UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0728

September Term, 2014

INROCK DRILLING SYSTEMS, INC., ET AL.

v.

DRILL TECH, INC.

Hotten,
Berger,
Arthur,

JJ.

Opinion by Hotten, J.

Filed: June 10, 2015

Appellants sought enrollment of a default judgment from Harris County, Texas in the Circuit Court for Queen Anne's County. The judgment was enrolled and appellee moved to vacate, alleging that it was never served with the underlying Texas complaint. Following a hearing, the circuit court granted appellee's motion to vacate and appellants appealed, presenting two questions for our review, which we have rephrased[1]:

> I. Whether the circuit court erred in finding that Harris County lacked personal jurisdiction over appellee.
>
> II. Whether the circuit court erred in declining to honor the Harris County judgment based upon perceived deficiencies in service.

For the reasons that follow, we shall reverse the judgment of the circuit court and remand for enrollment of the judgment.

FACTUAL AND PROCEDURAL HISTORY

Appellants, Inrock Drilling Systems Inc., and Inrock Guidance Systems, Inc., are Texas corporations with their principal place of business in Houston, Harris County, Texas. Appellee, Drill Tech, Inc., is a Maryland corporation in Chester, Maryland. The parties

[1] Appellant's original questions were:

> I. Whether the Circuit Court erred in refusing to honor a judgment that was issued from the State of Texas based upon incorrectly perceived deficiencies in serving the Texas complaint upon a Missouri corporate entity that shared the same name as Appellee when the Appellants filed an amended petition in Texas correctly naming the defendant as Drill Tech, Inc. a Maryland entity and attempted service upon Appellee at the address of Appellee's registered agent that was then on file with the Maryland Department of Assessments and Taxation.
>
> II. Whether the Circuit Court erred in finding that the forum selection clause was invalid, warranting a determination that the Texas Judgment should be denied full faith and credit and not be recognized in Maryland.

were engaged in a business relationship for approximately five years. During the business relationship, appellee would call or email appellants to purchase equipment and/or merchandise. The purchased items were then used by appellee in construction projects along the Eastern seaboard of United States. The two contracts which are the subject of this case were entered into in 2011 and 2012 for projects that appellee was conducting in North Carolina and South Carolina. The goods were sent directly from Texas to subcontractors in North Carolina and South Carolina.

On December 7, 2012, appellants filed a lawsuit against appellee in Harris County, Texas, asserting breach of contract claims based on unpaid invoices in the amount of $121,502.71. Appellants filed suit in Harris County pursuant to a forum selection provision included in its sales contract with appellee. In the complaint, appellants identified appellee as "a Missouri corporation with its principal place of business at 775 E. Morgan Street, Tipton, Missouri 65081." As required by Texas law, appellants served the Texas Secretary of State which then served the Drill Tech company indicated by appellants. Within a month however, appellants became aware that they had served the wrong corporation, and filed an amended petition on January 14, 2013. The amended complaint indicated appellee's registered agent on file with the Maryland State Department of Assessments and Taxation ("SDAT"): Michael T. Kalvaitas, 605 Pittman Rd., Baltimore, MD 21226. Again, appellants served the Texas Secretary of State, who attempted to serve appellee at the Baltimore address. On March 1, 2013, it received a return to sender notification as undeliverable. Thereafter, on May 29, 2013, appellants moved for a default judgment

which was granted by the Harris County court on June 14, 2013 (hereinafter referred to as the Harris County Judgment).

On March 18, 2014, appellants enrolled the Harris County Judgment in the Circuit Court for Queen Anne's County. Notice was sent to appellee using the business' Chester, Maryland address. Upon being served with the notice of the enrolled judgment, appellee filed a motion to vacate, asserting that it had never been served with the complaint in the Texas case and had no notification that there was a pending matter against it until it was served with the notice of enrolled judgment from the circuit court. Additionally, appellee averred that the Harris County court lacked personal jurisdiction over it because appellee had performed no business in Texas. Appellants opposed the motion, contending that it followed the proper procedures for serving appellee, and that Harris County had exercised jurisdiction based on the forum selection clause in the sales contracts.

A hearing was held on May 6, 2014. Following the hearing, the circuit court issued a memorandum and order vacating the judgments, finding that the error with service of process prevented Harris County from exercising jurisdiction over appellee and that the Texas court lacked jurisdiction because none of the contractual agreements occurred in Texas.

