COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00453-CV

IN RE HAPPY STATE BANK AND SCOTTY LINDLEY — RELATORS

ORIGINAL PROCEEDING
TRIAL COURT NO. CV16-0134

MEMORANDUM OPINION[1]

In this mandamus proceeding, we are asked to determine dominant jurisdiction and venue regarding two suits pending in Parker and Taylor Counties. The Parker County trial court determined that neither dominant jurisdiction nor statutory venue provisions required abatement or transfer of the Parker County case to Taylor County. We conclude that the two suits are inherently interrelated, requiring abatement of the second-filed, Parker County suit based on dominant jurisdiction.

[1]*See* Tex. R. App. P. 47.4, 52.8(d).

I. BACKGROUND

The procedural histories of the underlying suits are lengthy and detailed, which is true in most cases involving dominant jurisdiction. Our recitation of these histories is necessarily protracted to place our holding in the appropriate context.

A. INDEBTEDNESS AND GUARANTY AGREEMENTS

On December 30, 2013, relator Happy State Bank (HSB) and real party in interest LeClair Operating, L.L.C.[2] entered into a loan agreement under which HSB loaned LeClair $2.3 million and LeClair signed a promissory note in favor of HSB, providing that the note was secured by a deed of trust "on real property located in Taylor County, State of Texas." The note contained a choice-of-venue paragraph, stating that LeClair agreed, upon HSB's request, "to submit to the jurisdiction of the court of Taylor County" if "there is a lawsuit" and "if the transaction evidenced by this Note occurred in Taylor County." Tony Robinson, the "Managing Member and President" of LeClair, signed the promissory note. That same day several guarantors signed guaranty agreements under which they agreed to be jointly and severally liable for LeClair's repayment obligations under

[2]The parties' briefing caused some confusion regarding the appropriate real parties in interest. In an abundance of caution, we have considered all parties to the Parker and Taylor County suits, other than the relators, to be parties "whose interest would be directly affected by the relief sought" and, therefore, have designated them as real parties in interest for the purpose of notice to the parties. Tex. R. App. P. 52.2; *see* Tex. R. App. P. 12.6. But LeClair points out that it is the primary real party in interest, which HSB does not dispute. Indeed, LeClair is the only party that responded to HSB and Lindley's petition. Accordingly, we refer to only LeClair as a real party in interest in this opinion.

the note, including any renewals, extensions, or modifications of LeClair's debt. Each guaranty agreement included a choice-of-venue provision: "[T]he Guarantor hereby unconditionally submits and agrees to the jurisdiction of any appropriate Court in Taylor County, Texas, wherein venue hereunder shall exclusively lie." The initial guarantors for LeClair's note were Tony Robinson; Lori Robinson; David Deison; Nancy Deison; J. Lyndell Kirkley; Bart Dale; Jennifer Dale;[3] the Deisons' company Blest, Ltd.; Kirkley's company Sevens Corporation; and the Dales' company Bart Dale Oil & Gas, LP (BDOG).

On March 24, 2014, LeClair and HSB entered into an amendment to the loan agreement, allowing LeClair to transfer some of its securing assets to two of its subsidiary companies—Petrol Services & Plugging, L.L.C. and Petrolchem, L.L.C.—and recognizing that the subsidiaries granted HSB security interests in those assets to secure the note. Relator Scotty Lindley, the "President Abilene Market," signed the amendment on behalf of HSB. That same day, Petrol Services and Petrolchem executed a guaranty agreement in favor of HSB regarding LeClair's debt. As did each of the previous agreements, venue was contractually and "exclusively" set in Taylor County. Kirkley, Tony Robinson, David Deison, and Bart Dale signed the agreement as "Manager[s]" of Petrol Services and Petrolchem.

[3]On November 15, 2013, Jennifer Dale had signed a guaranty agreement in favor of HSB under which she guaranteed the present and future debts of LeClair's predecessor company, BDLT Energy, LLC. This agreement also contained a provision setting venue in Taylor County "[i]f there is a lawsuit."

On July 31, 2014, LeClair borrowed an additional $56,000 from HSB to purchase a truck, which HSB acquired a security interest in. Tony Robinson signed the promissory note and the security agreement on behalf of LeClair.

LeClair defaulted on its repayment obligations under both notes, and HSB accelerated the maturity of the indebtedness as permitted under the terms of the notes. HSB demanded payment from LeClair's guarantors to no avail.

