

FILED

JUN 06 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COA NO. 30554-6-III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

MARLIN LEASING CORPORATION,

Respondent,

VS

ASSOCIATED CREDIT SERVICE, INC.,

Appellant.

BRIEF OF APPELLANT

Paul J. Wasson, WSBA 5854
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I. ASSIGNMENTS OF ERROR

1. The trial court erroneously denied the appellant's motion to vacate the foreign judgment, holding the Pennsylvania Court used in respondent's lawsuit had subject matter jurisdiction.

2. The trial court erroneously denied the appellant's motion to vacate the foreign judgment, holding the Pennsylvania Court used in respondent's lawsuit had personal jurisdiction.

Issues Pertaining to Assignments of Error

1. When a lawsuit against a foreign (Washington) corporation is filed in a municipal court back in Philadelphia, Pennsylvania, does that Court have the jurisdiction to hear and decide such case, rendering a judgment which can then be registered here in Washington State? (Pertaining to Assignments of Error 1-2)

2. When a lawsuit filed in the municipal court in Philadelphia, PA, and notice of said lawsuit is mailed by regular first-class mail to the corporate defendant, i.e., a proper person was never personally served, does the municipal court in Pennsylvania have personal jurisdiction over the defendant to render a default judgment, and later register this same default judgment in Washington for enforcement? (Pertaining to Assignments of Error 1 & 2)

II. STATEMENT OF THE CASE

In or about July, 2004, appellant Associated Credit Service, Inc., a Washington Corporation, signed a sixty (60) months lease with "JB II Funding, Inc." Said lease required advance payments for two (2) months, i.e. \$1,537.02 before the lease started. Also in paragraph 4, the lease read, in pertinent part: ". . . This lease shall be governed by the laws of the Commonwealth of Pennsylvania. You agree that any suit under this lease shall be brought in **state or federal court** in Pennsylvania, and you irrevocably consent and submit to the jurisdiction of such courts. Each party waives any right to a jury trial. . . ." (emphasis added) (CP 9, 13-14)

As the lease approached its end date and termination, officers/employees of the appellant noticed that the lessor was charging appellant for insurance on the leased equipment despite the fact that appellant already maintained its own insurance, and that the 2 months advance payment wasn't credited against the remaining balance. For that reason, the appellant ceased lease payments to "offset" those amounts detailed above. (CP 10, 13-14, 22-23)

The respondent later filed suit in Pennsylvania **Municipal Small Claims Court** (CP 15-16; 19) in 2009, but mailed notice of said lawsuit to appellant rather than have said lawsuit served on appellant's registered agent or president pursuant to RCW 4.28.080. (emphasis mine) When the lawsuit was received by mail instead, the appellant made the decision, after reading the Municipal Court's brochure (CP 13-14), not to go to Pennsylvania to appear and defend. (CP 22-23)

Approximately two years later, the respondent filed a “Notice of Registration of Foreign Judgment.” (CP17) In response to said filing, appellant made a motion to vacate the “foreign judgment”, with supporting memorandum and attachments. (CP 9-24) A hearing on that motion occurred on December 9, 2011 before the Honorable Maryann Moreno. (RP 1-14) Following oral argument, the Court gave an oral ruling denying the motion. *Id.* The court’s decision was then reduced to a written Order. (CP 29) This Appeal followed. (CP 31-33)

III. ARGUMENT

A. THE TRIAL COURT ERRONEOUSLY DENIED APPELLANT’S MOTION TO VACATE A FOREIGN JUDGMENT

1. The Philadelphia Small Claims Court Did Not Have Subject Matter Jurisdiction

As a general rule, a judgment rendered by a court in one State, if valid, is entitled to recognition in the courts of another State(s) by virtue of the full faith and credit clauses. U.S. Const. IV, Section I; *Estate of Stein*, 78 Wn. App. 251, 261, 896 P. 2d 740 (1995); *Effert v. Kalup*, 45 Wn.2d 12, 14, 723 P.2d 541 (1986); *see also* RCW 6.36, Uniform Enforcement of Foreign Judgments Act.

