Not Reported in A.3d, 2013 WL 709099 (N.J.Super.A.D.)
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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.
PROFESSIONAL SOLUTIONS FINANCIAL SERVICES, a division of NCMIC Finance Corporation,
Plaintiff–Respondent,
v.
William R. CREGAR, DDS, and William R. Cregar, Individually, Defendant–Appellant.

Argued Jan. 29, 2013.
Decided Feb. 28, 2013.

On appeal from the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. DJ–63120–11.
Scott H. Marcus argued the cause for appellant (Scott H. Marcus & Associates, attorneys; Mr. Marcus, of counsel; Daniel E. Loew and Amar Agrawal, on the brief).

Joseph M. Cerra argued the cause for respondent (Forman Holt Eliades Ravin & Youngman LLC, attorneys; Constance DeSena and William L. Waldman, on the brief).

Before Judges FISHER and ALVAREZ.

PER CURIAM.

***1** In this appeal, we consider whether our courts are required to give full faith and credit to an Iowan judgment where the exertion of personal jurisdiction over defendant, with no contact with Iowa, was based on a "floating forum selection clause." Because the full faith and credit clause compels the enforcement of a sister state's judgment regardless of whether such a judgment could not be obtained in the forum and regardless of whether the judgment is repugnant to the laws and policies of the forum, we are required to enforce the Iowa judgment.

The record reveals that defendant Cregar [FN1] practices dentistry in Gloucester County. In September 2008, a representative of Brican American, LLC, approached Cregar about leasing a marketing system by which a flat screen monitor would be installed in his office to display advertising and educational messages to patients. On October 7, 2008, Cregar executed a **lease**, which contains the following "floating **forum selection clause**" that lies at the heart of the present dispute:

> FN1. The complaint names both Cregar and his practice as defendants. For simplicity, we will simply refer to the defendants as "Cregar."

> You [Cregar] agree this **Lease** is to be performed in Dade County, Florida and this **Lease** will be governed by the laws of the State of Florida. You consent to personal jurisdiction and venue in the State or Federal Court located in Miami, Dade County, Florida.... You specifically agree to waive any right to transfer venue and that agreement is knowing and voluntarily and is an essential term to Lessor's willingness to enter into this **Lease**. *If this **Lease** is assigned by Lessor, You consent to personal jurisdiction and venue in the State or Federal Court located where the Assignee's Corporate Headquarters is located. This is known as a floating **forum selection clause** and You agree that this is done knowingly and voluntarily and is an essential term to Assignee's willingness to take an assignment of*

> *this **Lease***. You specifically agree to waive any right to transfer venue and that agreement is knowing and voluntary and is an essential term to Assignee's willingness to take an assignment of this **Lease**.
>
> [Emphasis added]
>
> Less than two weeks later, and without notice to Cregar, Brican assigned its rights in the **lease** to plaintiff, which is headquartered in Iowa.

The marketing system was installed in Cregar's offices and he began making lease payments. Within a few months, Cregar stopped making lease payments, believing that Brican had not held up its part of the bargain.

On May 10, 2010, Cregar was served with a summons and complaint regarding an action filed by plaintiff against him in a state court in Polk County, Iowa. Cregar did not appear in that action and default judgment was entered against him on September 23, 2010. That judgment was docketed in the Superior Court of New Jersey, pursuant to the Uniform Enforcement of Foreign Judgments Act, *N.J.S.A.* 2A:49A–25 to –33, on March 1, 2011. Cregar unsuccessfully moved for relief from the judgment and, later, unsuccessfully moved for reconsideration.

***2** Cregar appeals, claiming the trial judge: (1) erred in enforcing the Iowa judgment because he was denied due process, and (2) erred in applying Iowa law, rather than New Jersey law, when considering the enforceability of the floating forum selection clause. We reject these arguments and affirm.

The federal constitution requires that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State." *U.S. Const.* art IV, § 1. The "animating purpose" of this command, *Baker v. General Motors Corp.*, 522 *U.S.* 222, 232, 118 *S.Ct.* 657, 663, 139 *L. Ed.*2d 580, 591 (1998), "was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin," *Milwaukee Cnty. v. M.E. White Co.*, 296 *U.S.* 268, 277, 56 *S.Ct.* 229, 234, 80 *L. Ed.* 220, 228 (1935). The full faith and credit clause, thus, obligates a state to enforce the judgment of a sister state although the suit in which the judgment was entered "could not have been maintained under the laws and policy of the forum to which the judgment is brought." *Magnolia Petroleum Co. v.. Hunt*, 320 *U.S.* 430, 439, 64 *S.Ct.* 208, 213, 88 *L. Ed.* 149, 155 (1943). "A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker, supra*, 522 *U.S.* at 233, 118 *S.Ct.* at 663–64, 139 *L. Ed.*2d at 592. *See also Roche v. McDonald*, 275 *U.S.* 449, 452, 48 *S.Ct.* 142, 143, 72 *L. Ed.* 365, 368 (1928) (holding that the judgment, "if valid where rendered, must be enforced in such other State although repugnant to its own statutes").

