IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 30, 2021 Session

RELYANT GLOBAL, LLC v. ROYDEN FERNANDEZ ET AL.

Appeal from the Chancery Court for Blount County
No. 2020-CH-95 Telford E. Forgety, Jr., Chancellor

No. E2021-00515-COA-R3-CV

Plaintiff, a Tennessee limited liability company headquartered in Blount County, sued defendants, a former employee and a limited liability company both residents of the U.S. territory of Guam, alleging breach of a non-compete agreement. The trial court granted the defendants' motion to dismiss the action under the doctrine of *forum non conveniens*. Plaintiff argues on appeal that the trial court erred by failing to enforce the non-compete agreement's forum selection clause and its express waiver of the inconvenient forum defense. We reverse, holding that the forum selection clause dictates the proper forum.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed; Case Remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

James H. Price and Michael R. Franz, Knoxville, Tennessee, for the appellant, Relyant Global, LLC.

Adam G. Russell and Robert W. Knolton, Knoxville, Tennessee, for the appellees, Royden Fernandez and Oia'i'O Halo MEC Remediation HUI, LLC.

OPINION

FACTS[1] AND PROCEDURAL HISTORY

The plaintiff, Relyant Global, LLC ("Relyant"), is a company organized under the laws of this state with its principal place of business in Blount County. As a primary area

[1] The facts below are taken from allegations in the complaint, which we presume to be true in reviewing the trial court's grant of defendants' motion to dismiss. *Lemon v. Williamson Cnty. Schs.*, 618 S.W.3d 1, 8 (Tenn. 2021); *Mitchell v. Campbell*, 88 S.W.3d 561, 565 (Tenn. Ct. App. 2002).

of its business, Relyant provides removal and abatement services for munitions and explosives of concern ("MEC") throughout North America, the Pacific, the Middle East, Africa, and Asia. In March of 2019, Relyant hired Royden Fernandez ("Fernandez") to be a project-based unexploded ordnance ("UXO") safety officer in the U.S. territory of Guam. Fernandez signed a confidentiality, non-disclosure, and non-compete agreement (the "Agreement") as a condition of employment. The "Non-Competition" paragraph of the Agreement provides:

> Employee agrees that during Employee's employment by RELYANT and for a period of one (1) year thereafter, Employee will not either directly or indirectly, on Employee's own behalf or in the service or on behalf of others, engage in any business that is the same as or essentially the same as the business of RELYANT in any capacity in the Non-Competition Area.

The Agreement defines the Non-Competition Area as "any country where RELYANT has engaged in or specifically solicited business for the two (2) year period of time prior to the Employees termination." Critical to this appeal, the Agreement also states:

> Governing Law; Venue: This Agreement shall be exclusively construed, governed and controlled by the laws of the State of Tennessee without regard to principles of law, including conflicts of law, of any other jurisdiction, territory, country and/or province. *Any dispute arising out of or relating to this Agreement shall exclusively be brought to any court of competent jurisdiction located within the State of Tennessee. Each party consents to personal jurisdiction thereto and waives any defenses based on personal jurisdiction, venue and inconvenient forum*. Each party hereby consents to service of process by United States certified mail, return receipt.

(Emphases added).

In late May 2020, Fernandez resigned and organized a one-member limited liability company under the laws of Guam, Oia'i'o Halo MEC Remediation HUI, LLC (the "LLC"). On its website, the LLC presents itself as a provider of UXO-related services, including "UXO/MEC Remediation Consultations," "UXO/MEC Construction Support/Escort," and "UXO/MEC Munition Response Site Clearance." In July of 2020, Fernandez and the LLC began bidding on federal government contracts and subcontracts for UXO-related services to be performed in Guam. Fernandez and the LLC were awarded a UXO contract for work at the Naval Base Guam Telecommunications Station, a contract for which Relyant had also submitted a bid.