Basically this means a foreign judgment must be given the same recognition and res jurisdiction effect it would receive in the State which rendered it, *Idaho v. Holjeson*, 42 Wn. App. 69, 70, 708 P.2d 661 (1985) *review*

denied, 105 Wn.2d 1005 (1986); *Marriage of Ulm*, 39 Wn. App. 342, 344-45, 693 P.2d 181 (1984), although a decree of a sister state may be subject to collateral attack for want of jurisdiction over the subject matter of the action or the parties to the action. *See Wampler v. Wampler*, 25 Wn.2d 258, 263, 170 P.2d 316 (1946); *Estate of Stein, supra*, at 261.

In the instant case, this action was brought in a **municipal court** that did not have subject matter jurisdiction on this case. While it is certainly true that the Philadelphia Municipal Court has subject matter jurisdiction over actions under \$10,000 for “assumpsit”, i.e. contracts and their alleged breach, 42 Pa. Cons. Stat. 1121-1123 (4), their jurisdiction is not as a State-wide court. It is limited to the City of Philadelphia by the very court materials mailed to defendants. (CP 15-16) *See Title 42, Pennsylvania Statutes and Codes.*

In *City of Yakima v. Aubrey*, 85 Wn. App. 199, 931 P.2d 927 (1997), this Division held that a tribal court lacked subject matter jurisdiction to order that a criminal defendant not leave the reservation to serve a Washington jail sentence, and therefore, that particular trial court’s order was not entitled to full faith and credit in our jurisdiction, citing at p. 203 to the RESTATEMENT (SECOND) OF CONFLICT OF LAWS, Section 104: “A judgment rendered without judicial jurisdiction . . . will not be recognized or enforced in other states.”

Unfortunately the motion judge in this case incorrectly assumed that a municipal court was a “state” court for purposes of the consent to venue clause in

the language of the contract at issue here, RP 13, when in fact the Municipal Court only has jurisdiction over city residents or companies that do business in the city.

(CP 15-16)

2. The Philadelphia Small Claims Court Did Not Have Personal Jurisdiction Over This Appellant

As to the issue of personal jurisdiction (assuming *arguendo* the trial court was correct on the first argument above on subject matter jurisdiction), the court in Pennsylvania merely mailed this Small Claims lawsuit (along with a brochure explaining the small claims procedures in municipal court) (CP 15-16) to Associated Credit's general mailing address. This did not give their municipal court jurisdiction over a Washington State resident, where the rules on service of process were not strictly adhered to and followed.

Even the motion judge here had problems with this personal service issue, but couldn't decide in what State such an argument should occur. RP 13. Specifically, the entire record at the motion hearing reveals only one paragraph in the court's ruling addressing this issue: "I'm not so sure, though, about the second issue with regard to service of process. There's been an argument that there's a consent to jurisdiction, and that --- and that I understand. But I'm not -- the question in my mind is whether or not this is the proper proceedings to litigate whether or not service was proper. And I also am not clear as to what service requirements exist in the State of Pennsylvania." *Id.*

Appellant submits that clearly this the jurisdiction to decide whether

service was proper, because this is the jurisdiction deciding whether to vacate the judgment! However, because the rules are essentially the same in both States it doesn't matter which jurisdiction's law is used in this "conflict of laws" question.

