Affirmed and Memorandum Opinion filed June 17, 2021.

In The

Fourteenth Court of Appeals

NO. 14-20-00075-CV

JACKIE R. STEVENSON, Appellant

V.

EDWARD L. ROBERTS AND CRST EXPEDITED, INC., Appellees

On Appeal from the 61st District Court
Harris County, Texas
Trial Court Cause No. 2019-09041

MEMORANDUM OPINION

Appellant Jackie R. Stevenson sued appellees Edward L. Roberts and CRST Expedited, Inc. for personal injuries allegedly incurred while Stevenson was a passenger in a truck driven by Roberts as an employee of CRST. At the time of the accident Stevenson was acting as an instructor for Roberts, a student driver. The trial court granted Roberts and CRST's motion to dismiss based on a forum-selection clause, which appears in Stevenson's contract with CRST. Stevenson challenges the trial court's dismissal alleging (1) the contract containing the forum-selection clause

had been superseded by a subsequent addendum; and (2) alternatively, the forum-selection clause does not apply to Stevenson's claims of negligence. We hold that the contract containing the forum-selection clause was the operative contract between the parties and Stevenson's claims fall within the forum-selection clause. We therefore affirm the trial court's judgment of dismissal.

BACKGROUND

Stevenson entered into a contract with CRST to drive a truck as an independent contractor for CRST. Stevenson signed the Independent Contractor Operating Agreement ("the Independent Contractor Agreement") on July 15, 2015. The Independent Contractor Agreement contained a forum-selection clause requiring all claims or disputes arising from or in connection with the agreement to be brought in Iowa:

> GOVERNING LAW. This Agreement shall be interpreted in accordance with, and governed by, the laws of the United States and, except as otherwise provided herein, of the State of Iowa, without regard to the choice-of-law rules of such State or any other jurisdiction. THE PARTIES FURTHER AGREE THAT ANY CLAIM OR DISPUTE ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER UNDER FEDERAL, STATE, LOCAL, OR FOREIGN LAW (INCLUDING BUT NOT LIMITED TO 49 C.F.R. PART 376), SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS SERVING CEDAR RAPIDS, IA. THE PARTIES HEREBY CONSENT TO THE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS SERVING CEDAR RAPIDS, IA.

The Independent Contractor Agreement contained several addenda, including a Lead Driver Addendum ("the Addendum"), which Stevenson signed two days after the Independent Contractor Agreement on July 17, 2015. The Addendum permitted Stevenson to train student drivers for CRST. The Independent Contractor Agreement and the Addendum both contained standard merger clauses. The merger clause in

the Addendum read as follows:

> **ENTIRE UNDERSTANDING**. This Addendum contains the entire understanding of the parties as to its subject matter and fully replaces and supersedes all prior and contemporaneous agreements on the same subject.

According to Stevenson's petition, filed in Harris County, Roberts was driving with Stevenson as the passenger/instructor on February 22, 2018 at 12:55 a.m. on Interstate 40 in Oklahoma. Stevenson and Roberts were the only occupants of the truck. Stevenson alleged that Roberts "lost control on the icy roadway and ran into the center median, hitting a cable barrier, rotating, and then rolling." Stevenson alleged that he suffered personal injuries as a result of the accident, which he alleged was caused by Roberts's negligence. Roberts answered, alleging, inter alia, comparative negligence of Stevenson.

Roberts and CRST filed a motion to dismiss the Harris County suit invoking the forum-selection clause in the Independent Contractor Agreement. Stevenson responded to the motion to dismiss, asserting his claim was not subject to the forum-selection clause because (1) the Addendum, which did not contain a forum-selection clause, superseded the Independent Contractor Agreement; and (2) in the alternative, the forum-selection clause did not apply to Stevenson's personal-injury claim. The trial court held a non-evidentiary hearing, and granted appellees' motion to dismiss. Stevenson filed this appeal.

