

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2200-11T2

CANON FINANCIAL SERVICES,
INC.,

Plaintiff-Respondent,

v.

EUFAULA SCHOOL DISTRICT,

Defendant-Appellant.

Argued April 24, 2012 – Decided June 4, 2012

Before Judges Messano and Yannotti.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-2063-11.

David B. Rubin argued the cause for appellant.

Howard N. Sobel argued the cause for respondent (Law Offices of Howard N. Sobel, P.A.; Mr. Sobel and Margaret D. Nikolis, on the brief).

PER CURIAM

By leave granted, defendant Eufaula School District, a school district in Oklahoma, appeals from the order denying its motion to dismiss the complaint of plaintiff, Canon Financial Services, Inc. Plaintiff, whose offices are located in Mount

Laurel, filed suit in the Law Division alleging that defendant had defaulted on four photocopier lease agreements executed in the fall of 2007. Plaintiff sought total damages in the amount of \$66,731.94.

Before filing its answer, defendant moved to dismiss for lack of personal jurisdiction pursuant to Rule 4:6-2(b). Defendant filed no affidavits or certifications and relied solely on its brief in support of the motion. Defendant did not request oral argument and none was held.

The motion judge, in a thorough written opinion, concluded that the forum selection clause included in each lease was valid and enforceable. The judge also determined that "[a]lthough Defendant[] may have to produce witnesses from Oklahoma and overcome some distance issues in preparing for trial, . . . such [does not] rise to the level of serious inconvenience sufficient to void the forum selection clause contained in the parties' contract." He denied defendant's motion to dismiss.

Before us, defendant argues that "[t]he complaint should be dismissed because there is no personal jurisdiction over [it], and the forum selection clause[s] in the leases [are] unenforceable." We have considered the arguments raised in light of the record and applicable legal standards. We affirm.

Each of the two-page lease agreements at issue contains a forum selection clause in its last paragraph which states:

32. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL: THIS AGREEMENT HAS BEEN EXECUTED BY [PLAINTIFF] IN, AND SHALL FOR ALL PURPOSES BE DEEMED A CONTRACT ENTERED INTO IN, THE STATE OF NEW JERSEY. THE RIGHTS OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES. ANY ACTION BETWEEN CUSTOMER AND [PLAINTIFF] SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE COUNTY OF CAMDEN OR BURLINGTON, NEW JERSEY, OR AT [PLAINTIFF'S] SOLE OPTION, IN THE STATE WHERE THE CUSTOMER OR THE EQUIPMENT IS LOCATED. CUSTOMER, BY ITS EXECUTION AND DELIVERY HEREOF, IRREVOCABLY WAIVES OBJECTIONS TO THE JURISDICTION OF SUCH COURTS AND OBJECTIONS TO VENUE AND CONVENIENCE OF FORUM. CUSTOMER, BY ITS EXECUTION AND DELIVERY HEREOF, AND [PLAINTIFF] BY ITS ACCEPTANCE HEREOF, HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY SUCH PROCEEDINGS.

This paragraph appears immediately above a space for the customer to initial the second page of the agreement. The paragraph is entirely in capital letters, unlike most of the rest of the agreement. The record also contains four purchase orders on defendant's letterhead, each executed on separate dates by Bill Wilson, the school district's superintendent.

"[F]orum selection clauses are generally enforced in New Jersey." Copelco Capital, Inc. v. Shapiro, 331 N.J. Super. 1, 4 (App. Div. 2000). "[T]he enforceability of forum selection

clauses is governed by requirements of notice, and reasonableness." Id. at 5 (citations omitted). "Whether these requirements have been met is a question of law, reviewable on appeal on a de novo basis." Ibid. (citations omitted).

"Such clauses will be enforced unless the party objecting thereto demonstrates (1) the clause is a result of fraud or overweening bargaining power, or (2) the enforcement in a foreign forum would violate strong public policy of the local forum, or (3) enforcement would be seriously inconvenient for the trial." McNeill v. Zoref, 297 N.J. Super. 213, 219 (App. Div. 1997) (quoting Wilfred MacDonald Inc. v. Cushman Inc., 256 N.J. Super. 58, 63-64 (App. Div.), certif. denied, 130 N.J. 17 (1992)) (internal quotation marks omitted). The party objecting to enforcement of the forum selection clause bears the burden of showing the clause in question should be rendered unenforceable. Wilfred MacDonald Inc., supra, 256 N.J. Super. at 63.

In this case, the motion judge specifically determined that defendant was provided with reasonable notice of the forum selection clause. We agree.

The cases defendant relies upon, including Copelco, supra, 331 N.J. Super. 5,6, and our recent decision in Hoffman v. Supplements Togo Management, LLC, 419 N.J. Super. 596, 611 (App. Div. 2011), certif. granted, 209 N.J. 231 (2012), are

distinguishable on their facts. In this case, there is "nothing about the style or mode of presentation, or the placement of the provision, that can be taken as a basis for concluding that the forum selection clause was proffered unfairly, or with a design to conceal or de-emphasize its provisions." Caspi v. Microsoft Network, L.L.C., 323 N.J. Super. 118, 125-26 (App. Div.), certif. denied, 162 N.J. 199 (1999).

Defendant also argues that enforcement of the forum selection clause would cause serious inconvenience because our courts are "halfway across the country." We have said that the "serious inconvenience" exception is not applicable to "cases where geographic distance merely inconveniences production of non-party witnesses; rather, it is reserved for the situation where 'trial in the contractual forum will be so gravely difficult and inconvenient that [the party] will for all practical purposes be deprived of his day in court.'" Copelco, supra, 331 N.J. Super. at 4 (alteration in original) (quoting Wilfred MacDonald Inc., supra, 256 N.J. Super. at 65).

As noted, defendant supplied no certifications or affidavits demonstrating the nature of this alleged serious inconvenience. Certainly on the record that exists, defendant has failed to demonstrate that it effectively will be denied its "day in court" if the trial occurs in New Jersey.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION