

Opinion issued January 27, 2011



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-01037-CV

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Appellant
V.
RSL FUNDING, LLC, Appellee

On Appeal from the 11th District Court
Harris County, Texas
Trial Court Case No. 2009-41386

MEMORANDUM OPINION

This is a restricted appeal filed by The Prudential Insurance Company of

America (“Prudential”).¹ Prudential was named in an award resulting from an arbitration between Gregory S. Everett and appellee RSL Funding, LLC. Even though the arbitration award does not name Prudential as a “party,” the award specifically identified Prudential and required it to take certain actions to carry out the award. Because Prudential was not served as a party in the action to confirm the award, Prudential contends the district court had no personal jurisdiction over it, and its judgment, for these and other reasons, is infirm. We agree.

The underlying arbitration arises out of an assignment agreement between Everett and RSL Funding in which RSL agreed to pay \$216,000 to Everett for his interest in payments (108 monthly payments of \$3,675.39) due to him from an annuity owned by Pruco Assignment Corporation and issued by Prudential. After a dispute arose between Everett and RSL Funding, RSL invoked the arbitration provision of the assignment agreement.

The arbitrator made an award in favor of RSL Funding, which also specifically named both Prudential and Pruco Assignment Corporation. The arbitration award stated in part:

that RSL Funding shall send within fifteen (15) business days of the date of the entry of this Award in Texas a copy thereof to the Annuity Issuer [Prudential]. Upon receipt thereof, Annuity Owner [Pruco] shall direct and Annuity Issuer shall issue a formal acknowledgment

¹ See TEX. CIV. PRAC. & REM. CODE ANN. § 51.012, .013 (West 2008 & Supp. 2010) (authorizing “writ of error,” now called “restricted appeal”) TEX. R. APP. P. 30 (restricted appeal).

letter, acknowledging its obligation to comply with this award . . . , acknowledging that the Garnished Payments shall be unconditionally and timely made to RSL Special-IV, Ltd. . . . , that RSL Funding LLC has been made the beneficiary of the Garnished Payments, and that RSL Special-IV, Ltd. shall be the only person or entity with the authority to change the name and/or address of the beneficiary of the Garnished Payments.

The award further permanently enjoined “all persons in concert with Everett and all persons with actual notice of this award . . . from paying Everett the Garnished Payment which are hereby ordered to be paid to Assignee [RSL Funding].”

RSL Funding filed a petition in the district court to confirm the “unopposed” motion to confirm the award, but did not serve Prudential or Pruco as parties. On August 18, 2009, the district court signed a judgment confirming the arbitration award. *See* 9 U.S.C. § 9 (2006) (authorizing confirmation of arbitration award). Prudential was later served with a garnishment action that RSL Funding filed in October 2009. Prudential responded by filing a restricted appeal challenging the August 18, 2009 judgment confirming the arbitration award, in part on the basis of a lack of personal jurisdiction over Prudential. *See Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 108 S. Ct. 896 (1988).

To prevail on its restricted appeal, Prudential must establish that: (1) it filed notice of the restricted appeal within six months after the judgment was signed; (2) it was a party to the underlying lawsuit; (3) it did not participate in the hearing that resulted in the judgment complained of and did not timely file any postjudgment

motions or requests for findings of fact and conclusions of law; and (4) error is apparent on the face of the record. *See Alexander v. Lynda's Boutique*, 134 S.W.3d 845, 848 (Tex. 2004). Only the second element is at issue here, as RSL admits that Prudential was not served until the subsequent garnishment action.

RSL Funding acknowledges on appeal that the arbitration award provides for what it characterizes as “garnishment language” directed at Prudential. It attempts to characterize this portion of the arbitration award as merely surplussage in light of the general availability of garnishment as a postjudgment remedy, and specifically states in its brief that “RSL is **not** seeking to hold Prudential or PRUCO to the arbitration award.” The plain language of the arbitration award, however, names Prudential and requires it to take specific acts and enjoins it from taking other acts. Accordingly, we hold that Prudential is a party to the arbitration award and, by extension, a party to the district court’s judgment that confirmed the award.

Because Prudential is a party to the judgment and was not served, the judgment is constitutionally infirm due to lack of notice and service. *See Peralta*, 485 U.S. at 84–85, 108 S. Ct. at 899. We therefore sustain Prudential’s issue three regarding lack of personal jurisdiction. We do not reach Prudential’s remaining issues, which discuss the merits of the district court’s confirmation order and

judgment. *See Peralta*, 485 U.S. at 86–87, 108 S. Ct. at 900 (holding that person deprived of due process need not defend merits of underlying action on appeal).

Accordingly, we reverse the district court’s judgment, and we remand the case to the district court for further proceedings.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Alcala and Bland.