

SUPREME COURT OF APPEALS OF WEST VIRGINIA

East Coast Underground, LLC v. Daniel Utility Construction, Incorporated

No. 14-0663 (Harrison County 14-76) · No. No. 14-0663 (Harrison County 14-76) · Decided March 13, 2015

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed the dismissal of East Coast Underground, LLC's complaint for improper venue based on a mandatory forum-selection clause in its subcontract with Daniel Utility Construction, Incorporated. The court held that the clause was reasonably communicated, covered the parties and claims, and was not shown to be unreasonable or unjust. The decision was issued as a memorandum decision under Rule 21 of the West Virginia Rules of Appellate Procedure.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 13, 2015
DOCKET	No. 14-0663 (Harrison County 14-76)
DISPOSITION	affirmed
PROCEDURAL POSTURE	East Coast Underground appealed the Circuit Court of Harrison County's order dismissing its complaint for improper venue based on a contractual forum-selection clause.
STANDARD OF REVIEW	A trial court's decision on a motion to dismiss for improper venue is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Memorandum decision with no substantial question of law and no prejudicial error; treated as nonprecedential or limited-precedential under the West Virginia appellate rules.
PARTIES	East Coast Underground, LLC v. Daniel Utility Construction, Incorporated

TOPICS

venue motions to dismiss civil procedure contract interpretation construction law

PRACTICE AREAS

civil procedure contracts construction law commercial litigation

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by dismissing the action for improper venue and enforcing the subcontract's forum-selection clause.
2. Whether the forum-selection clause was reasonably communicated and therefore presumptively enforceable.
3. Whether enforcement of the forum-selection clause would be unreasonable or unjust.

HOLDINGS

1. A forum-selection clause contained in the written subcontract was reasonably communicated where the party resisting enforcement was intimately and exclusively involved in negotiating, entering, and executing the contract, and the clause appeared in regular-sized font under a heading addressing choice of law and venue.
2. The mandatory forum-selection clause was presumptively enforceable because it was reasonably communicated, applied to the parties and claims, and was not shown to be unreasonable, unjust, fraudulent, or the product of overreaching.
3. The circuit court did not abuse its discretion by dismissing the complaint for improper venue based on the enforceable forum-selection clause.

KEY QUOTATIONS

“Determining whether to dismiss a claim based on a forum-selection clause involves a four-part analysis. The first inquiry is whether the clause was reasonably communicated to the party resisting enforcement. The second step requires classification of the clause as mandatory or permissive, i.e., whether the parties are required to bring any dispute to the designated forum or are simply permitted to do so. The third query asks whether the claims and parties involved in the suit are subject to the forum-selection clause. If the forum-selection clause was communicated to the resisting party, has mandatory force and covers the claims and parties involved in the dispute, it is presumptively enforceable. The fourth, and final, step is to ascertain whether the resisting party has rebutted the presumption of enforceability by making a sufficiently strong showing that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.” (at 2)

FACTUAL BACKGROUND

The parties entered into a subcontract containing Arkansas choice-of-law and mandatory forum-selection provisions requiring disputes and enforcement actions to occur in Pulaski County, Arkansas. East Coast Underground later sued Daniel Utility Construction in Harrison County, West Virginia, seeking sums allegedly

due for services. East Coast's sole member and manager admitted that he was intimately and exclusively involved in negotiating, entering, and executing the contract, although he asserted that the forum-selection clause had not been separately discussed or negotiated.

PROCEDURAL HISTORY

East Coast Underground filed a civil action in the Circuit Court of Harrison County seeking payment for services provided under a subcontract. Daniel Utility Construction moved to dismiss for improper venue instead of filing an answer. The circuit court granted the motion, and East Coast Underground appealed. The Supreme Court of Appeals of West Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- United Bank v. Blosser, 218 W.Va. 378, 624 S.E.2d 815 (2005)
- Caperton v. A.T. Massey Coal Co., Inc., 225 W.Va. 128, 690 S.E.2d 322 (2009)