

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

THE RETIRED PUBLIC)
EMPLOYEES OF ALASKA, INC.,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA,)
DEPARTMENT OF)
ADMINISTRATION, DIVISION OF)
RETIREMENT AND BENEFITS,)
)
Defendant.)

Case No. 3AN-18-06722 CI

MOTION TO COMPEL VENUE

I. INTRODUCTION

The State of Alaska, Department of Administration, Division of Retirement and Benefits (“State”) hereby moves pursuant to Alaska Rule of Civil Procedure 12(b)(3) and the terms of the AlaskaCare Retiree Health Plan (the “Plan”) to move the venue of this action to the First Judicial District, Juneau, Alaska. Venue is not proper in the Third Judicial District based on the plain, unambiguous language of the Plan and enforcement of its terms does not serve a hardship or injustice on the Plaintiff in the matter.¹

¹ This motion is based solely on the Applicable Law and Venue clause of the Plan and does not rely on Alaska Rule of Civil Procedure 3 or AS 22.10.040. However, the State has raised Alaska Rule of Civil Procedure 3 as an independent basis for the proposition that venue is not proper in the Third Judicial District and does not waive its right to challenge venue under Civil Rule 3 in the future. Nor does the State waive its right to argue that a change of venue is necessary for the convenience of witnesses and to avoid unnecessary expense and inconvenience under AS 22.10.040.

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II. BACKGROUND

On May 9, 2018, the Retired Public Employees of Alaska, Inc. (“RPEA”) initiated this action in the Superior Court for the Third Judicial District at Anchorage. [Summons and Complaint] In its amended Complaint, RPEA alleged that

Venue in Anchorage is appropriate because RPEA is headquartered in Anchorage and many retired state employees who are affected by the action of the Defendant at issue in this suit reside in Anchorage.

[Am. Compl. at ¶ 7] The State denied RPEA’s allegation, properly noting that the location of the Plaintiff is meaningless for venue purposes², and stating that “venue in Anchorage is [in]appropriate in light of the venue selection clause in the Plan.” [Answer to Am. Compl. at ¶ 7] The Applicable Law and Venue clause of the Plan states:

This plan is issued and delivered in the State of Alaska, and is governed by the laws of the State of Alaska. Any and all suits or legal proceedings of any kind that are brought against the State must be filed in the First Judicial District, Juneau, Alaska.

[AlaskaCare Plan at p. 106] Given that the complaint repeatedly refers to the provisions of the Plan, it is appropriate in this motion to compel venue to consider the terms of the

² See Alaska Rule of Civil Procedure 3(c); *Brooks Range Petroleum Corp. v. Shearer*, 425 P.3d 65, 71 (Alaska 2018) (“To withstand a motion based on improper venue, the plaintiff must present a prima facie case that the chosen venue is proper”); *Ketchikan Gen. Hosp. v. Dunnagan*, 757 P.2d 57, 59 (Alaska 1988) (“plaintiffs must follow the standard procedure; they must commence suit in the proper Rule 3 venue, and then, if that forum is inconvenient, move for a change of venue under AS 22.10.040 . . . This rule precludes plaintiffs from selecting a forum they believe is convenient without regard to Civil Rule 3.”).

Plan.³

III. ARGUMENT

Typically, forum selection clauses can either be drafted in a manner where the parties consent to the jurisdiction of a particular forum, but not to the exclusion of all other forums, or where the clause “designates a forum as the mandatory, exclusive arena for the resolution of all disputes to which the clause applies, even though other courts might have personal jurisdiction over the parties.”⁴ Here, the Plan’s venue selection clause is mandatory in nature and must be enforced absent a clear showing that “enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.”⁵

A. The Plan’s “Applicable Law and Venue” clause is mandatory.

The Plan’s forum-selection clause is clear: all suits of any kind brought against the State must be filed in the First Judicial District. It is both binding and applicable to the case at bar.

When a person opts into the state employee retirement system, he or she enters

³ *Alleva v. Municipality of Anchorage*, No. 3AN-18-06322 CI, 2018 WL 8621715, 2 (Alaska Sept. 20, 2018). *See also Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by* 307 F.3d 1119, 1121 (9th Cir. 2002) (holding that a court may consider documents “whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading”).

⁴ *Volkswagenwerk, A. G. v. Klippan, GmbH*, 611 P.2d 498, 503 (Alaska 1980) (internal citations omitted).

⁵ *Crowson v. Sealaska Corp.*, 705 P.2d 905, 911 (Alaska 1985) *citing M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).

into a contractual relationship with the State.⁶ Courts have frequently identified employee benefit publications as representing this contract, particularly when those documents establish coverage requirements.⁷ Here, the Plan establishes the level of medical insurance coverage an employee is entitled to upon retirement in exchange for her employment. Both the State and the employee are bound by its terms, subject to modification under *Duncan v. RPEA*.⁸ In fact, RPEA's suit is directed at strict compliance with the terms of the Plan as they existed in 2003. This invariably includes enforcement of the Plan's forum selection clause, which was not impacted by the January 1, 2014 Plan Amendment that RPEA contends supports its lawsuit. It is unreasonable for RPEA to seek only selective enforcement of the Plan's terms.

