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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

STEPHEN CAMPBELL, Individually and  
as Cotrustee, etc. et al.,

Plaintiffs and Appellants,

v.

MARRIOTT OWNERSHIP RESORTS  
INC. et al.,

Defendants and Respondents.

E064139

(Super.Ct.No. PSC1500096)

O P I N I O N

APPEAL from the Superior Court of Riverside County. James T. Latting, Judge.

Affirmed.

Mitchell Reed Sussman for Plaintiffs and Appellants.

Foley & Lardner, Sonia Salinas and David B. Goroff for Defendants and  
Respondents.

## I. INTRODUCTION

Plaintiffs and appellants, Stephen and Lisa Campbell, individually and as cotrustees of the Campbell Family Trust, dated September 24, 2005, appeal from an order staying their action for time-share-related fraud, intentional concealment, and rescission against defendants and respondents, Marriott Ownership Resorts, Inc. (Marriott), and its employees, Jennelle Rhodes and David Dorohoy. The trial court stayed plaintiffs' complaint because the time-share "Contract for Purchase," entered into between plaintiffs and Marriott, contained a mandatory forum selection clause which required plaintiffs to file suit in, and submit to the jurisdiction of, the Orange County, Florida courts. On this appeal, plaintiffs claim the trial court erred in staying the action because the forum selection clause is unreasonable and unenforceable, and also violates The Vacation Ownership and Time-Share Act of 2004 (the Act). (Bus. & Prof. Code, § 11210 et seq.) We reject these contentions and affirm the trial court's order.

## II. FACTUAL AND PROCEDURAL BACKGROUND

On December 8, 2013, at the Marriott Shadow Ridge in Palm Desert, California, plaintiffs entered into the Contract for Purchase with Marriott to purchase time-share interests in the Marriott Vacation Club Destinations plan. Plaintiffs' time-share interests allowed them to secure accommodations at various Marriott time-share resorts worldwide. Rhodes and Dorohoy were the Marriott employees who met with and explained the Marriott Vacation Club Destinations plan to plaintiffs. The Contract for Purchase identified Marriott as a Delaware corporation whose principal address was 6649

Westwood Boulevard, Orlando, Florida 32821-6090. The Contract for Purchase also contained a choice of law and forum selection clause, which was set forth in all caps and in bold font. The choice of law and forum selection clause states, in pertinent part:

**“THE LOCAL LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO FLORIDA’S CHOICE OF LAW RULES, WILL EXCLUSIVELY GOVERN THE INTERPRETATION, APPLICATION, ENFORCEMENT, PERFORMANCE OF, OR ANY OTHER MATTER RELATED TO, THIS CONTRACT. THE SELLER, PURCHASER, AND ANY OTHER PARTY CLAIMING RIGHTS OR OBLIGATIONS BY, THROUGH, OR UNDER THIS CONTRACT EACH WAIVE ANY RIGHT THEY MAY HAVE UNDER ANY APPLICABLE LAW TO A TRIAL BY JURY WITH RESPECT TO ANY SUIT OR LEGAL ACTION WHICH MAY BE COMMENCED BY OR AGAINST THE OTHER CONCERNING THE INTERPRETATION, CONSTRUCTION, VALIDITY, ENFORCEMENT, OR PERFORMANCE OF THIS CONTRACT OR ANY OTHER AGREEMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS CONTRACT. THE ORANGE COUNTY, FLORIDA COURTS WILL BE THE EXCLUSIVE VENUE FOR ANY DISPUTE, PROCEEDING, SUIT OR LEGAL ACTION CONCERNING THE INTERPRETATION, CONSTRUCTION, VALIDITY, ENFORCEMENT, PERFORMANCE OF THIS CONTRACT OR ANY OTHER AGREEMENT OR INSTRUMENT EXECUTED IN CONNECTION WITH THIS CONTRACT. IN THE EVENT ANY SUCH SUIT**

**OR LEGAL ACTION IS COMMENCED BY ANY PARTY, THE OTHER PARTY AGREES, CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE ORANGE COUNTY, FLORIDA COURTS WITH RESPECT TO SUCH SUIT OR LEGAL ACTION. EACH PARTY WAIVES ANY AND ALL RIGHTS UNDER APPLICABLE LAW OR IN EQUITY TO OBJECT TO THE JURISDICTION OR VENUE OF THE ORANGE COUNTY, FLORIDA**

