

SUPREME COURT OF LOUISIANA

No. 97-C-0388

Feliciana Lejano and Melinda Lejano

Versus

K.S. Bandak, et al.

KIMBALL, J., Concurring in part and dissenting in part.

I concur in that portion of the majority opinion which holds the forum selection clause is enforceable. I dissent, however, from that portion of the opinion which affirms the trial court's "stay" of this matter for six months during which time Mr. Lejano is to file suit in either Norway or the Philippines and which implies that should defendants successfully raise the issue of prescription in either of these fora, a court of this state will adjudicate his claim on the merits applying foreign law.

To support this conclusion, the majority relies on the following quote from *M/S Bremen v. Zapata Off-Shore Co.*, 92 S.Ct. 1907 (1972), wherein the Supreme Court held that forum selection clauses should be enforced unless the party opposing its enforcement "could clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." *Id.* at 1916. When the Supreme Court concluded forum selection clauses should not be enforced where unreasonable and unjust, it was referring to the "serious[] inconvenien[ce]", *id.*, of having to go to trial in the selected forum.¹ The Supreme Court in *Bremen* was **not**, in my view,

¹ Furthermore, it had to be a degree of inconvenience beyond that which was clearly foreseeable at the time of contracting.

In such circumstances it should be incumbent on the party seeking to escape his contract to show that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court. Absent that, there is no basis for concluding that it would be unfair, unjust, or unreasonable to hold that party to his bargain.

Id. at 1917.

contemplating that a forum selection clause which was initially valid would later become “unreasonable and unjust,” and, consequently, unenforceable, after a forum court rendered a legal decision to the detriment of one of the parties. Once it is decided the forum selection clause is valid and enforceable, this state is no longer, and cannot one day become by virtue of a proper forum court’s action, the proper forum for this case. Assuming plaintiff files suit either in Norway or the Philippines pursuant to the forum selection clause, it will be the duty of the courts of those fora to determine, under whatever choice of laws they deem to apply, all of the issues remaining in this case.