trike [f]oreign [j]udgment and [b]rief in [s]upport, [Davis] states that it never conducted any business in the State of Washington, does not own any property there, and has not had any contacts with the State

of Washington other than the events involving [Continuant].

According to [Davis]'s [p]etition and [b]rief, the events giving rise to the judgment began in 2007 when the parties discussed communications services that [Continuant] claimed it could perform for [Davis]. The discussions began in person in Nevada and continued via email. The subject matter of the contract was an upgrade of hardware and software of [Davis]'s telephone dialing system, which was located at [Davis]'s place of business in Allegheny County, Pennsylvania. [Davis] signed the contract in Pittsburgh in 2007, and in March 2008 [Continuant] sent its employees to [Davis]'s place of business to install the upgrades.

[Davis] believed that [Continuant] committed multiple breaches of the contract, and was planning to file a breach of contract action against [Continuant]. However, before [Davis] did so, [Continuant] filed its own action against [Davis] in the State of Washington. [Davis] appeared in the Washington action through local counsel there. [Davis] contested the issue of jurisdiction in Washington State. The Washington State court found that it did have personal jurisdiction over [Davis].

[Davis] stat[ed] in its [b]rief in [s]upport of the instant [p]etition [filed in Pennsylvania] that it had only authorized its local counsel in Washington State to enter an appearance for the purpose of contesting personal jurisdiction. At oral argument [on its motion to strike], on May 24, 2012, [Davis] averred that its local counsel suggested preparing an [a]nswer and [n]ew [m]atter and counterclaim, and that [Davis] participated in preparing it, but did not give local counsel the authorization to file it. Local counsel did, however, file the [a]nswer without [Davis]'s consent or authorization. [Davis] then allowed local counsel to withdraw from the case. The [a]nswer filed in Washington State was never

stricken. [Continuant] then entered judgment against [Davis] in Washington State by default.

Trial Court Opinion, 8/10/12, at 1-3.

On August 1, 2011, Continuant filed a petition for a writ of execution of the Washington State judgment in the Court of Common Pleas of Allegheny County. On August 11, 2011, Davis filed its emergency petition to strike the foreign judgment. Continuant filed preliminary objections to Davis's emergency petition to strike on September 2, 2011, which were denied by the trial court on October 12, 2011. The trial court held a hearing on Davis's petition on May 24, 2012. That same day, the trial court entered an order denying Davis's petition. On June 4, 2012, Davis filed a timely notice of appeal.<sup>1</sup>

On appeal, Davis raises four issues for our review.

1. Did the [t]rial [c]ourt err in denying [Davis]'s [p]etition to [s]trike [f]oreign [j]udgment by ruling that the [t]rial [c]ourt was required to recognize [Continuant]'s foreign judgment?
2. Was the venue selection clause in the parties' contract enforceable where enforcement of the provision would have effectively deprived [Davis] of a meaningful opportunity to be heard in the foreign [c]ourt?
3. Did the [t]rial [c]ourt in Washington State that entered the judgment against [Davis] have personal jurisdiction over [Davis]?

---

<sup>1</sup> Davis and the trial court have complied with Pa.R.A.P. 1925.

4. Did [Davis] agree to submit itself to the personal jurisdiction of the foreign [c]ourt that issues the judgment?

Davis's Brief at 4.

"Our standard of review from the denial of [an a]ppellant's petition[] to open and/or strike [a] foreign judgment is limited to whether the trial court manifestly abused its discretion or committed an error of law."

***Olympus Corp. v. Canady***, 962 A.2d 671, 673 (Pa. Super. 2008) (citation omitted). However, to the extent that Davis's argument raises questions of law, our standard of review is *de novo* and our scope of review is plenary.

***Id.***

We elect to address all of Davis's issues together, as they are all interrelated. Davis avers that the trial court erred in denying its motion to strike the Washington judgment because the Washington Superior Court did not have personal jurisdiction over Davis, and Davis never submitted itself to the jurisdiction of the Washington courts. Davis's Brief at 13-16. Continuant counters that Davis had an opportunity to litigate the issue of personal jurisdiction in the Washington court and may not re-litigate that issue *de novo* here in Pennsylvania. Continuant's Brief at 11.

