

2015 WL 226086

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Unpublished opinion. See KY ST RCP Rule 76.28(4) before citing.

NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

Ignacio Roman and Roman's Mexican Cuisine, Inc., Appellants
v.
Great American Financial Services, f/k/a [Great American Leasing Corporation](#), Appellee.

NO. 2014-CA-000277-MR

RENDERED: JANUARY 16, 2015; 10:00 A.M.

Discretionary Review Denied by Supreme Court September 16, 2015

APPEAL FROM HARDIN CIRCUIT COURT, HONORABLE KEN M. HOWARD,
JUDGE, ACTION NO. 13-CI-01296

Attorneys and Law Firms

BRIEF FOR APPELLANTS: [C. Mike Moulton](#), Elizabethtown, Kentucky

BRIEF FOR APPELLEE: [John M. Majors](#), [Taylor M. Hamilton](#), [Bradley S. Salyer](#),
Louisville, Kentucky

BEFORE: [CAPERTON](#), ¹[CLAYTON](#), AND JONES, JUDGES.

OPINION

[CLAYTON](#), JUDGE:

*1 Roman's Mexican Cuisine Inc., appeals the Hardin Circuit Court's order denying its motion opposing the filing of the notice and affidavit of foreign judgment registration of an Iowa decision granting a default judgment in favor of Great American Financial Services f/k/a Great American Leasing Corporation against Roman's Mexican Cuisine, Inc. Roman's Mexican Cuisine, Inc., challenges the validity of the foreign judgment. After careful consideration of the record and applicable law, we affirm.

BACKGROUND

In the case at bar, the judgment creditor, Great America Financial Services Corporation f/k/a Great America Leasing Corporation (hereinafter "Great America") is an Iowa Corporation, and the judgment debtor, Roman's Mexican Cuisine, Inc., (hereinafter "RMC") is a Kentucky corporation. Ignacio Roman is the president of RMC and resides in Elizabethtown, Kentucky. (RMC and Ignacio Roman are collectively the debtors.)

The origin of this dispute began on December 13, 2010, when allegedly RMC entered into a written contract with Great America, which was guaranteed by Roman. Language in the contract stated:

LAW/FORUM. This Agreement and any claims related to this Agreement will be adjudicated in a state or federal court located in Linn County, Iowa. You consent to personal jurisdiction and venue in such courts and waive transfer of venue. Each party waives any right to a jury trial.

On May 26, 2011, Great America filed an action against RMC in the sixth judicial district of Iowa in Linn County alleging breach of contract, breach of warranty, and unjust enrichment. Roman responded *pro se* to this complaint but stated that he was not appearing on behalf of RMC. Nevertheless, Roman admitted that he was the president of RMC and that the defenses and denials in his answer applied to RMC, too. He pleaded a number of defenses including lack of personal jurisdiction. Nonetheless, neither he nor RMC filed a motion to dismiss for lack of personal jurisdiction. Roman also maintained

that he and his company had never entered into the contract and that another individual forged his name. He demanded a jury trial.

Next, Great America made a motion to strike the demand for a jury trial. Roman's response to the motion included a letter from RMC's current Kentucky counsel, which stated that while counsel was refraining from replying on behalf of RMC, it was relying on Roman's assertions. And counsel averred that Roman did not sign nor authorize another party to sign the contract. Further, counsel stated that should a default judgment be entered against RMC, it would be challenged in a Kentucky court.

Occurring at this same time was an action against Robert Hembling by RMC. On July 12, 2011, RMC filed an action in the Hardin Circuit Court alleging that Hembling forged Roman's name to several documents and fraudulently entered into several leasing contracts (including the one with Great America) without authorization. In the aforementioned letter sent by Roman's counsel discussed in the above paragraph, it stated that Roman's counsel was negotiating a settlement with Hembling to satisfy the debt to Great America.

*2 Hembling's case was decided in Hardin Circuit Court, on January 29, 2013, and a default judgment was entered against Hembling in an amount to be determined by the trial court at a later date. Approximately nine months later, on September 24, 2013, the trial court entered judgment against Hembling in the amount of \$58,807.66 plus interest pursuant to Kentucky's statutory rate of interest.

The Iowa court on September 12, 2011, entered a default judgment against RMC for failure to file a responsive pleading and awarded a judgment against RMC in the amount of \$33,735.62 plus attorney fees in the amount of \$1,565.38 and costs of \$185.00. The Iowa trial court also awarded interest in the amount of 18% per annum.