On September 21, 2020, Relyant filed a complaint against Fernandez and the LLC (collectively, "Defendants") in the Blount County Chancery Court ("the trial court"), alleging breach of the Agreement and seeking lost profits resulting from the award of the

Naval Base Guam contract to Defendants. In addition to compensatory damages, the complaint asked the trial court for injunctive relief and a declaration of the parties' rights under the Agreement. On December 14, 2020, Defendants moved the trial court to dismiss the complaint under Rule 12.02 of the Tennessee Rules of Civil Procedure, asserting lack of personal jurisdiction over Defendants, lack of jurisdiction over the subject matter, and the doctrine of *forum non conveniens*. Defendants attached to the motion a Declaration from Fernandez,[2] which stated, in relevant part:

> 10. I do not recall signing a non-compete agreement for the Plaintiff.
>
> . . .
>
> 16. Any employment related document that I signed for Plaintiff was signed while I was in the State of Utah or in Guam.
>
> . . .
>
> 17. I am the President of Oia'i'o Halo MEC Remediation HUI, LLC (hereinafter the "LLC"), which was founded as a limited liability company in Guam.
>
> 18. Contrary to Plaintiff's Complaint allegation, I am not the only member of the LLC. There are presently two (2) other members, both of whom also live in Guam.
>
> . . .
>
> 21. I have never been to the State of Tennessee.

Relyant responded to the motion on April 6, 2021, arguing that the trial court had subject matter jurisdiction over actions for breach of contract under Tennessee Code Annotated section 16-11-101,[3] that Fernandez agreed to personal jurisdiction in the trial court pursuant to the Agreement, and that Fernandez expressly waived the defense of *forum non conveniens* in the Agreement. Concerning the LLC, Relyant contended that because it alleged in its complaint that Fernandez created the LLC as a vehicle to pursue unlawful competition with Relyant, the trial court should deny the motion to dismiss as to the LLC as well. In the alternative, Relyant submitted that the trial court should allow limited discovery as to the jurisdictional issues raised by Defendants.

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[2] Unlike motions to dismiss for failure to state a claim under Rule 12.02(6) of the Tennessee Rules of Civil Procedure, motions challenging personal jurisdiction under Rule 12.02(2) "are not converted to motions for summary judgment when either or both parties submit matters outside the pleadings either in support of or in opposition to the motion. *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 643 (Tenn. 2009) (citing *Chenault v. Walker*, 36 S.W.3d 45, 55 (Tenn. 2001)). Likewise, "motions challenging subject matter jurisdiction are not converted to summary judgment motions when matters outside the pleadings are considered or when disputes of material fact exist." *Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 160 (Tenn. 2017) (citations omitted).

[3] "The chancery court has all the powers, privileges and jurisdiction properly and rightfully incident to a court of equity." Tenn. Code Ann. § 16-11-101.

On May 3, 2021, the trial court filed an order granting defendants' motion to dismiss. The trial court assumed the Agreement's forum selection clause to be valid, concluded that personal jurisdiction can be waived by a forum selection clause, and determined that it had subject matter jurisdiction to hear the case. However, it dismissed the action, finding that Blount County was not a convenient forum under the *forum non conveniens* doctrine.[4] Relyant timely appealed.

ISSUES PRESENTED

Relyant raises three issues on appeal, which we slightly restate as:

(1) Whether the trial court abused its discretion when it applied the doctrine of *forum non conveniens* without considering the parties' mandatory forum selection clause.

(2) Whether the trial court abused its discretion when it ignored Defendants' express written waiver of application of the doctrine of *forum non conveniens*.

(3) Alternatively, if the trial court had discretion to consider the doctrine of *forum non conveniens* despite Defendants' express waiver, whether the trial court abused its discretion in granting Defendants' Motion to Dismiss based on traditional *forum non conveniens* factors.