**COURTS.”** The Contract for Purchase and its addendums also reference Florida and Florida laws repeatedly.

Plaintiffs subsequently filed a complaint in the Riverside County Superior Court alleging causes of action against defendants for fraud, intentional concealment, and rescission of the Contract for Purchase. Plaintiffs claimed defendants made various misrepresentations to them in connection with the Contract for Purchase, including that the time-share interests were financial investments whose resale price and value would increase over time. Plaintiffs sought \$67,114.27 in general damages, the amount they paid for their time-share interests. The trial court granted defendants’ motion to stay or dismiss the action. (Code Civ. Proc., §§ 410.30, 418.10, subd. (a)(3).) In its tentative ruling, which it adopted as its final ruling, the trial court explained that the Contract for Purchase contained a mandatory forum selection clause, and that such a clause had to be given effect ““*without* regard to the parties’ “convenience”; the only question [was] whether its enforcement would be *unreasonable*.”” It ruled that plaintiffs had failed to establish that the forum selection clause was unreasonable, and stayed the case “pending

refiling in Florida.” Plaintiffs appeal from the stay order. (Code Civ. Proc., § 904.1, subd. (a)(3).)

### III. DISCUSSION

#### A. *The Forum Selection Clause is Reasonable and Enforceable*

In California, contractual forum selection clauses are enforceable, provided they are entered into freely and voluntarily, and their enforcement is not unreasonable. (*Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d 491, 495-496; *America Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 11.) A contractual forum selection clause is presumed valid, and the burden is on the party seeking to overturn the forum selection clause to show that the clause is unreasonable. (*Schlessinger v. Holland America* (2004) 120 Cal.App.4th 552, 558-559.) A forum selection clause is unreasonable if the forum selected would be “unavailable or unable to accomplish substantial justice.” (*Smith, Valentino & Smith, Inc. v. Superior Court, supra*, at pp. 494-495; *Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1679.) A trial court’s decision to enforce a forum selection clause is reviewed for abuse of discretion. (*Verdugo v. Alliantgoup, L.P.* (2015) 237 Cal.App.4th 141, 148.)

A distinction has been drawn between mandatory and permissive forum selection clauses for the purpose of analyzing whether the clause should be enforced. “A mandatory clause will ordinarily be given effect without any analysis of convenience; the only question is whether enforcement of the clause would be unreasonable. On the other hand, when the clause merely provides for submission to jurisdiction and does not

expressly mandate litigation exclusively in a particular forum, then the traditional forum non conveniens analysis applies.” (*Intershop Communications AG v. Superior Court* (2002) 104 Cal.App.4th 191, 196 (*Intershop*).

The trial court determined the forum selection clause was mandatory because the Contract for Purchase provided that: “The Orange County, Florida courts will be the exclusive venue for any dispute, proceeding, suit or legal action concerning . . . this contract. . . . In the event any such suit or legal action is commenced by any party, the other party agrees, consents and submits to the personal jurisdiction of the Orange County, Florida courts with respect to such suit or legal action.” (Capitalization & bolding omitted.) In their reply brief, plaintiffs contend for the first time that the forum selection clause was permissive rather than mandatory. Because plaintiffs did not address this contention in their opening brief, they have forfeited the issue. (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4; *Aviel v. Ng* (2008) 161 Cal.App.4th 809, 821.) In any event, the trial court correctly concluded the forum selection clause was mandatory. We decide this threshold issue de novo because the “interpretation is based solely upon the terms of the written instrument without any assessment of conflicting extrinsic evidence.” (*Intershop, supra*, 104 Cal.App.4th at p. 196.)

