

FILED

JUL 19 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.

AMENDED BRIEF OF RESPONDENT

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Attorney for Respondent
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Vashon, WA 98070

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I. APPELLANT’S ASSIGNMENTS OF ERROR

1. The Appellant claims the trial court erred when it denied defendant’s motion to vacate the foreign judgment by holding that there was proper subject matter jurisdiction in the foreign court in which the case was filed.
2. The Appellant claims the trial court erred when it denied defendant’s motion to vacate the foreign judgment by holding that there was proper personal jurisdiction in the foreign court in which the case was filed.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court properly denied defendant’s motion to vacate the foreign judgment when it held that defendant had consented to the personal jurisdiction of the Philadelphia Municipal Court by consenting in the contract at issue to resolve disputes arising therefrom in a “state court” of Pennsylvania. Assignment of error 1.
2. Whether the trial court properly denied defendant’s motion to vacate the foreign judgment when it held notice was proper when defendant was served by mail. Assignments of error 2.
3. Whether Respondent is entitled to reimbursement of its attorney’s fees and costs on appeal.

III. STATEMENT OF THE CASE

In or about July, 2004, appellant Associated Credit Service, Inc., a Washington Corporation, signed a sixty (60) month lease with “JB Funding, Inc.” It is undisputed that the lease was assigned to Respondent. 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 Ours) [CP 9, 13-14, 15]; *See* attached Copy of Lease, Attachment A which is attached for legibility purposes pursuant to RAP 10.4(c).

The appellant ceased payments. Respondent filed suit in the Municipal Small Claims Court of Philadelphia and the court mailed Notice of the law suit to Appellant pursuant to Pennsylvania Law. When the lawsuit was received by Appellant, Appellant made the decision not to appear and defend. [CP 13-14]

Approximately two years later, Respondent filed a Notice of Registration of Foreign Judgment. [CP Notice of Registration of Foreign Judgment, p. 1-5] Appellant duly filed a Motion to Vacate the foreign judgment. [CP Motion to Vacate Judgment, p. 24] Following oral

argument on December 9, 2011, the court rendered an oral decision denying the motion and a written order was entered. [RP 1-14; CP 29] This appeal followed. [CP 31-33]

IV. ARGUMENT

A. THE TRIAL COURT PROPERLY FOUND DEFENDANT HAD CONSENTED TO THE PERSONAL JURISDICTION OF THE MUNICIPAL COURT OF PHILADELPHIA BECAUSE THE MUNICIPAL COURT IS A “STATE COURT OF PENNSYLVANIA”.

Respondent agrees with Appellant’s statement of the “general rule” with regard to recognition of foreign judgments and its recitation of citations related thereto in the first two paragraphs of Section III.A.1 of its brief.

A forum selection clause of the contract between the parties provides that disputes arising from the contract may be settled in a Pennsylvania “state or federal court” located in Pennsylvania. [CP 9, 13-14, 15-16; see also copy of Lease Contract attached hereto as Attachment A for legibility purposes pursuant to RAP 10.4(c)] Appellant argues that the Municipal Court of Philadelphia is not a “state court” and thus does not provide “subject matter” jurisdiction. Plaintiff believes this argument

instead implicates personal jurisdiction and thus henceforth treats it as a question of personal jurisdiction.

Attached hereto as Attachment B , pursuant to RAP 10.4(c), is a page from the Web site of the Unified Judicial System of Pennsylvania and is by this reference incorporated herein, specifically to be found at the following address:

<http://www.pacourts.us/Links/Public/AboutTheCourts.htm>.

In part, the Web site states the following:

The Pennsylvania court system is structured like a pyramid. At its base are the magisterial district judges and the **Philadelphia Municipal and Traffic courts where cases involving small claims**, minor crimes and traffic offenses are heard. One step up on the pyramid are the Common Pleas courts in 60 judicial districts around the state where trials are held in civil and criminal cases and disputes involving family and estate matters are litigated. Another step up are the intermediate appellate courts, the Superior Court, a general court of appeals with 15 judges, and the Commonwealth Court, a special court with nine judges which hears government-related matters. At the top of the pyramid is the highest court, the Supreme Court with seven justices. The Supreme Court has the power to review any case from the lower courts. It also has administrative authority over the entire Pennsylvania court system. A description of each level of the judiciary, beginning with the minor courts, follows. *** Minor courts, also called special courts or courts of limited jurisdiction, constitute the "grass roots" level of Pennsylvania's court system. For many Pennsylvanians these are the first, and often the only, courts they will ever encounter. **The minor courts include the magisterial district judge courts, Philadelphia Municipal Court and Philadelphia Traffic Court.**

