Texas Supreme Court and the Enforceability of Forum Selection Clauses

On June 12, the Texas Supreme Court issued an opinion in *Anthony A. Rieder, et. al. v. Kenny Woods et al.,* that provided clear guidance whether forum selection clauses could be enforced against non-signatories to an agreement. This case illustrates measures that parties need to take to clarify the proper venue for specific disputes that may arise between themselves and possibly related – but non-signatories – to the agreement.

The facts in this case were somewhat convoluted by the fact that the dispute involved two separate agreements that were executed on the same day, bore some relationship to one another, but had conflicting forum selection clauses. The first agreement was a company agreement executed by three individual members that established the various membership rights of these members in a limited liability company. This agreement was silent on proper venue for any disputes between the members, but provided that it would be governed by Nevada law.

Later that same day, the limited liability company executed a separate service agreement with a Fort Worth based company that provided Tarrant County, Texas was the exclusive venue for any dispute arising out of the service agreement. This agreement was not executed by any individual member or officer of either of these companies.

"With the ink barely dry" on both agreements, a series of related disputes arose from both the service agreement and the company agreement. As a result, two of the individual members of the limited liability company were sued in state district court in Tarrant County, Texas. Those two members—both living in Wisconsin—argued that Wisconsin was the proper venue, and that a forum selection clause included in an agreement that they were not parties to, was not enforceable against them individually. The trial court and appeals court disagreed. To reach this conclusion the appellate court construed the company agreement and service agreement as a unified instrument and noted that the broad wording in both agreements evidenced the individual members were "transaction participants" even though they did not sign the services agreement that included Tarrant County as exclusive venue for the parties' disputes.

However, the Supreme Court overturned the opinion, and held that the individual members cannot be bound to a forum selection clause in an agreement that neither executed in their individual capacities. The Court pointed to the presence of merger clauses in each agreement that evidenced each were stand-alone agreements and not a unified document. Additionally, Justice Guzman, who authored the opinion, noted that the mere fact that the company agreement and the services agreement "bore some relationship to one another and were executed on the same day is not controlling. The two agreements were executed by different parties, deal with separate situations, impose distinct obligations, and are governed by different law. Furthermore, neither agreement is essential to the other, references the other, nor

manifests an intent to fulfill any of the obligations in the other. Perhaps most importantly, we are unable to glean from either agreement's express terms that they were executed as a part of the same business transaction."

Thus, clarification of the proper venue for specific for similar disputes is necessary. Specificity in crafting a forum selection clause on the front end should especially be prioritized in transactions that involve multiple parties based in different locations. The lack of that type of clarity on the front end can predictably lead to extended legal battles like the one examined by the Supreme Court in this case on the back end.

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