

Opinion issued September 15, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-11-00541-CV

IN RE CHRISTOPHER MORICE, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Christopher Morice seeks mandamus relief from the trial court's order denying his motion to dismiss Equity Residential Management, LLC's suit for breach of a residential lease, based on a contractual provision designating the location of the leased property as the venue for suit.¹ Finding that clause governs,

¹ The underlying case is *Equity Residential Management, LLC, as Successor to Equity Residential Properties Management Corp. v. Christopher Morice*, No.

we conditionally grant a writ of mandamus, and direct the trial court to dismiss the case without prejudice.

Background

Morice leased an apartment in New York City, New York from Equity. The lease agreement provides:

LAWS GOVERNING THIS LEASE/VENUE: This Lease shall be governed by the laws of the state in which the Building is located, and all legal action arising from this Lease shall be tried in the county where the Building is located.

Despite this provision, Equity sued Morice in Harris County, Texas, where Morice now lives. Equity alleged that Morice defaulted on the lease and owes more than \$11,000 in unpaid rent. Morice answered Equity's lawsuit with a general denial and later moved to dismiss the case based on the foregoing clause.

Equity opposed enforcement of the clause, and the trial court denied Morice's motion to dismiss the case without stating its reasons. Morice asked the trial court to reconsider its ruling, but the trial court declined to do so.

Discussion

Standard of Review

A writ of mandamus will issue if the trial court committed a clear abuse of discretion for which the relator has no adequate remedy by appeal. *In re*

985323, in the County Court at Law No. 4 of Harris County, Texas, the Honorable Roberta A. Lloyd presiding.

Prudential Ins. Co. of Am., 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Mandamus relief is available to enforce a forum-selection clause. *In re AutoNation, Inc.*, 228 S.W.3d 663, 667 (Tex. 2007); see *In re AIU Ins. Co.*, 148 S.W.3d 109, 111–12 (Tex. 2004).

Forum-Selection Clause

Morice and Equity agreed that all legal action arising from their lease “shall be tried in the county where the Building is located.” While they did not expressly select the State of New York as the forum in which such actions shall be tried, we conclude that their selection of a New York county as the proper venue for suits arising from the lease necessarily implies their selection of the State of New York as the forum for any such suit. See *Ramsay v. Tex. Trading Co., Inc.*, 254 S.W.3d 620, 627 (Tex. App.—Texarkana 2008, pet. denied) (“a ‘forum’-selection agreement is one that chooses another state or sovereign as the location for trial, whereas a ‘venue’-selection agreement chooses a particular county or court within that state or sovereign.”) (quoting *In re Great Lakes Dredge & Dock Co.*, 251 S.W.3d 68, 74–75 (Tex.—Corpus Christi 2008, orig. proceeding)). The parties’ agreement fixes both a forum and a venue by providing that cases be tried in the county in which the leased premises are located. We decide whether the selection

of New York State as the forum for disputes arising under the lease agreement is enforceable.²

A trial court abuses its discretion in refusing to enforce a forum-selection clause unless the party opposing enforcement clearly shows “(1) enforcement would be unreasonable or unjust, (2) the clause is invalid for reasons of fraud or overreaching, (3) enforcement would contravene a strong public policy of the forum where the suit was brought, or (4) the selected forum would be seriously inconvenient for trial.” *In re ADM Investor Servs.*, 304 S.W.3d 371, 375 (Tex. 2010) (orig. proceeding). “The burden of proof is heavy for the party challenging enforcement.” *Id.*

Morice contends the trial court’s order denying his motion to dismiss is contrary to these principles of law. Equity responds by asserting a number of reasons why this case should be maintained in Texas, the first reason being that the Texas Deceptive Trade Practices Act (DTPA) and the Fair Debt Collection Practices Act (FDCPA) require as much. *See* 15 U.S.C. §§ 1692–1692p (2011);

