IN THE SUPREME COURT OF TEXAS

NO. 05-0311

IN RE AUTONATION, INC. AND AUTO M. IMPORTS NORTH, LTD., D/B/A MERCEDES-BENZ OF HOUSTON-NORTH, RELATORS

ON PETITION FOR WRIT OF MANDAMUS

Argued October 19, 2006

JUSTICE O'NEILL, concurring.

I agree that forum-selection clauses are presumed valid and enforceable unless the opposing party can clearly show that (1) enforcement would be unreasonable or unjust, (2) the clause is invalid for reasons of fraud or overreaching, (3) enforcement would contravene a strong public policy of the forum where the suit was brought, or (4) the selected forum would be seriously inconvenient for trial. *See In re AIU Ins. Co.*, 148 S.W.3d 109, 111-12 (Tex. 2004) (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 13-15 (1972)); *In re Prudential Ins. Co. of Am.*, 148 S.W. 3d 124, 134-35 (Tex. 2004). As Hatfield raises only the public-policy exception, we are not confronted with potentially serious fundamental-fairness concerns that might arise should the forum selected be chosen by unfair means or prove inaccessible. *See*, *e.g.*, *Stobaugh v. Norwegian Cruise Line Ltd.*, 5 S.W.3d 232, 234-36 (Tex. App.—Houston [14th Dist.] 1999, pet. denied). Hatfield's sole contention is that the strong public-policy concerns we articulated in *DeSantis* will be undermined if the parties' forum-selection

clause is enforced and the suit to enforce the covenant not to compete proceeds in Florida. *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 680 (Tex. 1990) ("[T]he law governing enforcement of noncompetition agreements is fundamental policy in Texas, and [] to apply the law of another state to determine the enforceability of such an agreement in the circumstances of a case like this would be contrary to that policy.").

I agree with Hatfield that deciding which noncompete agreements constitute reasonable restraints of trade on employees in this state is a matter of fundamental Texas public policy. *See id*. What is not apparent, however, is that enforcement of the forum-selection clause in this case will result in application of the contractual forum's law in a manner that will undermine Texas public policy. *See* TEX. BUS. & COM. CODE §§ 15.50-15.52 (Covenants Not to Compete Act); *Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644 (Tex. 2006). Had there been a clear showing to this effect, I might agree with the court of appeals' analysis, or at least would consider the trial court justified had it decided to abate the Texas declaratory judgment action pending the Florida court's decision. But a mere indication that the Florida court intends to apply Florida law does not, without more, justify a Texas court's interference with the parties' chosen forum. For this reason, I concur in the Court's judgment.

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Harriet O'Neill
Justice

OPINION DELIVERED: June 29, 2007