2019 IL App (1st) 180773-U
No. 1-18-0773
Order filed July 16, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SNAP ADVANCES, LLC, Plaintiff-Appellant, v. MACOMB OFFICE SUPPLY, INC., Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 17 M1 501214 Honorable Patrick J. Heneghan, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Justice Mason concurred in the judgment
Justice Pucinski specially concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing a Utah default judgment, which was void due to the lack of personal jurisdiction over defendant.

¶ 2 Plaintiff Snap Advances, LLC filed suit in Utah against Chapman's Books and Supply, Inc., a college bookstore, Tracy Brightwell-Kraft, the store's owner, and Macomb Office Supply, Inc., alleging breach of a purchase and sale agreement. Brightwell-Kraft signed the agreement on behalf of Chapman's and as guarantor. The agreement's choice of venue provision stated all

disputes would be litigated in Utah. Although Macomb was not a party to the agreement, Snap alleged it was liable as a "successor in interest" to Chapman's, as Brightwell-Kraft also owned Macomb, and operated it as a college bookstore in the same location after Chapman's went out of business.

¶ 3 None of the defendants appeared. The Utah court entered a default judgment, and Snap filed a petition in Cook County circuit court to register the default judgment. Macomb then moved to vacate the default judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)), arguing the Utah court did not have personal jurisdiction because Macomb was not a party to the agreement and had no business dealings with Snap or in Utah. The trial court granted the motion, finding Macomb did not consent to jurisdiction in Utah and had no contacts with Utah that would permit the Utah court to exercise personal jurisdiction.

¶ 4 Snap argues (i) the trial court should have given full faith and credit to the Utah court's finding of jurisdiction and should not have made a factual determination about Macomb's status as a successor in interest, and (ii) the trial court exceeded its authority by dismissing the Utah default judgment. We affirm. The trial court did not violate the full faith and credit clause of the United States Constitution or the Uniform Enforcement of Judgment Act by examining whether the Utah court had jurisdiction over Macomb. In addition, the trial court did not err in dismissing the default judgment, which was void due to the lack of personal jurisdiction.

¶ 5 Background

¶ 6 Chapman's operated as a college bookstore near the campus of Western Illinois University in Macomb, Illinois. Chapman's owner and president, Tracy Brightwell-Kraft, and Snap entered into successive purchase and sale agreements in October 2015 and April 2016. Under the agreements, Snap purchased a percentage of Chapman's accounts receivable.

Brightwell-Kraft also signed the agreement as guarantor. The agreement's "governing law" provision provided that all disputes would be resolved in either Utah state or federal court and under Utah law.

¶ 7 Since April 2010, Chapman's had a $350,000 commercial line of credit with First Bankers Trust, N.A. (FBT). As collateral, FBT had a perfected security interest in all of Chapman's equipment, inventory, and proceeds.

¶ 8 Chapman's went out of business in September 2016. (Soon after, Brightwell-Kraft opened Macomb Office Supply, also a student bookstore in the same location.) FBT notified Chapman's that because of the loan's default, FBT was accelerating the full amount owed, about $55,000, and demanding that Chapman's surrender all inventory, furniture, and fixtures. Chapman's waived all rights to the collateral and permitted FBT to repossess. FBT then sold all of Chapman's inventory and equipment to Macomb. FBT loaned Macomb the money to buy the assets and Macomb granted FBT a security interest in all of Macomb's assets.

¶ 9 Snap filed a complaint in Utah state court against Chapman's, Brightwell-Kraft and Macomb, alleging breach of the purchase and sale agreement for failing to deposit its income in a designated account. Snap also alleged breach of the guarantee and unjust enrichment against Chapman and Brightwell-Kraft, as well as successor liability against Macomb. Snap alleged Macomb constituted a continuance of Chapman's, maintaining the same common ownership and management, and had received all of Chapman's assets without consideration. Snap alleged jurisdiction and venue in Utah, as the defendants had given express written consent to the Utah court's jurisdiction.

¶ 10 None of the defendants appeared. (Macomb does not dispute proper service under Rule 4(d) (2) (B) of the Utah Rules of Civil Procedure. Utah R. Civ. P. 4(d)(2)(B) (West 2016)). The

Utah court entered a default judgment against them. Snap filed a petition to register the Utah judgment in Cook County and notified the defendants by mail. Snap also filed a citation to discover assets with MidAmerica National Bank to attach all funds the bank held for Macomb.

