SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0295-23

DANA TRANSPORT, INC., DANA CONTAINER, INC., SUTTLES TRUCK LEASING, INC., SUTTLES TRUCK LEASING, LLC., INTERNATIONAL EQUIPMENT LOGISTICS, INC., FLAGSHIP SERVICES OF WEST VIRGINIA, LLC, KENTUCKY FLAGSHIP, SERVICES, LLC, FLAGSHIP SERVICES OF OHIO, LLC, LIQUID TRANSPORT, LLC, and RONALD DANA,

Plaintiffs-Respondents,

v.

PNC BANK, NATIONAL ASSOCIATION, WELLS FARGO FOOTHILL, LLC, (NOW WELLS FARGO CAPITAL FINANCE, LLC), WACHOVIA BANK NATIONAL ASSOCIATION (NOW WELLS FARGO BANK), WELLS FARGO BANK, NATIONAL ASSOCIATION, M&I BUSINESS CREDIT, LLC (NOW BMO HARRIS BANK), THE HUNTINGTON NATIONAL BANK, CATHAY BANK, BANK LEUMI, USA, and JOHN P. BRADY,

Defendants-Appellants,

and

REALIZATION SERVICES, INC., BARRY KASOFF, FOCUS MANAGEMENT GROUP, SARI GARRICK, and ALAN TISCHBEIN,

Defendants.

Argued January 29, 2024 – Decided June 18, 2024

Before Judges Gilson, DeAlmeida and Bishop-Thompson.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-2095-16.

Michael S. Stein argued the cause for appellants (Pashman Stein Walder Hayden, PC, Reed Smith LLP, and Calcagni & Kanefsky, LLP, attorneys for PNC Bank, National Association, Cathay Bank and Bank Leumi US; Michael S. Stein, Brendan M. Walsh, Robert A. Nicholas (Reed Smith LLP) of the Pennsylvania bar, admitted pro hac vice, Henry F. Reichner, Anne Rollins Bohnet, Joshua M. Peles and Mariellen Dugan, on the joint brief).

Michael S. Stein argued the cause for appellants (Richard G. Haddad (Otterbourg PC), and Pauline McTernan (Otterbourg PC) of the New York bar admitted pro hac vice, attorneys for Wells Fargo Capital Finance, LLC, Wells Fargo Bank, National Association, and John P. Brady; Richard G. Haddad and Pauline McTernan, on the joint brief).

Michael S. Stein argued the cause for appellants (Felice B. Galant (Norton Rose FulBright US LLP), Steve Dollar (Norton Rose FulBright US LLP) of the New York and Texas bars, admitted pro hac vice, and Mark Oakes (Norton Rose Fulbright US LLP) of the Texas and California bars, admitted pro hac vice, attorneys for BMO Harris Bank and The Huntington National Bank; Felice B. Galant, Steve Dollar and Mark Oakes, on the joint brief).

Jan Alan Brody argued the cause for respondents (Carella, Byrne, Cecchi, Brody & Agnello, PC, and McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys; Jan Alan Brody, Caroline F. Barlett, James E. Cecchi and Joseph P. LaSala, on the brief).

PER CURIAM

On leave granted, defendants appeal from two orders of the Law Division: (1) a December 16, 2022 order declining to enforce the forum-selection clause in a lending agreement between the parties; and (2) an August 18, 2023 order denying defendants' motion for reconsideration of the December 16, 2022 order. We reverse.

I.

Plaintiffs, several related transportation entities and an officer of those entities, and defendants, several banks and an officer of one of those institutions, had a nearly decade-long commercial lending relationship. That relationship ended in 2013, when plaintiffs refinanced their credit facility with new lenders.

The parties, while represented by counsel, negotiated a 2009 amended and restated loan agreement, in which plaintiffs were referred to as "Borrowers" and defendants were referred to as "Lenders." Section 16.1 of the 2009 agreement contained a forum-selection clause that provided, in relevant part:

> Any judicial proceeding brought by or against any Borrower with respect to any of the Obligations, this Agreement, the Other Documents or any related agreement may be brought in any court of competent jurisdiction in the State of New York, United States of America, and, by execution and delivery of this Agreement, each Borrower accepts for itself and in connection with its properties, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts . . . . . Any judicial proceeding by any Borrower against Agents or any Lender involving, directly or indirectly, any matter or claim in any way arising out of, related to or connected with this Agreement or any related agreement, shall be brought only in a federal or state court located in the County of New York, State of New York.

