

MARKS & WEINBERG, P.C.

First Union Commercial Corporation v. Medical Management Services 2000 WL 33711037 (D. Ct. Pa.)

This case involves the enforcement of a forum selection clause contained in a guaranty. When the lessee stopped making payments, the lessor brought suit in the State of Pennsylvania against a guarantor of lessee's obligations. The guarantor argued that the Pennsylvania court lacked personal jurisdiction despite the fact that the guaranty had a forum selection clause which read: "Guarantor agrees that any actions or proceeding to which Lessor is a party [can be brought in] any state or federal court having situs within the commonwealth of Pennsylvania and that said court shall have jurisdiction thereof."

The court noted that the general rule was that, if a guarantor or lessee objects to personal jurisdiction, the lessor must demonstrate contacts sufficient with the forum state to justify the assertion of personal jurisdiction. However, when a guaranty or lease contains a forum selection clause, the burden imposed by the general rule shifts, and the guarantor or lessee must show that (1) the parties did not freely agree to the forum selection clause, or (2) the enforcement of the clause would be unreasonable. The court explains that the shift in burden stems from the fact that one's right to object to personal jurisdiction is waivable.

The court further noted that a forum selection clause would be considered "unreasonable" *only if* its enforcement would, under the circumstances existing at the time of the



litigation, ðseriously impairö the litigantö¸ ability to pursue his claims or defenses. Mere inconvenience or additional expense would not constitute unreasonableness. The court also noted that federal courts have applied similar standards in this type of situation.

In finding that it had personal jurisdiction over the guarantor, the court rejected the guarantorö¸ claim that agreeing to jurisdiction did not necessarily mean agreeing to ðpersonal jurisdictionö unless those words were specifically mentioned. The court reasoned that a forum selection clause was meaningless without an implied consent to personal jurisdiction because individuals have no right to confer subject matter jurisdiction to courts by consent.

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