Supreme Court No. 91116-9
Court of Appeals No. 71042-7-I
King County Superior court No. 12-2-07861-1

SUPREME COURT
OF THE STATE OF WASHINGTON

Radiance Capital, L.L.C.,
Respondent,

v.

Nicholas W. Bartz
Petitioner.

REPLY TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The respondent is Radiance Capital, LLC ("Radiance"), a duly licensed and registered Washington limited liability company.

II. COURT OF APPEALS DECISION

The Court of Appeals', Division I, decision is unpublished and was issued October 20, 2104. A copy of the decision is in the Appendix at pages A-1 through A-8.

III. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals' decision conflict with long-standing rules of construction and enforcement of personal guaranties where the Court found the Guaranty and Agreement were separate contracts and then interpreted the language of the Guaranty consistent with its plain-language?

2. Is an issue of substantial public interest presented when the Court of Appeals has enforced the plain-language of a personal guaranty in a standard form commercial equipment financing agreement?

3. If this Court accepts review, does Washington's long-arm statute provide a second basis for exercise of jurisdiction over Nicholas Bartz?

4. Is Radiance entitled to its attorney fees and costs under the Equipment Financing Agreement?

IV. COUNTER STATEMENT OF THE CASE

A. Factual Summary

The respondent, Radiance Capital, LLC ("Radiance"), a Washington limited liability company, finances commercial equipment

purchases, retaining a secured interest in the equipment as collateral. CP 67. The petitioner, Nicholas Bartz ("Bartz"), entered into an Equipment Financing Agreement with Radiance in May of 2008 as Managing Member of Health Pro Solutions, LLC ("Health Pro") (hereafter referred to as the "Agreement"). CP 74-82.

Bartz is a resident of Michigan. CP 125. Michigan is where the equipment financed by Radiance was originally delivered. CP 123. The Agreement lists Bartz's business address in Michigan, though that business was closed in 2011 and the collateral equipment was last located in Arizona. CP 124. Currently, Bartz does not know where the equipment is located. CP 124.

Bartz had his business located previously in Arizona and resided both in Arizona and California at times relevant to the Agreement. CP 121-122. Radiance, on the other hand, has been located only in Washington at all relevant times.

The Agreement provides that it is deemed to be fully executed and performed in Washington. CP 59. The Agreement states that the "DEBTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE OF WASHINGTON IN KING COUNTY." CP 59. The "debtor" under the Agreement is Health Pro.

There is a "Schedule 'A'" attached to the Agreement. CP 77. "Schedule A" is one page. The top portion of Schedule A incorporates the terms of the Equipment Financing Agreement and has a payment schedule for the financing. The bottom portion of Schedule A is a "Personal Guarantee(s)" ("the Guaranty"). The Guaranty personally obligates the petitioner, Bartz. In the Guaranty, Bartz "guarantee[s] and promise[s] to make all of the payments and perform all of the Debtor's obligations as specified [in the] Equipment Financing Agreement." CP 77, see paragraph entitled "**PERSONAL GUARANTEE(S).**"

Bartz does not dispute he signed the Equipment Financing Agreement and its "Schedule A," including the Guaranty. CP 76, 77. He likewise does not dispute Radiance provided $43,466.18 to his LLC, Health Pro, for purchase of various office furniture and electronic equipment. CP 77. Bartz does not dispute that Health Pro defaulted on the Agreement by failing to make payments when due. CP 121-125, CP 156-158. Finally, Bartz does not dispute that, in further breach of the Agreement, the equipment in which Radiance has a security interest was moved from Michigan to Arizona and placed in the possession of a third party, Dr. Fred Goldblatt. CP 124, paragraph 14. As a result, Bartz does not know the current whereabouts of the collateral equipment. CP 124, paragraph 16.

B. Summary of Procedure.

In March of 2012, Radiance filed suit against Bartz and Health Pro in King County Superior Court for breach of contract, seeking a money judgment and an order for surrender of the collateral equipment. CP 54-56.

Radiance filed a Motion for Summary Judgment against Bartz on August 19, 2013, requesting a judgment for past due payments totaling $29,342.82, plus recoverable costs and attorney fees. CP 67-96. Bartz does not dispute the sums due and owing. CP 121-125.

In response to Radiance's summary judgment motion, Bartz moved to dismiss Radiance's Complaint for lack of jurisdiction under CR 12(b). CP 97-119.[1] Bartz alleged improper venue and that the Washington court lacked jurisdiction over him personally. CP 121-125.

