IN THE SUPREME COURT OF GUAM

DRESSER-RAND COMPANY,
Plaintiff-Appellee,

v.

GUAM INDUSTRIAL SERVICES, INC.
d/b/a GUAM SHIPYARD,
Defendant-Appellant.

Supreme Court Case No.: CVA18-017
Superior Court Case No.: FO0001-17

OPINION

Cite as: 2019 Guam 4

Appeal from the Superior Court of Guam
Argued and submitted on October 16, 2018
Hagåtña, Guam

Appearing for Defendant-Appellant:
Louie J. Yanza, *Esq.*
Law Office of Louie J. Yanza
A Professional Corporation
One Agana Bay
446 E. Marine Corps. Dr., Ste. 202
Hagåtña, GU 96910

Appearing for Plaintiff-Appellee:
Geri E. Diaz, *Esq.* (argued)
Donald V. Calvo
Camacho Calvo Law Group LLC
134 W. Soledad Ave., Ste. 401
Hagåtña, GU 96910

BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and ROBERT J. TORRES, Associate Justice.

TORRES, J.:

[1] Defendant-Appellant Guam Industrial Services, Inc. d/b/a Guam Shipyard ("Shipyard") appeals from the Superior Court's Decision and Order denying its Motion to Vacate a Domesticated Judgment. In a case of first impression, we are presented with questions related to when a judgment issued in another jurisdiction that confirms an arbitration award shall be enforceable in Guam. For the reasons discussed below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In January 2015, Plaintiff-Appellee Dresser-Rand Company ("Dresser-Rand") sued Shipyard in the District Court of Harris County, Texas, claiming breach of contract and other related claims.[1] The alleged contract contained an arbitration clause that stated:

> The parties agree that any dispute that is not settled in a timely manner (whether for breach of contract, torts, products liability, payments or otherwise) shall unless mutually agreed otherwise, be resolved by binding arbitration pursuant the [sic] Commercial Dispute Resolution Procedures of the American Arbitration Association. . . . Judgment upon the award may be entered in any court having jurisdiction. . . . The site of such arbitration shall be either in Buffalo, New York or Houston, Texas.

See Record on Appeal ("RA"), tab 26, Ex. A, § 14 (Mot. Vacate, Nov. 27, 2017).

[3] In response to Dresser-Rand's claim for breach of contract, Shipyard filed an Amended Special Appearance arguing it was not subject to personal jurisdiction in Texas, which was

[1] On appeal, Shipyard also requested judicial notice of certain documents from the Texas proceedings. *See* Dresser-Rand Co. v. Guam Indus. Serv., Inc., CVA18-017 (Req. Judicial Notice (Sept. 6, 2018)). It is unclear whether Shipyard is asking us to take judicial notice of the content of these documents or of their mere existence. *See id.* In any event, in light of the record now before us—including declarations submitted by Shipyard below, *see, e.g.*, RA, tab 24 (Decl. Cynthia Pizzaro)—and our holding herein, we find the motion moot. Furthermore, we are reluctant to take notice in circumstances that do not unambiguously fit within Guam Rule of Evidence 201(b), especially when we are presented with documents from another jurisdiction that were not properly introduced at trial in our jurisdiction. *See People v. Diaz*, 2007 Guam 3 ¶¶ 59-66; *M/V Am. Queen v. San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983).

denied. *See* RA, tab 24 at 4 (Decl. Cynthia Pizzaro, Nov. 27, 2017). Shipyard filed an interlocutory appeal to the Texas Court of Appeals. While the appeal was pending, the District Court granted Dresser-Rand's Motion to Compel Arbitration and ordered arbitration. The District Court entered an arbitration order while Shipyard's interlocutory appeal was pending and while the trial proceedings were not stayed. *See Guam Indus. Servs., Inc. v. Dresser-Rand Co.*, 514 S.W.3d 828, 837 (Tex. App. 2017). This arbitration order was stayed by the Texas Court of Appeals pending determination of whether the District Court erred by denying the special appearance. On appeal and after granting a rehearing, the Texas Court of Appeals ruled that the District Court erred by denying Shipyard's Amended Special Appearance, but that arbitration proceedings could continue because the District Court "retained jurisdiction to refer the case to arbitration, proceedings were not stayed at the time arbitration was ordered and initiated, and the merits of the arbitration order" had not been appealed by Shipyard. *Id.* at 837-38. The Court of Appeals' opinion did not address the validity of the arbitration clause or the contract between the parties. *Id.* at 835 n.3, 837. The Court of Appeals limited its evaluation to whether Shipyard had contractually consented to being sued in Texas. *See id.* at 834. The Court of Appeals held that while Shipyard had not contractually consented to a court resolving the merits of the dispute, the Texas trial court could order arbitration. *See id.* at 834-38.

