REL: March 1, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1180144

Ex parte International Paper Company, Janet Pridgeon, Joni Harris, and Shawn Blenis

PETITION FOR WRIT OF MANDAMUS

(In re: Caterpillar Financial Services Corporation

v.

JRD Contracting, Inc., et al.)

(Wilcox Circuit Court, CV-16-900061)

SHAW, Justice.

International Paper Company ("International Paper") and three of its employees--Janet Pridgeon, Joni Harris, and Shawn

Blenis (hereinafter referred to collectively as "IPC")--the defendants in a third-party action pending below, petition this Court for a writ of mandamus directing the Wilcox Circuit Court to vacate its order denying IPC's motion to dismiss the action against it without prejudice based on improper venue. We grant the petition and issue the writ.

Facts and Procedural History

In 2015, Caterpillar Financial Services Corporation ("Caterpillar") entered into various loan and guaranty agreements with JRD Contracting, Inc. ("JRD"), and its president, John R. Dailey, Jr. ("Dailey"), for the purchase of certain equipment. That equipment was to serve as collateral for the loans between Caterpillar and JRD. According to Caterpillar, JRD and Dailey failed to pay the amounts due under the loan agreements, and, in September 2015 and again in December 2015, Caterpillar notified JRD and Dailey of its intention to accelerate the loans and to make demand for the return of the equipment.

In the summer of 2016, Dailey, on behalf of JRD Land Contracting and Land Clearing, Inc. ("JRD C&L"),[1] signed an

[1]JRD C&L appears to be a corporation separate from JRD. Dailey is apparently also the president of JRD C&L.

agreement with International Paper called the "International Paper Company Pine Hill Mill Waste Services Agreement" ("the waste-services agreement"), in which JRD C&L agreed to dispose of International Paper's waste at its Pine Hill Mill for a period of five years.

Later in 2016, Caterpillar sued JRD and Dailey in the Wilcox Circuit Court alleging a claim of detinue and seeking damages for breach of contract and breach of the guarantees. Caterpillar alleged that the defendants failed to pay amounts owed on their loans, and it sought to recover possession of the equipment held as collateral.

After performing work for International Paper under the waste-services agreement for eight months, JRD C&L received a letter from International Paper on April 6, 2017, providing 30 days' written notice of International Paper's intent to terminate the waste-services agreement.

In May 2017, JRD and Dailey filed in the pending Wilcox Circuit Court action a third-party complaint against IPC and fictitiously named defendants. In their complaint, JRD and Dailey sought a declaratory judgment and damages on claims of breach of contract, promissory estoppel, fraud, work and labor

done, and indemnity. According to JRD and Dailey, in an effort to perform the obligations under the waste-services agreement, they hired additional labor and also leased, purchased, and financed various items of equipment from third parties, including Caterpillar. They alleged that they acquired that equipment and entered into those loan agreements only in reliance on International Paper's alleged assurance that they would be compensated for their work over a five-year period. When International Paper terminated that agreement, JRD and Dailey alleged, they could no longer afford to pay the loans from their lenders, including Caterpillar, although they had already defaulted on some of those loans.

Later that same month, JRD and Dailey moved the trial court to add JRD C&L as a defendant to the action involving Caterpillar. According to JRD and Dailey, adding JRD C&L as a defendant was proper because JRD C&L had possession of the equipment that Caterpillar was seeking to recover. JRD C&L was also, as noted above, the signatory to the waste-services agreement with International Paper, which was at issue in the third-party action. The trial court granted that motion. Thereafter, JRD, Dailey, and JRD C&L filed an amended third-

party complaint adding JRD C&L as a third-party plaintiff (JRD, Dailey, and JRD C&L are hereinafter referred to collectively as "the third-party plaintiffs").

In June 2017, IPC moved, pursuant to Rule 12(b)(3), Ala. R. Civ. P., to dismiss the third-party complaint based on improper venue. According to IPC, the waste-services agreement contained an outbound forum-selection clause that provided that the courts of Tennessee would have jurisdiction over any disputes arising out of or relating to that agreement. IPC also challenged whether JRD or Dailey had a right to bring the third-party action because, it argued, the third-party action had nothing to do with the transactions underlying Caterpillar's lawsuit.

