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Aspen American Insurance Co. v. East Coast Precast & Rigging LLC et al., 252 A.3d 249 (R.I. 2021)

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Contract Law. *Aspen American Insurance Co. v. East Coast Precast & Rigging LLC et al.*, 252 A.3d 249 (R.I. 2021). The Rhode Island Supreme Court upheld a foreign judgement against the defendants who challenged jurisdiction of the New York court based on an invalid forum selection clause. Through the Court’s analysis, it ruled that defendants can challenge jurisdiction of a foreign court in Rhode Island, but if the challenge is based on an invalid forum selection clause, as was the case here, the foreign state’s laws will apply. Using New York law, the Court found that the defendants failed to meet the “high burden” of New York law to rebut the presumption of due execution and concluded that the New York court had jurisdiction over the defendants by virtue of the forum selection clause.

FACTS AND TRAVEL

The plaintiff, Aspen American Insurance Co. (Aspen) issued “Payment and Performance Bonds” to the defendant’s sons steel fabrication company called Heavy Metal Corp. (HMC).¹ The bonds were secured by a General Agreement of Indemnity (Indemnity Agreement) signed by the plaintiff, defendants, and their son as individual indemnitors.² The Indemnity Agreement also contained a choice of law and forum clause in which all actions or proceedings arising out of the agreement had to be litigated in New York courts.³ All signatures were notarized and dated by the

1. *Aspen Am. Ins. Co. v. East Coast Precast & Rigging LLC et al.*, 252 A.3d 249, 252 (R.I. 2021). Defendants in the Superior Court action include East Coast Precast & Rigging LLC, Jeremy Moses, Lawrence Moses, Elizabeth Moses, and Lauren Moses, but only the last three named defendants appealed the decision to the Rhode Island Supreme Court. *Id.* at n.1.

2. *Id.* at 252.

3. *Id.* Full text of the choice of law and forum clause stated:

Choice of Law and Forum. It is mutually agreed that this agreement is deemed made in the State of New York and shall be interpreted, and the rights and liabilities of the parties determined, in accordance with the laws of the State of New York. Indemnitors agree that all

defendants.⁴ HMC then encountered problems with certain construction projects, which required payment by Aspen.⁵ After Aspen made these payments, it demanded payment by the individual defendants under the Indemnity Agreement, which were not made.⁶

Aspen filed suit in New York to enforce the Indemnity Agreement and obtained a default judgement against the defendants in the amount of \$301,378.49.⁷ Aspen then filed the authenticated judgement in the Superior Court for Providence County on May 10, 2019.⁸ It sought enforcement based on the Uniform Enforcement of Foreign Judgements Act, Chapter 32 of Title 9 which provides in part:

A copy of any foreign judgement authenticated in accordance with the act of congress or statutes of this state may be filed in the office of the clerk of the appropriate superior or district court. The clerk shall treat the foreign judgment in the same manner as a judgement of the superior or district court. A judgement so filed has the same effect and is subject to the same procedures, defenses, and proceedings as a judgment of the court and may be satisfied in like manner to any Rhode Island state court judgement.⁹

The defendants filed a motion to vacate the foreign judgment on July 2, 2019, citing a lack of personal jurisdiction and that “[the defendants] never signed nor authorized anyone to sign the [indemnity agreement].”¹⁰ Defendants each submitted individual affidavits stating that their signatures were forged, that they never

actions or proceedings arising directly or indirectly from this Agreement shall be litigated only in courts having status within the State of New York, and consent to the personal jurisdiction and venue of any local, state[, or federal court located therein. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 252–53.

9. *Id.* (citing R.I. GEN. LAWS ANN. 1956 § 9-32-2 (West 1956)).

