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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1208

Filed: 4 June 2019

Mecklenburg County, No. 18 CVS 13202

MECUM AUCTION, INC., Plaintiff

v.

JAMES MCKNIGHT, Defendant

Appeal by Defendant from Order entered 26 September 2018 by Judge Todd Pomeroy in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 April 2019.

Hedrick Gardner Kincheloe & Garofalo LLP, by Allen C. Smith, and Foran, Glennon, Palandech, Ponzi & Rudloff, PC, by Douglas J. Palandech and Michael P. Sever, pro hac vice, for plaintiff-appellee.

Eisele Ashburn Greene & Chapman, PA, by Douglas G. Eisele, for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

James McKnight (Defendant) appeals from an Order Denying Defendant's Motion to Dismiss (Motion to Dismiss Order) filed on 26 September 2018, concluding that the foreign judgment from the Circuit Court of Walworth County, Wisconsin

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(Wisconsin Judgment), filed with the Clerk of Superior Court for Mecklenburg County remains in effect until satisfied. The facts and procedural history pertinent to the instant appeal are as follows:

On or about 12 December 2016, Mecum Auction, Inc. (Plaintiff) and Defendant entered into an “Auction Listing Contract” and “Auction Selling Contract” (collectively referred to as the Agreement). The Agreement states Plaintiff will present Defendant’s 1968 Chevrolet Corvette (Vehicle) for auction sale at Plaintiff’s January 2017 Auction in Kissimmee, Florida (Auction).

Following a request from Defendant, Plaintiff sent standard, blank forms of the Agreement to Defendant’s office in Iredell County, North Carolina. Defendant completed the forms, affixed his signature, and returned them to Plaintiff’s principal place of business in Walworth, Wisconsin, via mail. Upon receiving the forms, Plaintiff reviewed the information provided by Defendant—including, but not limited to, the VIN number, mileage, vehicle history, and reserve price—and approved the Vehicle for presentation at the Auction. The Agreement obligated Defendant to both represent his Vehicle accurately and hold Plaintiff harmless from and against any claims surrounding the accuracy and truthfulness of Defendant’s representations regarding the Vehicle.

On 12 January 2017, Plaintiff presented the Vehicle for auction sale in Kissimmee, Florida, where it sold for a total sale price of \$90,759. Subsequent to

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purchase, the winning bidder alerted Plaintiff to several misrepresentations in Defendant's vehicle description. Plaintiff informed Defendant of the winning bidder's complaints. Upon review, Plaintiff concluded Defendant's representations regarding the Vehicle were not fact-supported. At Plaintiff's request, Defendant agreed to take back the Vehicle, and the winning bidder received a full refund. However, Defendant did not agree to compensate Plaintiff for the \$14,490 commission-revenue loss arising out of his alleged misrepresentation, per the terms of the Agreement.

On 21 April 2017, Plaintiff filed suit against Defendant in the Circuit Court of Walworth County, Wisconsin (the Wisconsin Court), in accordance with the Agreement's Forum-Selection Clause, which provides:

This agreement shall be governed by, and construed in accordance with, laws of the State of Wisconsin without giving effect of any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Wisconsin. The seller/consignor irrevocably submits to the jurisdiction of the State of Wisconsin, Circuit Court of Walworth County, over any dispute arising out of, or relating in any way, to this agreement or to the transaction(s) to which it relates. The seller/consignor irrevocably agrees that all claims shall be heard and determined in such court. The seller/consignor irrevocably waives, to the fullest extent permitted by law, any objection or defense which he, she or it may now have, or come to have, regarding the inconvenience of this forum.

Service of process was perfected on Defendant by the Iredell County Sheriff's Department on 28 April 2017. Defendant did not file an appearance or a responsive pleading in the Wisconsin Court action. On 23 June 2017, 56 days after Defendant

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was served with the underlying Complaint and 26 days after his responsive pleading was due, Plaintiff filed a Motion for Default Judgment. A true copy of the Motion for Default Judgment was sent to Defendant by certified mail, which Defendant apparently received as reflected on the Certified Mail Receipt.