The parties' 2006 and 2007 amended and restated loan agreements contained identical provisions.

On October 8, 2015, plaintiffs filed a lender liability complaint against defendants in the United States District Court for the Southern District of New York (Dana I). They alleged contract, tort, and statutory claims arising out of and relating to the loan documents, including the 2009 agreement, and the parties' lending relationship. In explaining in the complaint why they filed suit

in New York, plaintiffs stated seven times that "the Loan Documents command suit be instituted in the State of New York." They also alleged venue was proper because the parties "contractually agreed that the case be venued in" New York.

In December 2015, the New York federal court held an initial case management conference. According to defendants, the judge expressed skepticism about the viability of plaintiffs' claims and invited a motion to dismiss the complaint and for an award of sanctions based on statute of limitations and waiver defenses. Four days later, plaintiffs voluntarily dismissed the complaint in Dana I.

In April 2016, plaintiffs filed a complaint against defendants in the Law Division, alleging essentially the same claims as those they alleged in Dana I. In lieu of filing an answer, defendants moved to dismiss the complaint based on, among other things, the forum-selection clause in the 2009 agreement. Plaintiffs opposed the motion, arguing, among other things, that the forum-selection clause is ambiguous and therefore void. In support of their position, plaintiffs argued that the clause contains both a permissive provision concerning New York courts and a mandatory provision concerning New York courts, and that this conflict makes the clause unenforceable. In addition, plaintiffs argued that the clause was obtained through duress, rendering it a nullity.

On June 8, 2018, the trial court granted the motion in part, and denied the motion in part. In an oral opinion, the court concluded the two provisions in the forum-selection clause are not ambiguous because the first, which is permissive, is broader than the second, which contains mandatory terms. The court interpreted the provisions to mandate that plaintiffs' contract claims be filed in a New York court, but allow plaintiffs' tort claims to be filed in any court. Applying this reasoning, the trial court dismissed the three counts of the complaint it determined to be contract claims and denied defendants' motion with respect to the remaining counts of the complaint. A June 8, 2018 order memorialized the trial court's decision.

We denied defendants' motion for leave to appeal the June 8, 2018 order. Dana Transp., Inc. v. PNC Bank, No. AM-0642-17 (App. Div. July 27, 2018).

By 2022, the matter had been assigned to a new judge. After completing discovery, defendants moved for summary judgment, again arguing the forum-selection clause required dismissal of the remaining counts of the complaint.

On October 28, 2022, in an oral opinion, the trial court granted defendants' motion. Based on its authority to reconsider interlocutory orders at any time prior to the entry of final judgment, Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987), the court concluded that the June 8, 2018

order was predicated on an incorrect interpretation of the forum-selection clause. The court found that it could not reconcile the two provisions in the forum-selection clause to permit plaintiffs' non-contract claims to be filed in New Jersey, while mandating that its contract claims be filed in New York. The court found that the mandatory provision of the clause "is expansive enough to encompass both contract and tort claims" and that our courts "have enforced forum[-]selection clauses utilizing similar language without a distinction as to the types of claims pled."

The court found that the parties to the 2009 agreement were sophisticated and represented by counsel when they negotiated the forum-selection clause, which appeared in the same form in several of their agreements over a number of years. The court found that the parties had equal bargaining power and opportunity to negotiate and that neither objected to the forum-selection clause nor attempted to modify its terms when negotiating the 2009 agreement.