(Emphasis ours) This is consistent with the information provided to the trial court. [CP 26-28, RP 12, quoting court website at www.courts.phila.gov/courts.asp] Accordingly, Philadelphia Municipal court is clearly a “state court” in the Unified Judicial System of Pennsylvania. As such, when defendant consented to venue in a “state court” of Pennsylvania that consent was valid to give personal jurisdiction for the lawsuit filed in the Municipal Court of Philadelphia, from which plaintiff received a favorable judgment. No other reading of the State of Pennsylvania’s own description of its court system can be made.

B. THE TRIAL COURT PROPERLY FOUND NOTICE WAS SUFFICIENT WHEN DEFENDANT WAS SERVED BY MAIL

1. Pennsylvania Rules of Civil Procedure Provide for service by mail.

The Pennsylvania Rules of Civil Procedure specifically authorize service by mail for defendants located outside the state and specify how mail service is to be done. The Rules provide that when serving a foreign defendant “original process shall be served outside the Commonwealth within ninety days of the issuance of the writ or the filing of the complaint or the reissuance or the reinstatement thereof: by mail in the manner provided in Rule 403.” *Pa. R.C.P. No. 403 and 404(2)*. Further, Rule 403 provides that when serving by mail “a copy of the process shall be mailed

to the defendant by any form of mail requiring a receipt signed by the defendant or his authorized agent. Service is complete upon delivery of the mail.” *Pa. R.C.P. No. 403*.

Additionally, the Philadelphia Municipal Court Rules of Civil Procedure provide that “a Complaint may be served by certified mail if defendant’s last known address is a post office box, or outside the County of Philadelphia.” *Phila.M.C.R.Civ.P. No. 111(c)(2)*. See also *Leight v. Lefkowitz*, 615 A.2d 751, 419 Pa.Super. 502 (Pa. Super., 1992). Implicit in the Court’s guidelines is that the court will conduct the mailing of process. [CP 17-18; 13-14]

In *Leight*, the appellate court held that a default judgment was improper where defendants refused delivery of service documents by mail by returning certified mail as “unclaimed” and regular mail as “refused” within fifteen days of mailing. Under the court’s reasoning in *Leight*, the service would have been proper and the default judgment upheld if the defendants had accepted the service documents through the mail instead of returning them.

In the instant case Appellant was served by mailing a copy of the Complaint to the Appellant at the Appellant’s business address, which was ACCEPTED by Appellant. [CP 13-14] The Appellant thereby had the opportunity to not accept service by refusing the service documents. The

Appellant, instead, chose to accept the mail service and do nothing. [CP 13-14] This inaction on the part of the defendant functioned as an acceptance of service for purposes of the Pennsylvania Rules of Civil Procedure.

In *Reichert v. TRW, Inc. Cutting Tools*, 561 A.2d 745, 385 Pa. Super. 416 (Pa, Super, 1989), the court examined an apparent conflict between Pennsylvania civil procedure Rules 404 and 424. Rule 404 allows service by mail on foreign defendants but Rule 424 appears to require that all corporations be served by personal service. The appellate court reasoned that the harm caused by requiring personal service on foreign corporations would outweigh any benefits accrued. Thus, the court held that the requirements of Rule 424 do not preclude service by mail on foreign corporations. See, *Reichert v. TRW, Inc. Cutting Tools Div.*, 561 A.2d 745, 385 Pa. Super. 416 (Pa. Super., 1989); *reversed* for another issue without addressing issue of service by mail on foreign corporation by *Reichert v. TRW, Inc., Cutting Tools Div.*, 611 A.2d 1191, 531 Pa. 193 (Pa., 1992).

Appellant's reliance on *City of Philadelphia v. Berman*, 863 A.2d 156 (2004) is unfounded based upon the facts of that case, which did not involve service of process under Pa. R.C.P. No. 403.