On 5 July 2017, the Wisconsin Court entered the Wisconsin Judgment, which granted Plaintiff's Motion for Default Judgment and awarded Plaintiff judgment in the amount of \$25,945, accounting for the lost auction commission together with Plaintiff's costs and attorney's fees.

On 3 July 2018, Plaintiff enrolled the Wisconsin Judgment with the Mecklenburg County Clerk of Superior Court, pursuant to N.C. Gen. Stat. § 1C-1703. Plaintiff served the Notice of Filing of Foreign Judgment on Defendant on 11 July 2018 and filed its Affidavit of Service of Notice of Filing of Foreign Judgment on 24 July 2018. On 26 July 2018, Defendant filed a Notice of Defense to Filing of Foreign Judgment (Notice of Defense Motion) alleging "the Judgment obtained in Wisconsin is void and unenforceable against Defendant in North Carolina because at the time the Judgment was entered in Wisconsin, the Courts in Wisconsin had no jurisdiction over Defendant" and seeking "this action to enforce the foreign Judgment obtained by Plaintiff against Defendant in Wisconsin be dismissed for lack of jurisdiction of the Wisconsin Courts over this Defendant."

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On 26 September 2018, the trial court entered its Motion to Dismiss Order. The trial court made no findings of fact or conclusions of law, and the Motion to Dismiss Order provides, in relevant part:

This matter came before the undersigned judge on Monday, August 27, 2018, on motion of Defendant, pursuant to N.C. Gen. Stat. § 1C-1705, to dismiss Plaintiff's foreign Judgment filed with the Clerk of Superior Court for Mecklenburg County on July 5, 2018. [Counsel] represented Defendant James McKnight; [Counsel] represented Plaintiff Mecum Auction, Inc.

Having considered the pleadings, affidavits, briefs, and case law submitted by the parties, the [trial court] is of the opinion that the motion should be denied.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is denied.

IT IS FUTHER ORDERED that the foreign judgment from [Wisconsin] filed with Clerk of Superior Court for Mecklenburg County on July 5, 2018, shall remain in effect until satisfied.

From this Order, Defendant appeals.

Appellate Jurisdiction

Defendant contends, and Plaintiff does not dispute, the Motion to Dismiss Order is an interlocutory order that affects a substantial right, thus appealable under N.C. Gen. Stat. § 1-277(a). *See* N.C. Gen. Stat. § 1-277(a) (2017) ("An appeal may be taken from every judicial order . . . of a superior . . . court . . . which affects a substantial right claimed in any action or proceeding[.]"). However, after reviewing the Record, the Motion to Dismiss Order appears to be a final judgment. "A final

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judgment disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court, . . . while an interlocutory ruling does not determine the issues but directs some further proceeding preliminary to the final decree.” *Burwell v. Griffin*, 67 N.C. App. 198, 203, 312 S.E.2d 917, 920 (1984) (citations omitted).

Here, although the trial court denied Defendant’s Notice of Defense Motion, which the trial court characterized as a motion to dismiss, the trial court’s Motion to Dismiss Order also states the Wisconsin Judgment “shall remain in effect until satisfied.” Because Plaintiff brought this action to enforce the Wisconsin Judgment, the fact that the trial court ordered the Judgment shall remain in effect until satisfied renders the Motion to Dismiss Order a final judgment, as this Order effectively “disposes of the cause as to all the parties[and] leav[es] nothing to be judicially determined between them in the trial court[.]” *See id.* (citations omitted). Therefore, we treat the Motion to Dismiss Order as a final judgment, and Defendant’s appeal is properly before this Court.