The court noted that plaintiffs do not contend the forum-selection clause is against public policy and found that they failed to establish that enforcement of the clause would make it gravely difficult or inconvenient so as to deprive them of their day in court. The trial court found that

> [t]he parties have engaged in a course of parallel litigation in both New York and New Jersey. Discovery

> was made – essentially, discovery was shared between the two litigations and while parties have invested significant time and . . . expense in the instant litigation, the record developed in New Jersey can similarly be used in New York. To the extent that either party has outstanding New Jersey claims, the New York choice of law principles would guide the [c]ourts as well.[1]

The court concluded that "plaintiff[s] . . . give[] no reason . . . for the [c]ourt to negate or disregard the enforceability of the present forum[-]selection clause . . . ." Thus, the court revised its prior order and found the forum-selection clause to be enforceable as to all of plaintiffs' claims against defendants. An October 28, 2022 order dismisses the complaint without prejudice.

Plaintiffs subsequently moved for reconsideration of the October 28, 2022 order. They argued that it would be unjust to enforce the forum-selection clause because their claims had become time barred in New York while their complaint was pending in New Jersey. Defendants opposed the motion.

On December 16, 2022, the trial court issued an oral opinion granting plaintiffs' motion. The court reasoned that

> I think that it would be improper for the [c]ourt to ignore the fact that four years ago . . . my predecessor entered an order that enforced some aspects of the

[1] The court's statement that discovery had taken place in a New York action is likely a reference to an action brought by defendants in New York to enforce a provision in the 2009 agreement entitling them to indemnification for attorney's fees incurred in Dana I (the Indemnification Action).

> forum[-]selection clause and not others and while I, for the reasons that I stated in October, believe that that was a wrong decision, that my consideration of the enforceability of the clause at that time did not consider a world in which plaintiff[s] would be barred from bringing the claim[s] then in the forum that I was directing plaintiff[s] to refile i[n].
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> . . . .
>
> And clearly, under New Jersey law, the cases that guide me indicate that I enforce a forum[-]selection clause under factor [three], where [doing so] would not seriously inconvenience the parties at trial and that . . . it can't be when a party, for all practical purposes would be deprived their day in court.
>
> And that frankly, is what . . . the [c]ourt would be doing by reversing the prior ruling, enforcing the forum[-]selection clause here and mandating that the plaintiffs go to a forum that frankly, is no longer open to them.

The court noted that "defendants did seek appeal of the [June 8, 2018] interlocutory order . . . and were not granted that, right, so had the Appellate Division . . . signaled that they thought that there was such a huge error, they could have taken it up at that time." This statement appears to adopt plaintiffs' argument that it was reasonable for them to believe the New Jersey action was properly filed and they had no need to file a protective complaint in New York.

In light of its findings, the trial court reconsidered its October 28, 2022 order and concluded that enforcement of the forum-selection clause was not warranted. A December 16, 2022 order memorializes the trial court's decision.

Defendants thereafter moved for reconsideration of the December 16, 2022 order. They argued that any hardship plaintiffs faced in bringing their claims against defendants in New York was self-created, given that they voluntarily withdrew their complaint in Dana I and engaged in forum shopping when they subsequently filed a complaint alleging the same claims in New Jersey. In addition, defendants argued that if the complaint is not dismissed, they are entitled to summary judgment with respect to plaintiffs' claim that they signed the 2009 agreement under duress. In support of this position, defendants argued that in the Indemnification Action, the New York federal court granted summary judgment in favor of defendants with respect to plaintiffs' duress claim and found that if the 2009 agreement was signed under duress, plaintiffs subsequently ratified the agreement. Plaintiffs opposed the motion.

On February 17, 2023, while defendants' motion for reconsideration was pending, the trial court issued a written opinion denying defendants' motion for summary judgment on the duress claims. The court found material issues of fact regarding defendants' conduct toward plaintiffs remained in dispute.

On August 18, 2023, the trial court issued a written opinion rejecting defendants' argument that plaintiffs are precluded from raising a duress defense to the forum-selection clause by the decision in the Indemnification Action. The court found the Indemnification Action, which concerned only the 2009 agreement, was not identical to the New Jersey action, which concerns nine agreements spanning the parties' years-long lending relationship. In addition, the court declined to reconsider its February 17, 2023 decision denying defendants' motion for summary judgment on plaintiffs' duress claims.

The court also rejected defendants' motion for reconsideration of the December 16, 2022 order, finding no basis to depart from its decision that enforcement of the forum-selection clause would be unreasonable because of the expiration of the New York statute of limitations on plaintiffs' claims. An August 18, 2023 order memorializes the trial court's decision.

