

**COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT
AMARILLO**

Carrie Welch v. Nightingale Nurses, LLC

No. 07-08-0305-CV · No. No. 07-08-0305-CV · Decided June 2, 2009

SUMMARY

The Texas Court of Appeals for the Seventh District affirmed dismissal of Carrie Welch’s retaliatory-discharge suit against Nightingale Nurses, LLC based on a contractual forum-selection clause requiring litigation in Palm Beach County, Florida. The court held that Welch failed to establish fraud, overreaching, serious inconvenience, or a strong Texas public policy that would make the clause unenforceable.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	Patrick A. Pirtle; Quinn, C.J.; Hancock, J.; Pirtle, J.
JURISDICTION	Texas
DECIDED	June 2, 2009
DOCKET	No. 07-08-0305-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Welch appealed the trial court's dismissal without prejudice of her Texas retaliatory-discharge action based on a contractual forum-selection clause requiring litigation in Palm Beach County, Florida.
STANDARD OF REVIEW	A trial court's ruling on a motion to dismiss to enforce a forum-selection clause is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Carrie Welch v. Nightingale Nurses, LLC

TOPICS

- forum non conveniens
- retaliation
- workers compensation
- contracts
- civil procedure

PRACTICE AREAS

- civil procedure
- contracts
- employment law
- workers compensation

QUESTIONS PRESENTED

1. Whether a motion to dismiss was a proper procedural mechanism for enforcing the contractual forum-selection clause.
2. Whether the forum-selection clause was unenforceable because enforcement would violate Texas public policy or would be unreasonable or unjust given that Welch's injury, workers' compensation claim, witnesses, and asserted retaliation occurred or were based in Texas.
3. Whether the trial court abused its discretion by dismissing Welch's suit without prejudice and requiring her to proceed in Palm Beach County, Florida.

HOLDINGS

1. A motion to dismiss is a proper procedural mechanism for enforcing a forum-selection clause when a party files suit in a forum not authorized by the agreement.
2. A contractual forum-selection clause is generally enforceable unless the party opposing enforcement clearly establishes fraud or overreaching, unreasonableness or injustice, contravention of a strong public policy of the forum, or serious inconvenience of the selected forum.
3. The Texas Labor Code's application to a workers' compensation retaliation claim does not, without more, establish a strong Texas public policy requiring the claim to be litigated in Texas or invalidate an otherwise enforceable forum-selection clause.

KEY QUOTATIONS

“A forum selection clause is not binding and may be disregarded by the trial court if public policy strongly favors jurisdiction in a forum other than the one to which the parties have agreed.”

“Welch has not demonstrated applicability of any of the exceptions to enforceability of a forum selection clause.”

FACTUAL BACKGROUND

Welch, a Texas EEG technician employed by Florida-based Nightingale Nurses, suffered an on-the-job injury and filed a workers' compensation claim. After she was released to light duty and notified Nightingale of that release, a Florida-based nurse manager allegedly cancelled her employment contract and terminated her. Welch filed a Texas retaliatory-discharge action, although her employment contract required disputes arising from the contract to be litigated exclusively in state or federal court in Palm Beach County, Florida.

PROCEDURAL HISTORY

Welch sued Nightingale Nurses in Potter County, Texas, under section 451.001 of the Texas Labor Code. Nightingale moved to dismiss based on an employment-contract provision requiring disputes to be litigated exclusively in Palm Beach County, Florida. The 47th District Court of Potter County granted the motion without prejudice, and Welch appealed. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re ADM Investor Services, Inc., 257 S.W.3d 817, 819 (Tex. App.—Tyler 2008, orig. proceeding)
- Deep Water Slender Wells, Ltd. v. Shell International Exploration & Production, Inc., 234 S.W.3d 679, 687 (Tex. Civ. App.—Houston [14th Dist.] 2007, pet. denied)
- In re AIU Insurance Co., 148 S.W.3d 109, 111-21 (Tex. 2004) (orig. proceeding)
- Phoenix Network Technologies (Europe) Ltd. v. Neon Systems, Inc., 177 S.W.3d 605, 610 (Tex. App.—Houston [1st Dist.] 2005, no pet.)
- In re International Profit Associates, Inc., 274 S.W.3d 672, 675, 677 (Tex. 2009) (orig. proceeding) (per curiam)
- In re Lyon Financial Services, Inc., 257 S.W.3d 228, 231-32 (Tex. 2008) (orig. proceeding) (per curiam)
- Michiana Easy Livin' Country, Inc. v. Holten, 168 S.W.3d 777, 792 (Tex. 2005)
- Holeman v. National Business Institute, Inc., 94 S.W.3d 91, 97-100 (Tex. App.—Houston [14th Dist.] 2002, pet. denied)
- In re AutoNation, Inc., 228 S.W.3d 663, 669 (Tex. 2007) (orig. proceeding)
- In re Great Lakes Dredge & Dock Co. L.L.C., 251 S.W.3d 68, 78 (Tex. App.—Corpus Christi 2008, no pet.)