B. LITIGATION

1. Parker County

On February 5, 2016, LeClair and King Goen, LLC—another company Tony Robinson was a "member" of—filed suit against Tony Robinson and TSW Energy, LLC in Parker County. LeClair and King Goen alleged that "Tony Robinson and his family are owners of TSW Energy, LLC." LeClair and King Goen asserted that Tony Robinson and TSW misappropriated entity property, slandered their other members, and refused to turn over operations of wells owned by King Goen. Other than a reference to a certificate of deposit held by HSB as security for the disputed wells, LeClair and King Goen do not mention any actions or inactions by HSB or Lindley or the specific promissory notes[4] in

[4]In their factual allegations, LeClair and King Goen recognized that they became "obligated on certain promissory notes which they would not have become obligated but for the representations of [Tony Robinson and TSW Energy]." None of their specified claims seek rescission or otherwise attack the validity of the notes or the guaranty agreements.

their claims. As characterized by HSB and Lindley, this suit was an "inter-company fight."

On October 10, 2016, LeClair and King Goen amended their petition to add David Deison, Bart Dale, and Kirkley as plaintiffs but did not amend the substance of their claims. Based on an arbitration clause contained in King Goen's membership agreement, Tony Robinson and TSW Energy moved to compel arbitration. In response, the Parker County plaintiffs summarized their claims, which again did not include any mention of HSB, Lindley, or the enforceability of the notes and guaranties. The trial court entered an agreed order granting the motion and sent the case to mediation and, if unsuccessful, to arbitration.

On February 1, 2017, the Parker County plaintiffs amended their petition to add BDOG and Sevens Corporation as plaintiffs, but did not add any substantive claims. All parties, including newly added plaintiffs BDOG and Sevens Corporation, signed a letter agreement on February 21, 2017, recognizing that the previously ordered arbitration had resulted in "a comprehensive resolution of all of the disputes between and among the various parties." Although the letter agreement requested that the trial court enter an "Agreed Final Arbitration Award," the record before this court does not reflect that the trial court has entered such an award.[5]

[5]LeClair avers that the Robinsons "immediately breached a portion of the disputes that were thought to have been settled" and that not all claims had been

2. Taylor County

On May 1, 2017, HSB filed suit against the Robinsons, the Deisons, Kirkley, the Dales, Blest, Sevens Corporation, and BDOG—the majority of LeClair's guarantors—seeking recovery based on those guarantors' breaches of their guaranty agreements. HSB further alleged that venue was proper in Taylor County based on the venue provision in each guaranty agreement, citing the general venue rule and the permissive venue statute applicable to contracts that are to be performed in a particular county. *See* Tex. Civ. Prac. & Rem. Code Ann. §§ 15.002, 15.035(a) (West 2017).

On June 2, 2017, the Deisons, Kirkley, the Dales, Blest, Sevens Corporation, and BDOG—many of the guarantors of LeClair's debts—filed counterclaims against HSB, cross-claims against the Robinsons, and third-party claims against Lindley, alleging fraud and civil conspiracy based on HSB's, the Robinsons', and Lindley's misrepresentations surrounding the execution of the guaranty agreements. *See* Tex. R. Civ. P. 38(a), 97(a), (e). They requested that the guaranties be "rescind[ed]."

3. The Aftermath

Six days after the guarantors filed their counterclaims, cross-claims, and third-party claims in Taylor County, the Parker County plaintiffs amended their petition for a third time to add Nancy Deison, Jennifer Dale, and Blest as

---

finally arbitrated; thus, the letter agreement did not terminate the Parker County suit according to LeClair. Indeed, the Parker County plaintiffs filed a third and fourth amended petition after the letter agreement was filed.

plaintiffs, which had all been named as defendants in Taylor County. In the same amended petition, LeClair filed claims against Lindley, HSB, Lori Robinson, and the "other Defendants"—Tony Robinson, TSW Energy, and TSW Oil & Gas—for fraud and civil conspiracy and requested that the trial court "rescind the Promissory Notes."