STANDARD OF REVIEW

As a preliminary matter, we must determine the appropriate standard of review. The trial court granted Defendants' motion to dismiss Relyant's complaint on the basis of the *forum non conveniens* doctrine. This Courts reviews a trial court's application of that doctrine solely for abuse of discretion. *Zurick v. Inman*, 426 S.W.2d 767, 772 (Tenn. 1968) (citations omitted); *Pantuso v. Wright Med. Tech. Inc.*, 485 S.W.3d 883, 888 (Tenn. Ct. App. 2015) (citing *Zurick*, 426 S.W.2d at 772). "In the context of *forum non conveniens*, an abuse of discretion arises when the lower court fails to review and balance the private and public factors that guide any consideration of the doctrine." *In re Bridgestone/Firestone*, 138 S.W.3d 202, 205 (Tenn. Ct. App. 2003) (citations omitted). Accordingly, appellate courts examine the particular factors relied upon by the trial court to determine whether an abuse of discretion occurred. *Zurick*, 426 S.W.2d at 772. The particular circumstances in this case, however, require our analysis to start elsewhere.

Relyant raises the issue of whether the trial court properly relied on the *forum non conveniens* doctrine to dismiss its complaint in light of Fernandez's written agreement (and allegedly the LLC's) to (1) litigate disputes arising out of or relating to the Agreement

[4] The trial court's order also denied as moot motions previously submitted by the parties requesting and opposing discovery concerning jurisdictional issues.

exclusively within this state and (2) waive the defense of inconvenient forum. "In considering an appeal from a trial court's ruling on a motion to dismiss, we take all allegations of fact in the complaint as true and review the trial court's legal conclusions de novo with no presumption of correctness." *Johnson v. Tomcat USA, Inc.*, No. E2021-00057-COA-R9-CV, 2021 WL 3737055, at *2 (Tenn. Ct. App. Aug. 24, 2021) (citing *Mid–South Indus., Inc. v. Martin Mach. & Tool, Inc.*, 342 S.W.3d 19, 27 (Tenn. Ct. App. 2010)) (other citations omitted). A motion to dismiss should not be granted unless "it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Cullum v. McCool*, 432 S.W.3d 829, 832 (Tenn. 2013) (citing *Webb v. Nashville Area Habitat for Humanity*, 346 S.W.3d 422, 426 (Tenn. 2011)).

ANALYSIS

We first address the import of the parties' contractual agreement concerning jurisdiction and venue. With respect to jurisdiction, the Agreement provides: "Any dispute arising out of or relating to this Agreement shall exclusively be brought to any court of competent jurisdiction located within the State of Tennessee." It continues: "Each party consents to personal jurisdiction thereto and waives any defenses based on personal jurisdiction, venue and inconvenient forum." Significantly, the Agreement also declares that it "shall be exclusively construed, governed and controlled by the laws of the State of Tennessee without regard to principles of law, including conflicts of law, of any other jurisdiction, territory, country and/or province." In adjudicating Defendants' motion to dismiss, the trial court assumed the Agreement's forum selection clause to be valid.

Under Tennessee law, "[g]enerally, a forum selection clause is enforceable and binding upon the parties." *Lamb v. MegaFlight, Inc.*, 26 S.W.3d 627, 631 (Tenn. Ct. App. 2000) (citing *Bremen v. Zapata Off–Shore Co.*, 407 U.S. 1, 12 (1972)). Our Supreme Court recognized almost forty years ago that "the validity or invalidity of such forum selection clauses depends upon whether they are fair and reasonable in light of all the surrounding circumstances attending their origin and application." *Dyersburg Mach. Works, Inc. v. Rentenbach Eng'g Co.*, 650 S.W.2d 378, 380 (Tenn. 1983) (citations omitted). In *Dyersburg*, the Court reviewed the provisions of the Model Choice of Forum Act[5] and of

[5] The 1968 Model Choice of Forum Act provided that

> an *unselected* court must give effect to the choice of the parties and refuse to entertain the action unless (1) the plaintiff cannot secure effective relief in the other state, for reasons other than delay in bringing the action; (2) or the other state would be a substantially less convenient place for the trial of the action than this state; (3) or the agreement as to the place of the action was obtained by misrepresentation, duress, abuse of economic power, or other unconscionable means; (4) or it would for some other reason be unfair or unreasonable to enforce the agreement.

