

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-20-00285-CV

**In re New Braunfels American Motorcycles, Ltd.; Javelina Motorcycles, LLC;
Harold A. Gottsacker III; and Harold A. Gottsacker, Jr.**

ORIGINAL PROCEEDING FROM COMAL COUNTY

MEMORANDUM OPINION

Relators have filed a petition for writ of mandamus challenging the trial court's order denying their motion to dismiss and alternative motion to transfer venue. The real parties in interest sued relators in Comal County. Relators moved to dismiss the suit (or alternatively, to transfer venue), asserting that one of the contracts arguably at issue in the suit contained a forum-selection clause requiring the suit to be brought in Bexar County. Although relators attempt to characterize the relied-upon clause as a forum-selection clause, the clause is in fact an unenforceable venue-selection clause.¹ See *In re Great Lakes Dredge & Dock Co. L.L.C.*, 251 S.W.3d 68, 73-74 (Tex. App.—Corpus Christi 2008, orig. proceeding) (explaining difference between “forum,” which refers to a sovereign or state, and “venue,” which refers to a particular county or court within that state or sovereign). The distinction is a critical one: forum-selection clauses are presumptively valid and enforceable, but “venue selection cannot be the subject of

¹ The parties do not dispute that Texas is the appropriate forum for the suit.

private contract unless otherwise provided by statute.” See *Liu v. Cici Enters., LP*, No. 14-05-00827-CV, 2007 WL 43816, at *2 (Tex. App.—Houston [14th Dist.] Jan. 9, 2007, no pet.). Venue-selection clauses are unenforceable except in circumstances in which they are specifically allowed by statute because it is “the legislature’s prerogative to set venue.” *In re Great Lakes Dredge & Dock*, 251 S.W.3d at 77-79 (noting that Texas Legislature has specified that only parties to “major transactions” of at least one million dollars may contract around mandatory-venue statutes and that in other transactions of any amount when “the contract provides that an obligation is to be performed in a particular county, the legislature has provided venue is permissive in that county”).

The trial court did not abuse its discretion by refusing to dismiss the suit on the basis of the venue-selection clause. Accordingly, we deny the petition for writ of mandamus. See *Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding) (denying mandamus relief for failure to establish abuse of discretion).

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Baker and Triana

Filed: June 2, 2020