

Third District Court of Appeal

State of Florida

Opinion filed May 13, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2059
Lower Tribunal No. 19-15828

Visual Technology and Extrusions, LLC,
Appellant,

vs.

Home Depot, U.S.A., Inc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Daryl E. Trawick,
Judge.

López-Brignoni Law, P.A., and Alfredo López-Brignoni, for appellant.

Bast Amron LLP, and Brett M. Amron and Peter J. Klock, II; Bondurant
Mixson & Elmore, LLP, and Adam T. Mills and Ronan P. Doherty (Atlanta, GA),
for appellee.

Before EMAS, C.J., and FERNANDEZ and HENDON, JJ.

HENDON, J.

Visual Technology and Extrusions, LLC, (“Vitex”), a Florida-based company, appeals from the trial court’s dismissal without prejudice of its complaint against Home Depot, USA, Inc. (“Home Depot”), a Georgia corporation. Vitex sued Home Depot for anticipatory breach of contract, fraud in the inducement, negligent misrepresentation, contractual unconscionability, and equitable estoppel. The trial court dismissed the action without prejudice based on the mandatory forum selection clause in the service agreement. We affirm.

Vitex entered into a Master Service Provider Agreement (“MSPA”) with Home Depot as one of Home Depot’s independent service providers, to be assigned work in the Miami-Dade area. When Vitex was not assigned any work months into the relationship, Vitex sued Home Depot in Miami-Dade County. The MSPA contains express forum selection and jurisdiction provisions requiring mediation and/or litigation to take place in Georgia and in Georgia state courts. There is no language giving the party a choice of forum. See Michaluk v. Credorax (USA), Inc., 164 So. 3d 719 (Fla. 3d DCA 2015). As we explained in Michaluk, “If the forum selection clause states or clearly indicates that any litigation must or shall be initiated in specified forum,” then the clause is mandatory and must be honored by the trial court in the absence of a showing that the clause is unreasonable or unjust. Id. at 722; see also Celistics, LLC v. Gonzalez, 22 So. 3d 824 (Fla. 3d DCA 2009) (holding the forum selection clause was mandatory, not permissive). We conclude that the

trial court correctly dismissed Vitex's complaint without prejudice for Vitex to file in Georgia state courts, as mandated by the contractual forum selection provision.

Finally, we find no merit to Vitex's argument that the MSPA forum selection provision is against public policy as set forth in section 47.025, Florida Statutes (2020). Because the MSPA is not a contract for improvement to real property, section 47.025 is inapplicable.

Affirmed.