Dyersburg, 650 S.W.2d at 380 (emphasis added).

the Restatement (Second) of Conflict of Laws[6] and acknowledged that tribunals that enforce forum selection clauses have "refused to enforce them against third parties who did not agree to the contract containing such clause and are not parties to the agreement." *Id.* (citations omitted). The Court then held that "the courts of this state should give consideration to the above mentioned factors and any others which bear upon the fundamental fairness of enforcing such a forum selection clause, and should enforce such a clause unless the party opposing enforcement demonstrates that it would be unfair and inequitable to do so." *Id.*

This state's appellate courts have repeatedly applied the *Dyersburg* approach either to enforce forum selection clauses or to find them unenforceable. *See, e.g.*, *Cohn L. Firm v. YP Se. Advert. & Publ'g, LLC*, No. W2014-01871-COA-R3-CV, 2015 WL 3883242, at *12 (Tenn. Ct. App. June 24, 2015) (enforcing forum selection clause after finding "nothing in the record to suggest that any of the factors in *Dyersburg* exist to invalidate the forum selection clause in this case"); *Sevier Cnty. Bank v. Paymentech Merch. Servs., Inc.*, No. E2005-02420-COA-R3CV, 2006 WL 2423547, at *8 (Tenn. Ct. App. Aug. 23, 2006) ("After reviewing the factors set forth in *Dyersburg*, we conclude that the Trial Court did not err when it concluded that the forum selection clause contained within the Agreement is enforceable under Tennessee law."); *Lamb*, 26 S.W.3d at 631 (holding forum selection clause enforceable under *Dyersburg* where plaintiffs "failed to present any evidence indicating that the forum selection clause itself was procured by fraud, misrepresentation, duress, or any other unconscionable means"); *Cummings, Inc. v. H.I. Mayaguez, Inc.*, No. 01-A-01-9306-CH00258, 1993 WL 398475, at *5 (Tenn. Ct. App. Oct. 1, 1993) (reversing dismissal after concluding that "the grounds stated in *Dyersburg* for refusing to enforce a forum selection clause" were not present).

Importantly, the context of *Dyersburg* and its progeny, was a Tennessee court's consideration of whether to decline jurisdiction when a defendant invokes the parties' contractual selection of a forum *other than* Tennessee. Here, by contrast, Tennessee *is* the forum selected by the parties, and the plaintiff brought the action in Tennessee as required by the parties' Agreement. The trial court assumed the forum selection clause contained in the parties' Agreement to be valid for purposes of the motion to dismiss.[7] We conceive of no ground to disturb that assumption or to otherwise question the clause's validity. Firstly, when considering a non-compete agreement, "just as in any other type of contract, a cardinal rule is that a court must attempt to ascertain and give effect to the intent of the parties." *Christenberry v. Tipton*, 160 S.W.3d 487, 494 (Tenn. 2005). To ascertain the

[6] Section 80 of the Restatement (Second) of Conflict of Laws provided: "The parties' agreement as to the place of the action cannot oust a state of judicial jurisdiction, but such an agreement will be given effect unless it is unfair or unreasonable." *Id.*

[7] Although forum selection clauses often mandate litigation in a specific county or court (i.e., the selected forum), they can also indicate—as is the case here—the particular state(s) where an action must be brought. *See Cohn Law Firm*, 2015 WL 3883242, at *5 (citation omitted).

parties' intent, "[c]ourts must look at the plain meaning of the words in a contract." *Allmand v. Pavletic*, 292 S.W.3d 618, 630 (Tenn. 2009). And, "[i]f the contractual language is clear and unambiguous, the literal meaning controls." *Id.* Defendants have not argued that the language of the forum selection clause is ambiguous or challenged its intent as expressed by that language's plain meaning. Those words literally provide that disputes arising out of the Agreement must be brought in Tennessee, and the complaint's allegations, in their entirety, are undeniably related to a breach of the parties' Agreement.