2. Defendant Acknowledges Receipt and Actual Notice

Defendant acknowledges receipt of the service documents. Defendant made a business decision not to respond to the lawsuit at the trial level. [CP 13-14]. The court should not allow the defendant to frustrate justice by claiming improper service after having acknowledged actual notice of the proceedings and after choosing not to respond to those proceedings.

C. ATTORNEYS FEES SHOULD BE AWARDED TO RESPONDENT

Under Washington law, attorney's fees may be awarded only when authorized by a private agreement, by statute, or by a recognized ground of equity. See *Hsu Ying Li v. Tang*, 87 Wn.2d 796, 557 P.2d 342 (Wash., 1976). In the instant case, the contract from which this dispute arises has a provision allowing for attorney's fees to the prevailing party in litigation.

4. If you do not pay us as agreed...you agree that we may...sue you for all past due payments and other charges and all payments due in the future to the end of the Lease Term, plus our legal and collection costs.

[CP 15; See also Attachment A hereto]. RCW 4.84.030 provides that, where a contractual provision provides for attorney's fees, the prevailing party shall be awarded reasonable attorney's fees necessary to defend the provisions of the contract. See also, RAP 18.1, *Rules of Appellate Procedure*.

V. CONCLUSION

The trial court properly ruled that the Small Claims Court of Philadelphia is a division of the Unified Courts of Pennsylvania. The Appellant was properly served according to Pennsylvania law. Respondent is entitled to an award of its reasonable attorneys fees pursuant to RAP 18.1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bradley B. Jones', written over a horizontal line.

Bradley B. Jones
Bradley Boswell Jones, wsba 10732
Attorney for Respondent

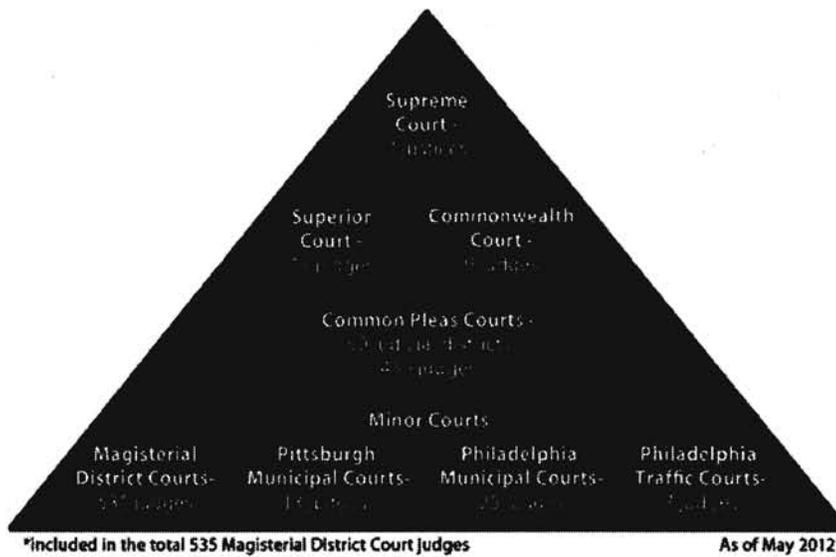
ATTACHMENT A

ATTACHMENT B

About the Courts

- [Pennsylvania's Courts: A Video Introduction](#)

The Pennsylvania court system is structured like a pyramid. At its base are the magisterial district judges and the Philadelphia Municipal and Traffic courts where cases involving small claims, minor crimes and traffic offenses are heard. One step up on the pyramid are the Common Pleas courts in 60 judicial districts around the state where trials are held in civil and criminal cases and disputes involving family and estate matters are litigated. Another step up are the intermediate appellate courts, the Superior Court, a general court of appeals with 15 judges, and the Commonwealth Court, a special court with nine judges which hears government-related matters. At the top of the pyramid is the highest court, the Supreme Court with seven justices. The Supreme Court has the power to review any case from the lower courts. It also has administrative authority over the entire Pennsylvania court system. A description of each level of the judiciary, beginning with the minor courts, follows.



Minor Courts

Minor courts, also called special courts or courts of limited jurisdiction, constitute the "grass roots" level of Pennsylvania's court system. For many Pennsylvanians these are the first, and often the only, courts they will ever encounter. The minor courts include the magisterial district judge courts, Philadelphia Municipal Court and Philadelphia Traffic Court.

