

Cite as 2011 Ark. App. 76

ARKANSAS COURT OF APPEALS

D I V I S I O N III

No. CA 10-614

DONALD BUFFINGTON

APPELLANT

V.

DIAMOND TRANSPORT & DRILLING,
LLC, and NEWTON W. DORSETT

APPELLEES

Opinion Delivered FEBRUARY 2, 2011

APPEAL FROM THE LAFAYETTE
COUNTY CIRCUIT COURT
[NO. CV-09-118-2]

HONORABLE KELVIN WYRICK,
JUDGE

REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

In this appeal, appellant Donald Buffington appeals the dismissal of his action against appellees Diamond Transport & Drilling, LLC, and Newton W. Dorsett filed in Lafayette County Circuit Court. In a complaint filed in March 2010, Buffington sued Diamond and Dorsett for breach of a compromise and settlement agreement executed in January 2008, related to a dispute over the sale of a drilling rig and the proceeds. The compromise and settlement agreement resolved two then-pending lawsuits, one in federal court in Arkansas and one in state court in Louisiana. The settlement agreement included a clear choice-of-law provision that mandated Louisiana state law would govern construction and enforcement of the agreement. Upon appellees' motion, the trial court dismissed the lawsuit for improper venue based upon this clause. Appellant Buffington appeals the dismissal of his lawsuit.

Cite as 2011 Ark. App. 76

In reviewing the trial court's decision on a motion to dismiss for improper venue, we treat all facts alleged in the complaint as true and view them in the light most favorable to the non-movant, Buffington. *Clowers v. Lassiter*, 363 Ark. 241, 213 S.W.3d 6 (2005). An express agreement to be subject to the jurisdiction of the courts of a particular state can be a valid forum-selection clause. *SD Leasing, Inv. v. Al Spain & Assoc., Inc.*, 277 Ark. 178, 640 S.W.2d 451 (1982). As a general rule in Arkansas, venue-selection clauses are enforceable unless to do so would be unfair or unreasonable. *Provence v. Nat'l Carriers, Inc.*, 2010 Ark. 27. Louisiana recognizes that venue-selection clauses can be enforceable. *Pitts, Inc. v. Ark-La Resources, L.P.*, (La. App. 2 Cir. 08/19/98); 717 So. 2d 268.

Venue is not concerned with the power and authority of a court but which parish or county where an action may be brought. *Luffey ex rel. Fredericksburg Props. of Tex., LP v. Fredericksburg Props. of Tex., LP, et al.* (La. App. 2 Cir. 12/10/03); 862 So. 2d 403. Furthermore, in Louisiana, such clauses, if valid, can be mandatory or permissive. *Town of Homer v. United Healthcare of La., Inc.* (La. App. 2 Cir. 01/31/07); 948 So. 2d 1163. For the clause to be mandatory, it must clearly establish the parties' intent to make the chosen venue exclusive. *Id.* In *Town of Homer*, the provision at issue recited:

To the extent not preempted by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana. It is agreed between the parties that proper venue for any legal action shall be in the Parish of East Baton Rouge.

This was held to be a clear and binding mandatory venue-selection clause. It contained mandatory language by use of "shall," and it clearly identified the specific chosen venue.

Buffington agrees with these general propositions of the law but asserts that there was no operative forum-selection clause, only a choice-of-law clause. In other words, Buffington asserts that although it is clear that the parties agreed to apply Louisiana law, they did not agree to limit where any dispute must be tried. In contrast, Diamond and Dorsett contend that because the word “venue” is in the title of this provision, it must mean that Louisiana’s courts are the only proper forum.

This then becomes a question of contract interpretation. Under either state’s laws, contracts are to be interpreted by determining the parties’ intent by use of the words in their plain and ordinary meaning. Buffington is an Arkansas resident whereas Diamond’s principal place of business is in Louisiana and Dorsett is a resident of Louisiana. The seven-page compromise and settlement agreement contains eighteen numbered paragraphs, each setting forth the topic in italics and then the material provisions of that topic in regular font. The agreement states that the terms were mutually negotiated by the parties. The provision at issue states exactly the following:

16. *Governing Law and Venue.* This agreement shall be subject to, construed and enforced in accordance with the laws of the State of Louisiana.

This provision does not state that the *parties* agree to be heard only in one particular venue. See *Servewell Plumbing, LLC v. Summit Contractors, Inc.*, 362 Ark. 598, 210 S.W.3d 101 (2005) (specific wording expressing party’s consent to jurisdiction and venue in another state); *Nelms v. Morgan Portable Bldg. Corp.*, 305 Ark. 284, 808 S.W.2d 314 (1991) (specific wording that the parties agreed to a particular county in a particular state as the proper venue and agreed

to waive venue at their respective residences); *Baan USA v. USA Truck, Inc.*, 82 Ark. App. 202, 105 S.W.3d 784 (2003) (specific wording that the parties agreed to submit to jurisdiction and venue of particular state's courts). *See also Yelton v. PHI, Inc.*, 2010 WL 1254564 (U.S. Dist. Ct., E.D. La., March 23, 2010) (parties may contract to specifically consent to a particular venue, but even then, to be the exclusive venue, it must so state); *Town of Homer, supra*. Even if it did mention a particular venue, it did not make the choice mandatory. Absent an express agreement on venue in the operative wording, and in light of the absence of any mandatory language on venue, we hold that the trial court erred in granting appellees' motion to dismiss for improper venue.

Buffington alternatively asserts that if there is a valid venue-selection clause, it has no effect on a separate breach of contract pled by Buffington against Dorsett, which Buffington contends is not covered by the settlement agreement. Because we hold that no valid forum-selection clause is present, this renders discussion of Buffington's alternate argument unnecessary.

Reversed and remanded.

WYNNE and GLOVER, JJ., agree.