10. *Aspen American Ins. Co.*, 253 A.3d at 253. Defendants filed an initial motion to vacate the judgement for lack of personal jurisdiction on May 28, 2019, which was objected to by Aspen and denied without prejudice by the court. *Id.* at n.4.

signed the agreement, and that they did not authorize anyone to sign the agreement on their behalf.¹¹

Aspen objected to this motion arguing that the defendants sent personal financial statements to Aspen, which therefore satisfied New York's long-arm statute.¹² Aspen also argued that the defendants "engaged in actions objectively manifesting assent to the Indemnity Agreement," and that the defendants' conduct "for more than three years undermined their affidavits and create[d] an open issue to be resolved against them."¹³

On August 2, 2019, after a hearing before the Superior Court, the justice denied defendants' motion to vacate.¹⁴ Since the defendants did not challenge personal jurisdiction in New York, Rhode Island law required the defendants meet a "heavy burden" to overturn the foreign default judgement.¹⁵ Since the judgement was from New York, the hearing justice looked to New York law which recognizes a "presumption of due execution" when a document includes the acknowledgement of a notary public.¹⁶ To overcome this presumption, the defendants needed to show evidence of forgery that was "so clear and convincing as to amount to a moral certainty."¹⁷ The justice ultimately held that this "heavy burden" was not met by the defendants because it required more than unsupported testimony and affidavits from the defendants who were certainly interested witnesses.¹⁸ Following the Superior Court decision, the defendants filed a timely notice of appeal.¹⁹

11. *Id.* at 253.

12. *Id.*

13. *Id.* Evidence used to support this claim by Aspen include the personal financial statements sent to Aspen in 2016 and 2017, email exchanges between HMC and Aspen which never communicated a lack of assent, and email communications among Aspen's counsel and the defendant during the pendency of the New York action, in which the defendants did not deny the genuineness of his signature. *Id.* at n.5.

14. *Id.* at 253.

15. *Id.*

16. *Id.*

17. *Id.*

18. *See id.* 253–54.

19. *Id.* at 254. As previously stated, only Lawrence Moses, Elizabeth Moses, and Lauren Moses are involved in the appeal before the Rhode Island Supreme Court. *See id.* at n.1.

ANALYSIS AND HOLDING

The Court first addressed the issue of personal jurisdiction. The Court began its analysis with a discussion of the Full Faith and Credit Clause of the United States Constitution and recognized that the United States Supreme Court has continuously held that “judgements in one state court should have the same credit, validity, and effect, in every other court of the United States.”²⁰ However, the Court noted that there are some limitations.²¹ Specifically, if the foreign court lacked jurisdiction over the parties, then “full faith and credit need not be given.”²² The Court acknowledged that the defendants did properly challenge personal jurisdiction in the Superior Court, but to succeed on this claim, the defendants would have to successfully challenge the validity of the indemnity agreement that contained the forum selection clause.²³ The Court relied on establish precedent that when determining a question of personal jurisdiction, the Court looks to that state’s law and ultimately disagreed with the defendants’ argument that the hearing justice erroneously applied New York law to this inquiry.²⁴ Thus, like the Superior Court, the Court applied New York law to analyze the forum selection clause and the defendant’s claims with respect to forgery.²⁵

Using New York law, the Court then addressed the issue of whether the forum selection clause was valid. For a forum selection clause to be invalid, it must be shown by the resisting party to be unreasonable.²⁶ Since these clauses “provide certainty and predictability in the resolution of disputes,” they are deemed valid and

20. *Id.* at 254 (citing *Underwriters Nat’l Assurance Co. v. North Carolina Life and Accident and Health Ins. Guaranty Ass’n*, 455 U.S. 691, 703–04, (1982)) (quoting U.S. Const. Art. IV, § 1).

21. *Aspen American Ins. Co.*, 253 A.3d at 255.

22. *Id.*

23. *Id.*

24. *Id.*

25. *See id.* at 256.