As indicated, the forum selection clause states that: “The Orange County, Florida courts will be the exclusive venue for any dispute, proceeding, suit, or legal action concerning . . . this contract.” (Capitalization & bolding omitted.) This language can

only reasonably be interpreted to require any suit to be filed in Orange County, Florida, to the exclusion of any other forum. At least one court has concluded that similar language created a mandatory forum provision. (*Olinick v. BMG Entertainment* (2006) 138 Cal.App.4th 1286, 1294 [““The parties agree to the exclusive jurisdiction and venue of the Supreme Court of the State of New York for New York County and/or the United States District Court for the Southern District of New York for the resolution of all disputes arising under this Agreement.””].) We may dispel any doubt about the mandatory nature of the forum selection clause by looking to the accompanying choice of law clause, which mandates that “[t]he local laws of the State of Florida, without regard to Florida’s choice of law rules, will exclusively govern the interpretation, application, enforcement, performance of, or any other matter related to, this contract.” (Capitalization & bolding omitted.) The phrase “will exclusively govern” is a broad one signifying the relationship of absolute direction, control, and restraint, and it reflects the parties’ agreement that the Contract for Purchase is to be completely and absolutely controlled by Florida law. (*Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 469.) Taking the choice of law and forum selection clause as a whole, it stands to reason the parties intended the clause providing “exclusive venue” in Orange County, Florida to be mandatory to the exclusion of any other forum.

Because the forum selection clause is mandatory, it “is presumed valid and will be enforced unless the plaintiff[s] show[] that enforcement of the clause would be unreasonable under the circumstances of the case.” (*Intershop, supra*, 104 Cal.App.4th at

p. 198.) Plaintiffs must show the Florida forum “would be unavailable or unable to accomplish substantial justice or that no rational basis exists for the choice of forum. [Citations.] Neither inconvenience nor the additional expense of litigating in the selected forum is a factor to be considered. [Citations.]” (*Id.* at pp. 199-200.) It is not irrational for a company that conducts business in multiple jurisdictions to insist on having all of its contractual disputes adjudicated in one forum, as long as there is a reasonable basis for selecting the forum. (*Cal-State Business Products & Services, Inc. v. Ricoh, supra*, 12 Cal.App.4th at pp. 1680, 1682.) It is reasonable to require actions to be filed exclusively where a company’s headquarters are located. (*Smith, Valentino & Smith, Inc. v. Superior Court, supra*, 17 Cal.3d at pp. 494-495.)

Plaintiffs contend the forum selection clause was unreasonable and unenforceable because Florida bears no legitimate relationship to the parties or their dispute. They also claim that enforcement of the clause will “gravely inconvenient [*sic*] plaintiffs and would effectively deny them their day in court if they are forced to litigate the case in Florida,” as the forum selection clause benefits only Marriott, and discourages plaintiffs from pursuing their claims against Marriott. We reject plaintiffs’ contention, as Marriott is a corporation whose headquarters are in Florida. Thus, Florida has “some legitimate relationship to the parties or their dispute,” and it was rational and reasonable for Marriott to insist on having all of its contractual disputes adjudicated in Florida, where its headquarters are located. Furthermore, plaintiffs would not be “effectively den[ied] . . . their day in court,” as they are still able to pursue their claims in the Florida court system.

Lastly, because the forum selection clause is mandatory, “neither inconvenience nor the additional expense of litigating in [Florida] is a factor to be considered” in determining whether the forum selection clause is reasonable. (*Intershop, supra*, 104 Cal.App.4th at p. 199.)

As plaintiffs point out, forum selection clauses have generally been upheld except in cases where the action involved California statutes that included explicit antiwaiver provisions. (*Wimsatt v. Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1520-1524; Corp. Code, § 31512 [“Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this law or any rule or order hereunder is void.”]; *Hall v. Superior Court* (1983) 150 Cal.App.3d 411, 417 [Corp. Code, § 25701 invalidates “[a]ny condition, stipulation or provision purporting to bind any person acquiring any security to waive compliance with any provision of this law” or any rule or order hereunder].) However, where, as here, there are no statutes prohibiting a forum selection clause, there is “no compelling policy reasons for denying enforcement of the forum selection clause . . . .” (*CQL Original Products, Inc. v. National Hockey League Players’ Assn.* (1995) 39 Cal.App.4th 1347, 1357; *Furda v. Superior Court* (1984) 161 Cal.App.3d 418, 427, fn. 5.)<sup>1</sup>

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<sup>1</sup> Plaintiffs’ reliance on *A.I.U. Ins. Co. v. Superior Court* (1986) 177 Cal.App.3d 281 does not support their claim that the forum selection clause is unreasonable and unenforceable. That case addressed whether the defendant had sufficient minimum contacts to justify the forum’s exercise of jurisdiction over it, not whether a forum selection clause was enforceable. (*Id.* at pp. 286-292.)