[4] On remand, Shipyard appeared in the renewed arbitration proceedings. During the arbitration proceedings, Shipyard raised defenses that related to contract formation, the validity of the arbitration clause, and damages. Ultimately, the arbitration panel found for Dresser-Rand. On Dresser-Rand's motion, the District Court entered final judgment confirming the arbitration award. There is nothing in the record suggesting Shipyard challenged the District Court's order referring the case to arbitration or its judgment confirming the arbitration award. *See* RA, tab 33

at 1-4 (Dec. & Order, Apr. 26, 2018) (summarizing procedural history); Appellant's Br. at 1-3 (July 24, 2018) (same); *see also Guam Indus. Servs., Inc.*, 514 S.W.3d at 837-38 ("The Shipyard subsequently sought a stay of the order pending the resolution of this appeal, which we granted, but it did not appeal the arbitration order.").

[5] After issuance of the Texas judgment, Dresser-Rand filed the judgment against Shipyard in the Superior Court of Guam. Shipyard moved to vacate the domesticated judgment, which the Superior Court denied. Shipyard timely appealed this final order.

II. JURISDICTION

[6] This court has jurisdiction over appeals from final orders issued in the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-19 (2019)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[7] The parties disagree on what standard of review applies. *Compare* Appellant's Br. at 8 (arguing *de novo* review applies), *with* Appellee's Br. at 2-3 (Aug. 23, 2018) (arguing for clear error). To the extent we are reviewing the legal question of whether the courts of Texas had personal jurisdiction over Shipyard and whether the Texas judgment should, therefore, be given effect in Guam, our review is *de novo*. *See Larsen v. Hyatt Int'l Corp.*, 2011 Guam 26 ¶ 8 (stating that questions of personal jurisdiction are reviewed *de novo*); *Coffey v. Gov't of Guam*, 1997 Guam 14 ¶ 6 ("The question as to whether a constitutional right has been violated is reviewed *de novo*."). If the Uniform Enforcement of Foreign Judgments Act of 2014 ("UEFJA") applies, *see* 7 GCA § 51101 (2005) *et seq.*, we review the "interpretation of relevant statutory authority as well as resolution of [any] mixed question[s] of law and fact" *de novo*. *Hawaiian Rock Prods. Corp. v. Ocean Hous., Inc.*, 2016 Guam 4 ¶ 13; *see also Hare v. Starr*

Commonwealth Corp., 813 N.W.2d 752, 757 (Mich. Ct. App. 2011) ("We also review de novo questions concerning the applicability of the UEFJA and the Full Faith and Credit Clause of the United States Constitution.").

IV. ANALYSIS

A. Shipyard Carries the Burden of Challenging the Texas Judgment

[8] The parties agree that the only jurisdictional nexus that might bind Shipyard to Texas is the contract between Shipyard and Dresser-Rand—specifically, the contract's arbitration clause. *See* Appellee's Br. at 15-21 (Dresser-Rand focusing solely on enforceability of the arbitration clause as jurisdictional mechanism binding Shipyard to Texas judgment); *see also Guam Indus. Servs.*, 514 S.W.3d at 834 ("Dresser–Rand concedes that the Shipyard lacks sufficient contacts with Texas to support the assertion of general or specific jurisdiction."). Shipyard asserts that the Texas trial court never determined that the arbitration clause was valid and enforceable, and thus never expressly determined that it had personal jurisdiction over Shipyard. *See* Appellant's Br. at 8-17. *But see Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1052 (5th Cir. 1987) (explaining the United States Supreme Court has "held that a court by necessity has the authority to determine . . . [personal] jurisdiction . . . and does so either tacitly or expressly, by rendering a judgment"). According to Shipyard, the Texas court's failure to consider the validity of the arbitration clause before entering a judgment violated due process. *See* Appellant's Br. at 8-17.

[9] "The burden of undermining the decree of a sister state 'rests heavily upon the assailant.'" *Ulrey v. Ulrey*, 106 N.E.2d 793, 795 (Ind. 1952) (quoting *Williams v. North Carolina*, 325 U.S. 226, 233-34 (1945)) (collecting cases); *see also Cook v. Cook*, 342 U.S. 126, 128 (1951). Under the Full Faith and Credit Clause, "[t]he validity of [a] foreign decree . . . is presumed, and the burden is on the challenger to show that the decree is invalid." *Stahl v. Stahl*,

2013 Guam 26 ¶ 14; *see also* 30 Am. Jur. 2d *Executions, Etc*. § 661 (2019) ("Under the Full Faith and Credit Clause, jurisdiction supporting a foreign judgment will be presumed until the contrary is shown."). "[T]he party seeking to prevent enforcement of the foreign judgment has the burden of establishing either the lack of jurisdiction or fraud underlying the foreign judgment." *Padron v. Lopez*, 220 P.3d 345, 353 (Kan. 2009). As the party seeking to prevent enforcement of a foreign judgment, Shipyard carries the burden of disproving the presumption that the Texas judgment is entitled to full faith and credit.

