2013 Ark. App. 275

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-850

	Opinion Delivered April 24, 2013
LUX TAN, INC., KENNETH DAVIES, and CYNTHIA D. GRIZZLE APPELLANTS	APPEAL FROM THE CRAIGHEAD COUNTY, WESTERN DISTRICT [NO. CV-2010-0337]
V. JK PRODUCTS & SERVICES, INC. APPELLEE	HONORABLE PAMELA HONEYCUTT, JUDGE AFFIRMED

RHONDA K. WOOD, Judge

This is an appeal from the circuit court's finding of personal jurisdiction over the appellants Kenneth Davies and Cynthia Grizzle. Davies and Grizzle, North Carolina residents, own Lux Tan, a North Carolina corporation. Lux Tan bought tanning beds from JK Products, an Arkansas corporation. To finance the beds, Lux Tan executed a promissory note in JK Products's favor. Davies and Grizzle also signed personal guarantees. The note and guarantees both had a forum-selection clause that required any litigation to take place in Arkansas.

Eventually Lux Tan defaulted, and JK Products accelerated the note's remaining payments and sued Lux Tan and appellants in North Carolina. Lux Tan and appellants argued that North Carolina did not have jurisdiction to hear the case on account of the

forum-selection clause. A North Carolina court agreed and dismissed the lawsuit because the forum-selection clause designated Arkansas as the forum.

JK Products then sued the same parties in Arkansas and presented its case at a bench trial. After it rested, the defense made a motion to dismiss, contending that Arkansas lacked personal jurisdiction. The circuit court denied the motion, and the defense presented its case. The defense renewed its motion to dismiss at the close of all the evidence. The court denied the motion as to Lux Tan itself, and in a later letter opinion denied the motion as to the appellants, concluding that Arkansas had jurisdiction over all of the defendants. The court later entered a judgment in favor of JK Products. Davies and Grizzle appeal from that judgment, and we affirm.

In bench trials, the standard of review on appeal is not whether there is substantial evidence to support the findings of the court, but whether the judge's findings were clearly erroneous or clearly against the preponderance of the evidence. *Cochran v. Bentley*, 369 Ark. 159, 251 S.W.3d 253 (2007). However, questions of law are reviewed de novo. *Helena-W. Helena Sch. Dist. v. Monday*, 361 Ark. 82, 204 S.W.3d 514 (2005).

A forum-selection clause is consent to personal jurisdiction. *Servewell Plumbing, LLC v. Summit Contractors, Inc.*, 362 Ark. 598, 210 S.W.3d 101 (2005). Choice-of-forum clauses in contracts are binding, unless it can be shown that the enforcement of the clause would be unreasonable and unfair. *Id.* Whether enforcement is unreasonable and unfair is determined by considering the factual circumstances of each case; however, claims of inconvenience or a waste of judicial resources do not rise to the level of being unreasonable and unfair. *Parsons Dispatch, Inc. v. John J. Jerue Truck Broker, Inc.*, 89 Ark.

App. 25, 199 S.W.3d 686 (2004). Thus, for a forum clause to be unreasonable or unfair, it must do more than inconvenience a party; it must effectively deprive the party of its day in court. *Id.*

Here, JK Products sued the appellants in North Carolina. The appellants had that case dismissed because the forum-selection clause required the case to be brought in Arkansas. JK Products proceeded to file suit in Arkansas; in this case the appellants now argue that Arkansas lacks personal jurisdiction because they don't have minimum contacts with the state. However, they signed a forum-selection clause, which is a consent to personal jurisdiction. Appellants produce no argument that enforcing the clause would be unreasonable or unfair. Indeed, appellants relied on the clause to get the North Carolina case dismissed. In short, appellants want the forum-selection clause enforced in North Carolina but ignored in Arkansas.[1] This result would deprive JK Products of relief because it would be precluded from suing appellants anywhere. We hold that it is not unreasonable or unfair to enforce the forum-selection clause.

Affirmed.

WYNNE and HIXSON, JJ., agree.

Brian D. Dover, for appellants.

Steven R. Davis, for appellee.

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[1] In a different sense, the appellants are barred from challenging the forum-selection clause under the doctrine against inconsistent positions. *See generally Dupwe v. Wallace*, 355 Ark. 521, 140 S.W.3d 464 (2004). We have applied that doctrine in *Dicus v. Allen*, 2 Ark. App. 204, 619 S.W.2d 306 (1981). In the current case, appellants cannot argue that the forum-selection clause is enforceable in North Carolina, obtain a dismissal based on that position, and then reverse course in Arkansas simply to prevent appellee from recovering at all.