But a hearing was held in the Iowa court on September 23, 2011, concerning Great American's motion to strike Roman's demand for a jury trial. Roman, however, did not appear. The Iowa court noted that the lease agreement between the parties clearly waived any right to a jury trial and, therefore, it granted Great America's motion to strike Roman's demand for a jury trial.

Roman participated in some discovery during the Iowa litigation; however, his answers were incomplete, prompting the Iowa court to order him to provide full answers, which he did not do. Subsequently, on July 26, 2012, a default judgment was entered against Roman for failing to fully comply with the Iowa court's orders regarding discovery. The Iowa court awarded Great America a judgment in the amount of \$35,132.85 and attorney fees in the amount of \$8,652.88. Further, the Iowa court awarded interest in the amount of 18% per annum, mirroring the rate expressed in the contract.

Subsequently, Great America filed a notice and affidavit of foreign judgment registration in Hardin Circuit Court on July 29, 2013. RMC moved for permission to file a response in opposition to the registration and to stay the enforcement of the judgment. An agreed order was entered granting RMC's motion to file a response. The order included a briefing schedule and granted RMC a stay of enforcement of the foreign judgment.

On February 7, 2013, the trial court entered findings of fact, conclusions of law, and an order, denying the RMC's motion in opposition to Great America's Notice and Affidavit of Foreign Registration and holding that the judgment by the Iowa court against the debtors was valid and entitled to full faith and credit in Kentucky.

First, the trial court held that Roman waived personal jurisdiction by participating in the Iowa case and not making a motion to dismiss based on lack of personal jurisdiction. Additionally, the trial court held that the forum selection clause was valid since it was not overly difficult or inconvenient for RMC or Roman and, accordingly, enforceable. Lastly, the trial court held that recognition of foreign judgments does extend to default judgments. The trial court cited *Sunrise Turquoise, Inc. v. Chemical Design Company, Inc.*, 899 S.W.2d 856 (Ky.App.1995), in support of this proposition since this case directly applied the Uniform Enforcement of Foreign Judgment Act (hereinafter "UEFJA") to a default judgment.

RMC now appeals this decision.

RMC maintains that the trial court erred in determining that Roman and RMC were subject to personal jurisdiction in the Iowa courts; that the forum selection clause was valid; and, that recognition of foreign judgments extends to default judgments. Great America counters that the trial court correctly decided that RMC waived the defense of personal jurisdiction by participating in the Iowa case and that recognition of foreign judgments does extend to default judgments.

STANDARD OF REVIEW

***3** An appellate court reviews findings of fact under a clearly erroneous standard. Furthermore, trial courts have much discretion when making findings of fact. Therefore, “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” [Kentucky Rules of Civil Procedure \(CR\) 52.01](#).

Findings of fact are clearly erroneous when they are not supported by substantial evidence. [Stanford Health & Rehabilitation Center v. Brock](#), 334 S.W.3d 883, 884 (Ky.App.2010). Substantial evidence is evidence which has sufficient probative value to induce conviction in the mind of a reasonable person. *Id.* The dispositive question is whether the findings are supported by substantial evidence. [Moore v. Asente](#), 110 S.W.3d 336, 354 (Ky.2003).

With regard to questions of law, our review is conducted under a *de novo* standard. [Hallahan v. The Courier–Journal](#), 138 S.W.3d 699, 705 (Ky.App.2004) (citation omitted). But when there are mixed questions of law and fact, we review the trial court’s decision pursuant to the clearly erroneous standard. [Moore](#), 110 S.W.3d at 354. Finally, when considering questions of law or mixed questions of fact and law, the reviewing Court has greater latitude to determine whether the findings below were sustained by evidence of probative value. [Uninsured Employers’ Fund v. Garland](#), 805 S.W.2d 116 (Ky.1991).

We now turn to the issues herein.

ANALYSIS

It is our task to review the decision of the trial court regarding whether the Iowa court had personal jurisdiction over Roman and RMC; whether the contract’s forum selection clause was valid; and whether, under the UEFJA, recognition of foreign judgments extends to default judgments.

