

147 So.3d 1064
District Court of Appeal of Florida,
Fifth District.

LOVE'S WINDOW & DOOR
INSTALLATION, INC., Appellant,

v.

ACOUSTI ENGINEERING
COMPANY, etc., et. al., Appellees.

No. 5D14-1555. | Sept. 12, 2014.
| Certification Denied Oct. 2, 2014.

Synopsis

Background: In action for breach of condominium construction contract, third-party complaint was filed against subcontractor, who filed fourth-party complaint against sub-subcontractor. The Circuit Court, Osceola County, [Scott Polodna, J.](#), denied sub-subcontractor motion to sever and transfer venue. Sub-subcontractor filed interlocutory appeal.

[Holding:] The District Court of Appeal held that compelling reasons existed not to enforce forum selection clause in subcontract.

Affirmed.

West Headnotes (2)

[1] Contracts

🔑 Agreement as to place of bringing suit;
forum selection clauses

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k127 Ousting Jurisdiction or Limiting Powers
of Court

95k127(4) Agreement as to place of bringing suit;
forum selection clauses

Compelling reasons existed not to enforce forum selection clause in subcontract for installation of windows in condominium construction project, where dispute over subcontract involved third- and fourth-party complaints filed in complex

litigation between multiple parties, action had originally been filed in county that was not the forum selected in subcontract, witnesses in subcontract would have to testify in action in non-forum county, and the claim against subcontractor's principal, personally, would have to remain in non-forum county.

[Cases that cite this headnote](#)

[2] Contracts

🔑 Agreement as to place of bringing suit;
forum selection clauses

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k127 Ousting Jurisdiction or Limiting Powers
of Court

95k127(4) Agreement as to place of bringing suit;
forum selection clauses

Compelling reasons not to enforce a forum selection clause include avoiding multiple lawsuits, minimizing judicial labor, reducing the expenses to the parties, and avoiding inconsistent results.

[Cases that cite this headnote](#)

Attorneys and Law Firms

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[Stuart J. Freeman](#), of [Brasfield, Freeman, Goldis & Cash, P.A.](#), St. Petersburg, for Appellee.

Opinion

PER CURIAM.

This appeal involves complex litigation regarding a construction project known as Artisan Club Condominium Community (“the Association”) in Osceola County. Plaintiff below, the Association, filed its initial construction defect action in October 2009 against the projects' developers and the general contractor, Core Construction Services, Southeast, Inc. Numerous third and fourth party complaints were subsequently filed in the matter. One of those third party

actions involved the general contractor bringing suit against the Appellee, Dunn Corporation, for improper installation of all of the aluminum windows on the project. In turn, Dunn Corporation brought a fourth party action against Love's Window and Door Installation, Inc., the Appellant, alleging that the Appellant improperly carried out its obligations regarding the window installation, as subcontracted by the Appellee.

[1] As complex as the Osceola County litigation is, the issue presented on appeal in this case is not. Appellant, based on a provision in its contract with Appellee, moved to sever its action involving Appellee and transfer venue to Volusia County. Both parties agree that there is a forum selection clause in their contract and that such a provision is generally mandatory. This was the argument presented by Appellant to the trial judge handling the litigation. Appellee responded that there are exceptions to the mandatory transfer rule when there are compelling reasons not to enforce the provision.

[2] Compelling reasons not to enforce a forum selection clause include avoiding multiple lawsuits, minimizing judicial labor, reducing the expenses to the parties, and avoiding inconsistent results. See *Mason v. Homes by Whitaker, Inc.*, 971 So.2d 1029, 1029–30 (Fla. 5th DCA

2008); *Girdley Constr. Co. v. Architectural Exteriors, Inc.*, 517 So.2d 137, 138 (Fla. 5th DCA 1987) (holding a forum selection provision should not be enforced when a transfer of venue would result in multiple suits and splitting causes of action).

The trial judge, based on decisions from this Court, denied Appellant's motion. *1066 Appellant conceded that some of the witnesses to its action would also have to testify in Osceola County. Further, the claim against James W. Love, individually, would have to remain in Osceola County. We find the facts of this case establish a compelling reason not to enforce the forum selection provision found in the parties' contract.

AFFIRMED.

EVANDER, LAMBERT, JJ., and HARRIS, C.M., Senior Judge, concur.

Parallel Citations

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