Issue

The sole issue on appeal is whether the trial court erred in denying Defendant’s Notice of Defense Motion and concluding the Wisconsin Judgment is enforceable in North Carolina. In support of his position, Defendant argues the undisputed facts establish the Agreement was executed in North Carolina and that N.C. Gen. Stat. §

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22B-3 invalidates the Agreement's Forum-Selection Clause, thus depriving the Wisconsin Court of personal jurisdiction over Defendant.

Analysis

I. Standard of Review

Defendant essentially argues the Wisconsin Judgment is not entitled to full faith and credit in North Carolina because the Wisconsin Court lacked personal jurisdiction over Defendant. "We review *de novo* the issue of whether a trial court has properly extended full faith and credit to a foreign judgment." *Marlin Leasing Corp. v. Essa*, ___ N.C. App. ___, ___, 823 S.E.2d 659, 662-63 (2019) (citing *Tropic Leisure Corp. v. Hailey*, 251 N.C. App. 915, 917, 796 S.E.2d 129, 131, *appeal dismissed and disc. rev. denied*, 369 N.C. 754, 799 S.E.2d 868-69, *cert. denied*, ___ U.S. ___, 199 L. Ed. 2d 385 (2017)).

II. Uniform Enforcement of Foreign Judgments Act

"The Full Faith and Credit Clause of the United States Constitution requires North Carolina to enforce a judgment rendered in another state, if the judgment is valid under the laws of that state." *Florida National Bank v. Satterfield*, 90 N.C. App. 105, 107, 367 S.E.2d 358, 360 (1988). "[B]ecause a foreign state's judgment is entitled to only the same validity and effect in a sister state as it had in the rendering state, the foreign judgment must satisfy the requisites of a valid judgment under the laws of the rendering state before it will be afforded full faith and credit." *Bell*

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Atlantic Tricon Leasing Corp. v. Johnnie's Garbage Serv., 113 N.C. App. 476, 478-79, 439 S.E.2d 221, 223 (1994) (citation omitted). “[T]he test for determining when the Full Faith and Credit Clause requires enforcement of a foreign judgment focuses on the validity and finality of the judgment in the rendering state.” *DocRx, Inc. v. EMI Servs. of N.C., LLC*, 367 N.C. 371, 375, 758 S.E.2d 390, 393 (2014) (citations omitted).

“The Uniform Enforcement of Foreign Judgments Act [UEFJA] governs the enforcement of foreign judgments that are entitled to full faith and credit in North Carolina.” *In re Gardner v. Tallmadge*, 207 N.C. App. 282, 287, 700 S.E.2d 755, 758-59 (2010) (citing N.C. Gen. Stat. §§ 1C-1701 *et seq.* (2009)), *aff’d per curiam*, 365 N.C. 102, 721 S.E.2d 928 (2011). “In order to domesticate a foreign judgment under the UEFJA, a party must file a properly authenticated foreign judgment with the office of the clerk of superior court in any North Carolina county along with an affidavit attesting to the fact that the foreign judgment is both final and unsatisfied in whole or in part and setting forth the amount remaining to be paid on the judgment.” *Tropic Leisure Corp.*, 251 N.C. App. at 917, 796 S.E.2d at 131 (citing N.C. Gen. Stat. § 1C-1703(a) (2015)).

“The introduction into evidence of [these materials] establishes a presumption that the [foreign] judgment is entitled to full faith and credit.” *Lust v. Fountain of Life, Inc.*, 110 N.C. App. 298, 301, 429 S.E.2d 435, 437 (1993) (citations omitted). A foreign-judgment debtor can rebut this presumption “upon a showing that the

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rendering court did not have . . . jurisdiction over the parties[.]” *Id.* (citations omitted). “In the absence of such proof, the judgment will be presumed valid.” *Rossi v. Spoloric*, 244 N.C. App. 648, 655, 781 S.E.2d 648, 654 (2016) (citation and quotation marks omitted).

