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STRAIGHT, INC., Appellant, v. **YORBA LINDA COMMERCENTER ASSOCIATES**, a general partnership, **WILLIAM K. DAVIS, RICHARD E. LUCY, CHARLES BUCHANAN, ROBERT J. THIERGARTNER and ALAN J. TUNTLAND**, as general partners of **DAVIS YORBA LINDA COMMERCE CENTER ASSOCIATES**, and **NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY d/b/a YORBA LINDA COMMERCENTER ASSOCIATES**, a general partnership, Appellees.

Case No. 91-02489

COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

594 So. 2d 849; 1992 Fla. App. LEXIS 1837; 17 Fla. L. Weekly D 591

February 28, 1992, Filed

SUBSEQUENT HISTORY: [**1] Released for Publication March 18, 1992. Petition for Review Dismissed May 15, 1992, Reported at 1992 Fla. LEXIS 947.

PRIOR HISTORY: Appeal from nonfinal order of the Circuit Court for Pinellas County; William L. Walker, Judge.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant challenged the Circuit Court for Pinellas County's (Florida) denial of its motion to dismiss appellees' complaint for improper venue. Appellant argued that the trial court should have dismissed the complaint based on a forum selection clause contained in the parties' contract.

OVERVIEW: Appellant and appellees entered into a lease agreement whereby appellant leased property in Yorba Linda, California from appellee center. The lease contemplated notices and rent payments to be sent to the lessor in Newport Beach, California. The contract showed that appellant was located in St. Petersburg, Florida and contained a forum selection clause indicating that all disputes were to be governed by the laws of the state where the leased property was located. Appellant vacated the premises and stopped paying rent. Thereafter, appellees brought an action in Pinellas County, Florida against appellant for breach of the lease agreement. The apparent basis for jurisdiction was the allegation that appellant's principal place of business was in Pinellas County. Appellant moved to dismiss the amended complaint and alleged improper venue. The court denied the motion and appellant sought review. The court reversed and dismissed the action due to improper jurisdiction. The court explained that the forum selection clause contained in the lease was enforceable because it was reasonable and did not violate public policy.

OUTCOME: The court reversed the trial court's order denying appellant's motion to dismiss and remanded with instructions to dismiss the action. The court held that the forum selection clause at issue was valid and enforceable because it was reasonable and did not violate public policy.

CORE TERMS: lease, forum selection clause, venue, industrial, principal place of business, rent, leased

LexisNexis(R) Headnotes

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Civil Procedure > Jurisdiction > Jurisdictional Sources > General Overview

Civil Procedure > Venue > General Overview

Contracts Law > Contract Conditions & Provisions > Forum Selection Clauses

[HN1] Courts possess discretion to decline to exercise jurisdiction in recognition of the parties' free and voluntary choice of a different forum.

Civil Procedure > Venue > General Overview

Contracts Law > Contract Conditions & Provisions > Forum Selection Clauses

[HN2] The modern trend is to enforce reasonable forum selection clauses.

COUNSEL: Terrence S. Buchert of Riden, Earle & Kiefner, P.A., St. Petersburg, for Appellant.

Catherine C. Prats of Martin & Prats, P.A., St. Petersburg, for Appellees.

JUDGES: PATTERSON, FRANK, ALTENBERND

OPINION BY: PATTERSON

OPINION

[*849] PATTERSON, Judge.

The appellant challenges the denial of its motion to dismiss the appellees' complaint for improper venue. The appellant contends that the trial court should have dismissed the complaint based on the forum selection clause contained in the parties' contract. Under the circumstances presented here, we agree and reverse.

The parties entered into a lease agreement on June 19, 1989, whereby the appellant leased property, termed an "industrial center," located in Yorba Linda, California, from appellee Yorba Linda Commercenter Associates. The lease contemplated notices and rent payments to be sent to the [*850] lessor in Newport Beach, California. The contract showed that the appellant corporation was located in St. Petersburg, Florida. Paragraph twenty-nine of the lease states:

Binding Effect; Choice of Law. [**2] . . . This Lease shall be governed by the laws of the State where the Industrial Center is located and any litigation concerning this Lease between the parties hereto shall be initiated in the county in which the Industrial Center is located.

Around August 1, 1990, the appellant vacated the premises and stopped paying rent. Thereafter, the appellees brought an action in Pinellas County, Florida, against the appellant for breach of the lease agreement. The apparent basis for jurisdiction was the allegation that the appellant's principal place of business is in Pinellas County, Florida. The appellant moved to dismiss the amended complaint and alleged improper venue based on paragraph twenty-nine of the lease. After hearing, the court entered an order denying the motion to dismiss. This appeal of a nonfinal order follows, pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(A).

Under the present circumstances, the forum selection clause contained in the lease is enforceable and does not violate the strong public policy of Florida or California. See *Manrique v. Fabbri*, 493 So. 2d 437 (Fla. 1986); *Smith, Valentino & Smith, Inc. v. Superior Court of Los Angeles County*, 17 Cal. 3d 491, 551 P.2d 1206, 131 Cal. Rptr. 374 (1976).

[**3] The appellees argue that *Smith, Valentino & Smith, Inc.* supports their position and distinguishes a "forum selection" clause from a "venue selection" clause. That case, however, upheld a forum selection clause which called for litigation to occur in a particular city, Philadelphia. The court held that "[HN1] courts possess discretion to decline to exercise jurisdiction in recognition of the parties' free and voluntary choice of a different forum." *Smith, Valentino & Smith, Inc.*, 551 P.2d at 1209, quoted in *Manrique*, 493 So. 2d at 440 (emphasis in original).

Here, the trial court abused its discretion when it refused to enforce the parties' agreement. The only connection with

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Florida is the appellant's principal place of business. The appellee partnership is in California, the leased property is in California, and presumably, the witnesses are in California. Thus, rather than being unreasonable, the California forum is particularly reasonable. Furthermore, the parties have not shown that choice of the California forum was the result of unequal bargaining power.

As recognized in both *Manrique and Smith, Valentino [**4] & Smith, Inc.*, [HN2] the modern trend is to enforce reasonable forum selection clauses. Thus, we reverse the trial court's order denying the appellant's motion to dismiss and remand the cause with directions that the trial court dismiss the action.

FRANK, A.C.J., and ALTENBERND, J., Concur.