The full faith and credit clause of the United States Constitution requires one state to give recognition to valid judgments of the courts of a sister state. [Anderson v. Reconstruction Finance Corp.](#), 136 S.W.2d 741, 742 (Ky.1940). Additionally, the effect of the full faith and credit provision is that in other states’ courts, the judgment of a sister state’s court is not impeachable except for want of jurisdiction or for fraud. *Id.* at 743. The type of “fraud” referred to as a defense to an action on a foreign judgment is fraud practiced in obtaining the foreign judgment. [50 C.J.S. Judgments § 1375 \(2014\)](#).

UEFJA, the statutory scheme for the enforcement of foreign judgments in Kentucky, is outlined in [Kentucky Revised Statutes \(KRS\) 426.950 to KRS 426.990](#). A foreign judgment is “any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in the Commonwealth.” [KRS 426.950](#). The procedure for the filing and the enforcement of foreign judgments is found in [KRS 426.955](#).

The purpose of the UEFJA is to “give holders of foreign judgments the same rights and remedies as the holder of a domestic judgment.” [Sunrise Turquoise, Inc. v. Chemical Design Co., Inc.](#), 899 S.W.2d 856, 857 (Ky.App.1995). Moreover, it is well-settled in Kentucky that a “sister state’s judgment is entitled to full faith and credit and to registration if the judgment is valid under that state’s own laws.” *Id.* at 857–858. And a judgment entered by another state is presumed to be valid and the party attacking that judgment has the burden of demonstrating its invalidity. [Waddell v. Commonwealth](#), 893 S.W.2d 376, 379 (Ky.App.1995). With this in mind, we turn to the specific issues herein.

Personal jurisdiction

*4 In the case at hand, the trial court determined that the Iowa court had personal jurisdiction over RMC and Roman. The trial court made these findings based on the fact that Roman participated in the Iowa action and, significantly, never made a motion to dismiss the case for lack of personal jurisdiction.

Under Iowa Rules of Civil Procedure, six challenges may be raised by a defendant in a pre-answer motion. Iowa R. Civil P. (I.C.A.) 1.421(1). The lack of personal jurisdiction is one of the challenges. *Id.* at (1)(b). Roman, however, did not file a pre-answer motion but pled the defense in his answer to the filing of the complaint. Notwithstanding this factor, the trial court decided that he waived personal jurisdiction by his continued participation in the case. We agree.

In particular, besides the filing of an answer, Roman filed a response to Great American's motion to strike jury trial and also participated in discovery. Further, he never filed a motion to dismiss for lack of jurisdiction. Based on these factors, the trial court had substantial evidence to support its findings and legally sound reasoning to determine that Roman waived the defense of lack of personal jurisdiction.

While RMC did not participate in the case, it has not proven or even alleged that it was not served in the Iowa action. The burden of providing invalidity of personal service, or for that matter the judgment itself, rests with the party attacking the judgment. *Dant v. Progress Paint Mfg. Co.*, 309 S.W.2d 187 (Ky.1958). RMC has not done so.

RMC provides a lengthy argument that the trial court's interpretation of the law is in error because it failed to consider the constitutional aspects of minimal contacts and fair play. RMC contends that the due process issue establishes that the Iowa court did not have personal jurisdiction over the debtors.

But this analysis is flawed because it ignores the fact that both Roman and RMC, through Roman's actions, consented to personal jurisdiction of the Iowa courts not only by their participation or failure to challenge the judgment but also through inclusion of the forum selection clause in the contract between the creditor and them. In sum, Roman and RMC are attempting to relitigate substantive issues, which they chose not to pursue in the Iowa case. Given that they waived any lack of personal jurisdiction and its contractual base, their reliance on due process arguments is misplaced. We will next address the legitimacy of the forum selection clause.

Forum Selection Clause

With regard to Roman and RMC's contention that the forum selection clause in the contract is unjust, the trial court held that the Iowa forum was not overly difficult or inconvenient and, thus, the forum selection clause was not unjust. Again, our review of the trial court's reasoning about the forum selection clause confirms that the findings were supported by substantial evidence and the reasoning valid.

Great American obtained personal jurisdiction over RMC and Roman through the forum selection clause in the contract between the parties. Indisputably, the contract stipulated that the debtors agreed to personal jurisdiction and venue in state or federal courts of Linn County, Iowa. In both Iowa and Kentucky, forum selection clauses can constitute sufficient consent by nonresident defendants to the exercise of personal jurisdiction by a foreign court. See *Prezocki v. Bullock Garages, Inc.*, 938 S.W.2d 888 (Ky.1997), and *Liberty Bank, F.S.B. v. Best Litho, Inc.*, 737 N.W.2d 312 (Iowa App.2007).

