



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARRYL COX D/B/A ROYAL
TRUCKING LANES, LLC,
Appellant,
vs.
CRESCO CAPITAL, INC. D/B/A LONE
MOUNTAIN TRUCKING LEASING,
Respondent.

No. 91462-COA

ORDER OF AFFIRMANCE

Darryl Cox d/b/a Royal Trucking Lanes, LLC appeals from a district court order dismissing a civil action. Eighth Judicial District Court, Clark County; Hon. Jennifer L. Schwartz, Judge.

Cox entered into a lease agreement in October 2023 for a commercial truck with OTR Leasing, LLC. The lease agreement incorporated a leasing schedule which indicated weekly payments were to be made by Cox for satisfaction of the lease. In June 2025, respondent Cresco Capital, Inc. d/b/a Lone Mountain Trucking Leasing, acquired all OTR Leasing customer accounts, which included the Cox account. The assignment of the lease maintained all prior payment agreements and leasing provisions.

Cox initiated the underlying proceedings in August 2025 and filed an application for writ of possession and an ex-parte motion for temporary restraining order arguing that respondent had wrongfully detained the truck due to alleged nonpayment and that the truck should be returned to him. He also filed a complaint for declaratory relief; breach of

contract; wrongful repossession; conversion; breach of the implied covenant of good faith and fair dealing; and injunctive relief.

Subsequently, respondent filed a motion to dismiss, arguing that the lease agreement contained a forum selection clause which stated that “[t]he Courts of Johnson County, Kansas shall have exclusive jurisdiction and venue over any cause of action or claim between the lessor and lessee arising out of or related to the lease and or the Equipment.” Thus, respondent averred that dismissal was warranted pursuant to the forum selection clause as Kansas has exclusive jurisdiction and was the proper forum for the dispute. Cox opposed the motion arguing, among other things, that he made various alleged payments in satisfaction of the lease schedule, and claimed respondent was falsely accusing him of being in default. According to a notice of hearing contained in the record, the motion to dismiss was scheduled for a September 25 hearing. The district court held a hearing on August 26 regarding Cox’s request for a preliminary injunction and continued the matter to September 9. During the September 9 hearing, the district court orally granted respondent’s motion to dismiss.

Subsequently, the district court issued a written order dismissing the action and concluding that the party seeking to avoid enforcement of a forum selection clause bears a heavy burden to establish the clause is unenforceable. The court found that on or about October 9, 2023, the parties to this lawsuit entered into a lease agreement. The court further found that Cox’s claims arose out of and were related to the lease. Because Cox provided no argument that the lease agreement was unenforceable, and because the court found the parties entered into the agreement freely and voluntarily, the court concluded that the terms should be strictly enforced. Thus, the court dismissed the case and said that

nothing prohibits Cox from bringing an action in Kansas, consistent with the lease agreement. This appeal followed.

Cox argues his due process rights were violated because the district court ruled on the motion to dismiss at the September 9 hearing rather than the scheduled hearing date (September 25) for the motion. Procedural due process is satisfied when parties receive notice and an opportunity to be heard. *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. 10, 17, 481 P.3d 853, 859 (2021); *see also Mesi v. Mesi*, 136 Nev. 748, 750, 478 P.3d 366, 369 (2020) (explaining that due process may be satisfied through a live hearing but parties may also have a meaningful opportunity to present their case through presentation of affidavits, supporting documents, and motions). Additionally, “[t]he lower court has broad discretion in calendaring matters before it.” *Maheu v. Eighth Jud. Dist. Ct.*, 89 Nev. 214, 216-17, 510 P.2d 627, 629 (1973); *see also Happy Campers, LLC v. Post & Pearl Props., LLC*, No. 84808, 2023 WL 7449409, at *2 (Nev. Nov. 9, 2023) (Order of Affirmance) (“[A] district court has the inherent authority to control its own docket.”).

