

## **Recent Court of Appeals Ruling Establishes the Breadth of Forum Selection Clauses**

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A recent decision by the Georgia Court of Appeals demonstrates the expansive application of forum selection clauses. Reversing the trial court below, the Court of Appeals in *Cemex Construction Materials Florida, LLC v. LRA Naples, LLC* found that a forum selection clause in one contract governed the dispute even though the case concerned “multiple, interrelated contracts” which did not all contain forum selection clauses.<sup>1</sup>

Cemex Construction Materials Florida, LLC (“Cemex”) entered into a contract (the “Four-Party Agreement”) with LRA Naples, LLC f/k/a Ginn-LA Naples, Ltd., LLP (“Ginn”) and two other companies not involved in the litigation.<sup>2</sup> The Four-Party Agreement contained the following provision: “[v]enue for any action concerning this Agreement shall be in Lee County, Florida.”<sup>3</sup> The Four-Party Agreement modified three other pre-existing agreements, none of which contained forum selection clauses.<sup>4</sup> Ginn filed suit in Cobb County Superior Court alleging breach of contract, and Cemex moved to dismiss the complaint based upon the Four-Party Agreement’s forum selection clause.<sup>5</sup>

The trial court denied Cemex’s motion because “the Four-Party Agreement purports to modify only certain provisions of the prior three contracts, [...] was entered into almost two and a half years after the original agreement, and it adds two other entities.”<sup>6</sup> Additionally, the trial court found the agreement “contains its own standard, boilerplate provisions governing that

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<sup>1</sup> 334 Ga. App. 415, 415-16 (2015).

<sup>2</sup> *Id.* at 415.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* Cemex also based its motion to dismiss argument upon the doctrine of forum non conveniens, but because the Court found that the forum selection clause governed the case, it rendered this argument moot and declined to discuss it. *See id.* at 417.

<sup>6</sup> *Id.* at 415-16.

contract,” thus “it should be read as a separate, independent agreement from the prior three agreements, to which the forum selection clause does not apply.”<sup>7</sup>

In reversing the trial court’s order, the Court of Appeals relied on its prior decisions adopting the United States Supreme Court’s conclusion that “forum selection clauses are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be ‘unreasonable’ under the circumstances.”<sup>8</sup> Because the reasonability of the forum selection clause was not in dispute, the Court focused only on the clause’s application to Ginn’s complaint.<sup>9</sup> Though the language of the forum selection clause was broad (it applied to “any action concerning” the Four-Party Agreement), the Court reasoned that it “generally accept[s] that contractual terms carry their ordinary meanings.”<sup>10</sup> As such, the Court relied on the ordinary meaning of “concerning” and found that Ginn’s complaint was indeed an action concerning the Four-Party Agreement because it alleged the existence of the Four-Party Agreement and sought relief from a payment due date contained within it.<sup>11</sup> For these reasons, the Court of Appeals reversed the trial court’s order, thereby granting Cemex’s motion to dismiss and requiring any complaint to be filed in Lee County, Florida.<sup>12</sup>

*Cemex v. LRA Naples* illustrates the power of forum selection clauses. Parties to a contract should not choose or agree to these clauses lightly because Georgia courts will generally enforce them, except in rare circumstances, and the consequences of an unfavorable jurisdiction may be detrimental to a party’s claim.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 416 (citing *The Park Ave. Bank v. Steamboat City Dev. Co.*, 317 Ga. App. 289, 293 (2012)).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (citing *Lafarge Bldg. Materials v. Thompson*, 295 Ga. 637, 640 (2014)).

<sup>11</sup> *Id.*

<sup>12</sup> *See id.* at 417.