

SUPREME COURT OF LOUISIANA

No. 97-CC-0388

FELICIANO LEJANO AND MELINDA LEJANO

Versus

K.S. BANDAK ET AL

ON APPLICATION FOR REHEARING

Calogero, C.J., Lemmon and Kimball, J.J., Dissenting from the Denial of the Application for Rehearing.

In the trial court, the defendants filed a motion for summary judgment on the issue of choice of laws. The trial court granted the summary judgment and ruled that Norwegian law applies. Although no pleadings raised the issue, the trial court further ruled that the forum selection clause was valid and enforceable, and accordingly dismissed the action rather than simply applying Norwegian law in this forum.

After the court of appeal affirmed the summary judgment, this court addressed the forum selection clause and affirmed its validity. On application for rehearing, plaintiffs claim that the trial court, in granting summary judgment on the forum selection clause, did not have (and therefore could not have considered) the information necessary to determine whether the forum selection clause was a contract of adhesion, because no pleadings notified the parties of the need to present evidence on that issue. Although the claim could have been raised earlier, plaintiff may have been misled by the defendant's deficient pleading.

In the interest of justice, we would grant the application for rehearing in part. While we would reaffirm our general conclusion on original hearing that "a forum selection should be enforced absent a clear showing that enforcement would be

unreasonable or unjust, or that the clause is invalid for such reasons as fraud or overreaching," we would set aside that portion of the summary judgment relating to the validity of this particular forum selection clause and remand the case to the trial court. Defendants then could raise the forum selection clause issue by appropriate pleadings,¹ and both sides would have the opportunity to present relevant evidence.

¹See Robert A. Casad, Jurisdiction in Civil Actions §§1.07, 3.01[5][c][iv] (2d ed. 1991).