¶ 11 Macomb petitioned to vacate the default judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)). Macomb also moved to dismiss the citation to discover assets. Macomb asserted the Utah court did not have personal jurisdiction because Macomb was not a party to the agreement with Snap and never conducted business outside of Illinois. Macomb also argued Utah did not have subject matter jurisdiction to determine whether Macomb was a successor in interest to Chapman's, as both Macomb and Chapman's were Illinois corporations that conducted business in Illinois. Macomb also argued it had no successor in interest liability because it was a good faith purchaser of Chapman's assets and that FBT had a superior perfected interest in those assets. Macomb asked the trial court to find the Utah default judgment void for lack of jurisdiction as to Macomb and to dismiss the citation to discover assets under section 2-1402 of the Code (735 ILCS 5/2-1402 (West 2016), because it never received a copy of the notice.

¶ 12 Snap argued (i) an Illinois court must give full faith and credit to the Utah court's factual jurisdictional finding, and (ii) section 2-1402 only requires that a plaintiff mail a citation to discover assets, not that a defendant acknowledge receipt.

¶ 13 The trial court vacated the default judgment, finding the Utah court lacked jurisdiction over Macomb. The trial court did not address Macomb's contention that it had a meritorious defense to Snap's successor liability allegation because that concerned the merits of the Utah case, and "it is inappropriate for the court to entertain such a challenge [in] assessing defendant's jurisdictional argument." Looking to the pleadings, the court found two misstatements in Snap's

Utah complaint—that jurisdiction and venue were proper in Utah because of "defendants' express written consent to [the Utah] court's jurisdiction." The court noted that while Chapman's and Brightwell-Kraft consented to Utah's jurisdiction and venue by signing the agreement, Macomb was not a party. "There exists no dispute that Macomb ever consented, in writing, or otherwise, to the Utah court's jurisdiction or venue over Macomb," stated the court. "It is conceivable that the Utah court mistakenly, but improperly, exercised jurisdiction and venue over Macomb based on these misstatements of fact."

¶ 14 The court further noted Macomb's status as an Illinois company, separate and apart from Chapman's and that Macomb had no contact, involvement, or transactional activity with Snap or in the state of Utah. Further, the court rejected Snap's successor liability argument; Snap was bootstrapping its allegations against Chapman's to assert Macomb was liable for Chapman's agreements and liabilities. The court concluded that if Macomb established that the Utah court did not have jurisdiction, it should not be expected or required to appear in the Utah court. Thus, the court vacated the judgment against Macomb and dismissed the citation to discover assets.

¶ 15 Analysis

¶ 16 Snap contends the trial court should have denied Macomb's section 2-1401 petition and given full faith and credit to the Utah court's finding of jurisdiction because (i) the judgment was based on a factual finding that Macomb was the successor in interest to Chapman's, and (ii) no evidence established that Snap engaged in extrinsic fraud to mislead the Utah court into finding it had jurisdiction. Alternatively, Snap asserts that even if the trial court had authority to vacate the registration of the foreign judgment, it did not have authority to vacate the Utah default judgment.

¶ 17 Macomb did not file an appellee brief. We do not serve as an advocate for the appellee or search the record for reasons to sustain the trial court's judgment. *First Capitol Mortgage Corp. v. Talandis Construction Corp*., 63 Ill. 2d 128, 133 (1976). But, a court of review should decide an appeal on the merits where, as here, the record is straightforward and the claimed errors can be comfortably decided without the aid of an appellee's brief, *Id.* Accordingly, we will decide the merits of Snap's appeal.

¶ 18 When a section 2-1401 petition raises a purely legal challenge to a judgment by alleging that the judgment is void, as in this appeal, we review the trial court's ruling on the petition *de novo*. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47.

¶ 19 Full Faith and Credit

¶ 20 Snap argues Macomb may not litigate in Illinois the question of Utah's personal jurisdiction under its long-arm statute. Snap asserts that successor status and successor liability involve questions of fact, and the full faith and credit clause of the United State Constitution (U.S. Const., art. IV § 1) and the Uniform Enforcement of Judgments Act (UEJA) (735 ILCS 5/12–650 *et seq*. (West 2016)), require an Illinois court give the Utah court's factual findings full faith and credit. Snap acknowledges that an Illinois court may inquire into jurisdictional basis for a foreign court's judgment but where the inquiry shows that the issue of jurisdiction has been litigated and decided, the Illinois court must accord it full faith and credit.

