

BACKGROUND AND FACTS

General Electric (G.E.) contacted an American subsidiary of Siempelkamp, a German manufacturer of heavy machinery, and expressed interest in Siempelkamp's "Conti Roll" presses built for the production of industrial laminates. The presses were to be used at a G.E. plant in Ohio that manufactures copper-clad technical laminates for the computer circuit industry. The negotiations took place between G.E. and Siempelkamp's German headquarters. G.E. issued a standard-form purchase order for one press. Siempelkamp then issued an order confirmation for the press. At Siempelkamp's German headquarters, two days later, the G.E. representative and a Siempelkamp agent signed under the words "accepted" on Siempelkamp's order confirmation. The G.E. agent also initialed each page of the 60 page document. The order confirmation contained the following forum selection and choice of law clauses:

Place of jurisdiction for all disputes arising in connection with the contract shall be at the principal place of business of the supplier. This shall also apply for claims in summary procedures on bills of exchange, promissory notes or cheques. The supplier is also entitled to file suit at the principal place of business of the purchaser.

All matters under this contract and any disputes arising hereunder shall be exclusively governed by the law of the Federal Republic of Germany.

G.E. filed suit in U.S. district court alleging breach of contract, violation of the Uniform Commercial Code, misrepresentation and breach of warranty in connection with the installation of the Siempelkamp press. The district court, relying on the

General Electric Co. v. G. Siempelkamp GmbH & Co.

29 F.3d 1095 (1994)

United States Court of Appeals
Sixth Circuit

forum selection clause of the contract, granted summary judgment for Siempelkamp (The dismissal was without prejudice so that the case could be heard in another jurisdiction). G.E. appealed, as follows

NATHAN R. JONES, CIRCUIT JUDGE

The occurrences here appear straightforward. G.E. made an offer to Siempelkamp in a purchase order. Siempelkamp then submitted a counteroffer, in the form of an order confirmation that contained terms very different from the purchase order. G.E. signed and thereby accepted that counteroffer, creating a binding contract. Both parties are therefore bound by the terms of the contract, including the forum selection clause in the counteroffer.

G.E. argues [here] that even if the forum selection clause applies, it is not exclusive or mandatory. Because the clause states that "all" disputes "shall" be at Siempelkamp's principal place of business, it selects German court jurisdiction exclusively and is mandatory. . . . The clause is clear and should be enforced according to its terms.

Finally, G.E. claims that it would be unreasonable to enforce the clause here. It is true that we may refuse to enforce even an unambiguous, bargained-for forum selection clause if a party can "clearly show that enforcement would be unreasonable and unjust, or that the clause [is] invalid for such reasons as fraud or overreaching. . . ."

In this case, we take judicial notice that G.E. is a sophisticated party that is used to dealing with complex international business transactions. We see no evidence that G.E. was exploited or unfairly treated in this transaction. . . . With regard to G.E.'s implication that Ohio is the reasonable

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venue for this suit, we note that Germany also has significant contacts with actions arising out of the agreement: the deal was negotiated and signed in Germany, much of the contract was performed in Germany, the presses were manufactured primarily in Germany, and witnesses

presumably would be located in Germany, as well as the United States. Application of the forum selection clause is not unreasonable here.

Decision. Enforcement of the forum selection clause providing for resolution of the dispute in a German forum is not unreasonable. Affirmed.