Appellants noted a timely appeal.

STANDARD OF REVIEW

A party's assertion of lack of personal jurisdiction is collateral to the merits of the case and raises questions of law. *Bond v. Messerman*, 391 Md. 706, 718 (2006). In deciding "'whether the trial court was legally correct' to exercise personal jurisdiction over

[a party]," we review the court's decision *de novo*. *Himes Associates, Ltd. v. Anderson*, 178 Md. App. 504, 526 (2008) (quoting *Bond*, 391 Md. at 718).

DISCUSSION

Article IV of the U.S. Constitution, referred to as the Full Faith and Credit Clause, states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." There are however, limitations to the Full Faith and Credit Clause, most importantly, that the court which rendered the judgment must have possessed jurisdiction over the controversy. *See Oxendine v. SLM Capital Corp*., 172 Md. App. 478, 484 (2007) (*citing Underwriters Nat'l. Assur. Co. v. N. Carolina Life & Acc. & Health Ins. Guar. Ass'n*, 455 U.S. 691 (1982). Maryland implements the Full Faith and Credit requirement through Maryland Code (2006 Rep. Vol. 2013) Courts & Judicial Proceedings Article §11-801 *et seq*, the Uniform Enforcement of Foreign Judgments Act. Section 11-802 of the Uniform Enforcement of Foreign Judgments Act, provides:

> Effect of foreign judgment
> (b) A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed.

I. Did Harris County have Jurisdiction?

Appellants aver that the forum selection clauses of their contracts vested Harris County with jurisdiction over the case. In its brief, appellee argues that that Harris County lacked subject matter jurisdiction and states that "the personal jurisdiction of the Harris County Court is not relevant given that Court's lack of subject matter jurisdiction." However, a review of the arguments by both parties reveals that they are in fact disputing

personal jurisdiction. Appellee maintains that under Texas' long arm statute, no jurisdiction existed and that appellants utilized the wrong service procedure under the statute. Since both are challenges to personal jurisdiction, we must determine whether Harris County did in fact acquire personal jurisdiction over appellees. If a party challenges the enforcement of a judgment from another state, alleging lack of jurisdiction, it is within the power of the Maryland court to engage in an inquiry regarding jurisdiction. *See Dixon v. Keeneland Associates, Inc.*, 91 Md. App. 308 (1992).

The contract between the parties includes a forum selection clause which designates that disputes will be handled by the courts of Harris County. In Maryland, generally, courts have accepted that parties may choose to specify in contracts that the law of one State may apply in any disputes regarding the contract. *See Jackson v. Pasadena Receivables, Inc*., 398 Md. 611, 617 (2007). However, the contract does not include a choice of law provision. It only contains a forum selection clause which designates Harris County as the forum for all disputes. Presumably, the Harris County court would have applied Texas law in its finding that appellants were in default. Therefore, since we are reviewing the jurisdiction of the Texas court, and the dispute rests on the Texas court's exercise of jurisdiction, we shall apply Texas law. *See e.g., Legum v. Brown*, 395 Md. 135, 149 (2006) (applying the Colorado long arm statute in determining whether the Colorado court obtained personal jurisdiction over a defendant); *Superior Court v. Ricketts*, 153 Md. App. 281, 333 (2003) (applying the California long arm statute and that state's case law in reviewing whether a California court had obtained personal jurisdiction over defendants challenging the enrollment of a default judgment obtained in California).

A Texas court has personal jurisdiction over a nonresident defendant if the defendant has been properly served and the nonresident defendant has established minimum contacts with Texas such that the court's "exercise of jurisdiction comports with traditional notions of fair play and substantial justice." *Fields v. Klatt Hardware & Lumber, Inc.*, 374 S.W.3d 543, 548 (Tex. App. 2012). Accordingly, there are two elements that must be met in order for Harris County to have acquired personal jurisdiction over appellants: proper service and minimum contacts.

a. Service

Regarding appellants' initial service of process error, in its order, the circuit court reasoned:

> Even if [appellee] waived venue, and even if [appellee] corporation submitted to jurisdiction in the contractual documents, it is clear that the corporation was never served due to an error by the judgment creditors or their attorneys in misidentifying the proper defendant, and that the default judgment should not perpetuate that error by being recognized or enforced in this State.

(footnote omitted). Appellants aver that while they initially served the wrong corporation, they served appellee at the address on file with the Maryland SDAT once the error was recognized.

