

STATE OF SOUTH CAROLINA  
 COUNTY OF BEAUFORT,  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-07-02102  
 2015-CP-07-00249

**RECEIVED**

FEB 08 2016

SC Court of Appeals

Vend Lease Company, Inc.

The Market Place Newland, NC  
 Suk Holmes

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Plaintiff

Attorney for :  Plaintiff Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk :

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Signature]*  
 Circuit Court Judge

2154  
 Judge Code

12/17/15  
 Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Fred H. Kuhn, Jr.

Paul H. Hoefer

Thomas W. Bunch, II

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jerri Ann Roseneau

CLERK OF COURT

**Court Reporter:** Mona Manley

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 Vend Lease Company, Inc., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 The Market Place News, LLC and Tae Suk )  
 Holmes, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

Case Nos.: 2014-CP-07-02102  
 2015-CP-07-00249

**ORDER CONSOLIDATING CASES  
 INTO 2015-CP-07-00249 AND  
 ENROLLING FOREIGN  
 JUDGMENTS**

2015 DEC 28 PM 1:35  
 BEAUFORT COUNTY  
 CLERK OF COURT  
 EUGENE C. GRIFFITH, JR.

In Case No.: 2015-CP-07-00249, Plaintiff Vend Lease Company, Inc. (“Vend Lease”) moved to enroll foreign judgments against The Market Place News, LLC (“Market Place”) and Tae Suk Holmes (“Holmes”) under the authority of the Uniform Enforcement of Foreign Judgments Act (S.C. Code Ann. §§ 15-35-900 et seq.). In a separate and previously filed action, Case No.: 2014-CP-07-2102, Market Place and Holmes filed suit against Vend Lease seeking a declaration that these same foreign judgments entered against them in Maryland are void and unenforceable; Vend Lease thereafter answered and moved for summary judgment in that action.

These matters came before the Court at a hearing held on October 27, 2015 before The Honorable Eugene C. Griffith, Jr. Appearing as counsel for Plaintiff was Paul H. Hoefler. Appearing as counsel for Defendants was H. Fred Kuhn, Jr. The parties agreed to consolidate the two cases into the above referenced caption and case number 2015-CP-07-00249. Based upon the matters of record, I find that Plaintiff is entitled to judgment as a matter of law and the foreign judgments should be enrolled of record in South Carolina.

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## FACTS

On or about July 16, 2013, a written Equipment Lease Agreement (“Agreement”) was entered between Vend Lease, as Lessor, and Market Place, as Lessee, under which Vend Lease would buy restaurant equipment and lease it to Market Place. *See Affidavit of Ira Himmel.* Holmes personally guaranteed payment under the Agreement. *Id.* Thereafter, Market Place and Holmes defaulted on their obligations to pay Vend Lease. *Id.*

On February 19, 2014, Vend Lease filed an action against Market Place and Holmes in the District Court of Maryland for Baltimore County (Case No. 0804-5581-2014) (“Maryland Lawsuit”). *Id.* On July 2, 2014, the Maryland court entered a default judgment against Holmes (“Holmes Judgment”). *Id.* Thereafter, Holmes moved to alter/amend judgment, moved for a new trial, and moved to dismiss the Complaint. *Id.* The Maryland court denied each of these motions and denied Holmes’ arguments that the Maryland court lacked personal jurisdiction. *Id.*

On July 24, 2014, after a trial on the merits and after considering arguments of personal jurisdiction, the Maryland court also entered judgment against Market Place (the “Market Place Judgment”). The Holmes Judgment and Market Place Judgment (hereinafter known as the “Maryland Judgments”) each remain fully outstanding and due. *See Affidavit of James Sterenberg, III.*

On August 27, 2014, Market Place and Holmes filed a separate action in this Court against Vend Lease (Case No.: 2014-CP-07-02102) seeking a declaration that the Maryland Judgments are void and unenforceable. Vend Lease timely filed and served an Answer in response.