Here, Plaintiff had the initial burden of proving the Wisconsin Judgment is entitled to full faith and credit in North Carolina. Plaintiff satisfied this burden by attaching an authenticated copy of the Wisconsin Judgment to its Notice of Filing of Foreign Judgment. *See Lust*, 110 N.C. App. at 301, 429 S.E.2d at 437. Therefore, Defendant needed to present evidence to rebut this presumption by asserting a defense under Section 1C-1705(a) of our General Statutes. In his Notice of Defense Motion, Defendant argued the Wisconsin Court lacked personal jurisdiction because the Agreement was executed in North Carolina and Defendant lacked sufficient contacts with Wisconsin. On appeal, Defendant further contends because the Agreement was created in North Carolina, Section 22B-3 invalidates the Agreement’s Forum-Selection Clause. As discussed *infra*, Defendant has failed to rebut this presumption.

A. Contract Formation

The “interpretation of a contract is governed by the law of the place where the contract was made.” *Schwarz v. St. Jude Med., Inc.*, ___ N.C. App. ___, ___, 802 S.E.2d 783, 788 (2017) (citation and quotation marks omitted). Under both North

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Carolina and Wisconsin law, a contract is formed at the place where occurred the last act necessary for a meeting of the minds of the parties, which is usually the place of acceptance. *See id.* at ___, 802 S.E.2d at 790-91; *see also NCR Corp. v. Transp. Ins. Co.*, 344 Wis. 2d 494, 505, 823 N.W.2d 532, 537 (2012) (“Contracting occurs where the last act necessary, under the forum’s rules of offer and acceptance, occurred to give the contract binding effect.” (citations and quotation marks omitted)); *Garvey v. Buhler*, 146 Wis. 2d 281, 289, 430 N.W.2d 616, 619 (1988) (“[C]ontracts require the element of mutual meeting of the minds and of intention to contract.” (citation omitted)); *see also Parson v. Oasis Legal Fin., LLC*, 214 N.C. App. 125, 126, 715 S.E.2d 240, 241 (2011) (holding that the last signature on the contract, which established a meeting of the minds between the parties, constituted the location where the contract was formed).

Here, Defendant contends the Agreement was formed in North Carolina because he filled out the blank forms “at his office in Mooresville, Iredell county, North Carolina,” thus constituting acceptance. However, this act of filling out blank forms does not constitute contract formation because no meeting of the minds regarding the terms of the contract had occurred yet. Specifically, the undisputed facts show Defendant requested Plaintiff send the blank forms, which would later form the Agreement, to Defendant’s office in North Carolina. Upon receiving these forms, Defendant filled out the forms with all of the required information concerning

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Defendant and the Vehicle, including, but not limited to, the VIN number, mileage, vehicle history, and reserve price. In part, these terms constituted the essential terms of the agreement. Thereafter, Defendant sent the filled-out forms to Plaintiff's office in Wisconsin. It was upon receiving these forms that Plaintiff learned the essential terms of the Agreement. Because the Record shows Plaintiff had no previous knowledge of these terms, the parties could not have had a meeting of the minds regarding the terms of the Agreement—and thus a valid contract—until Plaintiff received these filled-out forms in Wisconsin. Therefore, under both North Carolina and Wisconsin law, acceptance of this contract occurred in Wisconsin, and Wisconsin law applies to the Agreement.¹ See *Schwarz*, ___ N.C. App. at ___, 802 S.E.2d at 790-91; *Garvey*, 146 Wis. 2d at 289, 430 N.W.2d at 619; see also *Parson*, 214 N.C. App. at 126, 715 S.E.2d at 241. Because we have determined Wisconsin law applies to the interpretation of the Agreement, we now address whether the Wisconsin Court had personal jurisdiction over Defendant.

