

IN THE SUPREME COURT OF FLORIDA

CASE #68,370

FILED

CLERK OF THE SUPREME COURT OF FLORIDA

By _____

DATE _____

C.R. McRAE,

Petitioner

vs.

J.D./M.D., INC.

Respondent

ON APPEAL FROM THE
FOURTH DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF

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M/S Bremen v. Zapata Off-Shore Co.....1
407 U.S.1, 92 S. Ct. 1907, 32 L. Ed 2d 513 (1972)

REBUTTAL ARGUMENT

THE FORUM SELECTION CLAUSE IN THE SUBJECT CONTRACT IS
UNREASONABLE AND UNJUST AND SHOULD NOT BE ENFORCED

In the case of M/S Bremen v. Zapata Off-Shore Co., 407 U.S.1, 92 S. Ct. 1907, 32 L. Ed 2d 513 (1972), the United States Supreme Court, in reviewing a decision of a Federal District Court sitting in Admiralty, determined that a forum selection clause could not be enforced if it was shown to be unreasonable, unjust, or invalid due to fraud or overreaching. 407 U.S. at 15; 92 S. Ct. at 1916. In M/S Bremen, the contract at issue was between an American corporation and a German corporation and involved the international towage of a drilling rig from Louisiana to Italy. The rig could foreseeably have been damaged at any time and place during the course of the towage. In such case, suit could have been maintained in any jurisdiction where the accident occurred. To avoid this uncertainty and the possibility of extreme inconvenience, the parties negotiated and agreed upon a choice of forum in advance of the performance of the contract. The Supreme Court decided to enforce the clause because it was not shown to be unreasonable, unjust or the product of unequal bargaining power or overreaching. The Court

also noted that the provision which was contained in a contract involving international trade, was a vital part of the agreement.

The instant case does not involve international trade and commercial activity between the United States and foreign business enterprises. Thus, many of the reasons compelling the enforcement of the forum selection clause in M/S Bremen are absent in the case at bar. This case involves a contract which was entered into in the State of Mississippi for services to be provided solely within the State of Mississippi. The contract was breached in the State of Mississippi. All or a substantial majority of the witnesses are located in the State of Mississippi. Florida has no interest in or contact with this controversy other than the contractual venue provision. McRae will be required to incur additional and considerable expenses in litigating the action in this State.

Furthermore, the forum selection clause in the subject contract, unlike that in M/S Bremen, is not a vital part of the agreement. The contract at issue is a standardized contract prepared by J.D./M.D. The venue provision appears in paragraph 32 of a 43 paragraph contract. There is nothing to indicate in the contract itself or in the negotiations preceding the contract that the forum for any subsequent litigation over the contract was a material term of the agreement.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a copy of the foregoing was mailed on this 22nd day of May, 1986 to: MARJORIE GADARIAN GRAHAM, ESQUIRE, JONES & FOSTER, Post Office Drawer E, West Palm Beach, Florida 33402; BRUCE ZEIDEL, ESQUIRE, Post Office Box 13146, North Palm Beach, Florida 33408.

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5/22/86: (KER)/ CB
B/A at #29 (#7874)