Radiance's Motion for Summary Judgment and Bartz's Motion to Dismiss were argued and considered at one hearing, which took place on September 20, 2013. CP 161-163. The Court granted Radiance summary judgment and denied Bartz's Motion to Dismiss. CP 161-163.

Radiance was later awarded its attorney fees and costs on an unopposed motion. CP 32-42. An Amended Final Judgment Summary,

[1] Radiance did not seek summary judgment against Health Pro Solutions, LLC, which was dismissed as a party defendant because it was defunct as of November 2011.CP 122, 53.

Order Granting Summary Judgment and Denying the Defendant's CR 12(b) Motion to Dismiss was entered in favor of Radiance on October 4, 2013 and Bartz filed a timely appeal of this final order. CP 159-166.

The Court of Appeals, Division I, reviewed the matter de novo and affirmed the trial court's ruling in favor of Radiance. Bartz now petitions for review of that decision based on RAP 13.4(b)(1), (2), and (4).

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

There is no basis under RAP 13.4(b)(1), (2), or (4) to grant review in this case.

A. The Court of Appeals' decision is consistent with the decisions of Washington's Supreme Court and other Washington Courts of Appeal regarding personal guaranties.

Bartz alleges the Court of Appeals' decision conflicts with long-standing rules and decisions regarding construction and enforcement of personal guarantees. In actuality, the Court of Appeals decision is entirely consistent with these rules and decisions, including the authorities cited by Bartz.

Bartz first cites Union Mut. Life Ins. Co. v. Hanford, 143 U.S. 187 (1892) and Simpson Logging Company v. American Bonding Company of Baltimore, 76 Wash. 533, 538, 137 Pac. 127 (1913) for the rule that guarantors not be held liable beyond the express terms of their agreement.

Bartz then cites Wilson Court Limited Partnership v. Tony Maroni's, Inc., 134 Wn.2d 692, 952 P.2d 590 (1998) for the rule that guarantors can be held only upon the strict terms of their contract. Bartz later cites to Seattle-First National Bank v. Hawk, 17 Wn.App. 251, 562 P.2d 260 (1977), to reiterate the rule that guarantors be held only upon the strict terms of their contract. The Court of Appeals followed these rules in its analysis.

First, the Court of Appeals identified the express terms of the guaranty at issue:

> "It is undisputed that Bartz promised to 'make all payments and perform all Debtors'(sic) obligations as specified' in the Agreement. CP at 61. The parties disagree about what 'obligations' Bartz assumed by signing the Guarantee. The term 'obligation' is not defined in either the Agreement or the Guarantee. Bartz argues that his obligations under the Guarantee include only the tasks or debts related to the advance and the collateral. Radiance argues that all of the terms of the Agreement, not just the terms related to payments and collateral, are Bartz's obligations under the language of the guaranty." APP-6.

Next, the Court of Appeals analyzed whether the term "all obligations" included only the tasks or debts related to the advance and collateral, as Bartz urged. The language of the Guaranty refers to making all payments ***and*** performing all obligations of the debtor, Health Pro; thus, there was a guaranty beyond just making payments. The Court of Appeals found this to be an express indication that Bartz was responsible for the additional obligations of the Health Pro, not just for making

payments. APP-7. These "additional obligations" included Health Pro's agreement to submit to the jurisdiction of the State of Washington, King County.

B. The Court of Appeals' cited to Republic Int'l Corp because the contract language at issue was similar to this case.

Bartz next cites the long recognized rule that contracts of guaranty are separate and distinct from contracts of assignment (Croskey v. Skinner, 44 Ill. 321,323 (1867)), alleging the Court of Appeals "greatly strayed" from this rule by "finding persuasive" a 9th Circuit Court of Appeals decision concerning an assignment as opposed to a guaranty. APP-6, citing Republic Int'l. Corp. v. Amco Engineers, Inc., 516 F.2d 161, 168 n. 11 (9th Cir. 1975). Bartz's criticism is misplaced.

The Court of Appeals did not stray from the rule that contracts of guaranty are separate from contracts of assignment by citing Republic Int'l. The Court of Appeals cited Republic Int'l because it concerned contractual language similar to the instant action; whether the contract was an assignment or a guaranty is irrelevant.