B. Forum-Selection Clause (Consent to Jurisdiction)

¹ Additionally, the Agreement contains a Choice-of-Law Provision that states, “This agreement shall be governed by, and construed in accordance with, laws of the State of Wisconsin” As this type of provision is enforceable under both North Carolina and Wisconsin law, the Choice-of-Law Clause provides an alternative basis for interpreting the Agreement under Wisconsin law. See *Land Co. v. Byrd*, 299 N.C. 260, 262, 261 S.E.2d 655, 656 (1980) (“[W]here parties to a contract have agreed that a given jurisdiction’s substantive law shall govern the interpretation of the contract, such a contractual provision will be given effect.”); see also *Bush v. National School Studios, Inc.*, 139 Wis. 2d 635, 642, 407 N.W.2d 883, 886 (1987) (acknowledging the general rule in Wisconsin that “parties to a contract may expressly agree that the law of a particular jurisdiction shall control their contractual relations” (citations omitted)).

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Although Defendant argues at length that he lacked minimum contacts with Wisconsin sufficient to allow Wisconsin to exercise personal jurisdiction over him, we do not address this argument because Defendant expressly consented to personal jurisdiction in the Agreement. We therefore must determine whether this Consent-to-Jurisdiction Clause is valid under Wisconsin law.

The Agreement provides, in part: “The seller/consignor irrevocably submits to the jurisdiction of the state of Wisconsin, Circuit Court of Walworth County, over any dispute arising out of, or relating in any way, to this agreement[.]”

Wisconsin courts have repeatedly held this type of consent-to-jurisdiction clause is “presumptively valid in Wisconsin.” *Converting/Biophile v. Ludlow Composites*, 296 Wis. 2d 273, 286, 722 N.W.2d 633, 640 (2006) (citation omitted). To overcome this presumption of validity, a contesting party must show enforcement of the clause is “unreasonable under the circumstances.” *Id.* (citation omitted) (providing examples of unreasonable and thus unenforceable clauses, such as where the clause is “unconscionable or a violation of public policy”).

Here, the Consent-to-Jurisdiction Clause found in the Agreement is “presumptively valid” under Wisconsin law. *See id.* Defendant has presented no argument to overcome this presumption. Further, we find nothing in the Record suggesting this Clause is otherwise invalid under Wisconsin law. Accordingly, Defendant consented to the jurisdiction of the Wisconsin Court, and the trial court

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did not err in finding Wisconsin had personal jurisdiction over Defendant and in denying Defendant's Notice of Defense Motion.

C. N.C. Gen. Stat. § 22B-3

Although we have already found the Forum-Selection Clause is enforceable under Wisconsin law, Defendant asserts Section 22B-3 of our General Statutes invalidates this Clause, thereby depriving the Wisconsin Court of jurisdiction. N.C. Gen. Stat. § 22B-3 provides:

Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable. This prohibition shall not apply to non-consumer loan transactions or to any action or arbitration of a dispute that is commenced in another state pursuant to a forum selection provision with the consent of all parties to the contract at the time that the dispute arises.

N.C. Gen. Stat. § 22B-3 (2017). Under the plain language of this Statute, Section 22B-3 nullifies a forum-selection clause requiring prosecution or arbitration in another state if the contract was "entered into in North Carolina[.]" *See id.*; *see also Schwarz*, ___ N.C. App. at ___, 802 S.E.2d at 788-792 (finding a forum-selection clause void and unenforceable under N.C. Gen. Stat. § 22B-3).

Here, however, as we have already discussed, the contract was formed in Wisconsin. Therefore, Section 22B-3 is inapplicable to the Agreement. Further, as detailed *supra*, Defendant consented to personal jurisdiction in the Wisconsin Court,

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and his consent found in the Agreement is valid and enforceable under Wisconsin law. Therefore, the trial court properly gave the Wisconsin Judgment full faith and credit in North Carolina.

Conclusion

Accordingly, for the foregoing reasons, we affirm the 26 September 2018 Motion to Dismiss Order.

AFFIRMED.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).