Moreover, Defendants have made no claim below or before this Court that the Agreement was procured by misrepresentation, duress, abuse of economic power, or other unconscionable means. *See Dyersburg*, 650 S.W.2d 378 at 380 (citing *The Model Choice of Forum Act*, 1968). We therefore see no reason to engage in the *Dyersburg* analysis when the forum agreed to by the parties and the forum in which the action was brought are one and the same—and when there is no allegation that the Agreement was obtained unfairly. Having assumed the parties' forum selection clause to be valid, the trial court should have enforced it and given effect to the parties' intent.

Defendants' primary contention on appeal is that the forum selection clause should not be enforced because Tennessee would be a less convenient place for *them* to try the case than Guam. Of that, we have little doubt given their residency there. However, we are constrained to decline Defendants' invitation to consider the applicability of the *forum non conveniens* doctrine in the instant case for one simple but compelling reason: they expressly and specifically waived "any defenses based on personal jurisdiction, venue and inconvenient forum." Indeed, the only two circumstances expressly referenced by the trial court for deeming Tennessee a less convenient place for litigation—that obtaining testimony from material witnesses in Guam would be costly and that additional procedural steps would be required to enforce in Guam any injunctive relief ordered by a Tennessee court—were no different or less foreseeable back in March 2019 when Fernandez signed the Agreement. Put another way, Defendants voluntarily agreed to the inconvenience they now seek to avoid. They would have this Court disregard an unambiguous provision in an arm's-length Agreement and, in effect, deprive the parties of the benefit of their bargain. But "'[p]arties challenging a forum selection clause cannot rely on facts and circumstances that were present or reasonably foreseen when they signed the contract."' *Sevier Cnty. Bank*, 2006 WL 2423547, at *6 (quoting *Safeco Ins. Co. of Am. v. Shaver*, No. 01A01-9301-CH-00005, 1994 WL 481402, at *4 (Tenn. Ct. App. Sept. 7, 1994)). Having discerned no basis to question the validity or enforceability of the parties' Agreement, we refuse to deviate from its express provisions and to nullify the parties' intent. *See Individual Healthcare Specialists, Inc. v. BlueCross BlueShield of Tennessee, Inc.*, 566 S.W.3d 671, 688 (Tenn. 2019) ("The common thread in all Tennessee contract cases—the cardinal rule upon which all other rules hinge—is that courts must interpret contracts so as to ascertain and give effect to the intent of the contracting parties consistent with legal principles.").

For the same reason, Defendants' reliance on this Court's opinion in *Package Express Center v. Snider Foods, Inc.*, 788 S.W.2d 561 (Tenn. Ct. App. 1989), is misplaced. In that case, we affirmed the trial court's dismissal of a lawsuit on the basis of the *forum non conveniens* doctrine, notwithstanding the parties' designation of Greene County, Tennessee, in their lease agreement as the venue for litigation. *Id.* at 561-62. Just like Defendants here, the defendant in *Package Express* agreed to a Tennessee forum. In contrast, however, that defendant did not expressly and specifically waive the defense of inconvenient forum. *Package Express* is, therefore, not analogous and inapposite. In the instant case, the parties contractually precluded the doctrine of *forum non conveniens* as a defense should litigation arise. Their agreement as to the appropriate forum for litigation controls.

Pointing to this Court's opinion in *Hodges v. Attorney General*, 43 S.W.3d 918 (Tenn. Ct. App. 2000), Defendants advance the proposition that the trial court should have inherent authority to apply the *forum non conveniens* doctrine even when litigating parties had previously agreed to waive the inconvenient forum defense. Under the circumstances here, they submit that a Tennessee trial court should have the discretion to rely on the *forum non conveniens* doctrine to dismiss a complaint filed by a Tennessee plaintiff in a Tennessee court in accordance with a valid agreement to litigate in Tennessee under Tennessee law and to specifically waive the defense of inconvenient forum. We disagree. First, the circumstances here and in *Hodges* are poles apart. In *Hodges*, this Court affirmed the dismissal of a prisoner's complaint for failure to prosecute after the prisoner failed to provide the court clerk with copies of his complaint and to complete summons for service on the defendants—and, notably, did not offer an excuse for his failure to so do. *Id.* at 921. We explained: "Trial courts possess inherent, common-law authority to control their dockets and the proceedings in their courts. Their authority is quite broad and includes the express authority to dismiss cases for failure to prosecute or to comply with the Tennessee Rules of Civil Procedure or the orders of the court." *Id.* Here, in contrast, Relyant filed its complaint precisely in the jurisdiction agreed to by the parties and vigorously defended against Defendants' motion to dismiss the same; it did not fail to comply with any procedural rule or court order.

