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The Appellate Division Rules Material Supplier's Contract With Corporation Is Enforceable Against Personal Guarantor

In a recent decision, New Jersey's Appellate Division held that a person who signs a guarantee of his corporation's future commercial debts to a supplier, and then later executes on the corporation's behalf a contract to buy goods which contains a choice-of-forum provision, is personally bound as guarantor to litigate in the same forum as the corporation. Shelter Systems Group Corporation vs. Lanni Builders, Inc. and Paul G. Lanni, A-3466-91 T5, decided April 12, 1993.

The Facts of the Matter

The case was heard on appeal from the Law Division, Bergen County. It arose out of a commercial transaction wherein Respondents/Defendants, LANNI BUILDERS, INC. ("LANNI, INC.") and PAUL G. LANNI ("PAUL LANNI"), requested credit from the Appellant/Plaintiff, SHELTER SYSTEMS GROUP CORPORATION ("SHELTER"), for the manufacture and delivery of construction materials.

Lanni, Inc. is a Pennsylvania Corporation and Paul Lanni is a Pennsylvania resident; Shelter's principal place of business is located in Hainesport, New Jersey.

Forum Selection Provision

The sales contract entered into between Shelter and Lanni, Inc. dated September 25, 1988 at Paragraph 12, lines 5 and 6, fixed the forum of any disputes as "...courts located in the state where seller's principal place of business is located..."

In addition, Paul Lanni personally guaranteed payment of the corporate obligation under a continuing guarantee given in a credit application dated September 29, 1988.

Shelter filed a Complaint on May 20, 1991 seeking \$34,406.93. Thereafter, Lanni, Inc. and Paul Lanni filed a Motion to Dismiss for lack of jurisdiction.

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tion. Oral argument on that motion was heard by Judge Marguerite T. Simon on January 24, 1992, resulting in the entry of an Order dismissing Shelter's Complaint.

The Legal Argument On Appeal

A Notice of Appeal was filed on Shelter's behalf on March 5, 1992. **Shelter was represented by Leonard S. de Palma, Esq.**, of counsel and on the brief. Lanni, Inc. and Paul Lanni were represented by Colasanti & Ermel, Esqs., Karen A. Ermel on the brief.

On the Appeal, Shelter sought reversal of the lower court decision on four separate grounds. In one portion of its brief, Shelter argued that Lanni, Inc. and Paul Lanni had submitted themselves to the jurisdiction of New Jersey's Courts by written agreement among the parties.

Shelter relied upon Wilfred MacDonald v. Cushman, 256 N.J. Super. 58 (App.Div. 1992) which states that forum selection provisions will be enforced by New Jersey Courts unless the party objecting thereto demonstrates (1) the clause is a result of fraud or overweening bargaining power, or (2) enforcement in a foreign forum violates the strong public policy of the local forum, or (3) enforcement would be seriously inconvenient for the trial. Id. at 63, 64.

The Appellate Division determined that the Law Division judge had erred in ruling there were insufficient New Jersey contacts and that the contractual choice-of-forum provision was not enforceable against either defendant.

Sufficient Contacts With New Jersey

In fact, the Appellate Division ruled there was no need to determine whether or not there were sufficient contacts with New Jersey to create per-

sonal jurisdiction after service of process in Pennsylvania.

Instead, the contract made by the parties which included a choice-of-forum provision was held enforceable not only against the corporation, but also against the personal guarantor, even though the personal guarantee did not include a choice-of-forum provision.

The individual guarantor, Paul Lanni, argued that since only the corporate defendant, Lanni, Inc., had signed the contract with the choice-of-forum provision, New Jersey lacked personal jurisdiction to decide the case as to Paul Lanni, individually.

Lower Court Decision Reversed

The Appellate Division disagreed stating that the guarantor, in agreeing to stand behind the corporation's performance, must be taken to have accepted reasonable means outlined in the corporation's contract for enforcement of the contract. Therefore, the individual guarantor was bound by the choice-of-forum provision. The lower court decision was reversed.



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