Magisterial District Courts

Magisterial district judges preside over magisterial district judge courts in all counties but Philadelphia. They have authority to:

- conduct non-jury trials concerning criminal summary matters not involving delinquent acts as defined in 42 Pa.C.S., § 6301 *et seq*
- conduct non-jury trials concerning civil claims (unless the claim is against a Commonwealth party as defined in 42 Pa.C.S., § 8501) where the amount in controversy does not exceed \$12,000, exclusive of interests and costs, in the following classes of actions:
 - o landlord-tenant actions
 - o assumpsit actions unless they involve a contract where the title to real estate may be in question
 - o trespass actions
 - o fines and penalties by any government agency
- preside over preliminary arraignments and preliminary hearings
- fix and accept bail, except in cases involving murder or voluntary manslaughter
- issue arrest warrants

- accept guilty pleas to the charge of Driving Under the Influence (75 Pa.C.S.A., § 3802) so long as it is a first offense, no personal injury occurred to a third party other than the defendant's immediate family, property damage to any third party is less than \$500 and the defendant is not a juvenile
- preside over non-jury trials involving all offenses under Title 34 (Game).

Magisterial district judges are not required to be lawyers, but if they are not, they must complete an educational course and pass a qualifying examination before they can take office. They must also complete one week of continuing education each year in a program administered by the Minor Judiciary Education Board (<http://www.mjeb.org>).

Philadelphia Municipal Court

One of two minor courts in Philadelphia County, Municipal Court is Pennsylvania's only court of record at the minor courts level. Its judges have the same jurisdiction as magisterial district judges with the following exceptions:

- jurisdiction includes all criminal offenses, except summary traffic offenses, that are punishable by a term of imprisonment not exceeding five years
- they may enter judgments in civil claims where the amount does not exceed \$10,000.

The Municipal Court complement numbers 25, and judges who serve on this court must be attorneys. Municipal Court judges elect from their ranks a president judge who oversees the administration of the court. The president judge serves one five-year term and may be reelected after a minimum one-term interlude.

Philadelphia Traffic Court

Philadelphia Traffic Court's jurisdiction covers all summary offenses under the Motor Vehicle Code as well as any related city ordinances.

Seven judges sit on this court. As with magisterial district judges, the judges need not be lawyers, but must complete the certifying course and pass the qualifying examination administered by the Minor Judiciary Education Board (<http://www.mjeb.org>).

Unlike the president judges in the appellate, Common Pleas and Philadelphia Municipal courts, the president judge of Traffic Court is appointed by the governor.

Pittsburgh Municipal Court

The Pittsburgh Municipal Court is presided over by 13 magisterial district judges whose districts are in or partly in the City of Pittsburgh. Additional magisterial district judges from Allegheny County are assigned to the court on a rotating basis by the president judge of the Court of Common Pleas.

The Pittsburgh Municipal Court has a criminal division, a traffic division and a non-traffic division. Its judges preside over preliminary hearings on all homicide cases in Allegheny County. The judges also preside over matters within the City of Pittsburgh, including non-traffic summary offenses; traffic offenses, exclusive of parking citations issued by the Pittsburgh Parking Authority; all violations of City of Pittsburgh ordinances and preliminary hearings on all misdemeanor and felony criminal cases.

Common Pleas Courts

Common Pleas courts are Pennsylvania's courts of general trial jurisdiction. They have original jurisdiction over all cases not exclusively assigned to another court and appellate jurisdiction over judgments from the minor courts. They also hear appeals from certain state and most local government agencies.

The courts are organized into 60 judicial districts which generally follow the geographic boundaries of the Commonwealth's counties; however, seven of the districts are comprised of two counties. They are: Perry-Juniata, Snyder-Union, Franklin-Fulton, Wyoming-Sullivan, Columbia-Montour, Warren-Forest and Elk-Cameron. Each district has from one to 93 judges.

Each district also has a president judge to administer the affairs of the court. In districts with seven or fewer judges, the judge with the longest continuous service holds this position. In districts with eight or more judges, the president judge is elected to a five-year term by his or her peers.

Appellate Courts

Pennsylvania's appellate courts form a two-tiered appeals system. The first, or intermediate, level has two courts: the Superior Court, which has 15 judges, and the Commonwealth Court, which has nine. At the second level is the seven-justice Supreme Court, the highest court in Pennsylvania.