The trial court did not rule on IPC's motion to dismiss, and IPC petitioned this Court for a writ of mandamus directing the trial court to rule on the motion. On April 27, 2018, this Court granted IPC's petition and directed the trial court to address the merits of IPC's motion. See Ex parte International Paper Co., [Ms. 1170458, April 27, 2018] ____ So. 3d ____ (Ala. 2018). On November 7, 2018, the trial court denied the motion, and IPC filed the present petition.

Standard of Review

> "'"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court." Ex parte Integon Corp., 672 So. 2d 497, 499 (Ala. 1995).'
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> "Ex parte CTB, Inc., 782 So. 2d 188, 190 (Ala. 2000). In Ex parte CTB, this Court established that a petition for a writ of mandamus is the proper vehicle for obtaining review of an order denying enforcement of an 'outbound' forum-selection clause when it is presented in a motion to dismiss. Indeed, an attempt to seek enforcement of the outbound forum-selection clause is properly presented in a motion to dismiss without prejudice, pursuant to Rule 12(b)(3), Ala. R. Civ. P., for contractually improper venue. Additionally, we note that a party may submit evidentiary matters to support a motion to dismiss that attacks venue. Williams v. Skysite Communications Corp., 781 So. 2d 241 (Ala. Civ. App. 2000), quoting Crowe v. City of Athens, 733 So. 2d 447, 449 (Ala. Civ. App. 1999)."

Ex parte D.M. White Constr. Co., 806 So. 2d 370, 372 (Ala. 2001). Further, "a trial court's ruling on the question of enforcing a forum-selection clause" will be vacated if the court exceeded its discretion. Id.

Discussion

I.

IPC argues that, generally, outbound forum-selection clauses are enforceable in Alabama and that the third-party plaintiffs did not establish that the enforcement of the clause would be unfair or unreasonable. According to IPC, because the third-party plaintiffs failed to meet their burden, the outbound forum-selection clause should be enforced. For the reasons discussed below, we agree.[2]

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[2]Initially, we note that the third-party plaintiffs contend that IPC waived its forum-selection-clause argument when, they say, it removed the underlying action to federal court in October 2017. This Court has previously stated:

> "[A] party may waive its right to enforce a forum-selection clause, as it may with other contract provisions, by evincing an intention to do so. We note that no rigid rule exists for determining what constitutes a waiver of the right to enforce a forum-selection clause; the determination whether there has been a waiver must, instead, be based on the particular facts of each case."

Ex parte Spencer, 111 So. 3d 713, 718 (Ala. 2012) (emphasis added).

In the present case, both the petition and the answer indicate that IPC filed its motion to enforce the outbound forum-selection clause months before it filed its motion to remove the case to federal court, which occurred before the trial court ruled on the motion to dismiss. Under these facts, IPC did not evince an intent to waive its right to enforce the outbound forum-selection clause.

It is well established that an outbound forum-selection clause

> "'will be "upheld unless the party challenging the clause clearly establishes that it would be unfair or unreasonable under the circumstances to hold the parties to their bargain." Ex parte CTB, Inc., 782 So. 2d [188,] 190-91 [(Ala. 2000)]. The showing is sufficient where it is clearly established "'(1) that enforcement of the forum selection clause[] would be unfair on the basis that the contract[] [was] affected by fraud, undue influence, or overweening bargaining power or (2) that enforcement would be unreasonable on the basis that the chosen ... forum would be seriously inconvenient for the trial of the action.'" Id. at 191 ....'
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> "Ex parte Leasecomm Corp., 886 So. 2d [58,] 62-63 [(Ala. 2003)] (emphasis omitted). The Court has noted that '[t]he burden on the challenging party is difficult to meet.' Ex parte D.M. White Constr. Co., 806 So. 2d [370,] 372 [(Ala. 2001)]."

Ex parte PT Solutions Holdings, LLC, 225 So. 3d 37, 42 (Ala. 2016).

The waste-services agreement includes an unambiguous outbound forum-selection clause that states: "The Courts of Tennessee shall have ... exclusive jurisdiction over any disputes arising out of or relating to this agreement."

