

# Supreme Court of Louisiana

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NEWS RELEASE #070

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 10th day of December, 2013, are as follows:

**BY VICTORY, J.:**

2013-C -0691

BENJAMIN G. FIDELAK AND KERI TUBRE FIDELAK v. HOLMES EUROPEAN MOTORS, L.L.C. D/B/A LAND ROVER SHREVEPORT, ET AL. (Parish of Caddo)

For the reasons stated herein, the judgments of the lower courts are reversed and the case is remanded to the trial court for further proceedings consistent with this opinion.  
REVERSED AND REMANDED

12/10/13

**SUPREME COURT OF LOUISIANA**

**NO. 13-C-0691**

***BENJAMIN G. FIDELAK AND KERI TUBRE FIDELAK***

***VERSUS***

***HOLMES EUROPEAN MOTORS, L.L.C.  
D/B/A LAND ROVER SHREVEPORT, ET AL.***

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
SECOND CIRCUIT, PARISH OF CADDO**

**VICTORY, J.**

We granted this writ application to determine the enforceability of a forum selection clause. After reviewing the record and the applicable law, we reverse the judgments of the lower courts and hold that this forum selection clause is not enforceable because a third party defendant may not object to venue where the principal action has been instituted in the proper venue.

**FACTS AND PROCEDURAL HISTORY**

Benjamin and Keri Fidelak filed a petition for damages in Caddo Parish district court, a court of proper venue, against Foreign & Classic Auto Centre, Inc. (“Foreign & Classic”), a small, independent repair shop in Shreveport, Louisiana, specializing in the repair of high end foreign automobiles. The Fidelaks claimed that Foreign & Classic sold them a defective engine for their 2004 Land Rover. In response, Foreign & Classic raised numerous defenses and asserted a third party demand against British Parts International (“BPI”) for reimbursement and indemnification because BPI sold the engine to Foreign & Classic. BPI is headquartered in Houston, Texas, and conducts its business nationwide.

BPI filed a declinatory exception of improper venue asserting that venue was improper because a forum selection clause mandated that any litigation between the parties would take place in Harris County, Texas. Specifically, BPI asserted that the invoice for the sale of the engine stated that “Terms & Conditions are available on line at [www.motorcarsltd.com](http://www.motorcarsltd.com).” On that website, under “Terms & Conditions,” a paragraph entitled “Jurisdiction” stated: “It is agreed that all disputes are subject to Texas law and applicable federal law and will be filed and presented to Texas courts in Harris Country, Texas.” Foreign & Classic opposed the exception, arguing that forum selection clauses are unenforceable in Louisiana. Alternatively, Foreign & Classic claimed there was no meeting of the minds as to this forum selection clause, because the sale occurred when the president of Foreign & Classic ordered the engine over the telephone from an employee of BPI, at which time the parties discussed the engine and agreed to a price and the time of delivery. When Foreign & Classic received the engine several days later, the invoice was attached, but Foreign & Classic did not go to the website to read these Terms and Conditions. Foreign & Classic claims that these Terms and Conditions do not form a part of the contract between Foreign & Classic and BPI and that the forum selection clause “hidden” in the website cannot form part of the contract between the parties.

After a hearing, the district court sustained the exception of improper venue, finding that the forum selection clause and the Terms & Conditions found on the website were valid and enforceable. The district court noted that the parties had done business together for many years, and had used this invoice for numerous transactions. The Second Circuit affirmed, finding that commercially sophisticated parties could contract to limit their disputes to a forum of their choosing. *Fidelak v. Holmes European Motors, L.L.C.*, 47,915 (La. App. 2 Cir. 2/27/13), 111 So. 3d 456.

We granted Foreign & Classic's writ application to determine whether the exception of improper venue should have been granted. *Fidelak v. Holmes European Motors, L.L.C.*, 13-0691 (La. 5/17/13), \_\_\_ So. 3d \_\_\_.

### **DISCUSSION**

A forum selection clause is a provision in a contract that mandates a particular state, county, parish, or court as the proper venue in which the parties to an action must litigate any future disputes regarding their contractual relationship. In this case, BPI alleges that it contracted with Foreign & Classic to have their disputes settled in an out-of-state forum. Whether such clauses are valid under Louisiana law has never been squarely before us.

However, because of the procedural posture of this case, it is not necessary for us to decide this difficult issue. La. C.C.P. art. 1034 provides in part:

A defendant in an incidental action may plead any of the exceptions available to a defendant in a principal action, and may raise any of the objections enumerated in Articles 925 through 927, except that an objection of improper venue may not be urged if the principal action has been instituted in the proper venue.

A third party demand, such as the claim brought by Foreign & Classic against BPI, is an incidental demand. La. C.C.P. art. 1031. The principal action, i.e., the claim brought by the Fidelaks against Foreign & Classic, was brought in Caddo Parish, the parish of Foreign & Classic's principal place of business, which is the proper venue under La. C.C.P. art. 42. Under the plain language of La. C.C.P. art. 1034, BPI, as the third party defendant, may not object to venue as the principal action was instituted in the proper venue. Therefore, the lower courts erred in granting BPI's objection to venue.

## **DECREE**

For the reasons stated herein, the judgments of the lower courts are reversed and the case is remanded to the trial court for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**