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Conflict of Laws - Contracts - Enforcement of Foreign Contract Though Contrary to State

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RECENT DECISIONS

CONFLICT OF LAWS—CONTRACTS—ENFORCEMENT OF FOREIGN CONTRACT THOUGH CONTRARY TO STATE POLICY—Plaintiff, a citizen of Texas, obtained from the defendant an insurance policy which was written and delivered in Texas. The defendant agreed to pay for any damages to plaintiff's truck caused by fire, but stipulated that any dispute over the amount of the loss should be determined by arbitration proceedings in accordance with the terms of the contract. The truck was damaged by fire in Arkansas and a dispute arose over the amount of the loss. Plaintiff refused to submit the question to arbitration and brought this suit in the Federal District Court for Arkansas. Defendant argued that the action was premature since compliance with the arbitration provision was a condition precedent to court action. Plaintiff did not deny that the law of the place of making generally determines the validity of contract provisions, or that the arbitration provision would have been valid in Texas, but contended that since the public policy of Arkansas, as declared by statute,[1] opposed arbitration in insurance actions, the clause was unenforceable. *Held,* action dismissed. Since it did not appear that the Arkansas court would have denied effect to an arbitration provision which is valid in the state where the contract was made and delivered, the federal court sitting in that state must enforce the provision. This rendered the action premature. *Miller v. American Ins. Co. of Newark,* (D. C. Ark. 1954) 124 F. Supp. 160.

The general rule of conflict of laws is that a contract valid at the place of making or the place of performance will be enforceable in the state of the forum even though such a contract would not be enforced by the courts of the forum had it been made, or was performable, within the state.[2] In insurance cases, the substantive law of the state where the policy was made and delivered will prevail over the law of the forum.[3] The fact that the action is brought in federal court rather than the court of the state should not change the end result. In diversity of citizenship cases, the federal court must apply the conflict of laws rules prevailing in the state in which it sits.[4] Thus in the principal case the court properly examined the decisions of the Arkansas court to decide what rule would have been applied had the case first arisen in that jurisdiction.[5] The general rule

[1] The statute declares void those provisions which deprive the insured or beneficiary of jury trial on questions of fact. Ark. Stat. (1947) §66-509.

[2] GOODRICH, CONFLICT OF LAWS, 3d ed., §§106, 107, 109, 110 (1949); STUMBERG, CONFLICT OF LAWS, 2d ed., 226-241 (1951).

[3] Prudential Ins. Co. v. Ruby, 219 Ark. 729, 244 S.W. (2d) 491 (1951). See Faude, "Conflict of Laws Applied to Automobile Insurance," 1950 INS. L.J. 818.

[4] Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020 (1941); Griffin v. McCoach, 313 U.S. 498, 61 S.Ct. 1023 (1941). See Clark, "State Law in the Federal Courts: The Brooding Omnipresence of Erie v. Tompkins," 55 YALE L.J. 267 (1946); Wolkin, "Conflict of Laws in the Federal Courts: The Erie Era," 94 UNIV. PA. L. REV. 293 (1946).

[5] The court first recognized that the provisions would have been void had the contract been made in Arkansas, citing decisions of that state. But the court then looked to Ar-

that the law of the situs of the transaction will be applied to the substantive legal issues is subject to the exception that no right will be enforced which would contravene the public policy of the state of the forum.[6] This exception itself is subject to qualification since constitutional objections may arise should the forum capriciously apply its own substantive law rather than the law of the situs of the transaction.[7] Apart from the constitutional issues, the vagueness of the term "public policy" presents a serious problem of definition.[8] In every action in which the law of the forum differs from the law of the situs, the path is open for the argument that the public policy of the forum opposes and prevents the application of the foreign law.[9] The courts agree that a mere variance between the laws of the two states should not prevent the enforcement of a foreign law.[10] It has also been said that the courts should not refuse relief unless the application of the law of the other state would "violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."[11] Yet no rule of law has been formulated by which the outcome of the public policy argument may be predicted.[12] The more recent cases shed no further light on the uncertainty that now exists.[13] In deciding whether to refuse to apply the law of the situs for

kansas decisions on other foreign contracts held valid by the law of the place of making though they would be void if made in Arkansas, and concluded by analogy that Arkansas would have enforced the arbitration provision if faced with the problem of the principal case.

[6] See GOODRICH, CONFLICT OF LAWS, 3d ed., §§11, 106 (1949); STUMBERG, CONFLICT OF LAWS, 2d ed., 168-171, 278-279 (1951).