Article IV, Section 1 of the Federal Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. As such, "[w]e are obligated under the Full Faith and Credit Clause ... to recognize

and enforce the judgments of [our] sister states.” **Frontier Leasing Corp. v. Shah**, 931 A.2d 676, 679 (Pa. Super. 2007) (citation omitted); **see also Baker v. Thomas v. Gen. Motors Corp.**, 522 U.S. 222, 233 (1998) (stating, “[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land[.]”). “A judgment is not valid and enforceable, however, unless the sister state court that entered the judgment had personal jurisdiction over the defendant and afforded him or her due process of law.” **Frontier Leasing Corp., supra**. As a result, this case would ordinarily come down to the question of whether or not the Washington State court had personal jurisdiction over Davis.

However, the United States Supreme Court has held that a sister state court’s “judgment amounts to *res judicata* on the question of the jurisdiction of the court which rendered it over the person of the [defendant].” **Baldwin v. Iowa State Travelling Men’s Ass’n**, 283 U.S. 522, 524 (1931). When a state court renders a decision on personal jurisdiction, that judgment is entitled to full faith and credit and is *res judicata* when the person challenging the court’s exercise of jurisdiction over him had a fair opportunity to litigate that question. **Durfee v. Duke**, 375 U.S. 106, 110-111 (1963).

[W]hile it is established that a court in one State, when asked to give effect to the judgment of a court in another State, may constitutionally inquire into the foreign court’s jurisdiction to render that

judgment, the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule 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.

**Id.** at 111; **see also Am. Sur. Co. v. Baldwin**, 287 U.S. 156, 166 (1932) (stating, "[t]he principles of *res judicata* apply to questions of jurisdiction as well as to other issues[ ]"); **Iowa State Travelling Men's Ass'n, supra** (stating that the Due Process Clause of the Fourteenth Amendment contains "no right to litigate the same question twice[ ]").

Pennsylvania courts have followed the Supreme Court's lead in this area. In **Cairns v. Cairns**, 741 A.2d 800 (Pa. Super. 1999), a wife filed for divorce in Oregon and served a copy of her complaint on her then-husband, a Pennsylvania resident. **Id.** at 801. The husband filed objections in the Oregon trial court, asserting that the court did not have personal jurisdiction over him. **Id.** The Oregon court concluded that it did have jurisdiction over the parties. **Id.** The husband further participated in the proceedings through counsel and telephone testimony. **Id.** The Oregon court subsequently issued a child support order and neither party filed an appeal. **Id.** Thereafter, the husband filed a motion in the Philadelphia County Court of Common Pleas seeking to transfer venue to Pennsylvania on the grounds that "he could not afford to attend hearings or prosecute his case in

Oregon.” **Id.** The husband argued that the Oregon court’s exercise of personal jurisdiction over him was invalid. **Id.** This Court observed that the husband received a full and fair opportunity to litigate that question in Oregon.

While it appears that father raised timely jurisdictional challenges, father does not argue, nor is there any evidence of record to suggest, that he has been denied the ability to seek review of Oregon’s Circuit Court decision that it had personal jurisdiction over him. While it is clear that certain documents relative to this case are not a part of the certified record, we find no reference to or any suggestion of father having sought review by an Oregon appellate court.

**Id.** at 802. The **Cairns** Court went on to hold that to the extent that the husband wished to challenge the applicability and constitutionality of the Oregon statute used to exercise personal jurisdiction over him “the appropriate manner in which to challenge the validity of the statute was by direct appeal to the Oregon Court of Appeals.” **Id.** We therefore concluded that the husband was “precluded from collaterally attacking the issues of personal jurisdiction and the constitutionality of the Oregon statute in Pennsylvania and, therefore, the denial of his petition to transfer venue was appropriate.” **Id.** at 803.

In the case *sub judice*, we find **Cairns** to be instructive. Davis does not dispute that it had notice of the suit Continuant had filed. N.T., 5/24/12, at 5. Davis also acknowledges that it did have an opportunity to litigate the question of personal jurisdiction in the Washington courts. **Id.** In fact,

Davis did litigate the personal jurisdiction question, but unsuccessfully. ***Id.*** at 6. Although Davis claims that he was not authorized to do so, its local Washington counsel further participated in the Pierce County proceedings by filing an answer and counterclaim to Continuant's complaint, and then Davis allowed local counsel to withdraw. ***Id.*** at 10.