Texas Civil Practice and Remedies Code §17.044 [hereinafter Texas Civ. Prac. & Rem.] provides the rules for substituted service on a nonresident.

> (b) The secretary of state is an agent for service of process on a nonresident who engages in business in this state, but does not maintain a regular place of business in this state or a designated agent for service of process, in any proceeding that arises out of the business done in this state and to which the nonresident is a party.

In *Dole, et al. v. LSREF2APEX2 LLC*., 425 S.W.3d 617 (2014) [hereinafter *Dole*], the defendants appealed a default judgment entered against them in a foreclosure matter. The defendants were residents of California and had purchased a home in Texas by executing a promissory note which was held by the plaintiff. *Id*. at 619. The plaintiffs filed suit against the defendants in Texas, alleging breach of contract and eventually obtained a default judgment after the defendants did not respond to the lawsuit. *Id*. at 620. On appeal, the Texas Court of Appeals reviewed Texas principles regarding review of a challenge to a default judgment based on substituted service of a nonresident.

> The default judgment can be sustained only if the record before the trial court affirmatively shows that the Doles were served in strict compliance with the Texas Rules of Civil Procedure. *Primate Constr., Inc. v. Silver*, 884 S.W.2d 151, 152 (Tex.1994) (per curiam). If the record before the trial court does not affirmatively show, at the time that default judgment is requested, that the defendant has appeared, was properly served, or waived service in writing, the trial court lacks personal jurisdiction over the defendant. *Marrot Commc'ns, Inc. v. Town & Country P'ship*, 227 S.W.3d 372, 376 (Tex. App.-Houston [1st Dist.] 2007, pet. denied). "In contrast to the usual rule that all presumptions will be made in support of a judgment, there are no presumptions of valid issuance, service, and return of citation when examining a default judgment." *Barker CATV Constr.*, 989 S.W.2d at 792. Failure to comply strictly with the rules of civil procedure constitutes reversible error on the face of the record. *Uvalde Country Club v. Martin Linen Supply Co*., 690 S.W.2d 884, 885 (Tex.1985).

Id.

Texas courts have reviewed instances when service was ineffective due to errors regarding the defendant's correct address. In *Royal Surplus Lines Ins. Co. v. Samaria Baptist Church*, 840 S.W.2d 382 (1992) [hereinafter *Royal Surplus*], the plaintiff attempted to serve the defendant by substitute service using the Secretary of State. The address of the defendant's registered agent was "1201 Bessie", however, as a result of a typographical

error on the part of the Secretary of State's office, service was sent to "1201 Bassie". *Id.* at 383. The Texas Supreme Court ruled that based on the Secretary's error, service was ineffective and set aside the default judgment. *Id.* Similarly, in *Comm'n of Contracts of Gen. Executive Comm. of Petroleum Workers Union of Republic of Mexico v. Arriba Ltd.*, 882 S.W.2d 576 (Tex. App. 1994) [hereinafter *Arriba*], the plaintiff provided an incorrect address for the defendant to the Secretary of State. *Id.* at 586. As a result of the error, the defendant was never served, and a default judgment was subsequently entered. The Texas Court of Appeals held that service "was invalid because [the plaintiff's] petition gave the wrong address for the [defendant] and because the Secretary of State used the incorrect address to notify the [defendant] of the [] lawsuit. Service at an invalid address was a ground upon which a default judgment based on substituted service on the Secretary of State would be set aside. *Id.* "The service did not provide the [defendant] with any notice of the [] lawsuit at the time the default judgment was rendered against it." *Id.*

To the contrary, there have been instances when Texas courts have found errors in substituted service to be insufficient to render a default judgment invalid against a nonresident. Returning to *Dole*, *supra*, 425 S.W.3d 617, the defendants challenged the default judgment, alleging in part that service was improper because the attempts were returned as "unclaimed" and that the plaintiffs had multiple addresses at which they could have served them but had selected an incorrect address. *Id.* at 624. First, addressing the unclaimed attempts at service, the Texas Court of Appeals found that this was not sufficient to invalidate the default judgment. *Id.* The court concluded that the plaintiff was not responsible for the defendants' failure to claim certified mail sent to its address. Therefore,

the returned service to the Secretary of State did "not deprive the court of jurisdiction obtained under the long arm statute." *Id.* Second, regarding the defendants' claim that the plaintiffs had several addresses possible addresses at which it could have served the defendants, but the plaintiffs selected an incorrect one, the Court considered that the address used was indicated as the defendant's home address. It continued, explaining that "the fact that there [were] other addresses appearing on the loan documents in the record [did] not alter [its] conclusion" that the attempts at service were sufficient to strictly comply with the requirements under the Texas Rules of Civil Procedure.[2] *Id*. at 624-25.