[10] Separately, Dresser-Rand frames the arbitration as if it proceeded on a contractual basis and not according to court order. *See* Appellee's Br. at 19-22. We need not reach this issue if we find, as a threshold matter, that the Harris County District Court did not improperly exercise personal jurisdiction over Shipyard as it related to ordering arbitration and confirming the award—so it is to that inquiry that we turn.

B. Shipyard Was Afforded Constitutional Due Process During the Texas Proceedings

[11] Guam has adopted the UEFJA. *See* Guam Pub. L. 32-215 (Dec. 29, 2014). The UEFJA, as adopted in our jurisdiction, does not clearly specify when challenges to the *foreign court's* jurisdiction may be used to challenge enforcement of the judgment in Guam, even though other state legislatures have expressly recognized that a foreign judgment will not be enforced where the issuing court lacked jurisdiction. *Compare* 7 GCA § 51101 *et seq.* (failing to expressly address situations where the foreign court lacks jurisdiction), *with, e.g.*, Md. Code Ann., Cts. & Jud. Proc. § 10-704(a)(2) (West 2010) (Maryland statute parallel to UEFJA providing an express exception when "[t]he foreign court did not have personal jurisdiction"). Notwithstanding this lack of clarity in Guam's adopted version of the UEFJA, the statute is premised on the constitutional requirement that a foreign judgment "is entitled to full faith and credit in Guam."

7 GCA § 51103. Therefore—as recognized by Shipyard, *see* Appellant's Br. at 9-10—to determine when a foreign judgment is entitled to full faith and credit in Guam insofar as personal jurisdiction is concerned, the constitutional analysis and the analysis under the UEFJA effectively operate as the same inquiry.

[12] Under the Full Faith and Credit Clause, a judgment in one state is entitled to the same credit and effect in other states, unless the state entering judgment lacked personal or subject matter jurisdiction. *See Williams*, 325 U.S. at 228; *see also* U.S. Const. art. IV, § 1; *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1020 (5th Cir. 1982) ("[T]he requirement of full faith and credit does not initially attach if the judgment suffers jurisdictional defects that render it void."); *Stahl*, 2013 Guam 26 ¶¶ 17-18, 24-29.[2] The Full Faith and Credit Clause expressly applies to Guam through the Organic Act and the Full Faith and Credit Act. *See* 48 U.S.C.A. § 1421b(u) (Westlaw through Pub. L. 116-19 (2019)) (extending "article IV, section 1" to Guam); 28 U.S.C.A. § 1738 (Westlaw through Pub. L. 116-19 (2019)).

[13] The United States Supreme Court has stated that while a court

> may constitutionally inquire into [a] foreign court's jurisdiction to render [a] judgment . . . this Court [has] carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.

Durfee v. Duke, 375 U.S. 106, 111 (1963); *see also Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525-26 (1931) (finding that determinations regarding personal jurisdiction are subject to res judicata); *In re E.H.*, 450 S.W.3d 166, 170 (Tex. App. 2014). In addition, "[a]n

[2] In *Stahl v. Stahl*, this court analyzed the Full Faith and Credit Clause in some depth. *Stahl* involved a divorce proceeding with a distinctive procedural posture and therefore is not sufficiently analogous to the present case to provide appropriately specific guidance to the facts now before us. *See* 2013 Guam 26 ¶¶ 2-5; *see also* Appellant's Br. at 8-17 (challenging personal jurisdiction alone).

elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Pioneer Fed. Sav. Bank v. Driver*, 804 P.2d 118, 121 (Ariz. Ct. App. 1990).

[14] With this backdrop, the question is whether Shipyard had a full and fair opportunity during the Texas proceedings to litigate personal jurisdiction. We find the United States Supreme Court's analysis in *Baldwin*, 283 U.S. 522, instructive. There, the defendant, an Iowa corporation, collaterally attacked an adverse judgment entered in Missouri based on lack of personal jurisdiction. *See* 283 U.S. at 523-24. The defendant had previously made a special appearance in Missouri challenging personal jurisdiction, which was denied. *Id.* The *Baldwin* court found the defendant had not elected to make *no* appearance and had not elected to appeal Missouri's adverse judgment after it was entered. *Id.* at 524-25. Instead, the defendant "elected to follow neither of those courses, but, after having been defeated upon full hearing in its contention [by way of special appearance] as to jurisdiction, it took no further steps, and the judgment in question resulted." *Id.* at 525. The Supreme Court held that the defendant could not later collaterally attack the Missouri judgment because it had an opportunity to challenge this judgment in Missouri but failed to do so. *Id.* at 523-25.