There can be no doubt that Davis would have been fully within its rights to do nothing in the Washington litigation and wait to challenge the personal jurisdiction of the Washington court in Pennsylvania when Continuant sought to enforce its judgment. ***See First Fid. Bank N.A. v. Standard Mach. & Equip. Co.***, 581 A.2d 629, 631 (Pa. Super. 1990) (stating, "[i]t is established practice for Pennsylvania to entertain an attack on a foreign judgment even though the defendant did not appear in that forum to defend on the basis of lack of personal jurisdiction[ ]"), *appeal denied*, 588 A.2d 914 (Pa. 1991). Instead, however, Davis chose to participate in the Pierce County proceedings and litigate the issue of personal jurisdiction in Washington State. Therefore, if Davis had wished to challenge the Washington trial court's decision that it could exercise personal jurisdiction over it, its remedy was to take that issue to the Washington Court of Appeals. ***See Cairns, supra.*** Davis did not file such an appeal. As a result, Davis is now "precluded from collaterally attacking the issue [of the exercise of] personal jurisdiction ... [by] the [Washington courts]." ***Id.*** Because the Washington court's judgment, including its decision on the issue



of personal jurisdiction, is entitled to full faith and credit and is *res judicata*, all of Davis's issues on appeal fail on this ground.<sup>2</sup>

Based on the foregoing, we conclude that the trial court did not abuse its discretion or commit an error of law when it denied Davis's emergency petition to strike the Washington judgment.<sup>3</sup> ***See Olympus Corp., supra.*** Accordingly, the trial court's May 24, 2012 order is affirmed.

---

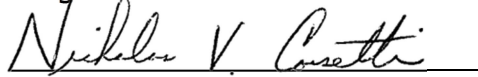
<sup>2</sup> The trial court concluded that Davis was not entitled to relief because it waived its jurisdictional argument and submitted itself to the jurisdiction of the Washington court. ***See*** Trial Court Opinion, 8/10/12, at 5. However, "[a]s an appellate court, we may uphold a decision of the trial court if there is any proper basis for the result reached; thus we are not constrained to affirm on the grounds relied upon by the trial court." ***In re Estate of Strahsmeier***, 54 A.3d 359, 364 n.17 (Pa. Super. 2012) (citation omitted).

<sup>3</sup> Even if we were to reach the merits of Davis's jurisdictional challenge, Davis would not be entitled to relief. Under Washington law, a party waives its challenge to personal jurisdiction if it "consents, expressly or impliedly, to the court's exercising jurisdiction." ***In re Marriage of Steele***, 957 P.2d 247, 250 (Wash. Ct. App. 1998), *review denied*, 972 P.2d 467 (Wash. 1998). One of the ways in which a party consents to jurisdiction is when the party seeks "affirmative relief" from the court exercising jurisdiction. ***See In re Schneider***, 268 P.3d 215, 219 (Wash. 2011); ***see also In re Support of Livingston***, 719 P.2d 166, 167 (Wash. Ct. App. 1986) (holding, "[e]ven where the defendant has properly contested jurisdiction ... the defendant may waive the defense of lack of personal jurisdiction by seeking affirmative relief and thereby invoking the jurisdiction of the court[.]") (citation omitted), *review denied*, 107 Wash.2d 1005 (1986).

In the instant case, Davis properly raised the question of personal jurisdiction in Washington. However, subsequent to the trial court's ruling against it, Davis's counsel filed an answer and counterclaim. Although Davis claims local counsel did not have Davis's consent, instead of instructing counsel to retract that answer and counterclaim, Davis allowed local counsel to withdraw and do nothing further in the proceedings. Therefore, if we were to reach the merits of Davis's personal jurisdiction argument, we would  
(Footnote Continued Next Page)

Order affirmed.

Judgment Entered.



Deputy Prothonotary

Date: 5/1/2013

(Footnote Continued) \_\_\_\_\_

conclude that Davis sought affirmative relief from the Washington court by filing their answer and counterclaim and never seeking to withdraw it. **See *Schneider, supra; Livingston, supra***. As a result, we would agree with the trial court's conclusion that Davis "*did* submit itself to Washington State's jurisdiction ...." Trial Court Opinion, 8/10/12, at 5 (emphasis in original).