HSB filed a plea in abatement and an alternative motion to transfer venue. In its plea, HSB asserted that the Taylor County suit was the first-filed suit regarding the enforcement of the notes and guaranty agreements held by HSB and, therefore, acquired dominant jurisdiction over LeClair's claims filed in Parker County. In its alternative venue motion, HSB argued that mandatory venue over LeClair's claims filed in Parker County lay in Taylor County as provided in the guaranty agreements, which were major transactions that specified venue in Taylor County. *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.020(b), (c)(2) (West 2017). Lindley filed a motion to transfer venue and alternative plea in abatement, adopting HSB's venue and plea-in-abatement arguments. The Parker County plaintiffs amended their petition for a fourth time after HSB and Lindley sought abatement or transfer of LeClair's claims, but they added no new parties or distinct claims. No party argues that the guarantor plaintiffs' claims in Parker County—the inter-company claims—were subject to the pleas in abatement or motions to transfer. Indeed, HSB and Lindley moved for abatement or transfer of only "LeClair's claims" brought against them.

On December 11, 2017, the Parker County trial court entered an order denying HSB's and Lindley's pleas in abatement and motions to transfer venue.[6] HSB and Lindley now seek mandamus relief from the trial court's denials.

II. STANDARD FOR RELIEF

Mandamus relief is justified only if the trial court committed a clear abuse of discretion and the relator has no adequate remedy at law. *See In re Coppola*, 535 S.W.3d 506, 508 (Tex. 2017) (orig. proceeding).

A. ADEQUATE REMEDY AT LAW

If a trial court clearly abuses its discretion by denying a plea in abatement involving dominant jurisdiction, the appropriate remedy is by mandamus. *See In re Red Dot Bldg. Sys., Inc.*, 504 S.W.3d 320, 322 (Tex. 2016) (orig. proceeding); *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 299–300 (Tex. 2016) (orig. proceeding); *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974) (orig. proceeding); *Dall. Fire Ins. Co. v. Davis*, 893 S.W.2d 288, 292 (Tex. App.—Fort Worth 1995, orig. proceeding). Similarly, mandamus is the proper remedy if the trial court clearly abuses its discretion by denying a motion to enforce a contractual, mandatory venue-selection clause. *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.0642 (West 2017); *In re Laibe Corp.*, 307 S.W.3d 314, 316 (Tex. 2010) (orig. proceeding); *In re Lyon Fin. Servs., Inc.*, 257 S.W.3d 228, 231 (Tex. 2008) (orig. proceeding). *See generally In re Masonite Corp.*, 997 S.W.2d 194,

[6]The trial court held a nonevidentiary hearing on the pleas and motions on November 27, 2017, but did not rule at that time.

197 (Tex. 1999) (recognizing venue rulings generally not reviewable by mandamus unless the trial court disregarded guiding principles of law, rendering mandamus appropriate remedy). Thus, we need only determine if the trial court clearly abused its discretion by denying HSB's and Lindley's pleas in abatement based on dominant jurisdiction or by denying their motions to transfer venue.[7]

B. CLEAR ABUSE OF DISCRETION

A trial court clearly abuses its discretion if its decision is so arbitrary or unreasonable that it amounts to a clear and prejudicial error of law or if it incorrectly analyzes or applies the law. *In re Olshan Found. Repair Co.*, 328 S.W.3d 883, 888 (Tex. 2010) (orig. proceeding). We review the trial court's application of the law de novo. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding) "A trial court has no 'discretion' in determining what the law is or applying the law to the facts." *Id.* As such, "[w]e must . . . carefully establish the controlling legal principles at issue in this case." *J.B. Hunt*, 492 S.W.3d at 294. We conclude, based on controlling dominant-jurisdiction precepts, that the trial court clearly abused its discretion by denying HSB's and Lindley's pleas in abatement.

1. Dominant Jurisdiction

HSB, Lindley, and LeClair recognize that the trial court's dominant-jurisdiction determination was governed by a two-part inquiry: (1) whether there

[7]LeClair does not assert in its response that HSB and Lindley are required to establish the lack of an adequate remedy by appeal, focusing solely on the propriety of the trial court's dominant-jurisdiction and venue rulings.

was an inherent interrelation between the subject matter of the Taylor and Parker County suits and (2) if so, whether an exception to dominant jurisdiction applied. *See id.* at 292, 294, 298. Of course, their positions diverge regarding the answers to these questions.

