

Michigan Court of Appeals Holds Forum-Selection Statute Requires Forum-Selection Clauses to be Exclusive

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Michigan law requires its courts to enforce a contractual forum-selection clause. The forum-selection statute, Mich. Comp. Laws § 600.745(3), states: "If the parties agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court shall dismiss or stay the action." A recent Michigan Court of Appeals case held that the statute requires a forum-selection clause to be "exclusive," and provided guidance as to how an "exclusive" forum-selection clause should be written.

Rieth-Riley Construction Co., Inc. v. Ecopath Contracting LLC, 2015 WL 3604633 (Mich. Ct. App. June 9, 2015) is a breach of contract action between an Indiana company and an Arizona company. The two parties contracted for the provision of services for a job in Michigan. The contract included a jurisdiction clause, in which the parties agreed to submit to the personal jurisdiction of Arizona state and federal courts. After the defendant failed to perform on the contract, the plaintiff sued in Michigan. The defendant moved to dismiss, arguing that the jurisdiction clause required the trial court to dismiss the case under MCL § 600.745. The trial court agreed and dismissed the case.

The Court of Appeals reversed. After considering the text of the forum-selection statute and examining the parties' jurisdiction clause, the court concluded that the jurisdiction clause was non-exclusive and that MCL § 600.745 therefore did not require the trial court to dismiss the case. The court noted that the forum-selection statute requires dismissal of an action when the parties agree that the action "shall be brought only in another state." This language, the court held, required a forum-selection clause to be exclusive for the purposes of MCL § 600.745. In other words, if a forum-selection clause did not clearly demonstrate that the parties wished to forgo jurisdiction in Michigan and clearly exclude Michigan courts from the possible forums, the statute would not require a trial court to dismiss the action.

While the parties' jurisdiction clause stated that the parties agreed to "submit to the personal jurisdiction of the federal and state courts in Arizona," the text of the provision never made Arizona courts the only possible forums, and was therefore non-exclusive. Thus, although the provision permitted Arizona courts to exercise jurisdiction, "it does not mandate that any litigation between the parties must be filed in Arizona [courts], and thus the provision does not prevent the parties from filing suit in Michigan."

The court also discussed what would indicate that a forum-selection clause was exclusive: namely, language or words providing that the chosen forum, or forums, was the "exclusive," "sole," or "only" forum where the action could be brought, or that an action "shall" or "must" be brought in the chosen forum. Because no such language was present in the parties' contract, the jurisdiction clause was non-exclusive, and the court concluded that MCL § 600.745 did not require the trial court to dismiss the case.

Going forward, a forum-selection clause that does not contain similar exclusive or mandatory language may be considered a permissive, not exclusive, clause, and may expose a party otherwise properly sued in Michigan to the jurisdiction of its courts regardless of the existence of the forum-selection clause.

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