As demonstrated by the caselaw quoted above, the burden was on the third-party plaintiffs to demonstrate that

enforcement of the outbound forum-selection clause would be unfair or unreasonable under the circumstances of this case. In its petition, IPC contends that the third-party plaintiffs failed to establish that enforcement of the clause would be unfair on the basis that the waste-services agreement was affected by fraud, undue influence, or overweening bargaining power.

The third-party plaintiffs argue to this Court that the enforcement of the outbound forum-selection clause would be unfair because, they say, it was affected by International Paper's "overweening bargaining power" given their allegation that International Paper is a large, multinational corporation and they are individual and small, local companies.[3] According to the third-party plaintiffs, International Paper "held all the cards" during the negotiations of the waste-services agreement and the third-party plaintiffs were given "zero opportunity to negotiate [the waste-services agreement]" because, they say, it was a "'take it or leave it' deal."

[3]We note that the third-party plaintiffs do not argue that enforcement of the clause would be unfair as a result of fraud or undue influence.

This Court has previously held that, even when a party to a forum-selection clause is a large company, there are allegations that one of the parties was not allowed to negotiate any of the terms of the contract, and the contract had to be accepted as written, those factors alone do not establish "overweening bargaining power." See Ex parte D.M. White Constr., 806 So. 2d at 373. Additionally, the third-party plaintiffs' assertions appear to be nothing more than conclusory and, without more, are insufficient to establish that enforcing the outbound forum-selection clause would be unfair. 806 So. 2d at 372 (holding that the respondent's conclusory assertions did not establish that enforcement of the outbound forum-selection clause would be unfair or unreasonable). Thus, under these circumstances, the third-party plaintiffs have failed to establish that enforcement of the outbound forum-selection clause would be unfair.

Next, IPC argues that the third-party plaintiffs cannot establish that the clause is unreasonable because, it contends, Tennessee is not a "seriously inconvenient" forum in the present case. The third-party plaintiffs argue, however, that Tennessee would be a "massively inconvenient" forum

because, they argue, witnesses would be required to travel to Tennessee for the proceedings and Tennessee "really has nothing to do with this dispute." They also contend that International Paper's termination of the waste-services agreement has "essentially bankrupted" them, making it "impossible" to bear the expense of conducting litigation in Tennessee.

In addressing whether the distance to a forum selected by an outbound forum-selection clause would be "seriously inconvenient," this Court has previously stated that

> "'distance of travel does not establish that a forum is unreasonable. Ex parte Northern Capital Res. Corp., 751 So. 2d 12 (Ala. 1999) (enforcing outbound forum-selection clause requiring that litigation be conducted in Missouri); O'Brien Eng'g Co. v. Continental Machs., Inc., [738 So. 2d 844 (Ala. 1999)] (enforcing outbound forum-selection clause requiring that litigation be conducted in Minnesota); Moseley v. Electronic Realty Assocs., 730 So. 2d 227 (Ala. Civ. App. 1998) (enforcing outbound forum-selection clause requiring that litigation be conducted in Kansas); and Professional Ins. Corp., et al. v. Sutherland, 700 So. 2d 347 (Ala. 1997) (enforcing outbound forum-selection clause requiring that litigation be conducted in Florida).'

"Ex parte D.M. White Constr. Co., 806 So. 2d at 373-74. A complaining party must cite more than mere

> distance to warrant negating the forum-selection clause. '"Inconvenience" sufficient to void a forum-selection clause is present where a "trial in that forum would be so gravely difficult and inconvenient that the challenging party would effectively be deprived of his day in court."' Ex parte Leasecomm Corp., 886 So. 2d [58,] 62–63 [(Ala. 2003)] (quoting Ex parte Rymer, 860 So. 2d 339, 342 (Ala. 2003))."

Ex parte PT Solutions, 225 So. 3d at 46. In addressing whether a party has established that a chosen forum itself is "seriously inconvenient," this Court has used the following five factors for guidance:

> "'"(1) Are the parties business entities or businesspersons? (2) What is the subject matter of the contract? (3) Does the chosen forum have any inherent advantages? (4) Should the parties have been able to understand the agreement as it was written? (5) Have extraordinary facts arisen since the agreement was entered that would make the chosen forum seriously inconvenient? We state these items not as requirements, but merely as factors that, considered together, should in a particular case give a clear indication whether the chosen forum is reasonable."'"

