Small, private companies are often viewed as a key to the growth of the GDP in the U.S. Even small companies quickly realize, however, that they are competing for business not just in their own neighborhood, but as part of a global marketplace. Therefore, when companies enter into contracts with other firms doing business in different states or countries, they often include terms in their agreements to select both the state in which to litigate any future disputes between them (choice of forum), as well as the county in which the litigation will take place (choice of venue). This post considers whether these choice of forum and choice of venue provisions the parties opt to include in their contracts will be deemed enforceable under Texas law.

### Important Distinctions Between Choice of Forum and Choice of Venue

The distinction is important between contract clauses selecting the state in which a lawsuit must be brought—a forum selection clause—and a specific court or county in which the lawsuit must be filed—a venue selection clause. Texas law treats these two clauses very differently, and will potentially lead to very different outcomes concerning where a future case will be tried. Location is very important in real estate, but it can also play a significant role in the outcome of litigation, as well. Further, and due to the impact of COVID-19, some courts have been closed for trial for all practical purposes, while others are now open for trial, but they have adopted a variety of “new normal” procedures that create challenges in resolving disputes.

### Texas Law Applicable to Forum and Venue Selection Clauses

Under Texas law, forum-selection clauses are generally considered valid and enforceable as long as the forum selection provision was freely and fairly negotiated among the parties. The result is that a party who negotiates and includes a forum selection clause that makes Texas the forum for resolving disputes will find courts willing to uphold that intent and enforce the provision.

By contrast, the general rule in Texas is that: venue-selection clauses are not enforceable unless the contract involves a “major transaction,” or if the venue-selection clause is expressly made enforceable by another Texas statute. It does not matter how clearly or forcefully the parties have
stated their intent to select the venue. The clause is unlikely to be upheld if there is no major transaction at issue in the case. Generally, the parties' choice of a specific Texas county or court for their dispute is not enforceable. *Shamoun & Norman, LLP v. Yarto Int'l Grp., LP, 398 S.W.3d 272, 293 (Tex. App. – Corpus Christi 2012, pet. dism’d)* (“In general, the fixing of venue by contract is invalid.”).

One example where a venue selection clause is upheld concerns arbitrations, because these are expressly provided for by the Texas Civil Practice and Remedies Code (“CPRC”). Thus, if the parties have chosen to arbitrate rather than litigate their disputes, and they select a specific county in which the arbitration proceeding will be held, that provision will be upheld by the terms of the CPRC. *See* Section 171.096(b).

The CPRC defines a major transaction as one that is “evidenced by a written agreement under which a person pays or receives, or is obligated to pay or entitled to receive, consideration with an aggregate stated value equal to or greater than $1 million.” CPRC section 15.020(a) (Emphasis added). In short, if the contract at issue does not involve at least $1 million, the choice of venue clause is not likely to be upheld as enforceable by the court.

**Conclusion**

Practically speaking, the disparate treatment of forum and venue selection clauses in Texas should serve as a reminder to attorneys to explain this distinction to their clients as it may have some impact on how they negotiate and accept other terms in their agreements. As just one example, clients may prefer to require arbitration of future disputes in their home county rather than run the risk of being subject to a lawsuit in a Texas county where the other contracting party has its home office. These are issues and strategic decisions that will need to be made by the client with the advice and input of counsel who is familiar with Texas venue statutes.

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