In general, appeals of Common Pleas Court decisions are made to one of the two intermediate appellate courts.

Commonwealth Court

The Commonwealth Court was created by the Constitutional Convention in 1968 as not only a means to reduce the workload of the Superior and Supreme courts, but as a court to hear cases brought against and by the Commonwealth. It has, therefore, both original and appellate jurisdiction.

The court's original jurisdiction encompasses:

- civil actions brought against the Commonwealth government or an officer of the government, usually seeking equitable relief or declaratory judgment and not damages
- civil actions brought by the Commonwealth government (note: these could also be brought in the Courts of Common Pleas)
- matters under the Election Code involving statewide offices.

Its appellate jurisdiction includes:

- appeals relating to decisions made by most state administrative agencies
- appeals from the Courts of Common Pleas involving:
 - actions against the Commonwealth that could not be initiated in Commonwealth Court
 - actions by the Commonwealth that could have been commenced in Commonwealth Court
 - some appeals from decisions of the Liquor Control Board and the Department of Transportation
 - most local government matters other than contract issues, including actions for damages
 - eminent domain proceedings
 - matters involving the internal affairs of nonprofit corporations.

Superior Court

Because the Superior Court's main function is as an appeals court, its original jurisdiction is limited. Such jurisdiction includes applications made by the attorney general and district attorneys under the Wiretapping and Electronic Surveillance Control Act.

As an appeals court, the Superior Court's jurisdiction is less specialized than the Commonwealth's; therefore, it hears a wide variety of petitions, both criminal and civil, from Common Pleas courts. Such petitions include all manner of cases from child custody to armed robbery to breach of contract.

Supreme Court

Since the Supreme Court was established by the Pennsylvania Provincial Assembly in 1722, the Commonwealth's highest court has undergone several major changes that have helped shape its composition today. The most far-reaching of these changes was the 1980 expansion of the Court's authority that allowed it to not only better administer the entire judicial system, but to devote greater attention to cases holding significant consequence for the Commonwealth and its citizens.

The Supreme Court's jurisdiction encompasses four main areas: original, appellate, exclusive and extraordinary.

The Court's original jurisdiction is non-exclusive and includes cases:

- of *habeas corpus*, cases involving detention of a party and determination of whether that party has been denied liberty without due process
- of *mandamus*, or prohibition to courts of inferior jurisdiction
- of *quo warranto*, lawsuits challenging the right of an individual to hold a public office, alleging that the individual is holding the office illegally.

The Court's **appellate** jurisdiction includes those cases it hears at its own discretion and various types of cases heard as a matter of right. These latter cases include appeals of cases originating in Commonwealth Court and appeals of certain final orders issued by either the Common Pleas courts or specific constitutional and judicial agencies.

Appeals from final orders of Common Pleas courts include:

- cases involving matters prescribed by general rule
- the right to public office
- matters where the qualifications, tenure or right to serve or the manner of service of any member of the judiciary is in question
- review of death sentences
- matters where the right or power of the Commonwealth or any political subdivision to create or issue indebtedness is in question
- supersession of a district attorney by the attorney general or by a court
- statutes and rules held unconstitutional by the Courts of Common Pleas
- matters where the right to practice law is involved.

The Supreme Court has **exclusive** jurisdiction of appeals from the following boards/commissions:

- Legislative Reapportionment Commission
- Court of Judicial Discipline (under limited conditions)
- Minor Judiciary Education Board
- Pennsylvania Board of Law Examiners
- Disciplinary Board of the Supreme Court (attorneys).

The Court also has exclusive jurisdiction of appeals from Common Pleas courts involving the death penalty. Such cases are automatically appealed to the Supreme Court.

Finally, the Court possesses **extraordinary** jurisdiction to assume jurisdiction of any case pending before a lower court involving an issue of immediate public importance. This it can do on its own or upon petition from any party and is commonly known as king's bench power.

As with president judges in lower courts having seven or fewer judges, the chief justice attains office by virtue of having the longest continuous service among the seven justices.

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Appellant.

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury that he caused a true and correct copy of Amended Brief of Respondent to be mailed via USPS First Class Mail, postage prepaid on this 17 day of July, 2012 to:

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Dated in Vashon WA on July 17, 2012.



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