Ex parte Nawas Int'l Travel Serv., Inc., 68 So. 3d 823, 827 (Ala. 2011)(quoting Ex parte Rymer, 860 So. 2d 339, 343 (Ala.

2003), quoting in turn Ex parte Northern Capital Res. Corp., 751 So. 2d 12, 15 (Ala. 1999)).

As the above authority indicates, the mere fact that in the present case witnesses would have to travel to Tennessee is not a sufficient reason to avoid the operation of a validly agreed-upon forum-selection clause. Thus, we must now look at the five factors listed above to determine whether Tennessee is a "seriously inconvenient" forum in this case.

As to the first factor, the parties here are business entities and businesspersons. Thus, this factor demonstrates that Tennessee is not a "seriously inconvenient" forum. See, e.g., Madasu v. Berry Co., 950 So. 2d 333, 338 (Ala. Civ. App. 2006)(holding that the fact that the parties were business entities was one of the factors that "clearly weighed in favor of enforcing the outbound forum-selection clause"). Second, the subject matter of the waste-services agreement appears to have no relevance to the issue whether Tennessee is an inconvenient forum. Third, the forum chosen by the parties for this action--Tennessee--is the business headquarters for International Paper. That fact would present a geographical advantage, at least, for IPC, and this Court has repeatedly

upheld outbound forum-selection clauses where the chosen forum is the state in which a party is headquartered or has its principal place of business. See, e.g., Ex parte United Propane Gas, Inc., 258 So. 3d 1103 (Ala. 2018) (enforcing an outbound forum-selection clause where the forum is the state in which the defendant's headquarters were located), and Ex parte Nawas, 68 So. 3d at 825 (enforcing an outbound forum-selection clause in which the forum is the state of the defendant's principal place of business). As to the fourth factor, the third-party plaintiffs do not indicate that they were unable to understand the terms of the agreement, and the outbound forum-selection clause is clearly and unambiguously written. Finally, as to the fifth factor, although the third-party plaintiffs allege that extraordinary circumstances have arisen since they entered into the waste-services agreement that would make the chosen forum seriously inconvenient--i.e., that International Paper's alleged actions have forced them into bankruptcy--this is only one of several factors to consider. Based on our discussion of the other factors above, which either weigh in favor of the agreed-upon forum or provide no support either way, the facts do not demonstrate

that enforcing the outbound forum-selection clause would be "unreasonable" on the basis that the contractually agreed-upon forum would be "seriously inconvenient for the trial of the action."

II.

Next, IPC argues that enforcement of the outbound forum-selection clause will not cause an impermissible "splitting" of claims. Specifically, it argues that the third-party plaintiffs' claims against it should have been filed in a separate lawsuit. According to IPC, the third-party plaintiffs' claims involve circumstances that are separate and distinct from Caterpillar's lawsuit against the third-party plaintiffs. Thus, IPC argues, enforcing the outbound forum-selection clause and requiring the third-party plaintiffs to file their action against it in Tennessee would not be contrary to notions of judicial economy.

This Court has previously recognized that

> "Alabama has a strong policy against splitting causes of action or claims. ... The policy promotes judicial economy, as well as convenience and fairness to the parties. See Century 21 Preferred Props., Inc. v. Alabama Real Estate Comm'n, 401 So. 2d 764, 769 (Ala. 1981) (discussing the rationale for federal pendent jurisdiction). '"'[T]he whole tendency of our decisions is to require a plaintiff

> to try his whole cause of action and his whole case at one time.'"' Id. (quoting United Mine Workers of America v. Gibbs, 383 U.S. 715, 724, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966)). 'The prohibition against splitting a cause of action is for the purpose of avoiding vexatious litigation and a multiplicity of lawsuits.' Terrell v. City of Bessemer, 406 So. 2d 337, 339 (Ala. 1981)."

Ex parte Leasecomm Corp., 886 So. 2d 58, 63-64 (Ala. 2003).