a. Inherent interrelation

Generally, the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts. *Id.* at 294. "In instances where inherently interrelated suits are pending in two counties, and venue is proper in either county,[8] the court in which suit was first filed acquires dominant jurisdiction." *Red Dot*, 504 S.W.3d at 322. Thus, when two suits are inherently interrelated, the trial court is required to abate the second-filed suit. *Id.*; *J.B. Hunt*, 492 S.W.3d at 294. To determine if claims are inherently interrelated, triggering dominant jurisdiction, we are guided by the compulsory-counterclaim rule. *See J.B. Hunt*, 492 S.W.3d at 292–93; *see also* Tex. R. Civ. P. 97(a). A counterclaim is compulsory if the claim: (1) is within the jurisdiction of the court, (2) was not the subject of a pending action when the original suit was commenced, (3) is mature and owned by the defending party at the time the pleading is filed, (3) arose out of the same transaction or occurrence that is the

[8]LeClair does not argue that Taylor County is not a county of proper venue and recognizes that "perhaps more events giving rise to LeClair['s] . . . claim transpired in Taylor County," which would justify permissive venue in Taylor County. LeClair asserts only that the mandatory-venue provision HSB and Lindley asserted in their motions to transfer venue is inapplicable to mandate venue in Taylor County.

subject matter of the opposing party's claim, (4) is against an opposing party in the same capacity, and (5) does not require the presence of third parties over whom the court cannot acquire jurisdiction. *See* Tex. R. Civ. P. 97(a); *J.B. Hunt*, 492 S.W.3d at 292–93.

Thus, claims are interrelated and subject to a plea in abatement if the first-filed claims are not the subject of a pending action at the time the pleading raising those claims is filed and if the claims meet the other dictates of rule 97(a). Tex. R. Civ. P. 97(a); *see J.B. Hunt*, 492 S.W.3d at 293 ("[A] counterclaim is compulsory if, in addition to Rule 97(a)'s other requirements, it was not the subject of a pending action when the original suit was commenced."). LeClair asserts that its claims against HSB and Lindley are not compulsory essentially because LeClair is not a named party to the Taylor County suit and because the Taylor County court does not have personal jurisdiction over LeClair or subject-matter jurisdiction over the dispute between LeClair, HSB, and Lindley.

For the following reasons, we conclude that LeClair's Parker County claims are compulsory counterclaims and, thus, are inherently interrelated to the first-filed, Taylor County claims. *See, e.g.*, *Cleveland v. Ward*, 285 S.W. 1063, 1066 (Tex. 1926), *disapproved of on other grounds by Walker*, 827 S.W.2d at 842; *Lamar Sav. Ass'n v. White*, 731 S.W.2d 715, 716 (Tex. App.—Houston [1st Dist.] 1987, orig. proceeding) (quoting *V.D. Anderson Co. v. Young*, 101 S.W.2d 798, 800–01 (Tex. 1937)). *See generally J.B. Hunt*, 492 S.W.3d at 292–93

(discussing rule 97(a) requirements for counterclaim to be considered compulsory).

(1) within the jurisdiction of Taylor County court

LeClair is incorrect that the lack of service on LeClair in Taylor County equates to the Taylor County court having no personal jurisdiction over LeClair or subject-matter jurisdiction over its claims. The inquiry is whether the Taylor County court would have the power to bring all necessary parties before it, not whether those parties actually have been cited and served. *See Lamar Sav.*, 731 S.W.2d at 716–17. Here, LeClair agreed in the note "to submit to the jurisdiction of the courts of Taylor County." *See In re Fisher*, 433 S.W.3d 523, 532 (Tex. 2014) (orig. proceeding) (recognizing contractual consent to jurisdiction waives objections to personal jurisdiction). The Taylor County court would have the power to hale LeClair and its claims against HSB and Lindley, arising under the notes and guaranties, to Taylor County. *See, e.g.*, Tex. R. Civ. P. 39(a), 43.

(2) subject of a pending action

At the time LeClair filed its claims against HSB and Lindley implicating the enforceability of the notes and guaranties, that subject was pending in Taylor County. Therefore, LeClair's claims against HSB and Lindley are barred by this portion of rule 97(a). *See Commint Tech. Servs., Inc. v. Quickel*, 314 S.W.3d 646, 652 (Tex. App.—Houston [14th Dist.] 2010, no pet.) ("[B]ecause there was another action pending at the time Commint filed its petition in Harris County,

Commint's claims are barred by this component of the compulsory counterclaim rule.").

