

DENY; and Opinion Filed August 18, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00952-CV

IN RE ATOS IT SOLUTIONS AND SERVICES, INC., Relator

**Original Proceeding from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-14-05877-E**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Boatright
Opinion by Justice Boatright

Relator Atos IT Solutions & Services, Inc. moved to dismiss real party in interest FirstGroup America, Inc's cross-claim based on the following provision in the parties' services agreement:

If the Dispute cannot be resolved by Customer and Supplier in accordance with Clause 32.1[the Mandatory ADR Process], the Parties irrevocably agree that the Courts of England shall have exclusive jurisdiction

FirstGroup opposed the motion to dismiss, arguing that the forum selection clause was not effective because the condition precedent of engaging in the Mandatory ADR Process was not met. The trial court denied the motion without explanation. Both parties presented evidence as to whether they engaged in the mandatory ADR process. In this original proceeding, relator seeks a writ directing the trial court to vacate the order denying the motion to dismiss and enter an order dismissing First Group's cross-claim.

To be entitled to mandamus relief, a relator must show both that the trial court has clearly abused its discretion and that relator has no adequate appellate remedy. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Mandamus relief is available to enforce forum-selection agreements because there is no adequate remedy by appeal when a trial court abuses its discretion by refusing to enforce a valid forum-selection clause that covers the dispute. *In re Int’l Profit Associates, Inc.*, 274 S.W.3d 672, 675 (Tex. 2009). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to correctly analyze or apply the law. *In re Esfandiar Maasoumi*, 339 S.W.3d 787, 788–89 (Tex. App.—Dallas 2011, orig. proceeding).

In evaluating the validity and enforceability of a forum-selection clause, courts apply ordinary principles of contract interpretation. *Loya v. Loya*, 507 S.W.3d 871, 876 (Tex. App.—Houston [1st Dist.] 2016, no pet.). The clause at issue here begins with the conditional term “if.” “The use of the term ‘if’ connotes a condition precedent that conditions performance rather than a covenant or promise.” *Shin–Con Dev. Corp. v. I.P. Invs., Ltd.*, 270 S.W.3d 759, 766–67 (Tex. App.—Dallas 2008, pet. denied). Under this record, the trial court did not clearly fail to analyze or apply the law correctly and, thus, did not abuse its discretion.

Accordingly, we deny relators’ petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Jason Boatright/

JASON BOATRIGHT
JUSTICE