This Court has applied this rationale in the context of the enforcement of outbound forum-selection clauses. In F.L. Crane & Sons, Inc. v. Malouf Construction Corp., 953 So. 2d 366 (Ala. 2006), Malouf Construction Corporation ("Malouf"), a Mississippi corporation, entered into a contract with Palm Beach Condominiums, LLC ("Palm Beach"), for the construction of condominiums in Orange Beach. Malouf then entered into a subcontract with F.L. Crane & Sons, Inc. ("Crane"), in which Crane agreed to perform some of the work. After the condominiums were built, Palm Beach Owner's Association, Inc. ("the Association"), whose membership consisted of the owners of the units in the condominiums, sued Malouf and Palm Beach in the Baldwin Circuit Court, alleging defects in the construction.

Malouf filed a third-party complaint against Crane and several other subcontractors alleging breach of contract,

breach of warranty, and negligent performance. Crane argued that an outbound forum-selection clause in the subcontract between it and Malouf required the claims to be litigated in a state court in Madison County, Mississippi, or in the United States District Court for the Southern District of Mississippi.

In affirming the trial court's decision denying the enforcement of the outbound forum-selection clause, this Court stated:

> "Forum-selection clauses are enforceable under Alabama law. Ex parte Rymer, 860 So. 2d 339, 341 (Ala. 2003). However, this Court has held that a forum-selection clause should not be enforced if the chosen forum would be '"seriously inconvenient for the trial of the action."' Ex parte Leasecomm Corp., 886 So. 2d 58, 62 (Ala. 2003) (quoting Ex parte CTB, Inc., 782 So. 2d [188,] 191 [(Ala. 2000)]). Such a 'serious inconvenience' arises if enforcement of the forum-selection clause '"would result in two lawsuits involving similar claims or issues being tried in separate courts."' 886 So. 2d at 63 (quoting Alpha Sys. Integration, Inc. v. Silicon Graphics, Inc., 646 N.W.2d 904, 909 (Minn. Ct. App. 2002)) (emphasis omitted). Malouf argues that just such a serious inconvenience would exist in this case if we ordered the trial court to enforce the outbound forum-selection clause. In the underlying action, the Association has asserted claims against Malouf arising from Malouf's general construction of the Palm Beach Condominiums; Malouf has, in turn, brought third-party claims against Crane and several other subcontractors. Malouf argues that enforcement of the outbound forum-selection clause in this case

> would move the litigation of the claims between Malouf and Crane to Mississippi, where, Malouf argues, they would be litigating claims and issues identical to those being tried in Alabama between Malouf and the Association and between Malouf and the other subcontractors, all of which arose out of the same construction job as did Malouf's claims against Crane. If its claims against Crane are transferred, Malouf argues, it would be subject to duplicative discovery and litigation.
>
> "Crane asks us to transfer the claims involving Malouf and Crane to Mississippi, while all the other related claims remain in Alabama. Crane argues that the action brought in Alabama by the Association involves claims and parties 'wholly unrelated to anything Crane did in the construction of Palm Beach Condominiums,' and that the action in Mississippi would involve the 'sole issue' whether Crane properly completed its work during the construction. Crane is correct that the action brought by the Association involves other parties unrelated to Malouf's third-party action against Crane and therefore involves issues that may not be present in the third-party action, but the opposite is not necessarily true. Malouf's claims against Crane involve issues that will be litigated in the Association's action. Both cases will likely involve interpretation of the same contract terms, and Malouf's testimony as to its activities during construction will be necessary in both actions. Litigation of the same issues, arising out of the same construction project, could therefore cause Malouf 'serious inconvenience.'"

953 So. 2d at 373-74 (emphasis added). Crane illustrates that enforcement of an outbound forum-selection clause might not be permitted where the same or similar issues or claims will be litigated in both the original action and the third-party

action, which arose out of the same subject matter, thereby resulting in an unnecessary "splitting" of the claims and "duplicative" discovery and litigation if the clause is enforced.

That is not the case here. Unlike the claims in Crane, the third-party plaintiffs' claims against IPC are distinct from the claims alleged against them by Caterpillar in its lawsuit. Caterpillar's action involved the breach of loan agreements with JRD and Dailey that were entered into in 2015. In contrast, the third-party plaintiffs allege claims against IPC for circumstances related to the waste-services agreement between International Paper and JRD C&L, an entirely separate, unrelated contract and cause of action.

Additionally, IPC also argues that it is being improperly sued as a third-party defendant in the present case. Rule 14, Ala. R. Civ. P., governs third-party practice and states, in pertinent part:

> "At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff."