[15] Here, we are presented with similar circumstances. The Texas court, in rendering a final judgment confirming the arbitration award, "tacitly, if not expressly, determine[d] its jurisdiction over the parties and the subject matter." *Stoll v. Gottlieb*, 305 U.S. 165, 171-72 (1938); *accord Republic Supply Co.*, 815 F.2d at 1052 ("[A] court by necessity has the authority to determine . . . jurisdiction . . . and does so either tacitly or expressly, by rendering a judgment. Consequently, to allow a party to collaterally attack a court's jurisdiction is to allow retrial of issues already

decided."). Yet, despite this tacit determination by the Texas trial court that it had jurisdiction to order arbitration and confirm the award, nothing in the record indicates that during these Texas proceedings Shipyard attacked the order to compel arbitration or the final judgment on jurisdictional grounds—even though it had initially raised the question of personal jurisdiction regarding the suit (*i.e.*, not arbitration). *See* RA, tab 24 at 1-6 & Ex. D (Decl. Cynthia Pizzaro); RA, tab 33 at 1-4 (Dec. & Order).

[16] Once the Texas Court of Appeals ruled that Shipyard had not contractually consented to personal jurisdiction in Texas for suits *un*related to arbitration, *see Guam Indus. Servs.*, 514 S.W.3d at 836-37, Shipyard did not challenge the District Court's arbitration order or the arbitration panel's authority, and it has provided no persuasive reason why it did not do so, *see* RA, tab 24 at 1-6 & Ex. D (Decl. Cynthia Pizzaro); Oral Argument at 10:22-10:28 (Oct. 16, 2018) (claiming only that it was a "tactical decision" not to further challenge the arbitration order). Shipyard's inaction continued even after the District Court entered final judgment confirming the arbitration award.

[17] While this torpidity is puzzling, what is clear is that Shipyard was on notice that personal jurisdiction was at issue—indeed, Shipyard *raised* the issue—and it had the opportunity and the incentive to continue litigating the question. Shipyard, however, "failed through its negligence or deliberate omission" to appeal the final judgment confirming the arbitration award, even though it "was not prevented from doing so." *Midessa Television Co. v. Motion Pictures for Television, Inc.*, 290 F.2d 203, 205 (5th Cir. 1961); *Sherrer v. Sherrer*, 334 U.S. 343, 348 (1948) ("[T]here is nothing in the concept of due process which demands that a defendant be afforded a second opportunity to litigate the existence of jurisdictional facts."); *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 710 (1982) ("A

party cannot escape the requirements of full faith and credit . . . by asserting its own failure to raise matters clearly within the scope of a prior proceeding."); *cf. Baldwin*, 283 U.S. at 523-26 (holding a foreign judgment res judicata where defendant had an opportunity to challenge original judgment but failed to do so). Moreover, the rules of Texas governing arbitration expressly specify circumstances under which an award may be vacated—including because "there was no agreement to arbitrate"—yet Shipyard failed to timely challenge the arbitration award on this basis, and it provides no explanation why it elected not to. *See* Tex. Civ. Prac. & Rem. Code Ann. § 171.088(a)(4) (West 1997) (application to vacate award on such basis may be made within 90 days after copy of award delivered to party); *id.* § 171.098 (party may appeal confirmation of award in same manner as an appeal from an order or judgment in a civil action).

[18] We are not persuaded that Shipyard was not given an opportunity to fully and fairly litigate the issue it now challenges. We are also inclined to follow the reasoning of other courts that have addressed similar questions. *See Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704-05 (1982) ("[T]he requirement of personal jurisdiction may be intentionally waived, or for various reasons a defendant may be estopped from raising the issue."); *Stoll*, 305 U.S. at 172 ("After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined."); *United States v. Van Cauwenberghe*, 934 F.2d 1048, 1058 (9th Cir. 1991) ("Because no appeal of the jurisdictional issue was taken from the final judgment . . . despite [defendant's] earlier challenge based on lack of personal jurisdiction, [defendant] cannot now collaterally attack the judgment on this jurisdictional ground."); *Midessa Television Co.*, 290 F.2d at 204-05; *Hirsch Fabrics Corp. v. S. Athletic Co.*, 98 F. Supp. 436, 438-39 (E.D. Tenn. 1951) (finding foreign judgment valid where defendant in

Tennessee action failed to contest, during New York proceedings, judgment by New York court confirming the arbitration award even though it had the opportunity). Shipyard has failed to meet its heavy burden of showing that the Texas judgment should not be given effect in Guam. We need not reach other arguments raised by Dresser-Rand challenging Shipyard's appeal.

V. CONCLUSION

[19] For these reasons, we **AFFIRM** the Superior Court's Decision and Order denying Shipyard's Motion to Vacate a Domesticated Judgment.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
ROBERT J. TORRES
Associate Justice

/s/
KATHERINE A. MARAMAN
Chief Justice