Plaintiffs also claim that the forum selection clause was unreasonable because the Contract for Purchase was a “take it or leave it” contract, or contract of adhesion, and because the forum selection clause was “buried in the middle of a thirteen (13) page form contract.” A forum selection clause that is presented as a “take it or leave it” proposition, and not subject to negotiation, does not make the clause unenforceable. (*Schlessinger v. Holland America, supra*, 120 Cal.App.4th at p. 559.) A forum selection clause contained in a contract of adhesion is enforceable where the covenant provided adequate notice of the forum selection clause (*Intershop, supra*, 104 Cal.App.4th at pp. 201-202), and where the covenant “is within the reasonable expectations of the party against whom it is being enforced” (*Cal-State Business Products & Services, Inc. v. Ricoh, supra*, 12 Cal.App.4th at p. 1679). A forum selection clause may be valid even if the plaintiff did not read the clause, as long as he or she had the opportunity to review the contract. (*Schlessinger v. Holland America, supra*, at pp. 558-559 [clause printed in all caps]; *Intershop, supra*, at p. 202.)

The trial court was correct in explaining that the “take it or leave it” nature of the contract did not establish that the forum selection clause was unreasonable. (*Schlessinger v. Holland America, supra*, 120 Cal.App.4th at p. 559.) As discussed, a nonnegotiable forum selection clause contained within a contract of adhesion is enforceable as long as the clause provided adequate notice to plaintiffs that they were agreeing to the forum selection clause. (*Intershop, supra*, 104 Cal.App.4th at pp. 201-202.) And here, even though plaintiffs claim they were not asked to acknowledge or accept the forum selection

clause, the forum selection clause is set apart from other sections of the Contract for Purchase by being printed in capital letters and bold type. The Contract for Purchase and its addendums also repeatedly refer to Florida and Florida law. Thus, plaintiffs received adequate notice of the forum selection clause even if they did not actually read the Contract for Purchase or the forum selection clause.

For these reasons, the trial court did not abuse its discretion in enforcing the forum selection clause and ordering plaintiffs' action stayed pending refiling in Florida.

*B. The Forum Selection Clause Does Not Violate the Act*

Plaintiffs assert that, because time-share plans offered for sale in this state are governed by the Act, enforcement of the forum selection clause violates the Act. Not so.

While the Act recognizes a plaintiff's ability to bring "[a]n action for damages . . . for a violation of this chapter . . . against the developer, seller, or marketer of time-share interests," it also states that "[r]elief under this section does not exclude other remedies provided by law." (Bus. & Prof. Code, § 11285.) The Act further articulates that any contractual provision that governs the dispute resolution process against a time-share developer shall provide that "the venue of the claim or dispute resolution process to be in the county where the time-share is located *unless the parties agree to some other location.*" (Bus. & Prof. Code, § 11275, subd. (a)(4), italics added.) Thus, the Act plainly contemplates that disputes concerning a California-purchased time-share may be resolved outside California.

In interpreting a statute, such as Business and Professions Code section 11275, subdivision (a)(4), “we look to the words of the statute themselves” as “[t]he Legislature’s chosen language is the most reliable indicator of its intent, because ““it is the language of the statute itself that has successfully braved the legislative gauntlet.”” [Citations.] We give the words of the statute ‘a plain and commonsense meaning’ unless the statute specifically defines the words to give them a special meaning. [Citations.] If the statutory language is clear and unambiguous, our task is at an end, for there is no need for judicial construction. [Citations.] In such a case, there is nothing for the court to interpret or construe.” (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082-1083.) Here, the Act does not prohibit the parties from agreeing to resolve their dispute in the Florida courts; in fact, it expressly permits the parties to agree to resolve disputes at a location other than the county where the time-share is located. (Bus. & Prof. Code, § 11275, subd. (a)(4).) For this reason, enforcement of the forum selection clause does not violate the Act.

#### IV. DISPOSITION

The trial court’s order staying the action is affirmed. Each party shall bear their respective costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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McKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

CODRINGTON  
J.