We granted defendants' motion for leave to appeal from the December 16, 2022 and August 18, 2023 orders. In doing so, we noted that "[w]e deem it in the interest of justice and judicial economy to address all issues related to the forum[-]selection clauses at this time."

Defendants argue: (1) the trial court correctly concluded that the forum-selection clause applies to all the claims plaintiffs allege against them in the

complaint; (2) the trial court erred when it concluded that the expiration of the New York statute of limitations justifies not enforcing the forum-selection clause; and (3) trial court erred when it denied defendants' summary judgment motion with respect to duress and ratification.

Plaintiffs argue: (1) the trial court's interpretation of the forum-selection clause renders the permissive provision of the clause superfluous and the June 18, 2022 order should be restored; (2) for the first time on appeal, that the forum-selection clause terminated when the parties ended their lending relationship and all of plaintiffs' claims should be reinstated; (3) the trial court properly exercised its discretion when it declined to enforce the forum-selection clause; (4) the trial court's findings with respect to duress and ratification are not before this court; and (5) if the trial court's findings with respect to duress and ratification are before this court, no grounds exist to reverse the trial court's conclusion that disputed issues of material fact preclude summary judgment in favor of defendants on those issues and that plaintiffs are not collaterally estopped from raising those arguments by the decision in the Indemnification Action.

II.

1. Whether the Forum-Selection Clause Applies to All of Plaintiffs' Claims.

Our review of the court's interpretation and construction of a contract is de novo. Manahawkin Convalescent v. O'Neill, 217 N.J. 99, 115 (2014). New Jersey courts have long accepted that parties may enter a contract in which they agree that any legal dispute arising from the agreement shall be filed in a particular forum. See Caspi v. Microsoft Network, LLC, 323 N.J. Super. 118, 122 (App. Div. 1999); Wilfred MacDonald, Inc. v. Cushman, Inc., 256 N.J. Super. 58, 63-64 (App. Div. 1992). The meaning and enforceability of a forum-selection clause "turns upon fundamental precepts of contract law." Hoffman v. Supplements Togo Mgmt, LLC, 419 N.J. Super. 596, 606 (App. Div. 2011).

When parties to an agreement offer differing interpretations of its provisions, our objective is to "ascertain the intention of the parties as revealed by the language used, the situation of the parties, the attendant circumstances, and the objects the parties were striving to attain." Celanese Ltd. v. Essex Cty. Improvement Auth., 404 N.J. Super. 514, 528 (App. Div. 2009). "Where the terms of a contract are clear, we enforce the contract as written and ascertain the intention of the parties based upon the language." Pollack v. Quick Quality Rests., Inc., 452 N.J. Super. 174, 187-88 (App. Div. 2017). "[U]nambiguous

contracts are to be enforced as written . . . ." Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 464 (App. Div. 2008).

Whether a contract is ambiguous is a legal question. Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997). To ascertain the intention of the parties, and to determine if an ambiguity exists, a court may, if necessary, consider extrinsic evidence offered to support conflicting interpretations. Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 269-70 (2006). Such extrinsic evidence includes "consideration of the particular contractual provision, an overview of all the terms, the circumstances leading up to the formation of the contract, custom, usage, and the interpretation placed on the disputed provisions by the parties' conduct." Id. at 269 (quoting Kearny PBA Local #21 v. Town of Kearny, 81 N.J. 208, 221 (1979)).

We hold the forum-selection clause is not ambiguous and mandates that all of plaintiffs' claims be filed in New York. "Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general." Gil v. Clara Maas Med. Ctr., 450 N.J. Super. 368, 378 (App. Div. 2017) (internal citations omitted); see also Bauman v. Royal Indem. Co., 36 N.J. 12, 22 (1961) ("In the interpretation of a contractual instrument, the specific is customarily

permitted to control the general and this ordinarily serves as a sensible aid in carrying out its intendment."); Homesite Ins. Co. v. Hindman, 413 N.J. Super. 41, 48 (App. Div. 2010) ("[W]hen two provisions dealing with the same subject matter are present, the more specific provision controls over the more general.").