ANALYSIS

In two issues Stevenson challenges the trial court's judgment dismissing his suit asserting (1) the parties did not contract for a forum-selection clause because the Addendum superseded the Independent Contractor Agreement; and (2) if the parties contracted for a forum-selection clause it did not apply to the facts of this suit.

I. Standard of Review and Applicable Law

The construction of an unambiguous agreement presents a question of law that we review de novo. *Moayedi v. Interstate 35/Chisam Rd., l.P.*, 438 S.W.3d 1, 7 (Tex. 2014). Our primary concern in interpreting an agreement is to ascertain and give effect to the intentions of the parties as expressed in the instrument. *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003). Courts interpret unambiguous forum-selection clauses according to their plain language under contract interpretation principles. *Alattar v. Kay Holdings, Inc.*, 485 S.W.3d 113, 119 (Tex. App.—Houston [14th Dist.] 2016, no pet.).[1]

Contractual forum-selection clauses allow contracting parties to "preselect the jurisdiction for dispute resolution." *Pinto Tech. Ventures, L.P. v. Sheldon*, 526 S.W.3d 428, 436 (Tex. 2017). Although once disfavored, such clauses are presumptively valid, *In re Lyon Fin. Servs., Inc.*, 257 S.W.3d 228, 232 (Tex. 2008) (orig. proceeding), and constitute consent to jurisdiction in the agreed forum. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 792 (Tex. 2005) (personal jurisdiction may be waived). Courts must enforce a valid 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.'" *Rieder v. Woods*, 603 S.W.3d 86, 93 (Tex. 2020) (quoting *In re Laibe Corp.*, 307 S.W.3d 314, 316 (Tex. 2010) (orig. proceeding)). This is a heavy burden to overcome. *Id.*

In this case, the validity of the forum-selection clause is not in dispute. The

[1] Neither side here argues that the agreements are ambiguous, and we have discerned no relevant ambiguity.

dispute is two-fold: (1) whether the forum-selection clause in the Independent Contractor Agreement was superseded by the Addendum; and (2) whether the claims asserted by Stevenson fall within the scope of the forum-selection clause.

II. The Independent Contractor Agreement and Addendum are one instrument rather than two separate contracts.

The first issue raised by Stevenson requires us to determine whether the Addendum and the Independent Contractor Agreement are separate agreements or one instrument. Stevenson argues that the operative agreement between the parties is the Addendum, which does not contain a forum-selection clause. Roberts and CRST argue that the operative agreement is the Independent Contractor Agreement because the Addendum and the Independent Contractor Agreement are one instrument.

We construe a contract in a manner that gives "effect to the parties' intent expressed in the text," but we may also take into account "the facts and circumstances surrounding the contract's execution." *Americo Life, Inc. v. Myer*, 440 S.W.3d 18, 22 (Tex. 2014). Under appropriate circumstances, "instruments pertaining to the same transaction may be read together to ascertain the parties' intent, even if the parties executed the instruments at different times and the instruments do not expressly refer to each other." *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000). Where appropriate, "a court may determine, as a matter of law," that multiple separate contracts, documents, and agreements "were part of a single, unified instrument." *Id.*

Whether several writings should be considered as a single unified instrument primarily turns on whether each written agreement and instrument was executed for the "same purpose" and whether they were a necessary part of the "same transaction." *Rieder*, 603 S.W.3d at 94-95 n.35. Important for our purposes, if the

two agreements are construed together as one unified contract, then a forum-selection clause in one of the agreements will be applied to any disputes arising out of the unified contract. *Laibe Corp.*, 307 S.W.3d at 317 (where two separate documents related to the sale of a drilling rig could be read together as a single contract, the court could enforce a forum-selection clause contained in only one of the documents). On the other hand, if the two instruments cannot be construed together to form one unified contract, a forum-selection clause contained in one of the instruments will not be applied to the other. *See Rieder*, 603 S.W.3d at 96, 102 (without evidence to the contrary, two instruments cannot be considered as a single, unified contract when the two agreements are executed by different parties, deal with separate situations, impose distinct obligations, and are governed by different law).