(Emphasis added.) The third-party plaintiffs' claims against IPC are not dependent on the outcome of Caterpillar's claims against them or vice versa, because each lawsuit involves a separate cause of action; nothing establishes that IPC would or may be liable to the third-party plaintiffs for Caterpillar's claims.

Nothing in the materials before us demonstrates that any issues litigated in the third-party action will also be litigated in the Caterpillar case. There is no identity of claims or underlying subject matter; there will be no duplicative discovery or litigation. Under these circumstances, enforcing the outbound forum-selection clause will not result in the "splitting" of an action so as to offend judicial economy.

III.

Next, IPC argues that International Paper's employees--Janet Pridgeon, Joni Harris, and Shawn Blenis--can enforce the forum-selection clause against the third-party plaintiffs even though they were nonsignatories to the waste-services agreement. IPC also argues that the outbound forum-selection

clause is enforceable against JRD and Dailey even though they were also nonsignatories to the agreement.

In Ex parte Killian Construction Co., [Ms. 1170696, Nov. 2, 2018] ____ So. 3d ____ (Ala. 2018), the City of Foley contracted with Killian Construction Company ("Killian") to build the Foley Sports Tourism Complex ("the sports complex"). Killian's principal place of business was located in Springfield, Missouri. Killian entered into a subcontract for part of the work with Edward E. Woerner, a resident of Baldwin County, who owned Southern Turf Nurseries, Inc.

According to Woerner, Killian subsequently failed to pay him the full amount due for the work he performed. Woerner sued Killian and one of Killian's employees, Christian Mills, in the Baldwin Circuit Court. Killian and Mills filed a "Notice of Removal" in the United States District Court for the Southern District of Alabama and a "Notice of Removal of Action to Federal Court" in the Baldwin Circuit Court, notifying it that the action had been removed. In their notice of removal, Killian and Mills stated that Woerner "'filed [his] Complaint in [the] Circuit Court of Baldwin County, Alabama, despite [his] agreement to litigate any dispute

arising under or related to the Subcontract in Missouri pursuant to a mandatory forum selection clause.'" ____ So. 3d at ____.

The federal court remanded the case to the Baldwin Circuit Court. Killian and Mills then moved to dismiss the circuit court action without prejudice "'pursuant to the mandatory forum selection clause stipulated to in the parties' Subcontract Agreement ("the Subcontract"),'" ____ So. 3d at ____, arguing that the clause made Missouri the proper forum. They further argued that the outbound forum-selection clause was valid and applicable to all claims because (1) the claims were all related to the subcontract and (2) Mills, as a Killian employee, was entitled to enforce the forum-selection clause because of his relationship to Killian. The circuit court denied the motion, and Killian and Mills sought mandamus review.

This Court addressed, among other things, whether Mills, a nonsignatory to the contract, could enforce the outbound forum-selection clause:

> "As to the issue whether Mills can enforce the outbound forum-selection clause, the complaint describes Mills as being 'employed by Defendant Killian' and, 'at all times pertinent hereto, ...

Defendant Killian's representative in dealings with [Woerner].' Moreover, in Count II of the complaint, Woerner seeks to hold both Killian and Mills liable for Mills's allegedly fraudulent representations to Woerner. Thus, on the facts as alleged by Woerner, Mills was Killian's employee and agent, and Woerner is attempting to hold Killian liable for Mills's actions as its employee. In Ex parte Procom Services, Inc., 884 So. 2d 827 (Ala. 2003), this Court considered an analogous set of facts and addressed whether such nonsignatories may enforce a forum-selection clause.