¶ 21 The full faith and credit clause provides that full faith and credit must be given to the judicial proceedings of every other state. U.S. Const., art. IV § 1; *First Wisconsin National Bank of Milwaukee v. Kramer*, 202 Ill. App. 3d 1043, 1047 (1990). "A lawsuit which has been pursued to judgment should be as conclusive in every other court as it is in the court where judgment was entered." *Kramer*, 202 Ill. App. 3d at 1047.

¶ 22 In the spirit of the full faith and credit clause and in keeping with the UEJA's intended purpose, the enforcing court will not consider the merits of the foreign judgment, as it is *res judicata* as to its nature and the amount awarded, as well as to defenses that could have been raised in the original court. *Thorson v. LaSalle National Bank*, 303 Ill. App. 3d 711, 715 (1999). (Thus, like the trial court, we will not address the merits of Snap's successor liability claims or Macomb's defenses to that claim.) Two exceptions permit an enforcing court to inquire into the defenses: (i) lack of jurisdiction in the foreign court or (ii) fraud in the procurement of the judgment. *Firstar Bank Milwaukee, N.A. v. Cole*, 287 Ill.App.3d 381, 383 (1997). The exceptions underscore the principle that a foreign judgment has no constitutional claim to full faith and credit where the defect (lack of jurisdiction or procurement by fraud) would render the judgment void. *Sackett Enterprises*, 211 Ill. App. 3d at 1001. But, the principles of *res judicata* restrict and govern these two exceptions as well.

¶ 23 Once the issues have been determined in the rendering court, they cannot be reconsidered by the enforcing court. *Firstar Bank Milwaukee*, 287 Ill. App. 3d at 383-84. ("if the issue of jurisdiction has been litigated and decided in the foreign court, the registering court is compelled to accord full faith and credit to that ruling"). Thus, when a defendant claims that a foreign court lacks personal or subject matter jurisdiction, the trial court must conduct a two-step analysis. First, the trial court must look to the record of the foreign court to determine if that court ruled on personal jurisdiction. If the foreign court did not rule, the trial court may perform the second step, examining the jurisdiction of the foreign court. *Id.*

¶ 24 Snap argues the Utah court litigated and decided the issue of jurisdiction. We disagree. Nothing in the record suggests the Utah court ruled on jurisdiction or addressed Snap's contention that Macomb succeeded to Chapman's interest. As noted, none of the defendants

appeared in Utah, even to contest jurisdiction. And the copy of the Utah default makes no mention of personal jurisdiction. Thus, the trial court acted properly in addressing Macomb's personal jurisdiction arguments.

¶ 25 Where a jurisdiction issue is properly before an Illinois court as the enforcing state, we look to the substantive law of the rendering state. *Thorson*, 303 Ill. App. 3d at 718. *Pavey Envelope & Tag Corp.*, 271 Ill. App. 3d 808, 811 (1995) ("In determining jurisdiction, the foreign State's law, as limited by due process, controls.").

¶ 26 Whether a Utah court had jurisdiction over an Illinois defendant requires an assessment of whether (i) the state long-arm statute extends to the defendant's acts or contacts, (ii) the claim arises out of those acts or contacts, and (iii) the exercise of jurisdiction satisfies the defendant's right to due process under the United States Constitution. *Fenn v. Mleads Enterprises, Inc.*, 2006 UT 8 ¶ 8, 137 P.3d 706. Utah's long-arm statute subjects a person to Utah jurisdiction if the person does any one of several enumerated acts including transacting business in the state, contracting to supply goods or services in the state, causing injury in the state, and owning real estate in the state. Utah Code Ann. § 78B-3-205 (West 2016).

¶ 27 Federal due process requires that the exercise of jurisdiction over a nonresident not offend the " 'traditional notions of fair play and substantial justice.' " *Fenn v. Mleads Enters., Inc.*, 2006 UT 8, ¶ 10, 137 P.3d 706 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Minimum contacts may be established when a defendant "purposefully avail[s] itself of the benefits of conducting business in Utah." *Fenn*, 2006 UT 8, ¶ 13, 137 P.3d 706. That means, "the defendant's conduct and connection with the forum State are such that [defendant] should reasonably anticipate being hailed into court there." *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

¶ 28 As far as the limited record on appeal shows, Macomb did not engage in any of the acts enumerated in Utah's long arm statute. Moreover, Macomb had no minimum contacts with Utah. Macomb, an Illinois corporation, transacts business only in Illinois. It did no business in Utah. It did not purposefully avail itself of the benefits of conducting business in Utah. So the Utah court could not exercise long arm jurisdiction over Macomb.