The clear intent of Section 16.1 is to require that suits brought by borrowers against lenders arising from the 2009 agreement be filed in New York, while permitting, but not requiring, other suits brought by borrowers (i.e., those not brought by borrowers against lenders) to be brought in New York as well other jurisdictions. The forum-selection clause provides a forum – New York – where lenders know they will litigate claims brought against them, while also permitting lenders and borrowers (except against lenders) to file suit elsewhere if circumstances so require. For example, secured lenders may need to enforce their rights to the collateral wherever the collateral is located. Here, the collateral includes plaintiffs' trucks, which can easily be moved from state to state. This interpretation of the contract harmonizes the two provisions of the forum-selection clause and effectuates the intent of the parties to the agreement.

Moreover, there is no distinction in the forum-selection clause between contract claims and tort and statutory claims. In the context of arbitration clauses, we have interpreted language like the language in Section 16.1 to apply

to all claims, including tort and statutory claims. See EPIX Holdings Corp. v. Marsh & McLennan Cos., 410 N.J. Super. 453, 468-75 (App. Div. 2009) (clause requiring disputes "arising out of" agreement applied to tort claims), overruled in part on other grounds by Hirsch v. Amper Fin. Servs., LLC, 215 N.J. 174, 192-93 (2013); Alfano v. BDO Seidman, LLP, 393 N.J. Super. 560, 575-77 (App. Div. 2007) (clause covering "all matters related to or arising out of" account applied to New Jersey statutory, breach of fiduciary duty, fraud, and civil conspiracy claims).

This interpretation of the clause is consistent with repeated allegations in the Dana I complaint revealing plaintiffs' understanding of the clause. In that pleading, plaintiffs alleged seven times that the forum-selection clause mandated that their claims, which included both contract claims and non-contract claims, be filed in a New York court. A party's interpretation of a contract "is entitled to great, if not controlling influence, and will generally be adopted and followed by the courts, particularly when . . . the construction of one party is against his interest." Pub. Serv. Enter. Grp. v. Philadelphia Elec. Co., 130 F.R.D. 543, 549 (D.N.J. 1990) (internal quotations and citation omitted). These allegations, certified as supported and warranted under Fed. R. Civ. P. 11, also constitute admissions that the forum-selection clause

"commanded" that all of plaintiffs' claims against defendants be filed in New York. See, e.g., New Amsterdam Cas. Co. v. Popovich, 18 N.J. 218, 224 (1955) ("Prior assertions made in pleadings or evidence which are inconsistent with or contradictory of present claims can be treated as an admission in subsequent litigation."); Bauman, 36 N.J. at 19 ("[T]he prevailing rule is that admissions in a pleading may be introduced as evidence against the pleader, even where they have been expressly withdrawn in a later amended pleading.").

2. Whether it is Unreasonable to Enforce the Forum-Selection Clause.

"The courts of our State have generally enforced . . . forum[-]selection clauses, where: (1) they are not the product of fraud or undue bargaining power, (2) they would not violate public policy, and (3) their enforcement would not seriously inconvenience the parties at trial." Hoffman, 419 N.J. Super. at 606. "The burden falls on the party objecting to enforcement to show that the clause in question fits within one of these exceptions." Caspi, 323 N.J. Super. at 122.

"We review a court's ruling on the legal enforceability of a forum[-] selection clause de novo." Largoza v. FKM Real Estate Holdings, Inc., 474 N.J. Super. 61, 72 (App. Div. 2022). Having carefully reviewed the record in light of the relevant legal principles, we disagree with the trial court's conclusion that enforcement of the forum-selection clause would be unreasonable because, at

the time the trial court decided defendants' motion for summary judgment, the New York statute of limitations on plaintiffs' claims had run.

