

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED RENTALS (NORTH	:
AMERICA), INC.,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:03cv589(PCD)
	:
CHARLOTTE MYERS,	:
Defendant.	:

RULING ON MOTION FOR RECONSIDERATION

Defendant moves for reconsideration of this Court's May 5, 2003 ruling denying its motion to dismiss. Reconsideration is granted and the original ruling is adhered to.

Defendant argues that this Court failed to address *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), in concluding that the forum selection clause in the employment agreement established personal jurisdiction notwithstanding Louisiana law prohibiting such clauses. There is no question as to this Court's jurisdiction when presented with an enforceable forum selection clause as such a clause generally constitutes a manifestation of consent to the jurisdiction of the designated forum. *See Burger King v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). The resolution of defendant's argument as to this Court's jurisdiction thus hinges on the enforceability of the forum selection clause.

Although the ruling did not directly cite *Erie R.R. Co.* in finding the clause enforceable, the reference to *Jones v. Weibrecht*, 901 F.2d 17 (2d Cir. 1990), directly addressed the issue. In *Jones*, the application of state law under *Erie R.R. Co.* was expressly rejected, with the

court concluding that “[q]uestions of venue and the enforcement of forum selection clauses are essentially procedural, rather than substantive, in nature. . . . [W]e find nothing . . . that would compel us to reject the well established rule of this Circuit that [federal law] applies with equal force in diversity cases.” *Id.* at 19. As the clause is enforceable under federal law, defendant’s argument is without merit.¹

Defendant also seizes on language in a footnote of the ruling rejecting the application of Louisiana law by providing that “[t]he relevant public policy for purposes of determining the enforceability of [the] forum selection clause is therefore Connecticut, not Louisiana.” Such is a reference to language used in *THE BREMEN v. Zapata Off- Shore Co.*, 407 U.S. 1, 15, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972), providing that “[a] contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision.” Defendant argues that the relevant public policy is not whether Connecticut takes a similar position on forum selection clauses but instead whether it has a public policy against enforcement of illegal contracts.²

¹ Defendant cites *Park Inn Int’l v. Moody Enters.*, 105 F. Supp. 2d 370 (D.N.J. 2000), for the proposition that state law should be considered if a forum selection clause is to serve as a basis for asserting personal jurisdiction over a party to the agreement. It suffices to say that the Third Circuit treats forum selection clauses as substantive rather than procedural under *Erie R.R. Co.* and thus stands contrary to the law of this Circuit. See *Lambert v. Kysar*, 983 F.2d 1110, 1116 n.10 (1st Cir. 1993) (providing summary of views of various circuits).

² Defendant’s argument as to “illegal agreements” adds an unnecessary contract defense into the discussion. As discussed in prior rulings, Louisiana has, by statute, rendered forum selection clauses void and unenforceable, and evidences a public policy against the use of such clauses. The question is thus whether the forum selection clause may be enforced notwithstanding a violation of Louisiana public policy.

As discussed above, the enforceability of the forum selection clause is a matter of federal, not state, law in this Circuit. An exception to such enforceability arises when the clause violates a public policy *of the forum in which the suit is brought*. Defendant points to no authority standing for the proposition that Connecticut has a public policy against enforcement of provisions in conflict with the public policy of another state, as such is the necessary import of the argument. The legality of a contract is determined by a choice-of-law analysis in diversity cases, which analysis presents itself only after questions of jurisdiction are resolved. *See Keeton v. Hustler Mag.*, 465 U.S. 770, 778, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984). Defendant's argument that enforceability of the clause is precluded as contrary to Louisiana public policy injects the law of another state into the analysis and cannot be resolved with the analysis set forth in *Bremen*, as the forum selection clause becomes substantive rather than procedural under *Erie R.R. Co.*

Defendant's motion for reconsideration (Doc. No. 26) is **granted** and the original ruling is adhered to.

SO ORDERED.

Dated at New Haven, Connecticut, May __, 2003.

Peter C. Dorsey
Senior United States District Judge