

Rel: May 17, 2019

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Jessie Castleberry and Rickey Castleberry

v.

Angie's List, Inc.

Appeal from Montgomery Circuit Court  
(CV-18-900500)

SELLERS, Justice.

Jessie Castleberry and Rickey Castleberry appeal from an order of the Montgomery Circuit Court dismissing the Castleberrys' claims against Angie's List, Inc., based on a

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forum-selection clause in a contract between Angie's List and the Castleberrys. We affirm the trial court's order.

Angie's List operates a paid membership service that enables its members to search for local service providers and to submit and consider reviews and ratings relating to those service providers. The Castleberrys, who are father and son, became members of Angie's List in 2014. They claim that they used their membership with Angie's List to locate a contractor, Dream Baths of Alabama, LLC ("Dream Baths"), which the Castleberrys hired to renovate a bathroom in Jessie Castleberry's house to make it handicapped accessible. According to the Castleberrys, Dream Baths was not properly licensed and poorly performed the work it contracted to do.

The Castleberrys sued Dream Baths, asserting various claims related to the renovation. They also named Angie's List as a defendant in the action, alleging that it had misrepresented Dream Baths' qualifications. Against Angie's List, the Castleberrys alleged breach of contract, breach of a duty of good faith and fair dealing, fraud, unjust enrichment, and deceptive trade practices.

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Pursuant to Rule 12(b)(3), Ala. R. Civ. P., Angie's List filed a motion to dismiss the Castleberrys' claims against it based on a forum-selection clause set out in the membership agreement between Angie's List and the Castleberrys. That clause provides:

"This Agreement and the relationship between You [the Castleberrys] and Angie's List will be governed by the laws of the State of Indiana, notwithstanding the choice of law provisions of the venue where any action is brought, where the violation occurred, where You may be located or any other Jurisdiction. You agree and consent to the exclusive Jurisdiction of the state or federal courts located in Marion County, Indiana and waive any defense of lack of personal jurisdiction or improper venue or forum non conveniens to a claim brought in such court, except that Angie's List may elect, in its sole discretion, to litigate the action in the county or state where any breach by You occurred or where You can be found. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out [sic] or related to Your use of the Service or this Agreement shall be filed within one (1) year after such claim or cause of action arose or will forever be barred."

The trial court determined that the quoted clause is "a valid and enforceable forum-selection clause that provides for the exclusive jurisdiction of the courts of Marion County, Indiana." Accordingly, the trial court granted Angie's List's motion to dismiss. Later, the trial court denied the Castleberrys' motion to reconsider the dismissal and, pursuant

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to Rule 54(b), Ala. R. Civ. P., certified its order of dismissal as final for purposes of appeal. The Castleberrys timely appealed.

The Castleberrys argue first that the trial court erred in determining that the contractual provision in question is a forum-selection clause allowing Angie's List to force its members to litigate their claims against Angie's List in the courts of Marion County, Indiana. The parties agree that, for purposes of this case, Alabama law applies to the construction and validity of the clause at issue.

The Castleberrys point to Ex parte Dan Tucker Auto Sales, Inc., 718 So. 2d 33, 35-36 (Ala. 1998), for the propositions that "[g]eneral contract law requires a court to enforce an unambiguous, lawful contract, as it is written" and that, "[w]hen interpreting a contract, a court should give the terms of the agreement their clear and plain meaning and should presume that the parties intended what the terms of the agreement clearly state." The Castleberrys assert that the language used in the forum-selection clause is unambiguous and that its clear and plain meaning is that Angie's List members agree to litigate in Indiana only those claims brought against

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them by Angie's List and not claims brought by them against Angie's List.

We disagree. The first sentence of the forum-selection clause provides for the application of Indiana law in "any action." The second sentence provides that Angie's List members "agree and consent to the exclusive Jurisdiction of the state or federal courts located in Marion County, Indiana" and that, with respect to actions brought in those courts, members waive defenses such as lack of personal jurisdiction, improper venue, or forum non conveniens. We do not read the reference to the waiver of potential defenses by Angie's List members in actions brought against them in the courts of Marion County, Indiana, as limiting the earlier provision stating that Angie's List members agree to the exclusive jurisdiction of those courts. Finally, the last sentence of the clause references "any claim or cause of action arising out [of] or related to [Angie's List members'] use of [Angie's List] Service or [the membership] Agreement" and purports to impose a one-year limitations period on such claims. Based on the entirety of the clause, we simply cannot agree with the Castleberrys that the clause unambiguously means that Angie's

