

## Insights

### Court Bulldozes Indiana Contract Provision Requiring Florida Litigation

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Pursuant to its \$1 million + contract with Sullivan Corporation (“Sullivan”), Rabco Enterprises, LLC (“Rabco”) agreed to provide labor and materials for a self-storage project in Noblesville, Indiana (the “Project”).

In 2019, Sullivan filed a breach of contract action against Rabco in Hamilton County, Indiana. Rabco filed a motion to dismiss the lawsuit, arguing the lawsuit was improperly filed in Indiana because the contract contained the following forum selection clause:

This contract shall be deemed to have been executed in and performable in the state of Florida and shall be construed under Florida law, without regard to said state's conflicts of law rules (except that the lien laws of the state in which the job site is situated shall apply to the Rabco's lien rights). It is agreed that the exclusive venue for any litigation arising hereunder shall be in the state or federal courts in Orange County, Florida.

*Sullivan Corp. v. Rabco Enterprises, LLC*, 160 N.E.3d 1124, 1125 (Ind. Ct. App. 2020).

The trial court agreed with Rabco's theory and dismissed the case. Sullivan appealed.

On appeal, the Court of Appeals reversed the trial court's decision, holding that while forum selection clauses are generally enforceable, they cannot override the clear language contained in the Indiana Mechanic's Lien Statute. In particular, Indiana Code § 32-28-3-17 states:

A provision in a contract for the improvement of real estate in Indiana is void if the provision:

- (1) makes the contract subject to the laws of another state; or
- (2) requires litigation, arbitration, or other dispute resolution process on the contract occur in another state.

Although a lien was not the focus of Sullivan's breach of contract action against Rabco, the Court of Appeals nevertheless required strict compliance with the statute.

Under the Court of Appeals' reasoning, Ind. Code § 32-28-3-17 will operate to (1) void contract provisions that make the contract subject to the laws of another state, and (2) void contract provisions requiring litigation or other dispute resolution in another state. Consequently, the Court of Appeals concluded that Sullivan's dispute with Rabco, arising from the improvement of real estate in Hamilton County, Indiana, had to be litigated in Indiana, not Florida, regardless of the existence of a lien and despite the forum selection clause in the parties' contract. *Sullivan*, 160 N.E.3d at 1126-27.



While choice of law and venue provisions are rarely the focus of pre-construction negotiations (unlike provisions concerning cost, scheduling, liquidated damages, and the like), this case illustrates why care should be used during contract drafting, evaluation, and negotiation.

If you have any questions about this alert, Indiana's Mechanic's Lien Statute, project dispute resolution, or other construction law inquiries, please contact **Christopher W. Bloomer**.

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