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**IN THE
COURT OF APPEALS OF INDIANA**

SEYMOUR LODGE, NO. 462,)
BENEVOLENT AND PROTECTIVE)
ORDER OF THE ELKS, a/k/a THE)
SEYMOUR ELKS LODGE, a/k/a)
SEYMOUR LODGE NO. 462,)
)
Appellant-Defendant,)
)
vs.)
)
FRONTIER LEASING CORP.,)
)
Appellee-Plaintiff.)

No. 36A01-0702-CV-104

APPEAL FROM THE JACKSON SUPERIOR COURT
The Honorable Bruce S. Markel, III, Judge
Cause No. 36D01-0604-CC-69

August 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Seymour Elks Lodge, No. 462 (the Lodge), appeals the trial court's entry of summary judgment in favor of Appellee-Plaintiff, Frontier Leasing Corporation (Frontier).

We affirm.

ISSUES

The Lodge raises two issues on appeal, however we find the following single issue dispositive in this case: Whether an Indiana court may give full faith and credit to a foreign judgment where personal jurisdiction was based on a forum selection clause in a lease agreement.

FACTS AND PROCEDURAL HISTORY

On July 17, 2004, the Lodge, an entity based in Indiana, entered into an Equipment Lease Agreement (the Lease) with Frontier, an entity based in Iowa. Pursuant to the terms of the Lease, Frontier leased two "express hospitality centers" to the Lodge. (Appellant's Br. p. 2). The leased equipment was delivered to the Lodge in Seymour, Indiana. The Lodge defaulted on the Lease. On February 3, 2005, relying on a forum selection clause within the Lease, Frontier filed a Complaint (the Iowa action) against the Lodge in Iowa District Court for Polk County (the Iowa court), alleging the Lodge was in default on the Lease in the amount of \$34,778.52. Specifically, the forum selection clause within the Lease stated:

You agree that this Lease shall be performed by lessee in Des Moines, Polk County, Iowa and that venue is proper in Des Moines, Polk County, Iowa,

and that any suit on this Lease shall be proper if filed in the Iowa District Court for Polk County.

(Appellant's App. p. 78).

The Lodge did not appear or defend itself in the Iowa action. As a result, on March 17, 2006, the Iowa court entered default judgment against the Lodge in the amount of \$32,869.17 plus interest accruing at the contract rate of 18% per annum from the date of judgment.

On April 28, 2006, having not yet been paid by the Lodge, Frontier filed a Complaint on Foreign Judgment in the Jackson County Superior Court in Indiana (the trial court), seeking payment of the Iowa court's judgment plus interest. In its Answer to this Complaint, the Lodge denied that the Iowa court's judgment was "duly given and made," and claimed that the Iowa court lacked jurisdiction over the Lodge. (Appellant's App. p. 22). In addition, the Lodge argued that the Lease was unconscionable and fraudulent on its face.

On May 24, 2006, Frontier filed a Motion for Summary Judgment with the trial court. On November 9, 2006, the Lodge filed a Cross-Motion for Summary Judgment and designated evidence in support thereof and in opposition to Frontier's Motion for Summary Judgment. On January 25, 2007, the trial court held a hearing, consisting of an oral argument, on the Motion and Cross-Motion for Summary Judgment. On January 26, 2007, the trial court entered summary judgment in favor of Frontier and ordered the Lodge to pay Frontier \$33,952.82 plus interest and costs.

The Lodge now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

The Lodge argues that the trial court erred in entering summary judgment in favor of Frontier. Specifically, the Lodge contends the Iowa court's judgment against it is improper because the Iowa court did not have personal jurisdiction over the Lodge.