On January 15, 2015, Vend Lease initiated the instant action by filing a Petition for Filing Foreign Judgment in Beaufort County with the properly authenticated Maryland Judgments and the requisite affidavit. On April 6, 2015, Vend Lease filed an Amended Petition for Filing

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Foreign Judgment, adding Tae Suk Holmes' full name, adding evidence of the dismissal of an appeal of the Maryland Judgments, and clarifying the judgment amounts against each defendant. On April 27, 2015, Market Place and Holmes were served with notice of the foreign judgment filings.

### LEGAL STANDARD

Under the Full Faith and Credit Clause, courts of one state must give such force and effect to a foreign judgment as the judgment would receive in the issuing state. U.S.C.A. Const. Art. 4, § 1. The law against which a foreign judgment is evaluated for viability and effect is the law of the state rendering the judgment. *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 681 S.E.2d 575 (2009).

Under the Full Faith and Credit Clause, personal jurisdiction is presumed when a foreign judgment appears on its face to be a record of a court of general jurisdiction. U.S.C.A. Const. Art. 4, § 1. *Id.* The burden of undermining the decree of a sister state rests heavily on the assailant who can overcome the presumption of jurisdiction and validity afforded the judgment by the full faith and credit clause only by extrinsic evidence, or by the record itself. *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 681 S.E.2d 575 (2009). Further, if a judgment debtor appears in a foreign state and loses, then that court's exercise of jurisdiction over him is not subject to collateral attack. *See Colonial Pac. Leasing Corp. v. Taylor*, 326 S.C. 529, 532-34, 484 S.E.2d 595, 597-98 (Ct. App. 1997).

### CONCLUSIONS OF LAW

After considering the matters set forth in the record, I find that Plaintiff is entitled to judgment as a matter of law.

- I. Res judicata bars Defendants' arguments that Maryland lacked personal jurisdiction.**

Defendants argue that Maryland lacked personal jurisdiction in the underlying Maryland Lawsuit. However, Defendants each appeared in the Maryland Lawsuit and the Maryland court specifically denied Defendants' jurisdictional arguments and entered judgments in favor of Vend Lease. *See Affidavit of Ira Himmel*. Therefore, Defendants are precluded by principles of res judicata from making these same jurisdictional arguments in this case. *See Colonial Pac. Leasing Corp. v. Taylor*, 326 S.C. 529, 532-34, 484 S.E.2d 595, 597-98 (Ct. App. 1997) (finding that "Judgment debtor was precluded by principles of res judicata from litigating personal jurisdiction in action to enforce foreign judgment, where debtor made general appearance in foreign suit, and could have thus litigated personal jurisdiction in that proceeding" and finding that "if judgment debtor appears in foreign state and loses, then that court's exercise of jurisdiction over him or her is not subject to collateral attack in action to enforce judgment").

**II. Regardless, Maryland had personal jurisdiction based on a valid and enforceable forum selection clause.**

Market Place and Holmes each voluntarily consented to jurisdiction in the State of Maryland based on a forum selection clause contained in the Agreement. Paragraph 15 (the "Forum Selection Clause") states:

**Law and Jurisdiction.** This Agreement will be deemed fully executed and performed in Maryland or the home state of the assignee as it may be assigned from time to time per Paragraph 11. This Agreement shall be governed by and construed in accordance with the laws of Maryland or the laws of the home state of the assignee. You expressly and unconditionally consent to the jurisdiction and venue of courts in Baltimore County in the State of Maryland or assignee's home state and waive right to trial by jury for any claim or action arising out of or relating to this Agreement or the Equipment. Furthermore, you waive the defense of inconvenience forum.

As part of the Agreement, Holmes signed an unconditional personal Guaranty provision providing:

If it is necessary for us to proceed legally to enforce this guaranty, you expressly consent to the jurisdiction of the court set out in paragraph 15 and

agree to pay all costs, including attorney's fees incurred in enforcement of this guaranty.

