

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HDAV OUTDOOR, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,  
Appellant,

vs.

ELITE MOBILE ADVERTISING LED  
BILLBOARDS, INC., A FOREIGN  
CORPORATION; TROY STEVENSON,  
INDIVIDUALLY; AND HARRY  
WILKINS, INDIVIDUALLY,  
Respondents.

No. 67437

**FILED**

**DEC 29 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a contract and torts action. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

The district court dismissed the underlying complaint based on a forum selection clause in the parties' contract requiring claims relating to the contract to be mediated through the court system in Florida. On appeal, appellant contends that the forum selection clause was procedurally and substantively unconscionable and that it did not apply to appellant's torts claims.

Although the forum selection clause at issue here was not artfully drafted, its effect—requiring any legal claims relating to the parties' contract to be resolved in Florida—is clear from the language of the clause, and we therefore disagree with appellant's argument that the clause was misleading or ambiguous. Moreover, appellant has not argued that it lacked notice of the clause or that the parties had unequal bargaining power preventing appellant from negotiating with respondents with regard to the forum selection clause.

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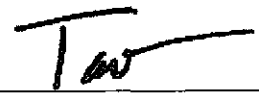
Under these circumstances, we conclude that appellant's argument that the forum selection clause was procedurally unconscionable lacks merit. See *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 554, 96 P.3d 1159, 1162 (2004) (providing that "[a] clause is procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract"); see also *Tandy Comput. Leasing, Inc. v. Terina's Pizza, Inc.*, 105 Nev. 841, 843, 784 P.2d 7, 8 (1989) (concluding that a forum selection clause was unenforceable where the "clause was buried on the very bottom of the back page of the lease agreement, in very fine print, in a paragraph labelled MISCELLANEOUS," such that the parties did not have notice of the clause). As a result, we further conclude that appellant has not demonstrated that the clause was unenforceable based on unconscionability. See *D.R. Horton*, 120 Nev. at 553, 96 P.3d at 1162 (requiring both procedural and substantive unconscionability in order to refuse to enforce a contract clause based on unconscionability).

Finally, because the clause, by its terms, applied to all claims relating to the contract, and because all of appellant's torts claims related to the contract, we conclude that the forum selection clause applied to appellant's torts claims as well as its contract claims. See *Tuxedo Int'l Inc. v. Rosenberg*, 127 Nev. 11, 22, 251 P.3d 690, 697 (2011) (requiring courts to first look to the parties' intent, based on the language of the forum selection clause, to determine whether such a clause will apply to torts claims). Thus, the district court properly concluded that the forum selection clause in this case required the action to be brought in Florida

and dismissed the action. *See Tandy Comput.*, 105 Nev. at 843, 784 P.2d at 8 (recognizing that a forum selection clause is enforceable when the contract is freely negotiated and the clause is not unreasonable and unjust, such as when one party has no notice of the existence of the clause). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Ronald J. Israel, District Judge  
Lansford W. Levitt, Settlement Judge  
Kirk T. Kennedy  
Elite Mobile Advertising LED Billboards, Inc.  
Harry Wilkins  
Troy Stevenson  
Eighth District Court Clerk