Statute of limitations considerations generally are not appropriate when assessing the reasonableness of enforcing a forum-selection clause. See, e.g., United Steel Am. Co. v. M/V Sanko Spruce, 14 F. Supp. 2d 682, 695 (D.N.J. 1988) (holding that a time-bar does not preclude enforcement of a forum-selection clause because "the analysis does not hinge on whether a clause is unreasonable in light of present circumstances created by plaintiff's failure to file in the correct forum"); see also New Moon Shipping Co. v. MAN B&W Diesel AG, 121 F.3d 24, 32-33 (2d Cir. 1997) (noting that "consideration of a statute of limitations would create a . . . loophole for the party seeking to avoid enforcement" as they could deliberately postpone filing their cause of action until the statute has run so that they might file in a more convenient forum); Street, Sound Around Elec., Inc. v. M/V Royal Container, 30 F. Supp. 2d 661, 663 (S.D.N.Y. 1999) ("By bringing suit here and not in Germany, plaintiffs have effectively chosen to ignore the forum selection clause that they previously agreed to; plaintiffs will not be heard now to complain of any potential timeliness problems that this choice may have created."); Allianz Ins. Co. of Canada v. Cho Yang Shipping Co., 131 F. Supp. 2d 787, 793 (E.D. Va. 2000)

("Even if Allianz did not deliberately ignore its obligation under the forum[-]selection clause, defendants . . . should not be punished for Allianz's procedural decisions and/or lapses."). The concerns expressed by these courts are particularly apt here.

The first legal action plaintiffs took against defendants was filing the Dana I complaint in New York. In that complaint, plaintiffs repeatedly acknowledged that the 2009 agreement mandated that they file all of their claims in a New York court. It was only after an initial case management conference at which the court invited a motion to dismiss that plaintiffs voluntarily withdrew their New York complaint. Four months later, plaintiffs filed a complaint in New Jersey alleging essentially the same claims against defendants. These circumstances suggest that by abandoning their New York action and filing in New Jersey, plaintiffs were seeking to avoid what appeared to be an unfavorable forum in the jurisdiction they admitted was mandated by the forum-selection clause. Thus, to the extent plaintiffs' claims may now be barred by the New York statute of limitations, that harm is the result of plaintiffs' election to switch fora after the viability of the claims in Dana I were questioned by the New York court.[2]

[2] The trial court did not make findings of fact with respect to whether plaintiffs' claims were timely when they filed their complaint in Dana I or whether, in fact,

By withdrawing the complaint in Dana I and filing essentially the same complaint in New Jersey, where they hoped to find a more favorable forum, plaintiffs accepted the risk that a New Jersey court – whether at the trial level or on appeal – would enforce the forum-selection clause and dismiss their claims. Defendants raised the forum-selection clause as a defense through a motion to dismiss the complaint in lieu of filing an answer. In addition, after the motion was denied in part, defendants preserved the defense in their answer, putting plaintiffs on notice that defendants would raise the forum-selection clause after the close of discovery or in an appeal.

We are not persuaded by plaintiffs' arguments that our denial of defendants' motion for leave to appeal the June 8, 2018 order denying in part their motion to dismiss the complaint was a reasonable basis on which plaintiffs could conclude that the forum-selection clause issue had been resolved partially

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plaintiffs' claims would be barred by the New York statute of limitations, were they to file a new complaint in a New York court. We note that defendants raised the statute of limitations with the New York court in their initial conference in Dana I and contend that that court directed the filing of a motion to dismiss the complaint on timeliness grounds. Neither party has addressed whether plaintiffs might successfully argue that the New York statute of limitations should be tolled during the period that plaintiffs' New Jersey action was pending. Our analysis is based on the presumption that as of the time of the trial court's December 16, 2022, and August 18, 2023 orders, plaintiffs' claims were time barred under New York law.

in their favor. The denial of a motion for leave to appeal does not constitute an adjudication of the merits. Gero v. Cutler, 66 N.J. 443, 445 n.1 (1975). Plaintiffs were on notice that defendants could again raise the issue of the forum-selection clause, either through a motion for reconsideration of the June 8, 2018 order, through a summary judgment motion after the close of discovery, or on appeal. While the New Jersey action was pending, plaintiffs had the opportunity to file a protective suit in New York or attempt to revive Dana I to ensure their claims could be adjudicated in New York in the event the New Jersey courts enforced the forum-selection clause. They did not take those protective measures.