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List can force its members to litigate in the courts of Marion County, Indiana, only those claims brought against members by Angie's List in those courts. To the contrary, we agree with Angie's List that the plain meaning of the language used makes the clause applicable to actions filed against Angie's List by Angie's List members.<sup>1</sup>

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<sup>1</sup>In their opening brief to this Court, the Castleberrys suggest that the use of the term "exclusive jurisdiction" in the forum-selection clause is intended to establish only that Angie's List members cannot object to a lack of personal jurisdiction over them with respect to claims brought against them in the courts of Marion County, Indiana. They do not, however, provide a persuasive explanation for why the clause uses the term "exclusive" and not "personal" to qualify "jurisdiction," if the intent was to waive objections to personal jurisdiction. In addition, it is noteworthy that the clause later expressly provides that Angie's List members will not contest personal jurisdiction in Marion County, Indiana. The Castleberrys make no further arguments in their opening brief regarding the use of the term "jurisdiction." See generally Ex parte International Paper Co., [Ms. 1180144, March 1, 2019] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2019) (enforcing a forum-selection clause providing that "'[t]he Courts of Tennessee shall have ... exclusive jurisdiction over any disputes arising out of or relating to this agreement'" (quoting waste-services agreement)); Ex parte Textron, Inc., 67 So. 3d 61, 63 (Ala. 2011) (enforcing a forum-selection clause providing that a party "consent[ed] to the exclusive jurisdiction of the Courts [in Rhode Island]"). We also note that, although the Castleberrys point out that the forum-selection clause is titled "governing law" and not "forum/venue selection," counsel for the Castleberrys conceded during the hearing on Angie's List's motion to dismiss that "the title of [the clause] isn't determinative" of its meaning.

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Ex parte CTB, Inc., 782 So. 2d 188 (Ala. 2000), upon which the Castleberrys rely, is distinguishable. In that case, this Court determined that a contractual provision with language that was similar, but not identical, to the language at issue in the present case was not an outbound forum-selection clause. The provision in CTB stated:

"Governing Law. This Contract will be construed and enforced under the laws of the State of Indiana (but not giving effect to any conflict of laws provisions), and [the plaintiff] consents to jurisdiction and venue in the Federal and State Courts located in Indiana."

782 So. 2d at 190. The Court in CTB determined that, although the clause demonstrated consent by the plaintiff to personal jurisdiction in the courts of Indiana, "nothing in the clause require[d] that any action involving these parties be filed in Indiana." Id. at 191. The forum-selection clause in the present case, however, does more than simply demonstrate a consent by the Castleberrys to personal jurisdiction of courts in Indiana. It provides that the Castleberrys agree to the "exclusive" jurisdiction of those courts. Thus, we disagree

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with the Castleberrys that the reasoning employed in CTB applies equally to the forum-selection clause in this case.<sup>2</sup>

The Castleberrys next argue that, even if the trial court correctly construed the forum-selection clause, it should not be enforced against the Castleberrys. This Court has said:

"[A]n 'outbound' forum-selection clause is upheld unless the party challenging the clause clearly establishes that it would be unfair or unreasonable under the circumstances to hold the parties to their bargain. [Professional Insurance Corp. v. Sutherland], 700 So. 2d [347,] 351 [(Ala. 1997)]. The party challenging the clause can meet its burden by clearly establishing either '(1) that enforcement of the forum selection clause would be unfair on the basis that the contract was affected by fraud, undue influence, or overweening bargaining power or (2) that enforcement would be unreasonable on the basis that the chosen ... forum would be seriously inconvenient for the trial of the action.' 700 So. 2d at 352. 'Because "[i]t is a difficult burden to defeat a forum selection clause[,]" Smith v. Professional Claims, Inc., 19 F. Supp. 2d 1276, 1282 (M.D. Ala. 1998), such clauses will usually be

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<sup>2</sup>The Castleberrys state that they do not contend that the clause at issue is ambiguous. Nevertheless, they assert that, if the clause is ambiguous, it must be construed against its drafter, Angie's List. The Court is not of the opinion that the clause is ambiguous. In any event, we note that the Castleberrys did not make this argument to the trial court until they filed a motion to reconsider the trial court's order granting Angie's List's motion to dismiss. The Castleberrys have not convincingly argued that this Court should consider holding the trial court in error based on a legal argument that was not presented to it until after it had entered the order under review.



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enforced.' Ex parte CTB, Inc., 782 So. 2d 188, 191 (Ala. 2000)."

