

2015 WL 3448809

Supreme Court, Appellate Term, First Department,
New York.

NORTHERN LEASING SYSTEMS, INC.,
Plaintiff–Appellant,

v.

George FRENCH, Defendant–Respondent.

May 29, 2015.

Synopsis

Background: Lessor of equipment sued lessee, seeking to recover \$1,839.77 allegedly owed for lease transaction. The Civil Court of the City of New York, New York County, [Peter H. Moulton, J.](#), denied lessor summary judgment in lieu of complaint and granted lessee’s cross-motion to dismiss for lack of personal jurisdiction. Lessor appealed.

Holdings: The Supreme Court, Appellate Term, held that:

^[1] lessee consented to personal jurisdiction, but

^[2] forum non conveniens dismissal was warranted.

Affirmed as modified.

West Headnotes (3)

^[1]

Contracts

🔑 Agreement as to Place of Bringing Suit;
Forum Selection Clauses

Courts

🔑 Of the Person

In lessor’s lawsuit seeking to recover \$1,839.77 from lessee for equipment lease transaction, lessee consented to exercise of personal jurisdiction, pursuant to equipment lease and guaranty containing jurisdiction and forum selection provisions, that were not rendered unenforceable by lessee’s general allegations of fraud without any specific allegation that

provisions themselves were induced by fraud.

[Cases that cite this headnote](#)

^[2]

Contracts

🔑 Agreement as to Place of Bringing Suit;
Forum Selection Clauses

Contracts

🔑 Presumptions and Burden of Proof

A contractual forum selection clause, while prima facie valid and enforceable, may be set aside if it is shown by the resisting party to be unreasonable or unjust, or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court.

[Cases that cite this headnote](#)

^[3]

Contracts

🔑 Agreement as to Place of Bringing Suit;
Forum Selection Clauses

Enforcement of equipment lease and guaranty’s forum selection provision designating New York courts for disputes arising from lease would be unreasonable, in lessor’s lawsuit seeking to recover \$1,839.77 from lessee for equipment lease transaction, thus warranting forum non conveniens dismissal of case on condition that lessee would waive any jurisdictional and statute of limitations defenses in California, where parties’ dispute had no substantial nexus with New York, entire transaction was executed in California, equipment was located in California at lessee’s place of business, and lessee was resident of California, 86 years old, and had no ties to New York, and principal amount in dispute was minor.

[Cases that cite this headnote](#)

PRESENT: [SCHOENFELD](#), J.P., [LING-COHAN](#), J.

Opinion

PER CURIAM.

*1 Order (Peter H. Moulton, J.), dated February 3, 2014, modified to the extent of conditioning the order of dismissal upon defendant's waiver of any jurisdictional and statute of limitations defenses in California; as modified, order affirmed, without costs.

^[1] We agree with the motion court that the action should be dismissed, albeit on grounds different from those stated. Defendant's motion to dismiss for lack of personal jurisdiction should have been denied, since he consented to the jurisdiction of New York's courts in the underlying equipment lease and guaranty (see *State Bank of India v. Taj Lanka Hotels*, 259 A.D.2d 291, 686 N.Y.S.2d 44 [1999]). Defendant's general allegations of fraud are insufficient to render the consent to jurisdiction and forum selection provisions contained in the lease and guaranty unenforceable for the purpose of this action. Defendant does not allege that these provisions were induced by fraud (see *Harry Casper, Inc. v. Pines Assoc., L.P.*, 53 A.D.3d 764, 764-765, 861 N.Y.S.2d 820 [2008]; *British W. Indies Guar. Trust Co. v. Banque Internationale A Luxembourg*, 172 A.D.2d 234, 567 N.Y.S.2d 731 [1991]). Insofar as defendant alleges that the entire transaction is void *ab initio*, his admitted failure to read the documents precludes such defense (see *Vulcan Power Co. v. Munson*, 89 A.D.3d 494, 932 N.Y.S.2d 68 [2011], *lv. denied* 19 N.Y.3d 807, 2012 WL 2381463 [2012]).

^[2] However, a contractual forum selection clause, while prima facie valid and enforceable (see *Brooke Group v. JCH Syndicate* 488, 87 N.Y.2d 530, 534, 640 N.Y.S.2d 479, 663 N.E.2d 635 [1996]), may be set aside if it is shown by the resisting party to be unreasonable or unjust,

or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court (see *Sterling Natl. Bank v. Eastern Shipping Worldwide, Inc.*, 35 A.D.3d 222, 826 N.Y.S.2d 235 [2006]).

^[3] In the instant matter, the parties' controversy has no substantial nexus with New York. The entire equipment lease transaction was executed in California; defendant's business, where the equipment is located, is in California; and defendant is a resident of California with no ties to New York. "[O]ur courts should not be under any compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus with New York" (*Silver v. Great Am. Ins. Co.*, 29 N.Y.2d 356, 361, 328 N.Y.S.2d 398, 278 N.E.2d 619 [1972]). Moreover, defendant is now 86-years old and the principal amount in dispute (\$1,839.77) is minor. In the particular circumstances of this case, enforcement of the forum selection provision would be unreasonable. In light of the substantial contacts with California, we favorably exercise our discretion to grant defendant's motion to dismiss on the ground of forum non conveniens (*3H Enters. v. Bennett*, 276 A.D.2d 965, 715 N.Y.S.2d 90 [2000], *lv. denied* 96 N.Y.2d 710, 726 N.Y.S.2d 373, 750 N.E.2d 75 [2001]; *U.S. Mdse., Inc. v. L & R Distributions, Inc.*, 122 A.D.3d 613, 996 N.Y.S.2d 83 [2014]). In order to assure the availability of forum for the action, we have conditioned the dismissal as indicated (see [CPLR 327\[a\]](#); *Wild v. University of Pennsylvania*, 115 A.D.3d 944, 946, 983 N.Y.S.2d 58 [2014]).

*2 THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

All Citations

--- N.Y.S.3d ----, 2015 WL 3448809, 2015 N.Y. Slip Op. 25176