IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

AMERICAN PATRIOT BRANDS, INC., PUERTO RICO ONE CORPORATION, ROBERT Y. LEE AND J. BERNARD RICE,

Appellants,

v. Case No. 5D20-2144

SKIP JACK APB HOLDING, LLC, SKIP JACK, LLC, NUVIEW TRUST CO. CUSTODIAN FBO FREDERICK R. KULIKOWSKI IRA, JASON LEMOINE, CARL PETERSON, ANITA SALUJA, RAJESH GUTTA, FRANCIS J. SANZILLO, ET AL,

Appellees.

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Opinion filed May 14, 2021

Nonfinal Appeal from the Circuit Court for Orange County, John E. Jordan, Judge.

Lindy K. Keown, and Michael R. Levin, of Baker & Hostetler, LLP, Orlando, for Appellants.

Tucker H. Byrd, and Thomas C. Allison, of Byrd Campbell, P.A., Winter Park, for Appellees.

HARRIS, J.

Appellants, American Patriot Brands, Inc. ("APB"), Puerto Rico One Corporation, Robert Y. Lee, and J. Bernard Rice, timely appeal the trial court's order denying their motion to dismiss or transfer to the contractually selected forum. They argue that the trial court erred in denying their motion because nine of the Appellees entered into contracts which contain mandatory, unambiguous forum selection clauses for which no exception to enforcement applies. Finding no compelling reasons to decline enforcement of the mandatory forum selection clause, we conclude that the trial court should have granted the motion to dismiss. We reverse the order denying Appellants' motion and remand for further proceedings.

APB is a Nevada corporation engaged in the cultivation and distribution of medical and recreational cannabis. It is principally located in Newport Beach, California. Appellees each made certain debt and equity investments into APB. For nine of the Appellees, these investments were memorialized by subscription agreements, which contained the following forum selection clause:

> 14. This Subscription Agreement shall be governed and interpreted by, and construed and enforced in accordance with, the laws of the State of Nevada without regard to its principles of conflicts of laws. Each of the parties hereto expressly and

> irrevocably (1) agree that any legal suit, action or proceeding arising out of or relating to this Agreement will be instituted exclusively in either the California State Superior Court, County of Orange, or in the United States District Court for the Central District of California, (2) waive any objections they may have now or hereafter to the venue of any such suit, action or proceeding, and (3) consent to the in personam jurisdiction of either the California State Supreme Court, County of Orange, or the United States District Court for the Central District of California in any such suit, action or proceeding. THE PARTIES HERETO AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED REPRESENTATION, OFFERING, STATEMENT, OR TRANSACTION. THE PARTY PREVAILING THEREIN SHALL BE ENTITLED TO PAYMENT FROM THE OTHER PARTY HERETO OF ALL OF ITS REASONABLE COUNSEL FEES AND LITIGATION COSTS AND EXPENSES.

On March 3, 2020, Appellees filed suit against Appellants in Orange County, Florida, each asserting causes of action for fraud, negligent misrepresentation, and violations of the Florida securities laws. Appellants responded with three separate motions to dismiss, one of which asked the court to dismiss or transfer to the contractually selected forum. Following a hearing on the motion to dismiss, the trial court entered its order declining to enforce the forum selection clause, finding that there was a compelling rationale not to enforce it, i.e., that the majority of the plaintiffs were Florida businesses, Florida residents, or maintained a domicile in Florida, and they

alleged a common scheme to defraud and sell unregistered securities in Florida.

We review the interpretation and enforceability of a contractual forum selection clause de novo. Ware Else, Inc. v. Ofstein, 856 So. 2d 1079, 1081 (Fla. 5th DCA 2003). The forum selection clause in this case contained the "magic word" of "exclusively," and therefore, it is mandatory. See Celistics, LLC v. Gonzalez, 22 So. 3d 824, 826 (Fla. 3d DCA 2009). Generally, mandatory forum selection clauses should be enforced absent a showing that the clause is unreasonable or unjust. Mason v. Homes By Whitaker, Inc., 971 So. 2d 1029, 1030 (Fla. 5th DCA 2008). The clause is considered unjust or unreasonable if enforcement of the clause would result in no forum at all. Espresso Disposition Corp. 1 v. Santana Sales & Mktg. Grp., Inc., 105 So. 3d 592, 595 (Fla. 3d DCA 2013). The party seeking avoidance of the forum selection clause must demonstrate that trial in the agreed-upon forum "will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court." McWane, Inc. v. Water Mgmt. Servs., Inc., 967 So. 2d 1006, 1007 (Fla. 1st DCA 2007) (internal quotations omitted); Manrique v. Fabbri, 493 So. 2d at 440 n.4 (Fla. 1986).

A court may decline to enforce a mandatory forum selection clause for "compelling reasons." Love's Window & Door Installation, Inc. v. Acousti

Eng'g Co., 147 So. 3d 1064, 1065–66 (Fla. 5th DCA 2014). In some circumstances, such reasons include "avoiding multiple lawsuits, minimizing judicial labor, reducing the expenses to the parties, and avoiding inconsistent results." Id. at 1065; see also Am. Safety Cas. Ins. Co. v. Mijares Holding Co., LLC, 76 So. 3d 1089, 1092 (Fla. 3d DCA 2011) (concluding that inconsistent and simultaneous interstate litigation is a compelling reason in some circumstances). It is not enough, however, to show that litigation in the selected venue would result in additional expense or inconvenience. Farmers Grp., Inc. v. Madio & Co., Inc., 869 So. 2d 581, 583 (Fla. 4th DCA 2004).

In this case, Appellees chose to file suit together for their own convenience and strategy. Appellees even acknowledged that they decided to collect their allegations "to illustrate the comprehensive nature of [Appellants'] fraudulent investment scheme." Appellees each brought their own individual claims for fraud, negligent misrepresentation, and Florida securities violations. Although the claims are joined in a single action, the claims themselves involve separate, distinct, and independent contracts as well as different facts surrounding those contracts, including the date such contracts were entered into. Appellants allegedly made different representations to each investor at different times, and each of the individual

claims in the complaint rely on such representations. The complaint even contained distinct sections indicating the specific representations that were made to each individual Appellee and separate sections specific to each Appellee as to the nature of their investments.

Where claims arise from independent and unrelated contracts, we have previously held that forum selection clauses must be enforced even if to do so would result in the same parties litigating in two different forums. See Ware Else, Inc., 856 So. 2d at 1083. In this case, we find that Appellees would not be deprived their day in court if the forum selection clause is enforced and find no compelling reason why the forum selection clause should not be enforced.

We reverse the order below with instructions for the trial court to enter an order granting Appellants' motion to dismiss based on the mandatory forum selection clause contained in the subscription agreements.

REVERSED AND REMANDED, with instructions.

LAMBERT and NARDELLA, JJ., concur.