Ex parte International Paper Co., 263 So. 3d 1035, 1040-41 (Ala. 2018). We review the trial court's holding regarding this issue to determine if it exceeded its discretion. Ex parte D.M. White Constr. Co., 806 So. 2d 370, 372 (Ala. 2001).<sup>3</sup>

The Castleberrys argue that the forum-selection clause should not be enforced because of Angie's List's alleged overweening bargaining power. The Castleberrys' opening brief

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<sup>3</sup>To the extent the Castleberrys invite this Court to overrule precedent and hold that a de novo standard of review applies to the trial court's determination that equitable considerations do not weigh against enforcement of the forum-selection clause, we decline that invitation. As for the separate issue of interpreting the language of the forum-selection clause, discussed earlier in this opinion, the Castleberrys assert that such an issue of contract interpretation is one of law and that the trial court's decision should therefore be reviewed de novo. See generally McDonald v. U.S. Die Casting & Dev. Co., 585 So. 2d 853, 855 (Ala. 1991) ("If the terms within a contract are plain and unambiguous, the construction of the contract and its legal effect become questions of law for the court ...."); Alabama Republican Party v. McGinley, 893 So. 2d 337, 342 (Ala. 2004) ("Questions of law are reviewed de novo."). It is not necessary for the Court to expressly resolve this issue, because the Castleberrys have not demonstrated that the trial court erred to reversal, even under de novo review, in interpreting the clause as allowing Angie's List to require its members to litigate claims against Angie's List in Marion County, Indiana.

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to this Court, however, does not support with citations to the record the facts underlying this argument so as to show with requisite specificity the examples of allegedly domineering bargaining power on the part of Angie's List. See Rule 28(a)(7) and (10), Ala. R. App. P. In any event, even if this Court were to accept the Castleberrys' averments as true, those averments do not demonstrate that the trial court erred to reversal in declining to find that the forum-selection clause was the result of overweening bargaining power. See Ex parte International Paper Co., [Ms. 1180144, March 1, 2019] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2019) ("[E]ven when a party to a forum-selection clause is a large company, there are allegations that one of the parties was not allowed to negotiate any of the terms of the contract, and the contract had to be accepted as written, those factors alone do not establish 'overweening bargaining power.'").

The Castleberrys also argue that trying their claims in Marion County, Indiana, would be seriously inconvenient.

"In order to demonstrate that the chosen forum is seriously inconvenient, the party challenging the clause must show that a trial in that forum would be so gravely difficult and inconvenient that the challenging party would effectively be deprived of

his day in court. Ex parte Northern Capital Res. Corp., 751 So. 2d [12] at 15 [(Ala. 1999)].

"When an agreement includes a clearly stated forum-selection clause, a party claiming that clause is unreasonable and therefore invalid will be required to make a clear showing of unreasonableness. In determining whether such a clause is unreasonable, a court should consider these five factors: (1) Are the parties business entities or businesspersons? (2) What is the subject matter of the contract? (3) Does the chosen forum have any inherent advantages? (4) Should the parties have been able to understand the agreement as it was written? (5) Have extraordinary facts arisen since the agreement was entered that would make the chosen forum seriously inconvenient? We state these items not as requirements, but merely as factors that, considered together, should in a particular case give a clear indication whether the chosen forum is reasonable.'

"Ex parte Northern Capital Res. Corp., 751 So. 2d at 14."

Ex parte Rymer, 860 So. 2d 339, 342-43 (Ala. 2003).

The parties agree that the primary purpose of the Angie's List membership agreement is to facilitate the obtaining of search results and reviews relating to local service providers. Although it is reasonably clear that the Castleberrys did not enter into the agreement in their capacities as businesspersons, the Court is without

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information regarding the Castleberrys' business experience generally or their level of sophistication. Thus, the Castleberrys have failed to demonstrate that their lack of business acumen weighs against enforcing the forum-selection clause.

The Castleberrys state in their brief that "[t]he chosen forum of Indiana has no inherent advantages in this case, as all witnesses necessary for the trial of this matter--except perhaps a single corporate representative of Angie's List--would be in or around Montgomery County, Alabama." They do not, however, provide any significant discussion, or point to any portion of the record, in support of this factual assertion.<sup>4</sup> In the relevant portion of their brief, the Castleberrys do not expressly address the final two factors--whether they should have been able to understand the agreement, which the Court views as unambiguous,<sup>5</sup> and whether extraordinary facts have arisen since the agreement was

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<sup>4</sup>The Court notes that Angie's List's principal place of business is in Indiana.

