

MAR 14 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ENERWASTE INTERNATIONAL  
CORPORATION, a Washington  
corporation,

Plaintiff - Appellant,

v.

ENERGO SRL, an Italian company,

Defendant - Appellee.

No. 10-35524

D.C. No. 2:09-cv-00950-TSZ

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Thomas S. Zilly, Senior District Judge, Presiding

Submitted March 8, 2011\*\*  
Seattle, Washington

Before: McKEOWN, FISHER and GOULD, Circuit Judges.

EnerWaste International Corp. appeals from the district court's order declaring the parties' forum selection clause unenforceable and dismissing the action on the basis of forum non conveniens. We reverse and remand.

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\*This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\*The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The forum selection clause is not ambiguous, because any reasonable person would understand it to designate the United States District Court for the Western District of Washington as the exclusive forum for resolving disputes arising from the contract. *See Doe 1 v. AOL LLC*, 552 F.3d 1077, 1081-82 (9th Cir. 2009) (per curiam).

Nor is the clause unenforceable on the basis of unreasonableness. Although most of the witnesses and evidence are located in Italy, Energo has not shown that proceeding in Washington would be “so gravely difficult and inconvenient” that it would effectively be denied its day in court. *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972). The district court abused its discretion by holding otherwise. *See Pelleport Investors, Inc. v. Budco Quality Theatres, Inc.*, 741 F.2d 273, 280-81 & n.4 (9th Cir. 1984).

The forum selection clause being enforceable, the forum non conveniens doctrine does not apply, *see id.* at 281, and EnerWaste is entitled to proceed in the Western District of Washington.

**REVERSED AND REMANDED.**