[7] Denial of due process and full faith and credit have been argued in conflict of laws cases. See Home Ins. Co. v. Dick, 281 U.S. 397, 50 S.Ct. 338 (1930); Bradford Electric Light Co. v. Clapper, 286 U.S. 145, 52 S.Ct. 571 (1932); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U.S. 143, 54 S.Ct. 634 (1934); John Hancock Mutual Ins. Co. v. Yates, 299 U.S. 178, 57 S.Ct. 129 (1936); Order of United Commercial Travelers of America v. Wolfe, 331 U.S. 586, 67 S.Ct. 1355 (1947).

[8] See Nutting, "Suggested Limitations of the Public Policy Doctrine," 19 MINN. L. REV. 196 (1935). In 33 COL. L. REV. 508 at 514 (1933), public policy is referred to as an "amazingly shifty phenomenon."

[9] The situations in which the public policy argument can be made are unlimited. For an excellent collection of the many types of cases in which it has been made, see 33 COL. L. REV. 508 (1933).

[10] First Nat. Bank v. Chuck Lowen, Inc., 128 Colo. 104, 261 P. (2d) 158 (1953); Whitney v. Penrod, 149 Neb. 636, 32 N.W. (2d) 131 (1948); Warner v. Florida Bank & Trust Co., (5th Cir. 1947) 160 F. (2d) 766; Biewend v. Biewend, 17 Cal. (2d) 108, 109 P. (2d) 701 (1941).

[11] Judge Cardozo in Loucks v. Standard Oil Co. of N.Y., 224 N.Y. 99 at 111, 120 N.E. 198 (1918). The *Restatement* requires the contravention of a "strong" public policy. CONFLICT OF LAWS RESTATEMENT §612 (1934). Some writers feel that local public policy should be applied sparingly. See Beach, "Uniform Interstate Enforcement of Vested Rights," 27 YALE L.J. 656 (1918); Goodrich, "Foreign Facts and Local Fancies," 25 VA. L. REV. 26 (1938).

[12] See note 8 supra.

[13] Generally the courts pay lip service to the public policy limitations but give no exacting explanation of why the foreign law may or may not be enforced because of local policy. Among the cases finding local public policy supreme are Ciampittiello v. Campitello, 134 Conn. 51, 54 A. (2d) 669 (1947); Fahy v. Lloyd, (D.C. Mass. 1944) 57 F.

policy reasons, the effect of the decision on the substantive rights of the parties should receive consideration. If the refusal of the court to hear the case only denies the plaintiff the use of the courts of the forum but does not deprive him of the right to bring the action elsewhere, the use of the public policy exception is more easily justified than if serious prejudice would result. Thus, when the effect of the exception is to deprive the defendant of a substantive defense so that affirmative enforcement is possible in the forum, the court should not apply the public policy of the forum to the detriment of the party who relies on the law of the situs of the transaction.[14] In the principal case, the court properly followed the Arkansas conflict of laws rules and applied the law of Texas to the contract. The application of the Arkansas statute to the insurance policy would allow the plaintiff to capitalize solely on his ability to serve the defendant in Arkansas. It would be an unusual public policy which would reward the plaintiff for the discovery of a jurisdiction in which the defense of the insurance company is not recognized.

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Supp. 156; Federal Deposit Ins. Corp. v. Stensland, 70 S.D. 103, 15 N.W. (2d) 8 (1944); Liberthal v. Glen Falls Indemnity Co., 316 Mich. 37, 24 N.W. (2d) 547 (1946); Reed v. Kelly, (7th Cir. 1949) 177 F. (2d) 473; Transbel Inv. Co. v. Roth, (D.C. N.Y. 1940) 36 F. Supp. 396. Illustrative of the cases applying the law of the situs despite local public policy are American Furniture Mart Bldg. Corp. v. W. C. Redmon, Sons & Co., 210 Ind. 112, 1 N.E. (2d) 606 (1936); Eskovitz v. Berger, 276 Mich. 536, 268 N.W. 883 (1936); Rauton v. Pullman Co., 183 S.C. 495, 191 S.E. 416 (1937); Rubin v. Schupp, (9th Cir. 1942) 127 F. (2d) 625; Tate v. Hain, 181 Va. 402, 25 S.E. (2d) 321 (1943).

[14] The distinction between refusal to hear the case and affirmative enforcement of the foreign action by application of local public policy is emphasized in Holderness v. Hamilton Fire Ins. Co., (D.C. Fla. 1944) 54 F. Supp. 145.