<sup>5</sup>The Court has not been directed to any evidence indicating that, when the Castleberrys entered into the membership agreement, they read the forum-selection clause and formed an understanding as to its meaning.

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entered that would make the chosen forum seriously inconvenient. This Court is not convinced that, based on the factors restated in Rymer, the trial court exceeded its discretion in determining that litigation in Marion County, Indiana, would not be "so gravely difficult and inconvenient that the [Castleberrys] would effectively be deprived of [their] day in court." Rymer, 860 So. 2d at 342.

Finally, the Castleberrys argue that the trial court erred in enforcing the forum-selection clause because, they assert, doing so requires them "to litigate some of their claims in one forum and other claims in a separate forum." In support of that argument, the Castleberrys point to Ex parte Leasecomm Corp., 886 So. 2d 58 (Ala. 2003), although they do not provide significant discussion of the facts of that case. In Leasecomm, the plaintiff, on behalf of a purported class, sued three entities based on their alleged involvement in a joint scheme to defraud the class members. Specifically, the plaintiff alleged that the defendants had engaged in a scheme to trick the class members into signing "worthless" leases of computer equipment, under the guise of paying tuition for Internet-business training, and to provide one of the

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defendants with access to the members' bank accounts so it could make improper deductions for lease payments. This Court described the alleged scheme as "a single transaction." 886 So. 2d at 65. One of the defendants moved the trial court to dismiss the claims against it pursuant to a forum-selection clause requiring litigation to proceed in Utah, and the other defendants moved for dismissal of the claims against them based on a forum-selection clause requiring litigation to proceed in Massachusetts. The trial court refused to enforce the forum-selection clauses. On appeal, this Court pointed to persuasive precedent from the Minnesota Court of Appeals, in which that court refused to enforce a forum-selection clause that would have split the plaintiff's "intertwined" claims against multiple defendants and would have "'result[ed] in two lawsuits involving the same or similar issues creating serious inconvenience.'" 886 So. 2d at 64 (quoting Personalized Marketing Serv., Inc. v. Stotler & Co., 447 N.W.2d 447, 452 (Minn. Ct. App. 1989) (emphasis omitted)). The Court in Leasecomm determined that the plaintiff's claims against the separate defendants in that case, like the claims in Stotler, were "inextricably intertwined" and that "enforcement of the

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forum-selection clauses ... would split the claims and require litigation of the intertwined issues in forums far removed, not only from Alabama, in which the cause of action arose, but from each other." 886 So. 2d at 65 (emphasis omitted). Thus, the trial court did not exceed its discretion in denying the defendants' motions to dismiss.

In the instant case, the Castleberrys simply point out in the argument section of their brief that, in addition to suing Angie's List, they also sued Dream Baths. They assert that "[t]his action pertains not only to the agreement between the Castleberrys and Angie's List, but to improper work performed upon a home located in Montgomery County, Alabama by defendant Dream Baths."<sup>6</sup> The Castleberrys provide no significant discussion of the specific claims against Dream Baths and Angie's List. We note that, in other portions of their brief, the Castleberrys allege that Dream Baths was not properly licensed, that it failed to follow applicable building-code provisions, that it did not obtain the required permits, that

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<sup>6</sup>The Castleberrys also assert, without further discussion or explanation, that an Indiana court's alleged lack of subpoena power over Alabama witnesses will "potentially limit[] the Castleberrys' ability to prove their case against Angie's List."

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it used incorrect materials and unqualified laborers, that it damaged Jessie Castleberry's house, and that it did not complete the job. As for Angie's List, the Castleberrys allege in their brief that Angie's List misrepresented that Dream Baths was licensed and insured while Angie's List was simultaneously "investigating issues related to Dream Baths' licensing status." They also assert in their brief that other Angie's List members had, at some point, complained to Angie's List regarding Dream Baths. Finally, they allege that Angie's List awarded Dream Baths "super service awards," although the only detail revealed regarding such awards is that a service provider must be properly licensed to receive them. The Castleberrys have not demonstrated that this case involves the sort of "inextricable intertwining" that was involved in Leasecomm. To the contrary, it appears that the Castleberrys' claims against Angie's List and Dream Baths are based on different categories of wrongdoing that are only tangentially related. The trial court did not err in enforcing the forum-selection clause simply because the Castleberrys also sued Dream Baths. The trial court's order is due to be affirmed.



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AFFIRMED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.