26. *See id.* (citing *Brooke Group Ltd. v. JCH Syndicate*, 488, 663 N.E.2d 635, 637 (N.Y. 1996)). To set aside a forum selection clause, the clause must be unreasonable and unjust or be invalid because of fraud, overreaching or would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court. *Aspen American Ins. Co.*, 253 A.3d at 256 (quoting *Sterling Nat’l Bank v. Eastern Shipping Worldwide, Inc.*, 826 N.Y.S.2d 235, 237 (N.Y. App. Div. 2006)).

enforceable in New York.²⁷ The Court also noted that where there is a “certificate of acknowledgement attached” as was the case here, the presumption of due execution arises, which the defendants would need to rebut.²⁸ The Court reviewed the record as well as affidavits from the plaintiff’s attorney, and held that it was “abundantly clear” that the defendants did not meet their burden of rebutting the presumption of due execution.²⁹ Based on the acknowledgement and signature of the notary, as well as conference calls, email exchanges between the parties, and lack of affidavits from non-interested parties, the defendants’ claims of forgery was “dubious at best.”³⁰

The Court concluded by refuting the defendants’ other contentions on appeal which include: (1) Rhode Island citizens who are summoned to a New York court based on an agreement containing the Rhode Islander’s forged signatures could only contest the New York court’s assertion of jurisdiction in the *New York* courts and (2) the trial court never examined the issue of whether New York had personal jurisdiction in the first instance.³¹(emphasis added). The Court noted that it was absolutely clear from the record that the defendants were given the opportunity in the Superior Court to contest whether New York had personal jurisdiction.³² Furthermore, as noted in the hearing justice’s opinion, “the defendants simply failed to meet their burden with respect to the allegedly forged signatures.”³³ Since the defendants failed, under New York law, to meet their burden of proof necessary to defeat the presumption, the forum selection clause was valid and the New York court had personal jurisdiction over the defendants to issue the judgement.³⁴

COMMENTARY

The ruling by the Rhode Island Supreme Court in this case sends a message by showing that defendants can challenge the

27. *Aspen American Ins. Co.*, 253 A.3d at 256. (quoting *Brooke Group Ltd. v. JCH Syndicate*, 87 N.Y.2d 530, 534 (1996)).

28. *Aspen American Ins. Co.*, 253 A.3d at 256.

29. *See id.* at 257.

30. *See id.* at 257–58.

31. *See id.* at 258.

32. *See id.*

33. *See id.* at 259.

34. *Id.*

jurisdiction of another states court in the courts of Rhode Island, but when the jurisdiction is challenged based on an invalid forum selection clause, it is the laws of that state that will be used to decide the matter. The laws of New York in this case, including all accompanying presumptions are very strict, and require more than just a bald assertion of forgery.³⁵ The ruling by the Rhode Island Supreme Court was necessary to show that defendants will not be able to defeat a claim from another state just because it is brought in Rhode Island, which could have more favorable rules for the defendant.

One consequence from this ruling is that it requires those entering contracts to fully appreciate the contract and all provisions in it, including forum selection clauses. Those against this decision will argue that it requires defendants to be experts on two states laws if they want to challenge jurisdiction in Rhode Island courts but that is not necessarily true. The Court emphasized that they would apply the rules of the state from which the decision came which would put would be challengers in the same position they would have been in had they challenged the decision in the other states court in the first place. This process of applying other states laws can also be beneficial to some defendants who cannot afford to hire lawyers in the original forum state and travel to defend their claim there. Since the Rhode Island courts will decide challenges to jurisdiction using the laws of the forum state, it gives parties a chance to defend their claim as if they were in the original forum state without having to leave the comforts of the Ocean State.

CONCLUSION

The Rhode Island Supreme Court ruled that a foreign judgment against a defendant can be challenged by the defendant in Rhode Island. However, if the jurisdiction is challenged based on an invalid forum selection clause, the Court held that it is the foreign state's law that apply. Here, the Court found that the defendants were unable to satisfy the "high burden" that New York law imposes to rebut the presumption of due execution, and therefore

35. *Id.* at 257 (quoting *Banco Popular North America v. Victory Taxi Management, Inc.*, 806 N.E.2d 488, 490 (N.Y. 2004)).

concluded that the New York court did have personal jurisdiction over the defendants via the forum selection clause.

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