

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

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CIRCUIT COURT OF
ST. LOUIS COUNTY

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POPULAR LEASING USA, INC.,)
)
Plaintiff,)
)
vs.)
)
HARRY MAJOR MACHINE &)
TOOL CO.,)
)
and)
)
(See List of Defendants, attorneys and)
cause numbers attached.))
)
Defendants.)

JOAN M. GILMER
CIRCUIT CLERK

Master Cause No. 04CC-3753A **B**

Cause No. (see attached list)

Division 19

ORDER AND JUDGMENT

This matter is before the Court on Defendants' Motion to Dismiss for Lack of Jurisdiction. The Motion was called and heard on June 6, 2005 and taken under submission.

When a defendant raises the issue of lack of personal jurisdiction, the burden shifts to the plaintiff to make a prima facie showing that the trial court may exercise personal jurisdiction over the defendant. Conway v. Royalite Plastics, Ltd., 12 S.W.3d 314, 318 (Mo.banc 2000). For a non-resident defendant to be subject to Missouri long-arm jurisdiction, two elements must be present: (1) the suit must arise out of one of the activities enumerated in Missouri's long-arm statute, section 506.500, RSMo.; and (2) the defendant must have sufficient minimum contacts with Missouri to satisfy due process requirements. Chromalloy Am. Corp. v. Elyria Foundry Co., 955 S.W.2d 1, 4 (Mo.banc 1997).

The Court finds that Defendants were served with long-arm service outside the State of Missouri, that the cause of action alleged in the petition does not arise from any of the activities set forth in section 506.500, RSMo., and that Defendants do not have sufficient minimum

contacts with the State of Missouri to satisfy due process requirements.

Personal jurisdiction may also be obtained by consent or waiver, that is, by means of a forum selection clause that complies with applicable due process standards. Whelan Security Company Inc. v. Allen, 26 S.W.3d 592, 595 (Mo.App. E.D. 2000); Chase Third Century Leasing Co., Inc. v. Williams, 782 S.W.2d 408, 411 (Mo.App. W.D. 1989). The contract which forms the basis for Plaintiff's cause of action contains a forum selection clause which provides as follows:

"This agreement shall be governed by, construed and enforced in accordance with the laws of the State in which Rentor's principal offices are located or, if this Lease is assigned by Rentor, the State in which the assignee's principal offices are located, without regard to either State's choice of law considerations and all legal actions relating to this Lease shall be venued exclusively in a state or federal court located within that State, such court to be chosen in Rentor or Rentor's assignee's sole option."

The Court recognizes that sophisticated parties have freedom of contract—even to make a bad bargain or relinquish fundamental rights. Purcell Tire & Rubber Company, Inc. v. Executive Beechcraft, Inc., 59 S.W.3d 505, 508 (Mo.banc 2001), citing Malan Realty Investors, Inc. v. Harris, 953 S.W.2d 624, 626 (Mo.banc 1997); High Life Sales Co. v. Brown-Forman Corp., 823 S.W.2d 493, 497 (Mo.banc 1992). It is well established that "commercial entities at arm's length may waive the right to a jury trial, or agree to forum selection (*unless unfair or unreasonable*)."
Purcell, supra, 59 S.W.3d at 509, citing Malan, supra, 953 S.W.2d at 627-28; High Life Sales, supra, 823 S.W.2d at 497. (Emphasis added.)

The Court finds the forum selection clause at issue herein does not select a specific forum to which the parties agree to submit to personal jurisdiction (and probably could not so specify since the assignee had not been identified at the time defendants signed the contracts) and,

therefore, does not comply with the requirements of Missouri law that “[p]arties to a contract may agree in advance to submit to personal jurisdiction *in a given court* by means of a forum selection clause because personal jurisdiction is an individual right capable of being waived.”

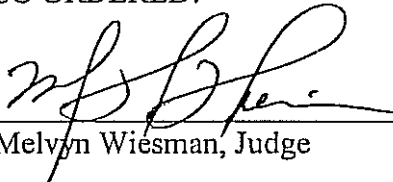
Whelan, supra; Chase Third Century, supra. (Emphasis added.)

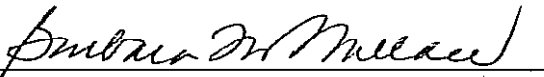
The Court concludes that enforcement of the forum selection clause herein, which does not specify a given venue in which the cause may be filed, would be unfair and unreasonable as a matter of law, and that Defendants have not otherwise consented to jurisdiction in this Court.

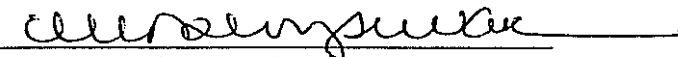
Accordingly, it is hereby ordered that Defendants’ Motion to Dismiss is GRANTED and that the cause be dismissed for lack of jurisdiction, costs to be taxed to Plaintiff.

SO ORDERED:

7-22-05
Date


Melvyn Wiesman, Judge


Barbara Wallace, Judge


Ellen Levy Siwak, Judge

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