Even more significant, in our view, is the fundamental difference between a dismissal for failure to prosecute and a dismissal from a forum the parties had selected and on the basis of a defense the parties had specifically agreed to renounce. The former has to do with the trial court's ability to keep its dockets moving when plaintiffs show no interest in pursuing their claims; the latter infringes upon the ability of parties to rely on bargained agreements as to choice of forum for litigation and defense waivers. Defendants here do not contend that their voluntary agreement to waive the inconvenience forum defense was obtained by coercive or unjust means. As already mentioned, parties that waive the inconvenient forum defense also agree to the inconvenience the selected forum may present. Neither *Hodges* nor the three federal cases cited by Defendants involved application of the *forum non conveniens* doctrine where the parties had contractually

agreed to a particular forum and to waive the inconvenient forum defense. *See Wong v. PartyGaming Ltd.*, 589 F.3d 821, 830 (6th Cir. 2009) (enforcing forum selection clause; no waiver of the defense); *Est. of Thomson ex rel. Est. of Rakestraw v. Toyota Motor Corp. Worldwide*, 545 F.3d 357, 366 (6th Cir. 2008) (no forum selection clause; no waiver of the defense); *Branch v. Mays*, 265 F. Supp. 3d 801, 810 (E.D. Tenn. 2017) (enforcing forum selection clause; no waiver of the defense).

We note that even in the absence of an express waiver such as the one contained in the Agreement between the parties here, some courts have deemed the *forum non conveniens* defense waived where the litigants have contractually agreed to a specific forum. *See, e.g., Nw. Nat. Ins. Co. v. Donovan*, 916 F.2d 372, 378 (7th Cir. 1990) ("But one who has agreed to be sued in the forum selected by the plaintiff has thereby agreed not to seek to retract his agreement by asking for a change of venue on the basis of costs or inconvenience to himself; such an effort would violate the duty of good faith that modern law reads into contractual undertakings."); *Aon Corp. v. Utley*, 863 N.E.2d 701, 708 (Ill. App. Ct. 2006) ("Rather, we find that where defendant agreed to a valid forum selection clause, she waived any arguments based on *forum non conveniens*."); *see also ESI Cos., Inc. v. Ray Bell Const. Co.*, No. W2007-00220-COA-R3-CV, 2008 WL 544563, at *7 n.7 (Tenn. Ct. App. Feb. 29, 2008) ("Because we conclude that the forum selection clause should be enforced, we need not address whether the doctrine of *forum non conveniens* would have otherwise required the case to be dismissed in Shelby County.").

In sum, this is not a case where the parties simply agreed to a mandatory litigation forum that was later either challenged by a defendant or sua sponte raised by the trial court as inconvenient. Here, the parties specifically bargained and contracted that dismissal would not occur on the basis of inconvenient forum. Although the enforcement of a contractual waiver of the *forum non conveniens* defense appears to be an issue of first impression in this state, we do not think that the authority inherent in our trial courts to "control their dockets" goes as far as allowing them to, at their discretion, invalidate a voluntary contractual waiver and to apply a defense mutually surrendered by the parties.[8] Defendants have not cited any authorities to the contrary, and the trial court should have given effect to the parties' intent as expressed in their Agreement.