The general rule is that forum-selection clauses are presumptively enforceable in Maryland. *See Secure Fin. Serv., Inc. v. Popular Leasing USA, Inc.*, 391 Md. 274, 282, 892 A.2d 571, 576 (2006). It has been recognized under Maryland law that a party may consent to personal jurisdiction in a foreign court. *See Dynacorp Ltd. v. Aramel, Ltd.*, 208 Md. App. 403, 483, 56 A.3d 631, 678 (2012). In *Universal Sec. Instruments, Inc. v. Wing Wah Chong Inv. Co.*, 732 F. Supp. 41, 42 (D. Md. 1990) where the contract at issue contained a similar forum selection clause provision, the Maryland court held the defendant waived its right to object on personal jurisdiction grounds and had specifically agreed to be sued in Maryland. More specifically, in *Gilman v. Wheat, First Sec., Inc.*, 345 Md. 361, 378, 692 A.2d 454, 462-63 (1997), the Maryland Court of Appeals set forth the following analysis:

We distill from these pronouncements, as have most courts, especially since 1992, that (1) a forum-selection clause is presumptively valid and enforceable and the party resisting it has the burden of demonstrating that it is unreasonable, (2) a court may deny enforcement of such a clause upon a clear showing that, in the particular circumstance, enforcement would be unreasonable, and (3) the clause may be found to be unreasonable if (i) it was induced by fraud or overreaching, (ii) the contractually selected forum is so unfair and inconvenient as, for all practical purposes, to deprive the plaintiff of a remedy or of its day in court, or (iii) enforcement would contravene a strong public policy of the State where the action is filed.

Defendants argue that enforcement of the forum selection clause is unreasonable and unjust. However, there is no evidence that the Agreement was induced by fraud or overreaching, that Defendants were deprived of their day in court, or that enforcement of the forum selection clause contravenes the public policy of the State of Maryland.

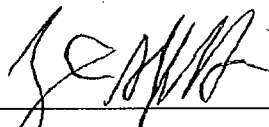
Defendants were not deprived of their day in court. Defendants retained Maryland counsel, litigated terms of the forum selection clause, and appealed the final judgments (which appeals were later voluntarily dismissed). *See Affidavit of Ira Himmel.*

There is no evidence that enforcement of the forum selection clause contravenes the public policy of Maryland. Market Place entered into a financing arrangement with Vend Lease to lease restaurant equipment, and Holmes guaranteed the contract which stated the laws of Maryland are controlling and venue and jurisdiction are in Maryland. Holmes individually executed the Unconditional Guaranty provision contained therein, which ratified the terms of the Forum Selection Clause. Defendants had a duty to read the Agreement, which totals 2 pages. *See Holzman v. Fiola Blum, Inc.*, 125 Md. App. 602, 629, 726 A.2d 818, 831 (1999) (“one is under a duty to learn the contents of a contract before signing it; if, in the absence of fraud, duress, undue influence, and the like he fails to do so, he is presumed to know the contents, signs at his peril, suffers the consequences of his negligence, and is estopped to deny his obligation under the contract.”). There is no evidence that enforcement of the Agreement is unreasonable.

#### CONCLUSION

After considering the matters set forth in the record, I find that the Maryland Judgments are entitled to Full Faith and Credit in South Carolina. Plaintiff Vend Lease is entitled to judgment against Defendants Market Place and Holmes, jointly and severally, in the principal amount of \$16,701.11, plus interest accruing at the Maryland post-judgment legal rate of interest from July 24, 2014 through the date of entry of this judgment, plus interest accruing hereafter at the South Carolina post-judgment legal rate of interest.

IT IS SO ORDERED THIS 17<sup>th</sup> DAY OF December 2015.

  
\_\_\_\_\_  
The Honorable Eugene Griffith, Jr.  
Judge, Fourteenth Circuit

Beaufort, South Carolina

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