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Austin & Austin Enterprises, Inc. v. Equinox Capital Corporation 2002 WL 59036 (Tex. App.-Hous (14 Dist.))

This is a good case for lessors who finance transactions in other states and who would like to know how courts analyze whether the lessee can be sued in the lessor's home state. It also serves as a reminder not to confuse choice-of-law clauses with choice-of-forum provisions.

Austin Enterprises ("Austin") was a North Carolina business that acquired equipment from a North Carolina supplier to be used in Austin's North Carolina restaurant. That purchase of the equipment was accomplished *via* a lease with Regency, a Texas Corporation, who later assigned its interest to Equinox Capital Corporation ("Lessor"). The lease contained a provision that stated that "the payment of all Rent Payments and other Amounts that are due under this Lease and the performance of all other obligations under this Lease are performable in Harris County, Texas." When Austin failed to perform under the lease, Lessor brought suit in Texas.

The Court first noted that the lease language amounted to a choice-of-law provision rather than a choice-of-forum provision and that Austin did not contractually agree to be sued in Texas. The Court then analyzed whether it could assert jurisdiction against Austin, paying particular attention to whether such an assertion would be consistent with due process guarantees embodied in the United States and Texas Constitutions. According to the Court, the due process requirement is driven by the idea that a person



has a "liberty interest in not being subject to the binding judgments of a forum state with which the nonresident has established no meaningful contacts, ties or relations." The Court provides a concise summary of several cases analyzing the amount of contacts that would justify a Texas court in exercising jurisdiction and held that Austin did not have sufficient contacts. In particular, the court noted that: (1) Austin did not actively seek out the Texas company to transact business and was only introduced to the Texas company by the North Carolina supplier of the equipment, (2) the documents were executed by Austin in North Carolina, (3) Austin's payment of the deposit was made in North Carolina, and (4) the only telephone calls which Austin made to Texas were mere follow-ups or inquiries regarding the status of progress of the transaction and did not involve negotiations relating to the terms of the lease.

The Court continued by noting that, even if it did believe that the foregoing contacts were sufficient, it would not assert jurisdiction because to do so would "offend traditional notions of fair play and substantial justice." The unfairness and injustice would result from the fact that: (1) it would be very burdensome for Austin, a North Carolina business that runs a local restaurant and has never transacted business in Texas, to defend a suit in Texas; and (2) Lessor would eventually have to go to North Carolina anyway in order to repossess the equipment.

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