¶ 29 Snap contends that in its complaint, it alleged the Utah court had jurisdiction over Macomb by virtue of its status as a successor in interest to Chapman's. Not so. In its complaint, Snap raised a successor liability claim against Macomb, but its contention that the Utah court had jurisdiction over Macomb arose due to the "defendants' written consent." As noted, Macomb was not a party to the purchase and sale agreement. It never consented to jurisdiction in Utah. It had no dealings with Snap. It came into existence only after the events giving rise to the lawsuit occurred.

¶ 30 Moreover, Snap's complaint and its brief fail to cite any legal authority for the proposition that a Utah court may exercise jurisdiction over a corporate successor based on its predecessor's consent to jurisdiction. Nor does Snap argue how Macomb could be deemed to have been a party to the purchase and sales agreement due to its status as a successor in interest.

¶ 31 As noted, Macomb does not dispute proper service of the Utah complaint, but service does not confer jurisdiction. Even though Macomb was properly served, it was not obligated to appear in Utah to contest jurisdiction or the successor in interest allegations in the complaint. If Macomb believed it was not subject to the Utah court's jurisdiction, it was within its rights not to appear and to ask an Illinois court to vacate the default judgment. We are obligated to give full faith and credit to foreign judgments, but not when, as here, the judgment is void due to a lack of jurisdiction. *Sackett Enterprises*, 211 Ill. App. 3d at 1001.

¶ 32 Extrinsic Fraud

¶ 33 Alternatively, Snap argues that even if the Utah court was misled into finding Macomb consented to jurisdiction, the default judgment would still be enforceable as any misleading allegations would constitute intrinsic rather than extrinsic fraud. Snap raises this argument for the first time on appeal. Entertaining issues raised for the first time on appeal undermines efficiency, predictability, procedural fairness, and finality. See *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996). Accordingly, we will not consider it.

¶ 34 Dismissing the Utah Judgment

¶ 35 Snap argues that even if the trial court had grounds for vacating the registration of the Utah judgment on a lack of jurisdiction, it exceeded its authority by vacating the default judgment. Again, we disagree. That the Utah court did not have jurisdiction over Macomb also voids the default judgment. *Sackett Enterprises*, 211 Ill. App. 3d at 1001. The trial court properly vacated the judgment under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2016)).

¶ 36 Affirmed.

¶ 37 JUSTICE PUCINSKI, specially concurring:

¶ 38 I concur with the decision of my colleagues to affirm an order of an Illinois circuit court judge vacating a Utah default judgment against defendant, Macomb Office Supply, Inc. I write separately to highlight my concerns about the conduct of Tracy Brightwell-Kraft and the impact that such conduct could have on the willingness of foreign state companies to do business with Illinois companies.

¶ 39 In 2015 and 2016, Tracy Brightwell-Kraft and Tracy Brightwell-Kraft, signing for Chapman's Books and Supply, signed a contract ("Purchase and Sale Agreement for Future Receivables") with SNAP Advances, LLC, a Utah corporation.

¶ 40 As signatories to the contract, Brightwell-Kraft and Chapman's agreed that the contract would be governed by Utah law, that it successors would be bound by the contract, and that they would engage in appropriate conduct. Specifically, Section 5.6 of the contract provided as follows: "Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Seller and any Guarantor consent to the jurisdiction of the federal and state courts located in the State of Utah and the County of Salt Lake and agree that such courts shall be the exclusive forum for all actions, proceedings or litigation arising out of or relating to this Agreement or subject matter thereof, notwithstanding that other courts may have jurisdiction over the parties and the subject matter thereof. Service of process by certified mail to Seller's address listed on the face of this agreement or such other address that Seller may provide Buyer in writing from time to time will be sufficient for jurisdictional purposes."

¶ 41 Section 5.4, in turn, stated: "Binding Effect: This Agreement shall be binding upon and inure to the benefit of the Seller, the Buyer and the respective successors and assigns, except that Seller shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Buyer, which consent may be withheld in the Buyer's sole discretion. The Buyer reserves the right to assign this Agreement with or without prior notice to Seller."

