

The Saiber Construction Law Column: September 2023

October 4, 2023

Source: MetroBuilders' Construction Law Column

A forum selection clause is a contractual provision by which parties agree to establish venue – the location of the court – if a dispute arises between the parties. Forum selection clauses are generally enforced in New Jersey. On April 13, 2023, the Supreme Court of Mississippi, applying principles similar to New Jersey law, enforced a forum selection clause in a dispute between a builder and homeowners.

In *Luxe Homes, LLC v. Brewer*, a builder sought to enforce a forum selection clause in the parties' contract which required the venue "of any action filed by either party to the contract" to be in a particular county. The homeowners filed suit in a county different from the county specified in the contract. The Court found that the venue provision of the contract was "mandatory and unambiguous and should be enforced as written." The Court further held that such clauses are "presumptively valid and enforceable" unless they are the product of fraud or uneven bargaining power, create great inconvenience for the parties or violate public policy. In *Luxe*, the homeowners failed to demonstrate that the forum selection clause was unenforceable, so the Court ordered the action transferred to the county designated in the contract for venue purposes.

New Jersey's court rules provide that breach of contract actions should be brought "in the county in which the cause of action arose, or in which any party to the action resides at the time of commencement." Parties, however, may contractually agree to a different venue if a contract contains a mandatory and unambiguous forum selection clause which was not obtained through fraud or undue bargaining power, does not violate public policy and would not inconvenience the parties at trial. Words such as "must," "only," or "shall" are strong indicators that a venue provision is mandatory and should be used in an agreement if a builder specifically wants to resolve contractual disputes in a particular county.

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Each issue's Saiber Construction Law Column will discuss a recent decision by New Jersey courts or, like here, courts from other states which may be of interest to people in the construction industry.

The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to ensure this information is up-to date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.



For any question relating to this article, please contact Robert B. Nussbaum, Esq. at Saiber LLC at rnussbaum@saiber.com.