I. Standard of Review

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. Ind. Trial Rule 56(C). In reviewing a trial court's ruling on summary judgment, this court stands in the shoes of the trial court, applying the same standards in deciding whether to affirm or reverse summary judgment. *AutoXchange.com, Inc. v. Dreyer and Reinbold, Inc.*, 816 N.E.2d 40, 47 (Ind. Ct. App. 2004). Thus, on appeal, we must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id.* In doing so, we consider all of the designated evidence in the light most favorable to the non-moving party. *Id.* The party appealing the grant of summary judgment has the burden of persuading this court that the trial court's ruling was improper. *Id.* at 47-48. Accordingly, the grant of summary judgment must be reversed if the record discloses an incorrect application of the law to the facts. *Id.* at 48.

II. Personal Jurisdiction

First, the Lodge argues that the Iowa court lacked personal jurisdiction over the Lodge because the forum selection clause in the Lease is invalid. In particular, the Lodge asserts that forum selection provisions are disfavored in Iowa when the provision

deprives other courts of jurisdiction they would otherwise possess. Here, the Lodge contends that the Iowa court deprived Indiana of rightful jurisdiction.

Article IV, Section 1 of the United States Constitution provides, “[f]ull faith and credit shall be given in each state to the . . . judicial proceedings of every other state.” However, the full faith and credit clause and 28 U.S.C. § 1738 require a sister state to afford a foreign judgment only the same effect as would the state which issued it. *Tandy Computer Leasing v. Milam*, 555 N.E.2d 174, 175 (Ind. Ct. App. 1990). Thus, all foreign judgments are open to collateral attack for lack of personal jurisdiction. *Id.* While lack of such jurisdiction need not appear on the face of the record, one who raises the jurisdictional attack must rebut the presumption in favor of the validity of the sister state’s judgment. *Id.* at 176.

Further, we have previously held that the personal jurisdiction requirement is a waivable right whereby a “variety of legal arrangements” may give “express or implied consent to the personal jurisdiction of the court.” *Id.* (quoting *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982)). In the commercial context, parties frequently stipulate in advance to submit their controversies for resolution within a particular jurisdiction. *Tandy*, 555 N.E.2d at 176. These forum selection provisions are enforceable if they are reasonable and just under the circumstances and if there is no evidence of fraud or overreaching such that the agreeing party, for all practical purposes, would be deprived of its day in court. *Dexter Axle Co. v. Baan USA, Inc.*, 833 N.E.2d 43, 48 (Ind. Ct. App. 2005); *see also Grott v. Jim Barna Log Systems-Midwest, Inc.*, 794 N.E.2d 1098, 1102 (Ind. Ct. App. 2003), *trans. denied*. To be

valid, a forum selection provision must also have been freely negotiated. *Dexter*, 833 N.E.2d at 48. Nevertheless, “[e]ven where the forum-selection establishes a remote forum for resolution of conflicts, ‘the party claiming [unfairness] should bear a heavy burden of proof.’” *Id.* (quoting *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 592 (1991)).

Accordingly, before we can set aside the forum selection clause within the Lease in the case before us, the Lodge must clearly show that enforcement of the clause would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud and overreaching. *See Dexter*, 833 N.E.2d at 48. However, the Lodge fails to put forth any argument here or any support in its designated evidence to show that enforcement of the forum selection clause in the Lease is unreasonable, unjust, or invalid due to fraud or overreaching. Instead, the Lodge focuses on demonstrating why Indiana could have had personal jurisdiction over the parties in the Iowa action, pointing out Frontier’s contacts with the State of Indiana. In directing its argument in this fashion, the Lodge has failed to meet its burden of proving the invalidity of the forum selection clause. The fact that Indiana could have served as a proper venue and obtained personal jurisdiction over both parties does not nullify the Iowa court’s judgment. Thus, the Lodge leaves no genuine issue of material fact to be decided, and we find no misapplication of the law in this case. Accordingly, the presumption is in favor of the validity of the Iowa court’s judgment; consequently, we conclude the trial court properly granted summary judgment in favor of Frontier. *See Tandy*, 555 N.E.2d at 176.

CONCLUSION

Based on the foregoing, we conclude the trial court properly granted summary judgment in favor of Frontier.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.