There was a similarity between the assignment and primary contract language in Republic Int'l, and the language of Bartz's Guaranty and the Agreement at issue here. The Court of Appeals noted the similarity – in the Republic Int'l contract, persons agreed to "do every act

and thing necessary to perform all of the conditions of said contracts" and, in this case, Bartz agreed "to make all payments and perform all [Health Pro's] obligations as specified in the [Agreement]." The Court of Appeals noted the Republic Int'l contract had a jurisdictional agreement clause, like the Agreement here. The Republic Int'l court's ruling that the contract language included "among those obligations...the promise to submit to the jurisdiction of the Uruguayan courts" was consistent with the ruling of the Court of Appeals, based on the plain language of the contracts in question. APP-6-7.

Notably, the Court of Appeals rejected Radiance's argument that the Guaranty and the entirety of "Schedule A" were one agreement and incorporated by reference all terms and conditions of the original Equipment Financing Agreement. Consistent with Bartz's argument that a guaranty is a separate and distinct contract, the Court of Appeals found Bartz's guaranty was "a separate legal undertaking from both the Agreement and its appurtenant Schedule A." APP-5.

C. An issue of substantial public interest is not presented when the Court of Appeals followed standard rules of contract interpretation to enforce the plain-language of a personal guaranty.

Bartz argues that a substantial segment of the population are now potentially affected or at risk because the Court of Appeals "drastically

depart[ed]" from the rules of construction and enforcement of personal guaranties. As is thoroughly analyzed above, the Court of Appeals followed the long-established rules pertaining to personal guaranties, and Bartz' argument should consequently be rejected.

Bartz claims to have been "involuntarily hauled into a foreign State" to defendant a lawsuit on a contract to which he was not a party. See Petition for Review, p. 18. Nothing could be further from the facts. Bartz signed the original Equipment Financing Agreement, albeit as the managing (and sole) member of his LLC. That Agreement at paragraph 26 states in **BOLD,** ALL CAPS font:

> "**26. CHOICE OF LAW; WAIVER OF JURY TRIAL.** THIS AGREEMENT SHALL BE DEEMED FULLY EXECUTED AND PERFORMED IN THE STATE OF WASHINGTON AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS THEREOF WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES OF SUCH STATE. DEBTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE OF WASHINGTON IN KING COUNTY. EACH CREDITOR AND DEBTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION INVOLVING THIS AGREEMENT." CP 75.

Bartz initialed the very page on which this obligation is described. While Bartz complains the term "obligation" in his personal guaranty should not include this clause, the Guaranty's plain language states otherwise. An "obligation" is something which a person is bound to do, or a binding promise, contract, or duty enforceable by law. Webster's

Universal College Dictionary, p. 546 (2001). If the term was meant to refer only to payments owed, as Bartz urges, the Guaranty would not require Bartz "to make all of the payments ***and*** perform all [Health Pro's] obligations." CP 77. All language beyond "to make all the payments" would be superfluous.

The law affecting the legal rights and interests of guarantors remains unchanged by the Court of Appeals' ruling in this case. This is a case of simple contract interpretation, not involving a substantial public interest.

D. Bartz is subject to Washington jurisdiction under the long-arm statute.

Interpreting the Guaranty to subject Bartz to Washington jurisdiction under paragraph 26 of the Agreement, the Court of Appeals did not reach the issue as to whether Bartz would be subject to Washington jurisdiction under the long-arm statute. RCW 4.28.185. Under that statute, a person who performs certain actions in Washington submits to the jurisdiction of Washington State, which actions include transaction of any business in Washington.

The Court may find that exercise of long-arm jurisdiction is a second, independent basis for exercise of jurisdiction over Bartz, even where there is a forum-selection clause. See Kysar v. Lambert, 76

Wn.App. 470, 442, 887 P.2d 431 (1995). The required "purposeful, minimum contacts" with the forum state can consist merely of ordering insurance by telephone and mail (Griffiths & Sprague Stevedoring Co v. Bayly, Martin & Fay, Inc., 71 Wn.2d 679, 430 P.2d 600 (1967)), or answering a phone solicitation and ordering by phone call from a vendor in Washington (Sorb Oil Corp v. Batalla Corp, 32 Wn.App. 296, 299, 647 P.2d 514 (1982)).