*5 Such clauses are presumed to be valid and enforceable unless the party opposing enforcement can demonstrate that circumstances render the clause unfair or unreasonable. *Prezocki*, 938 S.W.2d at 889. To demonstrate that a clause is unfair or unreasonable, a party must point out several factors including inconvenience created by holding the trial in the specified forum, the disparity of bargaining power between the two parties; and, whether the state in which the incident occurred has a minimal interest in the lawsuit. *Id.* (citation omitted).

Here, the contract provided that any litigation related to the contract to take place in Linn County, Iowa. Further, since Roman participated in the case in limited fashion the forum was not overly difficult or inconvenient. And RMC has not proven any difficulty

or inconvenience. Apparently, there is no disparity in bargaining power and clearly Iowa has an interest in the lawsuit. Lastly, Iowa does not void most contractual provisions simply based on a finding that the contract was one of adhesion. *Hotchkiss v. Int'l Profit Associates, Inc.*, 801 N.W.2d 32 (Iowa App.2011). Thus, the circumstances of the case do not render the forum selection clause unenforceable. Thus, as discerned by the trial court, the forum clause selection was not unjust.

Recognition of foreign default judgments

Roman and RMC maintain that Kentucky has not addressed with any specificity the recognition of foreign default judgments and cites *Sunrise Turquoise* for this proposition. But *Sunrise Turquoise, Inc.* directly applied to the UEFJA and default judgments since it involved a default judgment. Initially, *Sunrise Turquoise* stated “[t]he law in Kentucky is that a sister state’s judgment is entitled to full faith and credit and to registration if the judgment is valid under that state’s own laws.” 899 S.W.2d at 858 (citation omitted).

Returning to the statutory scheme for the enforcement of foreign judgments, we observe that the language of KRS 426.955 provides that a foreign judgment shall be treated “in the same manner as a judgment of any court of the state.” And a judgment filed in accordance with the statutory requirements has the “same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the court of this state and must be enforced or satisfied in like manner.” KRS 426.955. Nothing in the statute precludes the registration and enforcement of default foreign judgments.

For a party to have a foreign judgment set aside, it bears the burden to show that there is good cause to do so. *Dant v. Progress Paint Mfg. Co.*, 309 S.W.2d 187 (Ky.1958). To show good cause, the moving party must show: (1) a valid excuse for the default; (2) a meritorious defense to the claim; and (3) absence of prejudice to the non-defaulting party. *Perry v. Central Bank & Trust Co.*, 812 S.W.2d 166, 170 (Ky.App.1991). Absent a showing of all three elements, the default judgment will not be set aside. *S.R. Blanton Development, Inc. v. Investors Realty and Management Co., Inc.*, 819 S.W.2d 727, 729 (Ky.App.1991).

Here, the trial court found that there was no valid excuse for the debtors’ default since it appears that the parties decided to litigate the matter in Kentucky rather than in Iowa. Thus, the trial court ruled that they did not meet their burden of establishing the invalidity of the judgment entered by the Iowa court. Again, we agree with the findings and reasoning of the trial court.

*6 Furthermore, we find the appellants’ argument that recognition of foreign judgments not applying to foreign judgments unworkable and against public policy. If recognition of foreign judgments did not extend to default judgments, essentially any defendant could avoid the full faith and credit of judgments under the UEFJA by choosing to default in the foreign jurisdiction.

Trial court was tasked with determining if a properly registered default judgment should be set aside. It decided that RMC and Roman did not meet the burden for setting aside a default judgment. Further, a default judgment may be registered under the UEFJA. The trial court did not err in its decision.

CONCLUSION

We affirm the order of the Hardin Circuit Court denying RMC’s motion in opposition to the registration of the foreign judgment and holding that the Iowa judgment was valid and entitled to full faith and credit.

JONES, JUDGE, CONCURS.

CAPERTON, JUDGE, DISSENTS AND WILL NOT FILE SEPARATE OPINION.

All Citations

Not Reported in S.W.3d, 2015 WL 226086

Footnotes

- 1 Judge Caperton dissented in this opinion prior to Judge Debra Lambert being sworn in on January 5, 2015, as Judge of Division 1, Third Appellate District. Release of this opinion was delayed by administrative handling.

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