Third District Court of Appeal

State of Florida, July Term, A.D. 2011

Opinion filed October 5, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-3150
Lower Tribunal No. 09-92510

American Safety Casualty Insurance Company,
Appellant,

vs.

Mijares Holding Company, LLC, et al.,
Appellees.

An Appeal from a non final order from the Circuit Court for Miami-Dade County, John Schlessinger, Judge.

Kubicki Draper and Caryn L. Bellus and Christopher J. Bailey, for appellant.

Aran Correa Guarch & Shapiro, and Craig B. Shapiro; Hunter, Williams & Lynch, and Christopher J. Lynch, for appellees.

Before RAMIREZ, and SHEPHERD, JJ., and SCHWARTZ, Senior Judge,

RAMIREZ, J.

American Safety Casualty Insurance Company appeals from an order denying its motion to dismiss on the basis of improper venue. We reverse because

the two insurance contracts which form the basis of the claims against American contain mandatory and enforceable Georgia forum selection clauses.

Appellee Mijares Holding Company, LLC is a Florida company which conducts business in Miami-Dade County. Mijares owns Bulk Express Transport Inc., which provides specialty trucking services within this state. In 2004, Mijares purchased commercial motor vehicle liability insurance from American and allegedly co-defendant Odyssey American Reinsurance Corporation.

In July 2007, during the 2007-2008 coverage periods, a Bulk Express Transport vehicle was involved in an accident. Mijares allegedly settled the resulting personal injury claims with the consent and knowledge of both American and Odyssey. Despite the accident and resulting settlement, Mijares signed another release form with American and Odyssey at the end of the 2008 coverage period in consideration for another policy renewal. According to American, in executing the 2008 release, Mijares acknowledged in writing that it had reported no claims during the 2007-2008 policy period and agreed to indemnify American for any claims which it could have reported during that same period.

Mijares subsequently sought reimbursement from American and Odyssey. Mijares alleges that both carriers rejected its reimbursement claim on the $1 million settlement. Subsequently, Mijares sued and brought a total of ten counts against American and Odyssey. The counts against American included: count I,

rescission of the American policies; count II, declaratory judgment against American (seeking a declaration that the American policies are void as against Florida public policy); and count VI, breach of contract against American.

American moved to dismiss, asserting that Georgia was the proper venue for any claims relating to the rights and obligations of the insurance policy. American's motion was based on section III of the Coverage Form for the 2007-2008 policy agreement, in which American alleged Mijares specifically and expressly agreed that the Superior Court of Cobb County, Georgia "shall have jurisdiction and venue" in determining the parties' respective rights and obligations under the agreement. The trial court denied American's motion to dismiss.

The interpretation of a contractual forum selection clause is a question of law, such that our standard of review is de novo. See Celistics, LLC v. Gonzalez, 22 So. 3d 824, 825 (Fla. 3d DCA 2009); Weisser v. PNC Bank, N.A., 967 So. 2d 327, 330 (Fla. 3d DCA 2007).

We agree with American that the trial court improperly denied American's motion to dismiss on the basis of improper venue. Florida courts have long recognized that "[f]orum selection clauses are presumptively valid." Corsec, S.L. v. VMC Intern. Franchising, LLC, 909 So. 2d 945, 947 (Fla. 3d DCA 2005). They "provide a degree of certainty to business contracts by obviating jurisdictional struggles and by allowing parties to tailor the dispute resolution mechanism to their

particular situation." Manrique v. Fabbri, 493 So. 2d 437, 439 (Fla. 1986). Forum selection clauses reduce litigation over venue, thereby conserving judicial resources, reducing business expenses and lowering consumer prices. See America Online, Inc. v. Booker, 781 So. 2d 423, 425 (Fla. 3d DCA 2001).

Florida law presumes that the forum selection clauses in a plaintiff's contracts are valid and enforceable, and requires the plaintiff to establish that their enforcement would be unjust or unreasonable. See Corsec, 909 So. 2d at 947; Manrique, 493 So. 2d at 440, n. 4. The enforcement is unreasonable and unfair only when the designated forum amounts to "no forum at all." Corsec, 909 So. 2d at 947. Mijares has not shown that the forum selection clause is unreasonable or unjust. Mijares freely bargained for and contracted with American with full knowledge of this forum selection clause.

"The polestar guiding the court in the construction of a written contract is the intent of the parties," and where "the language used is clear and unambiguous the parties' intent must be garnered from that language[.]" ' TECO Barge Line, Inc., 15 So. 3d 863, 865 (Fla. 2d DCA 2009). The 2007-2008 policy states, "the Named Insured . . . agrees that such court shall have jurisdiction and venue for the purposes of determining all rights and obligations under this agreement." This language is clear and unambiguous. In addition, Mijares conceded that the clause in the 2008 release was clear and mandatory.

Mijares asserts that litigation in Georgia might produce results inconsistent with the litigation remaining in Miami and that this constitutes a compelling reason to keep the litigation in Miami. We conclude that the compelling reasons exception applies to interstate commercial contracts. The cases cited by Mijares address only Florida's venue statutes, purely intra-state disputes or tort claims not governed by forum selection clauses. See e.g., Taurus Stornaway Invest's, LLC v. Kerley, 38 So. 3d 840, 842-43 (Fla. 1st DCA 2010) (stating that contractual forum selection provisions supersede Florida's venue statutes); Assiff v. Carnival Corp., 930 So. 2d 776, 778 (Fla. 3d DCA 2006) (stating that section 47.122, Florida Statutes (2005), is "inapplicable" to contractual forum selection disputes). These cases are inapplicable to the instant case because they do not address the issue of enforcement of the mandatory forum selection clauses which require litigation in another state.

Mijares also asserts that, by litigating in both Florida and Georgia, it would be forced to split its causes of action. Additionally, Mijares argues that the Georgia forum selection clauses do not govern two of its three claims against American. Mijares concedes, however, that the clauses apply to the third claim, breach of contract, because they govern all suits seeking to enforce or interpret the contracts. We conclude that the validity of an entire contract must be submitted to the forum chosen by the parties in the contract. Bovis Homes, Inc. v.

Chmielewski, 827 So. 2d 1038, 1039 (Fla. 2d DCA 2002) ("We further conclude . . . that the mandatory venue selection provision of the contract applies to the Chmielweskis' fraudulent misrepresentation claim as well."). Furthermore, we disagree with the trial court's interpretation of the forum selection clauses and conclude that American's forum selection clauses are clear and mandatory, and they require a Georgia forum for all of the claims against American.

We therefore reverse and remand with directions to dismiss American from this action because the forum selection clause expressly stipulates that jurisdiction be had in Cobb County, Georgia.

Reversed and remanded with directions.