Radiance has been located in Washington at all times relevant to this case. This includes when Bartz conducted business with Radiance by obtaining his equipment financing from Radiance. Bartz is subject to long-arm jurisdiction because he contracted with a Washington limited liability company, located in Washington, to obtain his equipment financing. In the Agreement, it is clearly provided that the Agreement is "deemed" (ie. in "the opinion" of the parties considered...) to be fully executed and performed in Washington. CP 59. Under these facts, Bartz had sufficient minimum contacts to subject himself to jurisdiction in this State.

Furthermore, it is reasonable and just that this breach of contract suit be adjudicated in Washington. Bartz now resides in Michigan and the equipment financed by Radiance was originally delivered there. CP 125, 123. But Bartz also had his business located previously in Arizona and

resided there at one time. CP 121-122. His limited liability company, Health Pro, was established in Nevada. CP 122. Bartz says he resided briefly in California during relevant times as well. CP 121. While Agreement lists Bartz' business address in Michigan, Bartz admits the business was closed in 2011 and the collateral equipment was removed to Arizona. CP 124. Finally, Bartz does not know where the equipment is located now. CP 124. In order to recover its collateral equipment, Radiance would likely file suit in the State in which the equipment was located, but due to Bartz' breach of contract, there is no way of knowing where that is. Washington is the suitable place for adjudication of this contract dispute.

E. Attorney fees should be awarded Radiance.

Radiance requests and is entitled to its attorney fees and costs incurred on appeal, and for its response to the Petition for Supreme Court review, under paragraph 18 of the Agreement which provides:

> "Debtor shall pay Creditor [Radiance] its costs and expenses, including repossession and attorney's fees and court costs incurred by Creditor in enforcing this Agreement. This Agreement includes the payment of such amounts whether an action is file and whether an action that is file is dismissed." CP 75.

Per the Guaranty, Bartz is responsible for the "debtor," Health Pro's, obligation to pay attorney fees and court costs incurred to enforce the Agreement.

Radiance requested its attorney fees and costs on appeal, and the Court of Appeals allowed those fees in its ruling. Radiance's Motion for Fees and Costs was timely filed in the Court of Appeals but, evidently in light of this Petition, there has yet to be a final ruling. Radiance reiterates its request for fees and costs, including additional attorney fees and costs related to the Supreme Court review. Bartz's request for fees and costs should be denied.

VI. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests the Court decline Nicholas W. Bartz' Petition for Review.

Respectfully submitted this 16th day of December 2014.

Shannon R. Jones, WSBA #28300
Attorney for Respondent

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APPENDIX

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

RADIANCE CAPITAL, LLC,	)	
	)	No. 71042-7-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
NICHOLAS W. BARTZ,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: October 20, 2014

SPEARMAN, C.J. —Nicholas Bartz appeals the trial court's denial of his motion to dismiss for lack of personal jurisdiction under CR 12(b)(2). Finding no error, we affirm.

FACTS

Nicholas Bartz is a resident of Michigan. He was the managing member of Health Pro Solutions, LLC (HPS), a now defunct Nevada LLC. HPS was doing business in Arizona when it sought financing from an Arizona broker to purchase equipment. The broker found financing through Radiance Capital, LLC (Radiance), a Washington limited liability company. In May 2008, HPS and Radiance entered into an Equipment Financing Agreement (Agreement). According to the terms of the Agreement, Radiance advanced $43,466.18 to HPS for the purchase of office furniture and electronic equipment. HPS was the

sole debtor; Bartz signed the Agreement on behalf of HPS in his capacity as Managing Member. Bartz also signed a Personal Guarantee (Guarantee) in which he "promise[d] to make all of the payments and perform all Debtors'(sic) obligations as specified" in the Agreement. Clerk's Papers (CP) at 55.

The Agreement contained a clause in which the parties agreed to submit to personal jurisdiction of the King County Superior Court. Paragraph 26 of the Agreement, titled "Choice of Law; Waiver of Jury Trial," reads:

> THIS AGREEMENT SHALL BE DEEMED FULLY EXECUTED AND PERFORMED IN THE STATE OF WASHINGTON AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS THEREOF WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES OF SUCH STATE. DEBTOR AGREES TO SUBMIT TO THE JURISDICATION (sic) OF THE STATE OF WASHINGTON IN KING COUNTY. EACH CREDITOR AND DEBTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION INVOLVING THIS AGREEMENT. CP at 59.

The Agreement also included a "Schedule 'A' to the Equipment Financing Agreement" (Schedule A) that listed payment terms and information about the collateral. The Guarantee was located on the same page as Schedule A, but did not contain any reference to jurisdiction, venue or dispute resolution.