LeClair and the dissent assert that because HSB did not name LeClair as a defendant in its suit seeking to enforce the guaranty agreements in Taylor County, LeClair's later-filed claims against HSB and Lindley in Parker County were not the subject of a pending action and, therefore, were the first filed for purposes of dominant jurisdiction. But identical parties and identical claims are not required to conclude dominant jurisdiction demands abatement of a second-filed action. *See In re Volkswagen Clean Diesel Litig.*, No. 03-17-00478-CV, 2017 WL 3221748, at *3 (Tex. App.—Austin July 28, 2017, orig. proceeding) (quoting *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex. 1988), *clarified by J.B. Hunt*, 492 S.W.3d at 292–93); *Dall. Fire*, 893 S.W.2d at 292. What is required is that the claims in the first-filed suit may be amended to bring in all necessary and proper parties and issues. *See Wyatt*, 760 S.W.2d at 247 ("It is not required that the exact issues *and all the parties* be included in the first action before the second is filed, provided that the claim in the first suit may be amended to bring in all necessary and proper parties and issues." (emphasis added));[9] *Volkswagen*, 2017 WL 3221748, at *3 ("Several of the later-filing

[9]We agree with the dissent that the facts in *Wyatt* are not on all fours with the facts presented here. But the supreme court clearly stated a broad legal principle that was not factually limited: Not all parties must be identical to implicate dominant jurisdiction provided that the first-filed suit can be amended to add those parties. *Wyatt*, 760 S.W.2d at 247. Indeed, this court relied on *Wyatt* in holding that a first-filed suit's failure to include several parties that were named

counties argue that the doctrine of dominant jurisdiction does not apply to their respective suits because their lawsuits were the first to include certain defendants that were not named in the State's enforcement suits . . . . But the supreme court has rejected this argument [in *Wyatt*]." (footnote omitted)); *see also* Tex. R. Civ. P. 39(a), 43.

As HSB and Lindley assert, LeClair's claims against them in Parker County and HSB's and the guarantors' claims in Taylor County both seek to resolve the same indebtedness. HSB asks the Taylor County court to enforce the notes and guaranties in its claims against the guarantors; LeClair and the guarantors in the Taylor County suit claim that HSB and Lindley committed fraud surrounding the genesis of the notes and guaranties and ask the Parker County court for their rescission. The fact that HSB did not name LeClair as a defendant in Taylor County is not dispositive. *See Wyatt*, 760 S.W.2d at 247; *Volkswagen*, 2017 WL 3221748, at *3; *Dall. Fire*, 893 S.W.2d at 292. Six days after the guarantors filed their counterclaims and third-party claims in Taylor County, implicating the notes and guaranties, LeClair amended its petition in Parker County (1) to specifically name HSB and Lindley as defendants, (2) to raise the exact claims against HSB

---

in a second-filed suit did not render dominant jurisdiction inapplicable. *See Dall. Fire*, 893 S.W.2d at 292 ("[T]he fact that the Rancel Plaintiffs were not named as parties in the Tarrant County action until after the second Panola County action was filed does not mean that the Tarrant County action did not have dominant jurisdiction.").

and Lindley that the guarantors asserted in Taylor County,[10] and (3) to seek rescission of the notes. Before this amendment, neither LeClair—the principal obligor on the notes—nor any of the other Parker County plaintiffs had raised the unenforceability of the notes or guaranties in their inter-company claims.

We conclude that HSB's claims raised against LeClair's guarantors in Taylor County were not the subject of a pending action when the case was filed; thus, LeClair's subsequent Parker County claims dealing with the same subject matter as HSB's Taylor County claims—the enforceability of the notes and guaranties—may not be considered first-filed under this prong of the compulsory-counterclaim rule. *See, e.g.*, *Cleveland*, 285 S.W. at 1069–70; *In re Second St. Props., LLC*, No. 14-16-00390-CV, 2016 WL 7436649, at *3–4 (Tex. App.—Houston [14th Dist.] Dec. 22, 2016, orig. proceeding) (mem. op.); *Dall. Fire*, 893 S.W.2d at 292; *White v. Rupard*, 788 S.W.2d 175, 178 (Tex. App.—Houston [14th Dist.] 1990, writs denied).

(3) maturity of claim

The enforceability of the notes and guaranties had matured at the time HSB filed its claims and the guarantors filed their counterclaims and third-party claims. LeClair does not seem to dispute this in its response.