> "'Leitch and Crews state in the petition for a writ of mandamus that they "are both entitled to have the outbound forum-selection clause applied to Smith's claims asserted against them" even though they were not signatories to Smith's employment agreement with Procom. ... [F]ederal courts have held that forum-selection clauses bind nonsignatories that are closely related to the contractual relationship or who are "transaction participants." ...
>
> "'We also note an analogy between this Court's enforcement of arbitration clauses as to nonsignatories to a contract and the enforcement of the forum-selection clause in this instance. This Court has stated that "[i]f a nonsignatory's claims are 'intertwined with' and 'related to' the contract, arbitration can be enforced." Cook's Pest Control, Inc. v. Boykin, 807 So. 2d 524, 527 (Ala. 2001); see also Stevens v. Phillips, 852 So. 2d 123, 130 (Ala. 2002), quoting Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1121 (3d Cir. 1993) ("'"Because a principal is bound under the terms of a valid arbitration clause, its agents,

> employees, and representatives are also covered under the terms of such agreements."'"), and Ex parte Gray, 686 So. 2d 250, 251 (Ala. 1996) ("A party should not be able to avoid an arbitration agreement merely by suing an employee of a principal."). Because Smith's claims against Leitch and Crews arise out of statements Leitch and Crews allegedly made while negotiating Smith's employment contract with Procom, we conclude that Leitch and Crews are entitled to enforce the outbound forum-selection clause contained in the employment contract.'

"884 So. 2d at 834 (emphasis added).

"As an employee of Killian and its agent for the sports-complex project, Mills is clearly 'closely related' to the subcontract. Furthermore, the claims against Mills are 'related to' and 'intertwined with' the subcontract. The claims against Mills concern additional work Woerner performed at the sports complex allegedly for Killian at Mills's request. Based on Woerner's allegations, the fact that the additional work was not included in the original work to be performed under the subcontract does not preclude Mills from enforcing the outbound forum-selection clause. The outbound forum-selection clause expressly states that '[a]ny dispute arising under or related to this Subcontract Agreement, the performance of work or provision of any materials pursuant hereto, shall be brought only in state court in Greene County, State of Missouri.' (Emphasis added.) This Court has held that '[t]he term "arising out of or relating to" has a broad application.' Unum Life Ins. Co. of America v. Wright, 897 So. 2d 1059, 1086 (Ala. 2004). The claims against Mills as presented by Woerner arise under or relate to the subcontract, and, accordingly, Mills can enforce the outbound forum-selection clause."

Id. at ____.

The third-party plaintiffs' complaint in this case describes Pridgeon, Blenis, and Harris as employees of International Paper and refers to them as International Paper's "representatives." In Count III of the complaint, the third-party plaintiffs seek to hold Pridgeon, Blenis, and Harris liable for the alleged "representations and promises" they made to the third-party plaintiffs regarding the waste-services agreement. In Count IV, the third-party plaintiffs allege that all three of them made fraudulent representations concerning the business relationship between the third-party plaintiffs and International Paper. Based on the facts as alleged by the third-party plaintiffs, Pridgeon, Blenis, and Harris acted as agents of International Paper in discussing and finalizing the waste-services agreement with them. Thus, the third-party plaintiffs are attempting to hold Pridgeon, Blenis, and Harris liable for their actions in participating, as International Paper's employees, in the transaction at issue.

The attachments to the petition demonstrate that all three individual third-party defendants are "closely related"

to the waste-services agreement. Furthermore, the claims against them are "related to" and "intertwined" with the waste-services agreement because they concern alleged representations made during discussions before the signing of the agreement. Given the above, we conclude that all three employees are entitled to enforce the outbound forum-selection clause contained in the waste-services agreement.

Finally, IPC argues that the outbound forum-selection clause is enforceable against JRD and Dailey even though they are also nonsignatories to the waste-services agreement. This Court has previously stated that "'[a] plaintiff cannot simultaneously claim the benefits of a contract and repudiate its burdens and conditions.'" Custom Performance, Inc. v. Dawson, 57 So. 3d 90, 97 (Ala. 2010)(quoting Southern Energy Homes, Inc. v. Ard, 772 So. 2d 1131, 1134 (Ala. 2000)). Here, JRD and Dailey cannot claim the benefits of the enforcement of the waste-services agreement through their breach-of-contract claim without being subject to its outbound forum-selection clause. Thus, IPC is entitled to enforce its right under that clause against JRD and Dailey.

Conclusion

For the foregoing reasons, we conclude that IPC has shown a clear legal right to the writ of mandamus. The trial court is directed to vacate its November 7, 2018, order and to enter an order dismissing the third-party plaintiffs' action against IPC without prejudice, pursuant to Rule 12(b)(3), Ala. R. Civ. P.

PETITION GRANTED; WRIT ISSUED.

Parker, C.J., and Bolin, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.