

IN THE SUPREME COURT OF THE STATE OF NEVADA

PURE PLANET PRODUCTS, INC., AN
ARIZONA CORPORATION; HEIDI BENSON;
AND ROBERT NICHOLS,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE, AND THE
HONORABLE STEVEN R. KOSACH,
DISTRICT JUDGE,

Respondents,

and

STI CREDIT CORPORATION, A NEVADA
CORPORATION,

Real Party in Interest.

No. 36791

FILED

JUL 13 2001

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION

This is an original petition for a writ of prohibition challenging an order of the district court denying the petitioners' motion to quash service of process or motion to dismiss for lack of personal jurisdiction.¹ In their petition, the petitioners contend that: (1) the district court erroneously found that the forum selection clause in the STI agreement is alone sufficient for Nevada to confer personal jurisdiction over the petitioners; and (2) the district court failed to recognize that STI did not present competent evidence necessary to make a prima facie showing of personal jurisdiction and impermissibly ignored the petitioners' affidavits. We disagree.

¹This court reviews de novo whether the plaintiff has presented sufficient evidence to make a prima facie showing of personal jurisdiction. Hospital Corp. of America v. District Court, 112 Nev. 1159, 1160-61, 924 P.2d 725, 725-26 (1996).

First, the petitioners assert that Nevada's long-arm statute does not confer jurisdiction over a defendant solely based on a forum selection clause in a contract to which the defendant is a party. The petitioners contend that there must be an additional independent ground before Nevada may assert personal jurisdiction. We disagree. Unlike the jurisdictions relied on by the petitioners,² the long-arm statute in Nevada confers personal jurisdiction to the full extent allowed by the federal constitution.³ Under well-settled precedent established by the Supreme Court of the United States, personal jurisdiction may be waived or designated in a forum selection clause without violating due process so long as the clause is freely negotiated and the provisions of the clause are not unreasonable and unjust.⁴ In this case, we agree with the district court that the petitioners have failed to show, for purposes of defeating STI's prima facie case, that the clause was not freely negotiated and was unreasonable and unjust.⁵ Accordingly, the forum selection clause in STI's

²See, e.g., McRae v. J.D./M.D., Inc., 511 So. 2d 540, 544 (Fla. 1987); American Investors Life Ins. Co. v. Webb Life, 876 F. Supp. 1278, 1280-81 (S.D. Fla. 1995); Alexander Proudfoot Company World Headquarters v. Thayer, 877 F.2d 912, 921 (11th Cir. 1989); see also Phone Directories Co. v. Henderson, 8 P.3d 256 (Utah 2000). These cases all involve long-arm statutes narrower and more restrictive than Nevada's, and thus were interpreted to require an independent ground supporting jurisdiction in addition to the forum selection clause.

³Trump v. District Court, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993) ("Nevada's long-arm statute has been construed to extend to the outer reaches of due process.").

⁴Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 n.14 (1984) (citations omitted); see also Tandy Computer Leasing v. Terina's Pizza, 105 Nev. 841, 784 P.2d 7 (1989) ("When [forum] selection provisions have been obtained through 'freely negotiated' agreements and are not 'unreasonable and unjust,' their enforcement does not offend Due Process.").

⁵A forum selection clause is unreasonable if:

Its incorporation into the contract was
the result of fraud, undue influence, or
continued on next page . . .

contract was sufficient to confer personal jurisdiction over the petitioners at this stage in the proceedings.

Next, the petitioners argue that the district court failed to examine STI's claim of personal jurisdiction under the proper standard. Specifically, the petitioners contend that the district court relied on the bare allegations contained in STI's complaint and did not properly evaluate whether STI produced "competent evidence" to show its prima facie case of personal jurisdiction. Further, the petitioners claim that the district court ignored their affidavits, which showed that neither Pure Planet nor Benson and Nichols were properly included as defendants in the matter. We disagree.

. . . continued

overweening bargaining power; (2) the selected forum is so gravely difficult and inconvenient that the complaining party will for all practical purposes be deprived of its day in court; or (3) enforcement of the clause would contravene a strong public policy of the forum in which the suit is brought.