Here, Cox had notice and an opportunity to be heard because by the time the district court granted the motion to dismiss during the September 9 hearing, he had already filed his opposition to the motion to dismiss and was present at the hearing. Moreover, the district court, in its written order, specifically stated it reviewed the parties’ motion practice, including Cox’s opposition, and based on that review determined that dismissal was warranted pursuant to the forum selection clause.¹ *See*

¹Notably, Cox represents on appeal that the district court resolved the motion at the hearing without taking additional argument, which reinforces that the court resolved the motion based on the parties’ motion practice

Matter of Guardianship of D.M.F., 139 Nev. 342, 351, 535 P.3d 1154, 1163 (2023) (stating that “[n]otice is sufficient to satisfy due process where it is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections” (internal quotation marks omitted)). Thus, Cox had notice and a meaningful opportunity to present his opposition to respondent’s motion to dismiss.

Nevertheless, even assuming without deciding that the district court abused its discretion by moving the hearing on the motion to dismiss to an earlier date, Cox has not demonstrated that he was prejudiced since he has not shown that the court abused its discretion in dismissing the action pursuant to the forum selection clause, as set forth below. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (holding “[a]n error is harmless when it does not affect a party’s substantial rights”); *cf.* NRCP 61 (stating that courts “must disregard all errors and defects that do not affect any party’s substantial rights”).

This court reviews “a district court’s order dismissing an action for forum non conveniens for an abuse of discretion.” *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 300, 350 P.3d 392, 395-96 (2015). However, the applicability of a forum selection clause in a contract and interpretation thereof are reviewed de novo. *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015). When a forum selection clause is mandatory and suit is brought in the incorrect forum, the matter should be dismissed. *See id.* at 738, 359 P.3d at 105; *Tuxedo Int’l Inc. v. Rosenberg*, 127 Nev. 11, 22, 251 P.3d 690, 697 (2011) (recognizing

alone, as opposed to new arguments raised at the hearing without notice to Cox.

that parties are free to agree to binding forum selection clauses); *see also M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12-13 (1972) (explaining that forum selection clauses should be enforced if they are unaffected by fraud, undue influence, or overweening bargaining power).

Cox argues that even a valid forum selection clause cannot be enforced if enforcement would be unreasonable and unjust when tainted by fraud. In making this argument, he relies on his pleadings which argued respondent committed fraud in alleging that he was in default of the lease, and claims that the district court should have considered that fraud when determining whether the forum selection clause was enforceable. However, these fraud allegations involved respondent presenting an allegedly fraudulent accounting of Cox's payments pursuant to the lease and did not suggest that respondent committed fraud with respect to the forum selection clause itself. *See Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n. 14 (1974) (explaining that allegations of fraud must be specific to the forum selection clause itself in order to invalidate the forum selection clause). And Cox presents no argument on appeal challenging the district court's findings that the parties entered into the agreement freely and voluntarily and, thus, its terms should be strictly enforced. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2. 367 P.3d 442, 446 n.2 (Ct. App. 2015) (stating that issues that are not raised on appeal are deemed forfeited); *Tandy Comput. Leasing, Inc. v. Terina's Pizza, Inc.*, 105 Nev. 841, 843, 784 P.2d 7, 8 (1989) (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); *cf. 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's] 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").

Therefore, Cox has not demonstrated that the district court abused its discretion in dismissing the underlying action pursuant to the forum selection clause contained in the lease agreement.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

²While the appeal was pending in the Nevada Supreme Court, the supreme court issued an order holding the appeal in abeyance pending the district court's resolution of an NRCP 60(b) motion that Cox had filed, and instructing that any aggrieved party who wished to appeal from the written order resolving the NRCP 60(b) motion should file a notice of appeal in accordance with NRAP 3(c). Thus, to the extent Cox presents argument on appeal regarding the district court's decision to deny his NRCP 60(b) motion, we do not consider these points as Cox did not file a notice of appeal challenging the district court's order denying his motion for NRCP 60(b) relief. See NRAP 3(c)(1)(B) (providing that a notice of appeal must "designate the judgment, order, or part thereof being appealed").

Insofar as Cox raises arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

cc: Hon. Jennifer L. Schwartz, District Judge
Darryl Cox
Winner & Booze
Eighth District Court Clerk