¶ 42 Finally, Section 3.1 provided: "Seller's Conduct: Until the Buyer has been paid in full hereunder Seller shall *** (ii) not take any action to reduce or divert the deposit of any Receipts from any payments received by the Seller into the Account or permit any event to occur which could have an adverse effect on the deposit of any Seller's receipts into the Account."

¶ 43 In addition to those aforementioned provisions, Chapman's and Brightwell-Kraft also agreed to sell $33,000 of Chapman's receipts plus 10% interest for a total of $45,210 in exchange for Snap, the buyer of those receipts, advancing the $33,000 to Brightwell-Kraft and

Chapman's. SNAP did what it agreed to do, that is, advanced $33,000 to the sellers and expected the sellers to keep their end of the bargain.

¶ 44 Unbeknownst to SNAP, however, First Bankers Trust Company had a lien on Chapman's going back to June, 14, 2010. The failure to inform SNAP of the prior lien was a violation of the contact. The Bank's Note had a balance due of $54,745.74 as of October 16, 2016.

¶ 45 Through a series of shenanigans, Brightwell-Kraft wound up with First Bankers Trust Company foreclosing on its lien, buying Chapman's, and reselling it and its inventory back to her so that she has the same business with a different name, the same location, and the same inventory. Despite the fact that Brightwell-Kraft and Chapman's agreed in the contract with SNAP that nothing would be done to diminish SNAP's interest in getting repaid, they did just that by maneuvering the change in ownership with the help of their friendly bank, and, oh, what a surprise, won't pay SNAP back its money.

¶ 46 Understandably, SNAP followed Utah's service of process laws and pursued judgment against Brightwell-Kraft and Chapman's as well as Macomb Office Supply. Macomb, despite having had notice, chose not to appear in the Utah court to contest its jurisdiction. Utah law provides for the defense of lack of jurisdiction over the person to be filed by a motion, in effect a special appearance (Utah Rules of Civil Procedure, Utah R. Civ. P. 12 (West 2016)). Instead, Macomb did nothing and a default judgment was entered against it.

¶ 47 I agree with my colleagues that the Utah court's default judgment contains no indication that the court addressed whether it specifically had personal jurisdiction over Macomb. I also agree that the "limited" record on appeal does not show whether Macomb engaged in any of the acts enumerated in the Utah long arm statute or that it had minimum contacts with Utah.

¶ 48 It is clear to me, however, that Macomb is the successor in interest to Chapman's. It has the same owner, the same location, the same inventory, and the same business purpose.

¶ 49 In *Norfolk Southern Railway Company v. Rogers, FNA Elm LLC*, 2017 IL App (1st) 162280-U ¶ 14, my colleagues Justice Neville, Justice Hyman, and Justice Mason concluded that: "A party who acquires a business's assets may also take on responsibility for the business's liabilities, if the acquiring party qualifies as the liable business's successor in interest. *MIG Investments, Inc. v. Marsala*, 92 Ill. App. 3d 400, 404 (1981). To count as a successor in interest 'a party must continue to retain the same rights as original owner without change in ownership and there must be changes in form only and not in substance.' *Spiegel v. Hollywood Towers Condominium Ass'n*. 283 Ill. App. 3d 992, 999 (1996)."

¶ 50 *MIG Investments* included findings that where the second [owner] was not aware of the [ ] contract, the second [owner] was not liable for breach of the [ ] contract between the [the] first [owner] and the [other party to the contract]. See *MIG Investments Inc.*, 92 Ill. App. 3d at 404. However, that cannot be the case here since Brightwell-Kraft was the owner of Chapman's and is the owner of Macomb. She signed the contract with SNAP and was clearly aware of her obligation to pay SNAP its money.

¶ 51 Although I believe that Macomb is clearly the successor in interest to Chapman's and that Brightwell-Kraft engaged in a make-the-money-disappear shell trick worthy of the slickest grifter, SNAP has failed to provide this court with any authority that a Utah court may exercise jurisdiction over a corporate successor based solely on its predecessor's consent to jurisdiction in a sales contract.

¶ 52 Therefore, I reluctantly join my colleagues in affirming the trial court's vacatur of the Utah court's default judgment against Macomb. In doing so, I emphasize that nothing in this court's disposition precludes SNAP from initiating action against Macomb in Illinois.