Brooke v. Hill-Rom Co., 2000 WL 1364288 (D. Or. 2000) (citing Argueta v. Banco Mexicano, S.A., 87 F.3d 320, 324-25 (9th Cir. 1996)). We note that a clause is unreasonable when its "incorporation into the contract" was fraudulently obtained, not when the signatures of the parties were fraudulently obtained as the petitioners contend.

The district court in this case found: (1) there was no indication that STI was overreaching by adding the clause; (2) the inconvenience to the defendants was not unreasonable and did not deprive any party of his day in court; and (3) the clause does not offend Nevada public policy. We agree with the district court's findings on these points as they pertain to STI's prima facie case, but conclude that the petitioners still have the opportunity at a later evidentiary hearing or at trial to show by a preponderance of the evidence that the clause was not freely negotiated and is unreasonable and unjust.

In Trump v. District Court,⁶ we held that a plaintiff opposing a defendant's motion to quash has the burden of establishing a prima facie showing of jurisdiction through "competent evidence" and must later prove personal jurisdiction by a preponderance of the evidence at an evidentiary hearing or at trial. We also held that in determining whether a prima facie case has been made, the district court must accept as true all properly supported proffers of evidence by a plaintiff and resolve any factual disputes in favor of the plaintiff.⁷

In this case, STI attached a copy of the credit line agreement to the complaint filed with the district court. On its face, the agreement establishes that Pure Planet, through its general manager Mel Stuart, established with STI a commercial credit line guaranteed by Mel Stuart, Heidi Benson, and Robert Nichols. The issues raised in the petitioners' affidavits - whether Stuart lacked authority to bind Pure Planet⁸ and whether Stuart forged Benson and Nichols's signatures - are all disputed questions of fact that are to be resolved in STI's favor for purposes of evaluating its prima facie case.⁹ Accordingly, we conclude that the agreement attached to STI's complaint constituted the "competent evidence" necessary to establish STI's prima facie showing of personal jurisdiction over the petitioners.

⁶109 Nev. at 692, 857 P.2d at 743-44.

⁷Id. at 693, 857 P.2d at 744.

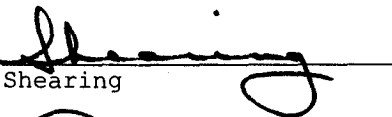
⁸Indeed, it is undisputed that Mel Stuart was employed as a general manager for Pure Planet, which raises the issue of whether his agency (actual or apparent) allowed him to bind the petitioners.

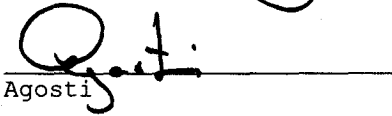
⁹Great American Ins. Co. v. General Builders, Inc., 113 Nev. 346, 352, 934 P.2d 257, 261 (1997) (noting that the existence of apparent authority is a question of fact); Iaea v. Iaea, 586 P.2d 1015 (Haw. 1978) (noting that forgery is a question of fact).


We emphasize that the petitioners are not without recourse at this point. As we noted in Trump, once personal jurisdiction has been challenged, the plaintiff must still prove personal jurisdiction at trial by a preponderance of the evidence.¹⁰ Instead of waiting for trial, the defendant may require the plaintiff to prove personal jurisdiction by a preponderance of the evidence in a pretrial evidentiary hearing.¹¹ Thus, if the petitioners have proof that there was no agency relationship sufficient to bind Pure Planet or that their signatures were forged, they may demand a pre-trial evidentiary hearing to present their evidence and possibly be dismissed from the case for lack of personal jurisdiction.¹²

Having concluded that STI has made a prima facie showing of personal jurisdiction over the petitioners, and therefore that the district court did not err in denying petitioners' motion to quash service of process or motion to dismiss for lack of personal jurisdiction, we

ORDER the petition DENIED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

¹⁰109 Nev. at 693, 857 P.2d at 744.

¹¹Id. at 694, 857 P.2d at 744.

¹²As noted above, the petitioners may also present evidence establishing that the clause was not freely negotiated and is unreasonable and unjust.

cc: Hon. Steven R. Kosach, District Judge
Armstrong Miller, LLP
Robert Nichols
Heidi Benson
Brooksbank & Associates
Washoe County Clerk