HPS defaulted on the Agreement and Radiance filed suit in King County, Washington against HPS and Bartz under the Agreement and the Guarantee. Radiance filed a motion for summary judgment on the amount owed and Bartz moved to dismiss for lack of personal jurisdiction. The trial court granted Radiance's motion for summary judgment and denied Bartz's motion to dismiss. Bartz appeals.

DISCUSSION

If, as in this case, the trial court has ruled on personal jurisdiction based on the pleadings and the undisputed facts, its determination is a question of law that we review de novo.[1] Outsource Srvcs. Mgmt., LLC v. Nooksack Bus. Corp., 172 Wn. App. 799, 807, 292 P.3d 147 (2013) rev. granted, 177 Wn.2d 1019 (2013) aff'd, 2014 WL 4108073, __ P.3d.__ (2014). Similarly, contract interpretation that does not depend on the use of extrinsic evidence is also a question of law reviewed de novo. State v. R.J. Reynolds Tobacco Co., 151 Wn. App. 775, 783, 211 P.3d 448 (2009).

Consent to Jurisdiction

Bartz contends that the trial court erred in denying his motion to dismiss because he did not personally agree to submit to jurisdiction of the Washington courts. He points out that only the Agreement, which he signed solely in his official capacity as managing member of HPS, contained language agreeing to jurisdiction. The Guarantee, which he signed in his personal capacity, contained no such language. Radiance argues that the Guarantee is part of the Agreement and all of the terms of the Agreement apply to the guarantor.

We disagree with Radiance and find that the Guarantee and the Agreement are separate contracts. "[A] guaranty is a separate legal undertaking

[1] We reject Radiance's contention that the appropriate standard of review is whether the trial court abused its discretion. The argument assumes that the issue before us is the validity of the forum selection clause. This case turns on whether Bartz consented to jurisdiction under the terms of the Agreement and the Guarantee, not whether the forum selection clause is enforceable. Although on appeal, Bartz initially challenged the validity of the forum selection clause, in his reply, he appears to acknowledge that the language of the Guarantee and the Agreement's consent to jurisdiction clause are the dispositive issues.

from the principal obligor's undertaking on a note." Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC, 155 Wn. App. 643, 660, 230 P.3d 625 (2010). In Freestone, we found that the out-of-state guarantors were not bound by a choice of law provision contained only in the promissory notes and amendments. Id at 661. The guarantees did not incorporate any of the terms of the notes, nor did they mention a choice of law. Id. The trial court apparently bound the guarantors to the choice of law provisions based solely on the fact that the guarantees were subjoined to the notes. Id. at 660. This court reversed, indicating that they "ha[d] found no persuasive authority" for extending the terms of the notes to the guarantees, just because they were located on the same page. Id. We held that:

> 'The debtor is not a party to the guaranty, and the guarantor is not a party to the principal obligation. The undertaking of the former is independent of the promise of the latter; and the responsibilities which are imposed by the contract of guaranty differ from those which are created by the contract to which the guaranty is collateral. ***The fact that both contracts are written on the same paper or instrument does not affect the independence or separateness of the one from the other.***'

Id., quoting Robey v. Walton Lumber Co., 17 Wn.2d 242, 255, 135 P.2d 95 (1943). The guarantees and the notes were "two separate obligations were undertaken by different parties." Freestone, 155 Wn. App. at 661.

Applying similar reasoning, the Ninth Circuit found a guarantees to be separate from the underlying contract and declined to apply a guarantee's choice

of law provision to the corporate debtor's underlying note.[2] Shannon-Vail Five Inc. v. Bunch, 270 F.3d 1207, 1211 (9th Cir. 2001). The circuit court stated that "a guarantee is a separate undertaking in which the principal obligor does not join, and a guarantee exists independent of the original obligations between the principal obligor and the obligee." Id.

The Guarantee that Bartz signed is located on the bottom of the page containing Schedule A. Schedule A includes terms that apply only to the creditor and the debtor. The Agreement only refers to Schedule A in the sections addressing the debtor's terms of repayment and the collateral. There is no mention of the Guarantee or the existence of any guarantors in the Agreement or in Schedule A.