Additionally, the "unreasonable and unjust" exception to enforcing a forum-selection clause refers to inconvenience of the chosen forum as a place for trial and not, as the trial court concluded, to the detrimental effect on a party's claims of applying the law of the chosen forum. See, e.g., New Moon Shipping, 121 F.3d at 33 ("The language used in the Supreme Court opinions focuses on the inconvenience of the chosen forum rather than the effect of applying the law of the chosen forum."); Gen. Elec. Co. v. G. Siempelkamp GmbH & Co., 809 F. Supp. 1306, 1314 (S.D. Ohio 1993) ("The unreasonableness exception to the enforcement of a forum[-]selection clause refers to the inconvenience of the

chosen forum as a place for trial, not to the effect of applying the law of the chosen forum."), aff'd, 29 F.3d 1095 (6th Cir. 1994).

We also note that the trial court's decision deprives defendants of the benefit of the forum-selection clause they negotiated in the 2009 agreement. "The 'enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system.'" Atlantic Marine Constr. Co. v. U.S. Dist. Ct., 571 U.S. 49, 63 (2013) (quoting Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 33 (1988) (Kennedy, J, concurring)). For all these reasons, we reverse the trial court's conclusion that it would be unreasonable to enforce the forum-selection clause.[3]

3. Whether Defendants were Entitled to Summary Judgment on Plaintiffs' Duress Claims.

We review a grant of summary judgment de novo, applying the same standard as the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that

[3] We reject plaintiffs' argument, raised for the first time on appeal, that the forum-selection clause did not survive the termination of the 2009 agreement and conclude it lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

the moving party is entitled to a judgment or order as a matter of law.'" Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (quoting R. 4:46-2(c)). "Summary judgment should be granted . . . 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). We do not defer to the trial court's legal analysis or statutory interpretation. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018); Perez v. Zagami, LLC, 218 N.J. 202, 209 (2014).

As we understand the record, plaintiffs' duress claim does not specifically involve the forum-selection clause. Plaintiffs argue that the entire 2009 agreement was the product of duress. As we established in Largoza, allegations of fraudulent inducement to sign a contract generally do not provide a basis for invalidating a forum-selection clause. 474 N.J. Super. at 78. "Plaintiffs' attempt to avoid enforcement of the forum[-]selection clause by alleging [the other party to the contract] fraudulently induced them into the operative contract fails as they never contended [the other party] improperly obtained their assent to that provision specifically, a necessary requirement to vitiate such clauses under the majority rule." Id. at 66-67. We explained that "we align our holding with the

majority approach adopted by other jurisdictions, as well as our Supreme Court's holding in Goffe [v. Foulke Mgmt. Corp., 238 N.J. 191 (2019)], and conclude that plaintiffs' allegations of generalized fraud do not provide a basis to invalidate the forum[-]selection clause." Id. at 78. This holding applies with equal force to plaintiffs' allegations of duress.

The trial court, therefore, erred when it reasoned that the evidence plaintiffs produced in support of their argument that they signed the 2009 agreement, but not the forum-selection clause specifically, under duress precluded summary judgment in favor of defendants on this point. The record contains no evidence that plaintiffs agreed specifically to the forum[-]selection clause, which appears in the parties' prior contracts, under duress. Defendants are therefore entitled to summary judgment precluding plaintiffs from claiming that the forum-selection clause is invalid because it was agreed to under duress.[4]

In light of our conclusions, there is no obstacle to enforcement of the forum-selection clause as to all of the claims plaintiffs allege against defendants. We also find that defendants are entitled to summary judgment in their favor

[4] We offer no opinion with respect to the preclusive effect of the decision in the Indemnification Action rejecting plaintiffs' duress claims and finding they ratified the 2009 agreement even if it was signed under duress. An appeal of that decision is pending in the United States Court of Appeals for the Second Circuit and is, therefore, presently not final for purposes of collateral estoppel.

with respect to plaintiff's duress claims. The December 16, 2022 and August 18, 2023 orders are, therefore, reversed to the extent they provide that it would be unreasonable to enforce the forum-selection clause and deny defendants' motion for summary judgment on plaintiffs' duress claims.

Reversed. The matter is remanded to the trial court for entry of an order dismissing the complaint against defendants. We do not retain jurisdiction.