Returning to the case at bar, pursuant to Texas law, appellants served the Texas Secretary of State in the underlying breach of contract action. Admittedly, appellants first served the wrong corporation. Normally, under *Arriba, supra*, this error would have been sufficient to conclude that Harris County lacked jurisdiction and render the default judgement invalid. However, upon recognizing their mistake, appellants located the correct corporation and attempted service using the address on file with the Maryland SDAT: 605 Pittman Rd., Baltimore, MD 21226. The Texas Secretary of State attempted to serve appellee at this address, but service was returned undeliverable because the address was not current. Appellants complied with the Texas requirements and served appellee through the Texas Secretary of State. Apparently, the address appellee had on file with the Maryland SDAT at that time was outdated, which appellee admitted before the circuit

[2] *See also Paramount Credit, Inc. v. Montgomery*, 420 S.W.3d 226, 230 (2013) (explaining that if the record demonstrates that service was properly attempted, then the default judgment is valid, even if the address of the registered agent was not properly maintained with the State).

court. It is the responsibility of the corporation to maintain an updated address with SDAT. Notably, the purpose behind requiring a corporation to provide a name and address of a registered agent is so that it can provide parties and the State with a method to notify a corporation if there are any legal proceedings initiated against it. Appellants' initial error of serving the wrong corporation was remedied with its amended complaint and corrected address. Unlike the instances in *Royal Surplus* and *Arriba*, the incorrect address was not the fault of the plaintiff or the result of an error made by the Secretary of State. Service was ineffective due to appellee's failure to update its address with SDAT. Accordingly, akin to *Dole*, the plaintiffs complied with the substituted service requirements under Texas law.

b. Minimum Contacts

"Texas courts may assert personal jurisdiction over a nonresident defendant only if the Texas long-arm statute authorizes jurisdiction and the exercise of jurisdiction is consistent with federal and state due process standards." *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 806 (Tex. 2002) [hereinafter *Coleman*]. Texas' long arm statute for business transactions and torts is codified as Texas Civ. Prac. & Rem. §§17.041-45. Section 17.042 provides:

> In addition to other acts that may constitute doing business, a nonresident does business in this state if the nonresident:
>
> > (1) contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part in this state;
> >
> > (2) commits a tort in whole or in part in this state; or

> (3) recruits Texas residents, directly or through an intermediary located in this state, for employment inside or outside this state.

The Texas Supreme Court provided a review of its personal jurisdiction standards in *Coleman, supra*, 83 S.W.3d. 801. There, it opined:

> Under the Due Process Clause of the Fourteenth Amendment, jurisdiction is proper if a nonresident defendant established "minimum contacts" with Texas and maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1940). The purpose of the minimum-contacts analysis is to protect the defendant from being haled into court when its relationship with Texas is too attenuated to support jurisdiction. *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex.1990). Accordingly, we focus upon the defendant's activities and expectations in deciding whether it is proper to call it before a Texas court. *Id*. . . . The defendant's activities, whether they consist of direct acts within Texas or conduct outside Texas, must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court. *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). A defendant is not subject to jurisdiction here if its Texas contacts are random, fortuitous, or attenuated. *See Guardian*, 815 S.W.2d at 226. . . . A defendant's contacts with a forum can give rise to either specific or general jurisdiction. For a court to exercise specific jurisdiction over a nonresident defendant, two requirements must be met: (1) the defendant's contacts with the forum must be purposeful, and (2) the cause of action must arise from or relate to those contacts. *Id*. at 227. . . . The plaintiff bears the initial burden of pleading allegations sufficient to bring a nonresident defendant within the provisions of the long-arm statute. *McKanna v. Edgar*, 388 S.W.2d 927, 930 (Tex.1965).

Id. at 806-07.