[10]In fact, LeClair repeated, essentially word for word, the guarantors' counterclaims and third-party claims brought against HSB and Lindley in Taylor County.

(4) arising out of the same transaction or occurrence

LeClair's claims against HSB and Lindley arose out of the same occurrences and transactions as HSB's claims against the guarantors of LeClair's debt and as the guarantors' counterclaims and third-party claims against HSB and Lindley. *See Archer Grp., LLC v. City of Anahuac*, 472 S.W.3d 370, 377 (Tex. App.—Houston [1st Dist.] 2015, no pet.); *Commint*, 314 S.W.3d at 652–53; *Jack H. Brown & Co. v. Nw. Sign Co.*, 718 S.W.2d 397, 400 (Tex. App.—Dallas 1986, writ ref'd n.r.e.). A claim arises out of the same transaction or occurrence if the same facts, whether disputed or not, are significant and logically relevant to both claims. *See Jack H. Brown*, 718 S.W.2d at 400. As HSB concisely states: "Here, it is clear that the disputed issues in the Taylor County court are identical to those in the Parker County court—namely, should the debt be paid and, if so, by whom?" *See, e.g.*, *Commint*, 314 S.W.3d at 653 ("Because the same facts would be needed in both cases, we conclude the claims meet the logical relationship test."). Indeed, if separate trials were allowed on the single issue of LeClair's and the guarantors' debts to HSB, inconsistent results could occur, the prevention of which is a core reason behind the dominant-jurisdiction doctrine as interpreted through the lens of the compulsory-counterclaim rule. *See Dall. Fire*, 893 S.W.2d at 292 ("To hold otherwise would emasculate the principle of dominant jurisdiction and wrongly encourage the filing of multiple lawsuits and forum-shopping."); *see also McCurdy v. Gage*,

69 S.W.2d 56, 59 (Tex. Comm'n App. 1934, judgm't affirmed); *Second St. Props.*, 2016 WL 7436649, at *3.

(5) capacity and (6) presence of third parties

LeClair's Parker County claims are against HSB and Lindley in the same capacities as HSB's and Lindley's capacities stated in the Taylor County suit. And finally, the suit does not require the presence of third parties over whom the Taylor County court could not exercise jurisdiction. Each party obligated to repay the indebtedness at issue had agreed to submit disputes surrounding the notes and guaranties to the jurisdiction of the Taylor County courts.

b. Exceptions to dominant jurisdiction

Although LeClair's Parker County claims against HSB and Lindley satisfy the compulsory-counterclaims test, dominant jurisdiction would not lie in Taylor County if an exception to the doctrine applies. *See J.B. Hunt*, 492 S.W.3d at 293–94. There are three dominant-jurisdiction exceptions: (1) conduct by a party that estops it from asserting prior, active jurisdiction, (2) the lack of either persons to be joined if feasible or the power to bring them before the court, and (3) the lack of intent to prosecute the first-filed action. *See Miles v. Ford Motor Co.*, 914 S.W.2d 135, 138 (Tex. 1995); *see also J.B. Hunt*, 492 S.W.3d at 294. We conclude LeClair has not met any of these exceptions.

LeClair asserts that HSB's failure to name LeClair as a defendant in Taylor County estops it from arguing that LeClair's Parker County claims are subject to

dominant jurisdiction and shows that it did not intend to prosecute its Taylor County claims.[11] But this specified conduct is not the equivalent of conduct that has been found to trigger estoppel, such as filing suit merely to obtain priority or filing suit to prevent defendants from also filing suit by fraudulently representing settlement was possible. *See, e.g.*, *Curtis v. Gibbs*, 511 S.W.2d 263, 267–68 (Tex. 1974); *Bonacci v. Bonacci*, 420 S.W.3d 294, 298–99 (Tex. App.—El Paso 2013, pet. denied). HSB was entitled to file suit to enforce the repayment obligations stated in the notes and guaranty agreements under their terms. No prior suit implicated the enforceability of the notes or guaranties or attacked HSB's and Lindley's conduct surrounding their creation.