[8] This Court had previously upheld a clear and unambiguous contractually agreed waiver of defenses. *See, e.g., Beach Cmty. Bank v. Labry*, No. W2011-01583-COA-R3CV, 2012 WL 2196174, at *11 (Tenn. Ct. App. June 15, 2012) ("This provision clearly states that the Appellants waive notice and foreclosure. If this Court were to hold that, notwithstanding this broad waiver provision, the Bank had a duty to provide notice or foreclose on the property, the waiver provision of the contract would be rendered meaningless."); *see also Cary v. Cary*, 937 S.W.2d 777, 782 (Tenn. 1996) ("We conclude that a voluntary and knowing waiver or limitation of alimony in an antenuptial agreement is not per se void and unenforceable as contrary to public policy."); *Maxwell v. Motorcycle Safety Found.*, Inc., 404 S.W.3d 469, 475 (Tenn. Ct. App. 2013) (holding that waiver of ordinary negligence did not violate public policy).

Last, Defendants argue that even if the forum selection clause of the Agreement is enforceable against Fernandez, it should not apply to the LLC because the company was not a party to the Agreement. In reviewing a trial court's dismissal of a complaint pursuant to a motion to dismiss, "we take all allegations of fact in the complaint as true." *Johnson*, 2021 WL 3737055, at *2. In its complaint, Relyant alleged that Fernandez is the only member of the LLC; that Fernandez created the LLC for the sole purpose of performing UXO-related services in direct competition with Relyant; that the LLC presents itself on its website as a '"munition of explosive concern (MEC) company' that performs a variety of UXO-related services"; and that, therefore, the LLC should be regarded as the "nominee and alter ego of Fernandez." Viewing these allegations as true, we are not persuaded that Relyant can "prove no set of facts" in support of its position that the LLC should be bound by the terms of the parties' Agreement, including the provisions concerning personal jurisdiction and forum. *Cullum*, 432 S.W.3d at 832. We do not readily see a logical basis for our courts to refuse exercising jurisdiction over the LLC where Relyant has alleged that the LLC was solely created by Fernandez, a signatory of the Agreement, as an instrument to unfairly compete with his former employer. At the motion to dismiss stage, we assess "only the legal sufficiency of the complaint, not the strength of the plaintiff's proof or evidence." *Webb*, 346 S.W.3d at 426. Relyant's allegations might well be disproven in due course but are, at this juncture, sufficient for its complaint to survive the motion to dismiss the LLC from this action.

"Tennessee law is clear . . . that the party challenging the enforcement of a forum selection clause 'should bear a heavy burden of proof.'" *Blackwell v. Sky High Sports Nashville Operations, LLC*, 523 S.W.3d 624, 631 (Tenn. Ct. App. 2017) (quoting *Chaffin v. Norwegian Cruise Line Ltd.*, No. 02A01-9803-CH-00080, 1999 WL 188295, *4 (Tenn. Ct. App. Apr. 7, 1999)). Defendants have neither carried that burden nor showed why their contractual agreement to waive the inconvenient forum doctrine should be disregarded. *See Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 33 (1988) (Kennedy, J., concurring) ("[E]nforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system."); *Castleberry v. Angie's List, Inc.*, 291 So. 3d 37, 40 (Ala. 2019) (enforcing forum selection clause that included waiver of personal jurisdiction, improper venue, and *forum non conveniens* defenses); *Four Star Resorts Bahamas, Ltd. v. Allegro Resorts Mgmt. Servs., Ltd.*, 734 So. 2d 576, 577 (Fla. Dist. Ct. App. 1999) ("Having contractually agreed to venue in Dade County, and having explicitly waived any venue or forum non conveniens objection, Four Star will not be heard to say otherwise now."). Under the circumstances here, we hold that the trial court abused its discretion by dismissing the action pursuant to the *forum non conveniens* doctrine when the parties specifically waived such defense and expressly agreed to this state as the mandatory forum for litigation arising out of or relating to their Agreement. The third issue raised by appellant is thus moot.

CONCLUSION

The judgment of the trial court is reversed, and the case is remanded for further proceedings consistent with this opinion. Costs on appeal are assessed to the appellees, Royden Fernandez and Oia'i'O Halo MEC Remediation HUI, LLC, for which execution may issue if necessary.

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KRISTI M. DAVIS, JUDGE