These federal constitutional principles require enforcement of a sister state's judgment absent a due process violation. That is, our courts are not obligated to enforce a judgment of a rendering state that lacked subject matter or personal jurisdiction or when the rendering state's court did not provide the judgment debtor with adequate notice and the opportunity to be heard. *Zelek v. Brosseau*, 26 *N.J.* 501, 502 (1958), *aff'g o.b.*, 47 *N.J.Super.* 521, 527 (App.Div.1957); *Sonntag Reporting Serv., Ltd. v. Ciccarelli*, 374 *N.J.Super.* 533, 537 (App.Div.2005); *Arnold, White & Durkee v. Gotcha Covered, Inc.*, 314 *N.J.Super.* 190, 195 (App.Div.), *certif. denied*, 157 *N.J.* 543 (1998); *see also Choi v. Kim*, 50 *F.*3d 244, 248 (3rd Cir.1995).

There is no question that the Iowa court had

subject matter jurisdiction; Cregar was also given adequate notice and an opportunity to be heard in Iowa. Cregar instead argues that the Iowa court could not fairly exert personal jurisdiction over him because the application of the floating **forum selection clause** in question is fundamentally unfair. Certainly, that is the proper focus. There is no suggestion that Cregar had the minimum contacts with Iowa otherwise required by due process. If the Iowa court could properly exert personal jurisdiction it was only because Cregar executed a **lease** that contained a clause that ostensibly conveyed his consent to litigate his disputes with Brican's assignee in the assignee's home state. Cregar argues that we should hold that the Iowa court did not properly exercise personal jurisdiction because, he contends, the floating **forum selection clause** is "unreasonable and unjust." *Burger King Corp. v. Rudzewicz*, 471 *U.S.* 462, 472 n. 14, 105 *S.Ct.* 2174, 2182 n. 14, 85 *L. Ed.*2d 528, 540 n. 14 (1985) (holding that **forum selection clauses** are enforceable unless they were not "freely negotiated" or "unreasonable and unjust"); *see also M/V Bremen v. Zapata Off–Shore Co.*, 407 *U.S.* 1, 15, 92 *S.Ct.* 1907, 1916, 32 *L. Ed.*2d 513, 523 (1972).[FN2]

FN2. Cregar's argument lacks some of its force when it is considered that he expressly agreed to litigate any disputes with Brican in Florida. That is, Cregar must concede he would not have a basis to complain of the prosecution of the action in Florida, which is approximately the same distance from New Jersey as is Iowa. Even if a floating forum selection clause, as a general matter, offended notions of fair play and substantial justice, the clause here was freely bargained and the end result-the "floating" of the exclusive jurisdiction for the parties' disputes from Florida to Iowa-when applied to a New Jersey citizen does not appear "unreasonable" or "unjust."

***3** Cregar argues that floating forum selection clauses are contrary to New Jersey law or public policy, citing *Copelco Capital, Inc. v.. Shapiro*, 331 *N.J.Super.* 1, 5–6 (App.Div.2000).[FN3] We need not decide whether Cregar is correct because his argument is irrelevant. The question is not whether a New Jersey court would enforce this forum selection clause but whether the judgment was in accord with the laws and policies of the rendering state. *Baker, supra*, 522 *U.S.* at 232, 118 *S.Ct.* at 663, 139 *L. Ed.*2d at 591; *Roche, supra*, 275 *U.S.* at 452, 48 *S.Ct.* at 143, 72 *L. Ed.* at 368.[FN4] Because Iowa has found such clauses enforceable, *see Liberty Bank, F.S.B. v. Best Litho, Inc.*, 737 *N.W.*2d 312, 316–18 (Iowa App.2007), we must conclude that the only possible ground for our withholding full faith and credit—Cregar's argument that Iowa could not constitutionally exert personal jurisdiction over him—lacks merit. Despite any repugnance we may have for the floating forum selection clause in question, there is "no roving 'public policy exception' " to our obligation to give full faith and credit to judgments duly entered in a sister state. *Baker, supra*, 522 *U.S.* at 233, 118 *S.Ct.* at 664, 139 *L. Ed.*2d at 592.

FN3. Cregar also cited, in support for his position, *Choi, supra*, 50 *F.*3d at 249–50 (in which the divided panel affirmed the dismissal of an action seeking enforcement of a Korean judgment entered without notice to defendant), and *In re NorVergence, Inc.*, 424 *B.R.* 663, 710 (Bankr.D.N.J.2010).

FN4. For example, a state in which gambling contracts are illegal has been required to give full faith and credit to a sister state's judgment based on such a contract, because the contract was not illegal in the rendering state. *Fauntleroy v. Lum*, 210 *U.S.* 230, 28 *S.Ct.* 641, 52 *L. Ed.* 1039 (1908).

Affirmed.

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