Both Washington and Pennsylvania have strictly proscribed rules for service of original process on corporations. *See generally*, RCW 4.28.080-.090 and Pa. R. C. P. 402. Most of those requirements are identical in both state's rules and statutes, whether service is to be made on an individual or a business. *Id.* In a Pennsylvania case that involved service of process of an amended complaint on a new defendant called Callowhill Center Associates (CCA), the appellate court in *City of Philadelphia v. Berman*, 863 A.2d 156 (2004) said this about service of original process at pp. 160-161:

Service of process is the mechanism by which a court obtains jurisdiction over a defendant. (footnote omitted) *Sharp v. Valley Forge Medical Center and Heart Hospital, Inc.*, 422 Pa. 124, 221 A.2d 185 (1966). The rules relating to service of process must be strictly followed. *Id.*; *Dubrey v. Izaguirre*, 454 Pa. Super. 504, 685 A.2d 1391 (1996). Proper service is not presumed; rather, the return of service itself must demonstrate that the service was made in conformity with the Pennsylvania Rules of Civil Procedure. *Township of Lycoming v. Shannon*, 780 A.2d 835 (PA.Cmwlth, 2001). In the absence of valid service, a court lacks personal jurisdiction over the party and is powerless to enter judgment against that party. *U. K. LaSalle, Inc. v. Lawless*, 421 Pa. Super. 496, 618 A.2d 447 (1992) . . .

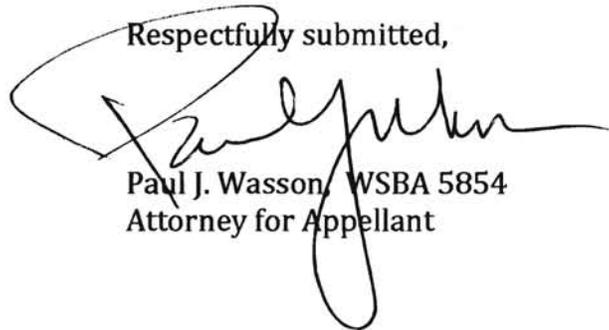
Similarly, in Washington, courts have held that first and basic to personal jurisdiction is service of process. *Painter v. Olney*, 37 Wn. App. 424, 427, 680 P.2d 1066, *review denied*, 102 Wn.2d 1002 (1984). RCW 4.28.080 (9) has set requirements for service of process on a Washington corporation. Service by mail

is not an option under this section. The Pennsylvania Small Claims court did not properly serve the appellant corporation by sending out an envelope with a court date and summons when to appear in their State. Appellant Associated Credit was never properly served, and thus, no jurisdiction was obtained to enter a default judgment in the Pennsylvania. Thus the trial court should have vacated the foreign judgment registration on this grounds alone.

IV. CONCLUSION

The trial court erred by denying the motion to vacate this foreign judgment. The foreign court (Pennsylvania) had no jurisdiction (1) over the subject matter or (2) the "person" (appellant Associated). To hold otherwise, with all due respect, is contrary to the cases and statutes cited above. This court should reverse the Superior Court, and remand with instructions to that court to vacate the foreign judgment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul J. Wasson', is written over the typed name and title. The signature is fluid and cursive, with a large loop at the end.

Paul J. Wasson, WSBA 5854
Attorney for Appellant

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COURT OF APPEALS, DIVISION THREE, STATE OF WASHINGTON

MARLIN LEASING CORPORATION

Respondent,

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Appellant,

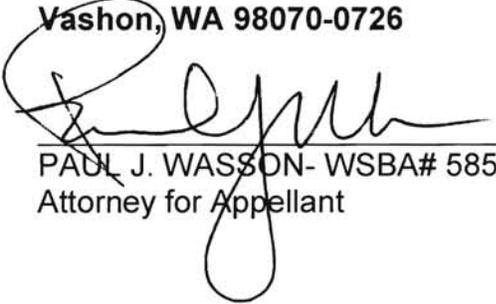
No. 30554-6-III

CERTIFICATE OF SERVICE

Paul Wasson, Attorney for Appellant, certifies under penalty of perjury that I caused a true and correct copy of **APPELLANT'S BRIEF, MOTION FOR EXTENSION FOR FILING**, and **VERBATIM REPORT OF PROCEEDINGS** to be mailed, postage prepaid on the 6th day of June, 2012 to:

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