Here, the Independent Contractor Agreement and the Addendum concern the same transaction—the employment relationship between Stevenson and CRST. The Addendum, by virtue of its title and its plain language, is a part of the Independent Contractor Agreement. At the top of the Addendum are the words, "CRST Expedited, Inc. Independent Contractor Operating Agreement." The third paragraph of the Addendum references Stevenson's employment as an independent contractor pursuant to the Independent Contractor Agreement.

By its terms, the Addendum is a part of the Independent Contractor Agreement and authorizes Stevenson as an independent contractor to participate in the Lead Driver Program.[2] The text of the Independent Contractor Agreement and the Addendum do not identify the Addendum as a document that supersedes the Independent Contractor Agreement. Quite the opposite, the Addendum references

[2] Black's Law Dictionary defines "addendum" as "Something to be added, usu[ally] to a document; esp[ecially], a supplement to a speech, book, contract, or other document to alter its contents or give more information." Black's Law Dictionary (11th ed. 2019).

the Independent Contractor Agreement and cannot be read as a separate agreement.

In short, the two agreements were not intended to function separately, but were instead intended to function in tandem with each other to accomplish the same purpose, i.e., to set forth the terms of Stevenson's employment. *See generally In re Lisa Laser USA, Inc.*, 310 S.W.3d 880, 885 (Tex. 2010) (orig. proceeding) (holding that a document with multiple subparts referencing each other, which would be incomplete without each other, comprised a single agreement). And, in turn, because the two agreements form one unified contract, the forum-selection clause contained in the Independent Contractor Agreement must be applied to any disputes arising from that contract in accordance with the Texas Supreme Court's opinion in *Laibe Corp.*, 307 S.W.3d at 317. We therefore conclude that the Addendum is not a separate agreement and did not supersede the forum-selection clause in the Independent Contractor Agreement. *See id*.

Stevenson argues that the Addendum, which memorialized his participation in the Lead Driver Program, was the operative agreement between Stevenson and CRST at the time of the accident. Stevenson asserts that the merger clause in the Addendum indicated the parties' intent that the Addendum supersede the Independent Contractor Agreement. Both the Independent Contractor Agreement and the Addendum contain standard merger clauses. A merger clause is a contractual provision stating that the contract represents the parties' complete agreement and supersedes all informal understandings and oral agreements relating to the subject matter of the contract. *Id.* at 96. However, the merger clause in the Addendum provides that the Addendum, "supersedes all prior and contemporaneous agreements on the same subject." The merger clause does not supersede all prior terms, but only supersedes any prior agreements related to the same subject matter, i.e., lead driver services. Because the Independent Contractor Agreement and Addendum act as one

single instrument, the operative agreement between the parties contains a forum-selection clause that must be enforced if the claims fall within its scope.

III. The parties' dispute is governed by the forum-selection clause.

Stevenson further asserts that the parties' dispute is not governed by the forum-selection clause.

To determine whether claims fall within the scope of a forum-selection clause, the Texas Supreme Court held that "a reviewing court should engage in a 'common-sense examination of the claims and the forum-selection clause to determine if the clause covers the claims.'" *Lisa Laser USA, Inc.*, 310 S.W.3d at 884 (quoting *In re Int'l Profit Assocs., Inc.*, 274 S.W.3d 672, 677 (Tex. 2009) (orig. proceeding)). We make this determination based on "the language of the clause and the nature of the claims that are allegedly subject to the clause." *Deep Water Slender Wells, Ltd. v. Shell Int'l Expl. & Prod., Inc.*, 234 S.W.3d 679, 688 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (citing *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216, 221–22 (5th Cir. 1998)). We look to federal law for guidance in analyzing forum-selection clauses. *In re Int'l Profit Assocs., Inc.*, 274 S.W.3d at 677.