RPEA's exclusive standing in this matter is on behalf of its members, each bound by the Plan's terms.⁹ If an individual member of RPEA were to bring a similar suit against the State, the Plan's forum selection clause would undoubtedly apply.¹⁰ That

⁶ See Alaska Const. art. XII, § 7.

⁷ See, e.g., *Duncan v. Ret. Pub. Employees of Alaska, Inc.*, 71 P.3d 882, 885, 889 (Alaska 2003).

⁸ *Duncan*, 71 P.3d at 887.

⁹ While the State does not concede RPEA has standing in this matter, "an association has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906, 915 (2000).

¹⁰ RPEA's standing to bring this suit is contingent on the fact its members have either citizen-taxpayer or interest-injury standing. *Id.* Consequently, RPEA's standing is based on the relationship created under the terms of the Plan.

RPEA has associational standing to pursue a claim on behalf of its members does not immunize it from its members' contractual obligations. The Plan's venue selection clause is unambiguous and mandatory.

B. Enforcement of the venue selection clause does not impose a hardship or injustice on the Plaintiff.

Because the Plan's venue selection clause is mandatory, it must be enforced unless the Plaintiff makes a clear showing that enforcement would be unreasonable and unjust or that the clause is invalid for such reasons as fraud or overreaching.¹¹

The Plan's forum selection clause is not unreasonable, nor does RPEA's suit allege that the Plan's general provisions are the product of fraud or misrepresentation. To the contrary, the Plan's mandate that suits take place in the First Judicial District reasonably advances the interests of both the State and individuals challenging the Plan. The Plan is administered by the Division of Retirement and Benefits as the commissioner's designee under AS 39.35.003(a). The Division of Retirement and Benefits is primarily located in Juneau, with all senior management being located in Juneau. Most importantly, the individuals responsible for the January 1, 2014 Plan Amendment worked in Juneau when the amendment occurred, the Plan Amendment was drafted and executed in Juneau, and the vast majority of the primary architects still reside and work for the State in Juneau today. Additionally, the solicitation of the Plan's Third-Party Administrator currently occurs—and has historically occurred—in Juneau,

¹¹ *Crowson*, 705 P.2d at 911.

meaning that the vast majority of the discretionary and ministerial acts and omissions related to the Plan occur in the First Judicial District. Finally, the selection of the First Judicial District does not represent the selection of an alien forum designed to cause serious inconvenience of parties challenging the terms, condition, or design of the Plan. Consequently, it is reasonable to enforce the plain terms of the Plan's forum selection clause.

The fact that the Plan's forum selection clause was not the result of specific bargaining is of little importance. In *Carnival Cruise Lines, Inc. v. Shute*, the United States Supreme Court analyzed the forum selection clause in a contract of adhesion.¹² In reviewing the forum selection clause found on a cruise ship ticket, the Court stated that "a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions."¹³ Whether or not the forum selection clause was the product of bargaining simply goes to the reasonableness analysis of whether the court should enforce the clause, but "nonnegotiated forum-selection clause in a . . . contract is never [not] enforceable simply because it is not the subject of bargaining."¹⁴ As previously stated, the selection of the First Judicial District is reasonable and there is no evidence

¹² 499 U.S. 585, 593–94 (1991).

¹³ *Id.*

¹⁴ *Id.* at 593.

the forum selection clause is the product of fraud, misrepresentation, overreaching, or solely designed to inconvenience potential litigants. Consequently, the Court must enforce the clause and transfer this matter to the Superior Court for the First Judicial District in Juneau.

IV. CONCLUSION

The mandatory and unambiguous language of the Plan must be enforced such that this action is filed in the proper district. Because its enforcement does not serve a hardship or injustice on the Plaintiff, the State requests the Court to transfer venue to the First Judicial District, Juneau, Alaska.

DATED July 19, 2019.

KEVIN G. CLARKSON
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Defendant.)

ORDER GRANTING MOTION TO COMPEL VENUE

Defendant's Motion to Compel Venue is GRANTED. Venue in the above-captioned suit is hereby changed to the First Judicial District at Juneau, Alaska.

DATED: _____, 2019.

Honorable Eric A. Aarseth
Superior Court Judge

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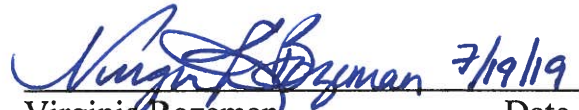
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CERTIFICATE OF SERVICE

This is to certify that on this date true and correct copies of the **Motion to Compel Venue, Order Granting Motion to Compel Venue, and this Certificate of Service** were served via U.S. mail and email on the following:

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