HSB and Lindley explain that LeClair was not named as a defendant because it and some of its guarantors had represented in the Parker County suit that LeClair was insolvent. HSB's failure to name LeClair as a defendant in Taylor County does not rise to the level of conduct equating to estoppel; thus, HSB and Lindley may assert dominant jurisdiction based on the first-filed claims in Taylor County that implicate the enforceability of the notes and guaranties as do LeClair's second-filed claims in Parker County. *See J.B. Hunt*, 492 S.W.3d at 294–98. *See generally* 2 Roy W. McDonald & Elaine A. Grafton Carlson, *Texas*

[11]LeClair does not argue the second exception in its response. It argues only that HSB's failure to name LeClair as a defendant in the Taylor County suit estops HSB from asserting dominant jurisdiction. In any event, we addressed the ability to join LeClair as a party in Taylor County in our discussion of the applicability of the compulsory-counterclaim rule.

Civil Practice § 9:19[a] (2d ed. 2002) (discussing scope of exceptions to dominant jurisdiction); 16 Tex. Jur. 3d *Courts* § 82 (2013) (same).

2. Venue[12]

The trial court also denied HSB's and Lindley's alternative motion to transfer venue to Taylor County based on the venue-selection clause in LeClair's note. Section 15.020 provides that contractual venue-selection clauses are enforceable in cases involving major transactions.[13] Tex. Civ. Prac. & Rem. Code Ann. § 15.020(a)–(c). Unconscionable agreements, however, are not subject to this provision. *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.020(d)(1). LeClair argued that because Tony Robinson, HSB, and Lindley failed to disclose material facts to LeClair, LeClair's loan agreement with HSB was unconscionable, rendering the venue-selection clause in the note unenforceable. Although LeClair raised this argument to the trial court in response to HSB's and Lindley's motions to transfer, we agree with HSB and Lindley that LeClair's proffered, conclusory evidence on this issue did not rise to the level of prima facie proof.[14] *See* Tex. R. Civ. P. 87.3.

---

[12]We briefly address venue only in the alternative to our dispositive holding regarding dominant jurisdiction and in an abundance of caution.

[13]The $2.3 million loan qualifies as a major transaction. *See* Tex. Civ. Prac. & Rem. Code Ann. § 15.020(a).

[14]And as pointed out by HSB and Lindley as "absurd," Kirkley's affidavit—the venue evidence LeClair relies upon—averred that LeClair was taken advantage of "to a grossly unfair degree" by the misrepresentations of LeClair's president, Tony Robinson. *Cf. Hirsch v. Tex. Lawyers' Ins. Exch.*, 808 S.W.2d

LeClair also argues that the misrepresentations occurred before the loan agreement and, therefore, its claims do not rely on or arise from a major transaction. As pointed out by HSB and Lindley, this argument has been rejected. *See, e.g.*, *Fisher*, 433 S.W.3d at 529–31. Even if dominant jurisdiction did not apply to require abatement in favor of Taylor County, section 15.020 operated to place mandatory venue over LeClair's claims seeking rescission of the note in Taylor County; therefore, the trial court clearly abused its discretion by denying HSB's and Lindley's motions to transfer. *See In re Grp. 1 Realty, Inc.*, 441 S.W.3d 469, 473–74 (Tex. App.—El Paso 2014, orig. proceeding).

III. CONCLUSION

LeClair's claims based on the enforceability of the notes and guaranty agreements, which it filed in Parker County after HSB and the guarantors raised similar claims in Taylor County, meet the compulsory-counterclaim test; therefore, they were inherently interrelated for dominant-jurisdiction purposes. No exception to the application of dominant jurisdiction applies. We conclude that the trial court clearly abused its discretion by denying HSB's and Lindley's pleas in abatement and by failing to abate LeClair's Parker County claims against HSB and Lindley in favor of the first-filed claims raised in Taylor County. *See, e.g.*, *In re Dodd*, No. 01-17-00130-CV, 2017 WL 2645041, at *5–6 (Tex. App.—Houston [1st Dist.] June 20, 2017, orig. proceeding) (mem. op.).

561, 563 (Tex. App.—El Paso 1991, writ denied) (recognizing notice concerning a corporate matter given to president of corporation constitutes actual knowledge by the president and the corporation).

We direct the respondent to vacate the December 11, 2017 order denying HSB's and Lindley's pleas in abatement and to sign an order abating LeClair's claims against HSB and Lindley as requested in their pleas. We are confident that the respondent will comply, and our writ will issue only if the respondent fails to do so.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: SUDDERTH, C.J.; GABRIEL and PITTMAN, JJ.

SUDDERTH, C.J., filed a dissenting and concurring opinion.

DELIVERED: April 23, 2018