The starting point of the inquiry is the forum-selection clause's language. *Pinto Tech. Ventures*, 526 S.W.3d at 437. In this case, the parties agreed to resolve "any claim or dispute arising from or in connection with this agreement" in Iowa. The supreme court, noting that dictionaries define "arise" to mean "to originate from a specified source," "to stem (from)," and "to result (from)," observed that the words "arising out of" have broad significance. *Id.* (citing *In re NEXT Fin. Grp.*, 271 S.W.3d 263, 268 (Tex. 2008) (orig. proceeding). The court further held that "[w]hen a forum-selection clause encompasses all 'disputes' 'arising out of' the agreement, instead of 'claims,' its scope is necessarily broader than claims based solely on rights originating exclusively from the contract." *Pinto Tech. Ventures*, 526 S.W.3d at 439.

In *Pinto Tech. Ventures*, the Texas Supreme Court examined federal authority and prior supreme court authority in the interpretation of "arising out of" in forum-selection clauses, especially when determining whether the clauses extend to non-contractual claims. *Pinto Tech. Ventures*, 526 S.W.3d at 438–40. The court warned against using an analytical construct that focuses only on the claims alleged and a hypothetical world in which the agreement does not exist. *Id.* at 439.

The Texas Supreme Court previously applied the "but-for" causal standard to a forum-selection clause applicable to "any dispute arising out of" a distribution agreement. *See In re Lisa Laser*, 310 S.W.3d at 886 (concluding that a party's "claims arise out of the Agreement" when "but for the Agreement, [the party] would have no basis to complain.").

After reviewing a federal district court's decision within the Fifth Circuit, and the Seventh Circuit's criticism of the "but-for" test, the Texas Supreme Court examined the factual allegations in *Pinto Tech. Ventures* to determine whether (1) the existence or terms of the agreement were operative facts in the dispute; and (2) "but for" that agreement the plaintiffs would not have been aggrieved. *Pinto Tech. Ventures*, 526 S.W.3d at 440.

With that framework in mind, we turn to the factual allegations supporting Stevenson's complaint to determine whether (1) the existence or terms of the Independent Contractor Agreement are operative facts in the dispute; and (2) "but for" the Independent Contractor Agreement Stevenson would not be aggrieved. Engaging in a common-sense examination of the substance of the claims made and the terms of the forum-selection clause, we conclude Stevenson's claims fall within the clause's scope. Reviewing the allegations in the live pleadings, the dispute substantively concerns a suit for negligence filed by Stevenson. Roberts and CRST asserted comparative negligence as a defense.

Although Stevenson's suit is not a contract claim, a but-for relationship between the dispute and the Independent Contractor Agreement is evident. The Independent Contractor Agreement authorized Stevenson to drive a truck for CRST. The Addendum authorized Stevenson to act as an instructor in their Lead Driver Program. Without the Independent Contractor Agreement and the subsequent Addendum Stevenson would not have been serving as Roberts's instructor at the time of the accident. Stevenson conceded that the suit was a result of Stevenson and Roberts being in the vehicle as part of the Lead Driver Agreement, which we have held was not separate from the Independent Contractor Agreement. In examining Stevenson's claims, a but-for relationship between the dispute and the Independent Contractor Agreement is evident.

For these reasons we hold the dispute at issue arises out of the agreement between the parties and therefore falls with the scope of the Iowa forum-selection clause. This is consistent with the supreme court's direction requiring that we focus on the substance of the claims, not the labels, and avoid "slavish adherence to a contract/tort distinction." *Pinto Tech. Ventures*, 526 S.W.3d at 441 (quoting *In re Int'l Profit Assocs.*, 274 S.W.3d at 677).

CONCLUSION

We overrule Stevenson's issues and affirm the trial court's judgment of dismissal.

/s/ Jerry Zimmerer
Justice

Panel consists of Justices Bourliot, Zimmerer, and Spain (Bourliot, J. and Spain, J. concurring without opinion).