

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

THE RETIRED PUBLIC EMPLOYEES
OF ALASKA, INC.,

Plaintiffs,

vs.

STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION, DIVISION
OF RETIREMENT AND BENEFITS,

Defendants.

3AN-18-06722CI

Order Denying Motion to Compel Venue

Defendant State of Alaska, Department of Administration, Division of Retirement and Benefits (DRB) moves to compel venue pursuant to Alaska Rule of Civil Procedure 12(b)(3) and the terms of the AlaskaCare Retiree Health Plan (the “Plan”). Defendant argues that venue is not proper in the Third Judicial District based on the language of a choice of forum clause in the Plan.

Standard of Review

At common law, choice of forum clauses in contracts are “considered per se invalid on the grounds that a court’s jurisdiction could not be contravened by an agreement between litigating parties or that they were against public policy.”¹ Courts

¹ Volkswagenwek, A.G. v. Klippan, GmbH, 611 P.2d 498, 503 (Alaska 1980). The exception applies when: (A) a forum selection clause is part of a “freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power;” (B) the clause “designates unambiguously [a] court of competent jurisdiction as the sole and exclusive forum to which either party must submit;” and (C) enforcing the clause would

may determine that a choice of forum clause that specified a mandatory, exclusive forum is an exception to the common law rule if it passes a “reasonableness” test.² The Supreme Court of Alaska has recognized that a party imposing a choice of forum clause must have the authority to do so.³

Discussion

The Plan booklet states: “Any and all suits or legal proceedings of any kinds that are brought against the State must be filed in the First Judicial District, Juneau, Alaska.”⁴

The Juneau-only provision clearly specified a mandatory, exclusive forum for the litigation of the dispute in question, and the court therefore applies a reasonableness test.

The common law exception does not apply because there was no opportunity for employees to negotiate the venue provision, and the Juneau-only provision serves only “one interest.”⁵ Without negotiation, the retired public employees of Alaska who earned vested medical benefits did not waive their right to file an action in any Alaska court where venue is proper.

There is no statutory authority that allows the DRB to unilaterally impose a choice of forum clause, and it cannot act beyond its statutory authority.

Requiring State of Alaska residents to litigate a dispute outside of the judicial district in which they live is offensive to the notion of employees and retirees being

not violate due process, be unfair, unreasonable or unjust, or “contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision.” *Id.* at 503-5.

² *Id.* at 503.

³ See *id.* (finding that the party did not have the authority to enforce the choice of forum clause).

⁴ AlaskaCare Retiree Health Plan 106.

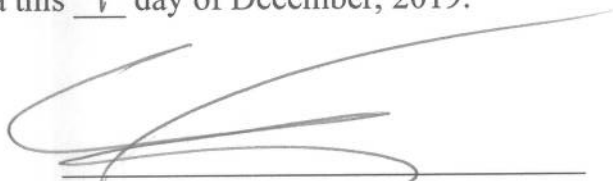
⁵ See *Crowson v. Sealaska Corp.*, 705 P.2d 905 (Alaska 1985) (invalidating a forum selection clause because “it appear[ed] that only one interest was represented at the bargaining table”).

treated fairly. Theoretically, a person may work their entire career, earn their retirement, and then enjoy their retirement in rural Alaska. DRB provides no justification why that individual must bear the cost of litigating his or her dispute in Juneau.

This Court DENIES the Defendant's Motion to Compel Venue.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 4th day of December, 2019.



ERIC A. AARSETH
Superior Court Judge

I certify that on 4 December, 2019, a
copy was mailed to:

G Callow; J Pidett; K Dilg

Alison Shlom, Law Clerk