In *Tri-State Bldg. Specialties, Inc. v. NCI Bldg. Sys., L.P.*, 184 S.W.3d 242, 244 (Tex. App. 2005), the Texas Court of Appeals reviewed a forum selection clause's impact on personal jurisdiction in Harris County. Tri-State, a California corporation with its principle place of business in California, purchased equipment from NCI, a Texas

corporation with its principal place of business in Harris County.[3] *Id*. at 245. The parties' contract included a forum selection clause stipulating that any claims or disputes arising out of any transactions between the two would be litigated in Harris County. *Id*. NCI later filed a lawsuit in Harris County against Tri-State alleging breach of contract for failure to pay a bill. *Id*. Tri-State responded with a "special appearance" which is the Texas method for challenging jurisdiction, averring that Harris County lacked personal jurisdiction. *Id*. The Texas trial court denied Tri-State's motion, finding that the forum selection clause permitted it to exercise personal jurisdiction, and Tri-State appealed. *Id*. at 246. Following a review of personal jurisdiction principles, the Texas Court of Appeals turned to whether the forum selection clause was Tri-State's consent to personal jurisdiction. The court continued:

> If a party signs a contract with a forum selection clause, then that party has either consented to personal jurisdiction or waived the requirements for personal jurisdiction in that forum. This rule is a manifestation of the principle that personal jurisdiction is a legal right protecting the individual, not a limitation on the power of a court. As such, a party may bargain such right away when that party perceives the bargain as advantageous. In a commercial context, as here, parties frequently "stipulate in advance to submit their controversies for resolution within a particular jurisdiction," for business or convenience reasons. Forum-selection clauses "are *prima facie* valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances." The party opposing enforcement of the forum-selection clause carries a "heavy burden" of showing that the forum-selection clause should not be enforced. A forum selection clause will be invalidated only (1) if it was the product of fraud or overreaching, (2) if the agreed forum is so inconvenient as to deprive the

[3] Tri-State had originally contracted with another California company, but that company's assets were purchased by NCI after it filed for bankruptcy. The contract including the forum selection clause was included in a contract between NCI and Tri-State, subsequent to NCI's acquisition of the original California company.

> litigant of his day in court, or (3) if enforcement would contravene a strong public policy of the forum in which the suit is brought.

Id. at 248 (internal citations omitted). The court found that the forum selection clause was freely entered into, reasonable, not the product of fraud, and that Harris County was not so inconvenient as to deprive Tri-State of its day in court. *Id*. at 249. Accordingly, it held that the forum selection clause operated as Tri-State's consent to personal jurisdiction in Harris County. *Id*.

In the case at bar, applying both the Texas long arm statute, and the principles enumerated in *Coleman*, we conclude that there were sufficient minimum contacts to support appellee being called into court in Harris County. Pursuant to the long arm statute, appellee qualified as a nonresident subject to the long arm statutes because they contracted in Texas "by mail or otherwise with a Texas resident and either party [wa]s to perform the contract in whole or in part in" Texas. Appellee stated that it communicated with appellants via telephone and email, and there is no dispute that appellee was aware that appellants were Texas residents. Furthermore, pursuant to the terms of the agreement, the contract was at least partly performed in the state because appellants would ship the ordered equipment from its primary place of business in Houston, Texas and, if necessary, any rented equipment would later be returned to Houston, Texas. Maintenance of the suit in Harris County did not offend traditional notions of fair play and justice. Appellee contracted with appellants over the course of at least five years and knew that they were Texas corporations. Appellee highlights that the contract was entered into for various projects in states along the Eastern seaboard and not in Texas. However, both the long arm

statute and due process permit jurisdiction in instances when the contract pertains to acts outside of Texas. Finally, there are no allegations or evidence of fraud, therefore, the forum selection clause was freely entered into. We conclude that there were sufficient minimum contacts with Harris County so that traditional notions of due process were not offended by the exercise of personal jurisdiction in that County.

II. Did the circuit court err in granting the motion to vacate enrollment of the Harris County Judgment?

Since we have established that the Harris County court did obtain personal jurisdiction, we hold that the circuit court erred in vacating the enrollment of the Harris County judgment based on lack of jurisdiction. *See Legum*, 395 Md. at 149 (declining to strike the enrollment of a foreign judgment after concluding that the foreign court had obtained jurisdiction). *Cf. Ricketts*, 153 Md. App. at 331 (explaining that when a foreign court did not have jurisdiction, then Maryland Courts need not give its judgments full faith and credit). Accordingly, we remand to the circuit court for enrollment of the Harris County judgment.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY IS REVERSED. COSTS TO BE PAID BY APPELLEE.