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## Barshaw v. Allegheny Performance: Determining Governing Jurisdiction

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When one agrees to a contractual agreement, he or she should focus on the clause selecting the forum for potential future disputes. There are two types of forum-selection clauses: permissive clauses and mandatory clauses. While permissive forum-selection clauses authorize jurisdiction and venue in a designated forum without excluding litigation elsewhere, mandatory forum-selection clauses exclusively designate a specific jurisdiction and venue for future disputes.

It is crucial that all parties to a contract understand whether its forum-selection clause language is permissive or mandatory. However, without proper legal guidance and a well-written contract, it may be difficult for a court to interpret the intent of the parties at the time of the agreement.

In *Barshaw v Allegheny Performance Plastics, LLC*, No. 350279, 2020 WL 6930058 (Mich App, Nov 24, 2020), a Michigan employee sought termination damages from his Pennsylvania employer. The employer sought dismissal from Michigan's Macomb Circuit Court based on the following contract language:

**Governing Law; Jurisdiction.** This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of Pennsylvania, and the parties hereby confer jurisdiction upon the courts of any jurisdiction within the State of Pennsylvania to determine any dispute arising out of or related to this Agreement, or the breach thereof.

The Circuit Court determined that a Michigan court should rely on Pennsylvania law. Given that the law of Pennsylvania required a dismissal, the Michigan trial court held that the employee had no claim. The matter was therefore dismissed.

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The Michigan Court of Appeals reversed the trial court, holding that the trial court must first determine the intent of the employment contract. If the language of a contract is unambiguous, then its terms must be enforced as written. The Court of Appeals noted that, generally, Michigan courts enforce forum-selection clauses. Yet, there are situations in which the general rule will not be enforced. One is where effective relief may not be obtained in the other state. It was held that this exception applied in the *Barshaw* case.

The trial court held that the lawsuit was not viable under Pennsylvania law, although it would have been viable under Michigan law. The Michigan resident would have had no claim if the Pennsylvania court was to be the forum. While the excerpt from *Barshaw* quoted above states that the contract should be interpreted in accordance with Pennsylvania laws and that jurisdiction is conferred upon Pennsylvania courts, the clause fails to exclude states besides Pennsylvania from hearing the case, and the contract does not contain an exclusion clause to expressly nullify the conflict of law provisions. Accordingly, Michigan courts are not prohibited from hearing the case and, in accordance with Michigan's rules on conflict of laws, Michigan courts may hear the case and follow Michigan laws.

In reversing the trial court, the Court of Appeals held that the question as it pertains to forum-selection for hearing the underlying facts is "whether there is a sufficient reason that the action should be litigated in another forum rather than the one in which the plaintiff filed the action . . . , whereas a dismissal pursuant to a forum-selection clause is based on honoring the contractual agreement reached between the parties." The "interest of justice is served by holding parties to their 'bargain' when those parties have contracted in advance to litigate disputes in a particular forum."

Contract terms in the agreement determine the law and/or state jurisdiction when language is exclusive and specific. In *Barshaw*, the Court of Appeals held that the determination of the forum-selection is mandatory when the language of the clause contains "words of exclusivity." In the contract clause in *Barshaw*, there was no designation that the case could *only* be heard by Pennsylvania courts. If the contract clause had stated "*only* courts of any jurisdiction within the State of Pennsylvania and the law of Pennsylvania will determine any dispute," the dismissal would have been appropriate. Accordingly, because the court must look to the terms of the contract to find the parties' intent – and because the agreement did not expressly bar out-of-state courts from hearing the issues – the case could be heard by Michigan courts.

Given that the employment contract clause in *Barshaw* did not exclude other jurisdictions from hearing the case (while stating that the law of Pennsylvania should apply), the Court of Appeals held that the failure to require Pennsylvania law to apply meant that Michigan courts could maintain the jurisdiction of the case and apply Michigan law for manners in which Michigan law differs from Pennsylvania law.

While parties are unlikely to fully contemplate litigation risks at the time they mutually agree to a contractual relationship, the reality is that such concerns should always be considered. Cases such as *Barshaw* exemplify the need for proper legal representation when entering into a contract. Accordingly, parties would be well advised to consult with their attorneys before entering such

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contracts.

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