² Some Texas authorities hold that venue selection, in contrast to forum selection, cannot be the subject of private contract, because an advance agreement regarding venue must not encroach on the statutory scheme for fixing venue. *See Fleming v. Ahumada*, 193 S.W.3d 704, 712–713 (Tex. App.—Corpus Christi 2006, no pet.); *Bristol-Myers Squibb Co. v. Goldston*, 957 S.W.2d 671, 674 (Tex. App.—Fort Worth 1997, pet. dism’d by agr.) (“Because venue is fixed by law, any agreement or contract whereby the parties try to extend or restrict venue is void as against public policy.”). Because we decide that New York is the appropriate forum, and the lease agreement provides that New York law governs, we do not reach the issue of the appropriateness of any particular venue under New York law.

TEX. BUS. & COMM. CODE ANN. §§ 17.41–.63 (West 2011). Equity cites each statute’s venue provision to support its suggestion that, despite the forum-selection clause, any suit to collect amounts owed under the lease agreement must be brought in Harris County, where Morice now resides, and not in New York, where the apartment building is located. *See* 15 U.S.C. § 1692i; TEX. BUS. & COMM. CODE ANN. § 17.56. We disagree. Neither statute mandates that suit be brought in Harris County. *See* 15 U.S.C. § 1692i(2)(A), (B) (providing that legal action subject to FDCPA may be brought in judicial district in which consumer signed contract *or* in which consumer resides at commencement of action); TEX. BUS. & COMM. CODE ANN. § 17.56 (providing that DTPA action may be brought in county of proper venue under Texas’s general venue rule *or* county in which defendant solicited transaction made the subject of lawsuit). More importantly, however, Equity’s petition includes only one cause of action—breach of the lease agreement. The petition does not assert any cause of action under the DTPA, and Equity has not made any showing that it is a debt collector or that its efforts to collect money from Morice are subject to the FDCPA.

Equity next argues that, even if Harris County is not a mandatory venue under the DTPA or the FDCPA, it is a permissive venue under Texas’s general venue rule, and, as the plaintiff in this case, Equity is entitled to its choice of venue. *See generally* TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a) (West

2002). This argument ignores the fact that Equity chose the forum for its suit against Morice when it executed the lease agreement, well before it filed its petition with the Harris County trial court. The trial court's order permitting Equity to litigate its claim in a forum other than the contractually designated one encourages the type of forum shopping that the Texas Supreme Court has cautioned against. *See, e.g., In re Lisa Laser USA, Inc.*, 310 S.W.3d 880, 883 (Tex. 2010); *In re AIU Ins. Co.*, 148 S.W.3d at 117–20.

Equity also argues that enforcement of the forum-selection clause contravenes public policy by “encourag[ing] consumer litigation in locations where a consumer does not reside.” As discussed above, however, Equity has made no showing that its lawsuit is subject to the provisions of the two consumer litigation statutes on which it relies, the DTPA and the FDCPA. Because both statutes would permit suit in a venue other than the county in which Morice now resides, we cannot conclude that enforcement of a clause designating New York as the place for suit violates the public policy underlying those statutes. Given that Equity's claim involves an alleged breach of a New York contract anticipated to be performed in New York and executed by a person then living in New York and a company based in New York, we also cannot conclude that the circumstances of this lawsuit threaten any other public policy of the State of Texas.

In summary, Equity has not demonstrated a basis for avoiding the forum-selection clause in this breach of contract case seeking to enforce other obligations in the same contract. Accordingly, we grant mandamus relief to enforce the forum-selection clause. *See In re AIU Ins. Co.*, 148 S.W.3d at 117–20 (Tex. 2004) (concluding that appeal is not an adequate remedy for trial court’s failure to enforce forum-selection clause).

Conclusion

For the foregoing reasons, we conditionally grant Morice’s petition. We lift our order staying the trial court’s proceedings and direct the trial court to promptly dismiss this case without prejudice. Our writ will issue only if the trial court fails to do so.

Jane Bland
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.