

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001229-MR

GUY AND CHERYL OEHLER

APPELLANTS

v. APPEAL FROM OWEN CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 06-CI-00072

WILDERNESS LOG HOME

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * **

BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

DIXON, JUDGE: Guy and Cheryl Oehler (“the Oehlers”) appeal an order of the Owen Circuit Court dismissing their complaint against Wilderness Log Home (“Wilderness”) pursuant to Kentucky Rules of Civil Procedure (CR) 12.02. After reviewing the record on appeal, we vacate and remand.

On October 28, 2004, the Oehlers executed a contract to purchase a custom log home kit from Wilderness. The Oehlers hired a contractor, James Boyd, to construct

the house after the materials were delivered to the home site in Owen County, Kentucky. After construction began, the Oehlers became dissatisfied with Boyd's performance.

On April 12, 2006, the Oehlers filed a complaint against Wilderness and Boyd¹ in Owen Circuit Court. The complaint alleged breach of contract, unjust enrichment, fraud, and *respondeat superior*. Wilderness filed an answer and a motion to dismiss pursuant to CR 12.02. Wilderness asserted that the parties' contract of sale contained a forum selection clause granting the courts of Wisconsin jurisdiction of any legal disputes. Although the Oehlers filed a responsive pleading opposing the motion to dismiss, the circuit court dismissed the complaint against Wilderness by order entered May 23, 2006, which stated:

Motion having been made and the Court being duly advised:

IT IS HEREBY ORDERED AND ADJUDGED that Wilderness Log Home's Motion to Dismiss is SUSTAINED and Plaintiff's Complaint in the instant action be and hereby is DISMISSED WITH PREJUDICE.

This is a final and appealable Order; there being no just cause for delay.

This appeal followed.

The Oehlers contend the trial court erred by summarily dismissing their complaint because the forum selection clause is unfair and unreasonable. Wilderness argues the trial court correctly dismissed the complaint because the forum selection clause is valid and enforceable against the Oehlers.

¹ The Oehlers brought suit against Boyd and his wife Ginger Boyd, individually, and against their jointly-owned construction company, Ohio Wilderness Company. It appears the Oehlers and the Boyds are still involved in litigation.

The sales contract between the parties was six pages in length. On the last page of the agreement, the final paragraph stated:

Governing Law; Consent to Exclusive Jurisdiction and

Forum: This Contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. Each party agrees that all actions or proceedings arising out of or in connection with this Agreement shall be commenced and litigated only in the state courts located in the County of Sheboygan or the U.S. Federal District Court for the Eastern District of Wisconsin. Each party waives any right it may have to assert that the forum is inconvenient or to object to venue to the extent any proceeding is brought in accordance with this Section. Each party consents to and waives objection to the exercise of personal jurisdiction over it by the courts described in this Section.

Acknowledgment: Customer acknowledges that he or she has carefully read and understands this Contract, including these terms and conditions.

Immediately below the final paragraph, the Oehlers individually signed the contract.

Both parties agree that, under Kentucky law, a forum selection clause is *prima facie* valid unless it is proven unfair or unreasonable. *Prudential Resources Corp. v. Plunkett*, 583 S.W.2d 97, 99 (Ky. App. 1979) citing *Restatement (Second) of Conflict of Laws* § 80 (1971). The parties also cite *Prudential Resources Corp.* for the proposition that proper evaluation of a forum selection clause also includes: 1) inconvenience of the chosen forum; 2) disparity in bargaining power between the parties; and 3) whether Kentucky has more than a minimal interest in the dispute. *Id.* at 99-100.

While we agree *Prudential Resources Corp.*, enunciates the proper analysis, our review begins with *Prezocki v. Bullock Garages, Inc.*, 938 S.W.2d 888 (Ky. 1997). *Prezocki* addressed a contract for construction of a garage, which included a

provision designating Illinois law to govern disputes arising from the agreement. *Id.* The purchasers, the Prezockis, were unhappy with the garage and brought suit in Oldham County District Court. *Id.* Bullock Garages moved the court to dismiss the complaint based on the choice of law provision in the contract. *Id.* The district court dismissed the complaint, and the purchasers appealed to Oldham Circuit Court. *Id.* The circuit court, relying on *Prudential, supra*, affirmed the dismissal. *Id.* at 889. This Court declined review, but the Supreme Court granted discretionary review. *Id.* The Court revisited the analysis enunciated in *Prudential* and held:

Therefore, according to *Prudential, supra*, the forum selection clause in the present case should be enforced as *prima facie* valid, unless appellants present the trial court with countervailing circumstances that would render the clause 'unreasonable.' However, because the underlying decision of the Oldham District Court was based on a motion to dismiss, matters outside the pleadings were not considered. Thus, given the limited record in the present case, this Court has an inadequate set of facts upon which to base an appropriate legal determination.

Furthermore, while we ultimately agree with the circuit court's reliance upon *Prudential*, we disagree with the procedure it followed. The limited findings in the record in the case at bar compelled the Oldham Circuit Court to remand the case to the Oldham District Court for a factual determination, not to affirm the district court's dismissal of the case. Accordingly, we reverse the decision of the Oldham Circuit Court and remand the case to Oldham District Court for a hearing and a factual determination in conformity with the decision in *Prudential, [supra]*.

Id. at 889.

As in *Prezocki*, the trial court in this case failed to make any findings on the record. This Court is simply unable to make an appropriate legal determination based on such inadequate facts. Accordingly, we find the Owen Circuit Court erred by summarily dismissing this matter without making findings on the record in conformity with *Prudential Resources Corp., supra*.

For the reasons stated herein, the order of Owen Circuit Court is vacated and this matter remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Shane C. Sidebottom
WOLNITZEK & ROWEKAMP, P.S.C.
Covington, Kentucky

BRIEF FOR APPELLEE:

Stephen G. Amato
Benjamin L. Riddle
MCBRAYER, MCGINNIS, LESLIE &
KIRKLAND, PLLC
Lexington, Kentucky