Radiance cites no authority for its position that either Schedule A or the Agreement includes the Guarantee. The Guarantee happens to be printed on the same page as Schedule A. Bartz, as personal guarantor, "guarantee[d] and promise[d] to make all of the payments and perform all Debtors'(sic) obligations as specified in this Equipment Financing Agreement." CP at 61. The terms of the Agreement are not incorporated into the Guarantee by any reference. Only Schedule A incorporates the terms of the Agreement by reference. Schedule A is part of the Agreement; the Guarantee is a separate legal undertaking from both the Agreement and its appurtenant Schedule A.

[2] The Shannon-Vail guarantees contained an express provision stating that "[g]uarantor acknowledges that its obligations hereunder are independent of the obligations of the Borrower," and the choice of law provision contained limiting language – *"[t]his Guarantee* shall be governed by and construed in accordance with the law of the state of Nevada." Id.

Next, we look to the language of the Guarantee to determine whether Bartz is subject to the Agreement's consent to jurisdiction clause. It is undisputed that Bartz promised to "make all payments and perform all Debtors'(sic) obligations as specified" in the Agreement. CP at 61. The parties disagree about what "obligations" Bartz assumed by signing the Guarantee. The term "obligation" is not defined in either the Agreement or the Guarantee. Bartz argues that his obligations under the Guarantee include only the tasks or debts related to the advance and the collateral. Radiance argues that all of the terms of the Agreement, not just the terms related to payments and collateral, are Bartz's obligations under the language of the Guarantee.

As a matter of law, however, the language of the Guarantee established an affirmative duty and an "obligation" of the debtor to submit to the jurisdiction of King County and the State of Washington. See Republic Int'l. Corp. v. Amco Engineers, Inc., 516 F.2d 161, 168, n.11 (9th Cir. 1975). In that case the ninth circuit found that assignees of a contract, who agreed to "'do every act and thing necessary to perform all of the conditions of said contracts,'" were bound by the original contract's consent-to-jurisdiction clause. Id. The original contract's clause stated that "[f]or the purposes of this contract, the contracting parties place themselves under the jurisdiction and competence of the courts of the Republic of Uruguay." Id., at n.11. The assignees claimed that their assignment contract changed the forum by requiring disputes to be decided under Delaware law. The circuit court disagreed and held that the assignees had "agreed to assume [assignor's] obligations under the contracts; among those obligations was the

promise to submit to the jurisdiction of the Uruguayan courts." Id. at 169. The assignment contract's Delaware forum selection clause applied only to disputes between the assignor and assignee. Id.

We agree with the Ninth Circuit's reasoning and find that Bartz's guarantee of "all Debtors' obligations" included the duty to submit to jurisdiction. In a stand-alone sentence, without any limiting language, the Agreement states "DEBTOR AGREES TO SUBMIT TO THE JURISDICATION (sic) OF THE STATE OF WASHINGTON IN KING COUNTY." CP at 59. The language of the Guarantee specifically refers to making "all of the payments and perform[ing] all Debtors' obligations" (emphasis added), indicating that the Guarantor is responsible for additional obligations as well as making payments under the Agreement. CP at 59. Among those obligations was the promise to submit to jurisdiction in King County, Washington. By signing the Guarantee, Bartz consented to the jurisdiction of the King County Superior Court.

Bartz directs the court to other language in the Agreement as evidence that his "obligations" do not include submitting to jurisdiction. He cites paragraph 14, which reads "If Debtor fails to perform any of its obligations hereunder, Creditor may perform such obligations . . . ." CP at 58. Based on this provision, Bartz argues consenting to jurisdiction is not an "obligation" he agreed to undertake because it would make no sense for the creditor to consent to jurisdiction on behalf of the debtor. We disagree. Paragraph 14 sets forth the creditor's right to perform any obligations upon the debtor's failure and demand reimbursement and costs. It does not serve to define "obligations" by implication,

nor does it create an inconsistency that would limit the debtor's duties to those tasks that can be performed by the creditor to protect the collateral. Bartz guaranteed all of the debtor's obligations as specified in the agreement, including the promise to consent to jurisdiction.

We affirm the trial court's denial of Bartz's motion to dismiss.[3] As the prevailing party in this appeal, Radiance is entitled to fees and costs under RAP 18.1 and the Guarantee.

Affirmed.

WE CONCUR:

Spearman, C.J.

Trickey, J

[3] The parties also argued for and against jurisdiction under the Washington long-arm statute. Because we affirm the trial court's decision based on the contracts, we do not reach the question of statutory jurisdiction.