

DENY; and Opinion Filed February 28, 2018.



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

No. 05-17-01320-CV

IN RE JAMES M. BAKER AND CASTRO & BAKER, LLP, Relators

**Original Proceeding from the 417th Judicial District Court
Collin County, Texas
Trial Court Cause No. 417-00076-2017**

MEMORANDUM OPINION

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

In this original proceeding, relators complain of the trial court's denial of relators' motion to dismiss based on a contractual forum selection clause. Relators seek a writ directing the trial court to vacate its ruling and grant relators' motion to dismiss. We deny the relief requested.

In the trial court, real party in interest Strategic Contract Brands, Inc. asserted seven grounds for denying relators' motion to dismiss. The trial court denied the motion to dismiss and denied relators' motion for reconsideration without stating on which grounds it denied the motions. In their petition for writ of mandamus, relators address only six of the seven grounds raised by the real party in interest below. When an appellant fails to attack one of the possible grounds on which a judgment was granted, the judgment must be affirmed. *Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970) (stating proposition in context of summary judgment); *see also Mann v. Denton Cty.*, No. 02-16-00030-CV, 2017 WL 526309, at *6 (Tex. App.—Fort Worth Feb. 9, 2017, pet. denied) (mem. op.) (“When the trial court grants a plea to the jurisdiction and does not

state the basis of its ruling, we may affirm on any basis preserved in the record.”). Although relators’ failure to challenge one ground raised by the real party in interest below constitutes sufficient reason to deny mandamus relief, in the interest of judicial economy we address the petition.

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). Contractual forum selection clauses are enforceable in Texas, and mandamus is an appropriate vehicle for enforcing such clauses. *In re Lisa Laser USA, Inc.*, 310 S.W.3d 880, 883 (Tex. 2010). A trial court abuses its discretion when it fails to properly interpret or apply a forum-selection clause. *Id.* Further, an appellate remedy is inadequate when a trial court improperly refuses to enforce a forum-selection clause. *Id.* A trial court abuses its discretion in refusing to enforce a forum-selection clause unless the party opposing enforcement of the clause 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. *In re Lyon Fin. Servs., Inc.*, 257 S.W.3d 228, 231–32 (Tex. 2008). A forum-selection clause is generally enforceable, and the burden of proof on a party challenging the validity of such a clause is heavy. *Id.*

Under this record, we conclude that the real party in interest met its burden of proof in challenging the validity of the forum selection on at least one of the grounds raised in response to the motion to dismiss. We cannot conclude that relators have demonstrated that the trial court abused its discretion by denying the motion to dismiss.

Relators also complain that they have been harmed by the trial court’s failure to issue findings of fact and conclusions of law because relators have been forced to guess the reasons for

the trial court's rulings. We disagree. Findings of fact and conclusions of law are unnecessary where, as here, the trial court has decided the case based solely on the pleadings and arguments of counsel. *CMS Partners, Ltd. v. Plumrose USA, Inc.*, 101 S.W.3d 730, 736 (Tex. App.—Texarkana 2003, no pet.) (citing *IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 443 (Tex. 1997) and *Awde v. Dabeit*, 938 S.W.2d 31, 33 (Tex. 1997)). Further, relators have not been harmed by the lack of findings of fact and conclusions of law. Where, as here, the facts are undisputed and the only matters presented are legal issues, the failure to file findings of fact and conclusions of law is harmless error. *CMS Partners*, 101 S.W.3d at 737.

Based on the record before us, we conclude relators have not shown they are entitled to the relief requested. 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).

/Elizabeth Lang-Miers/

ELIZABETH LANG-MIERS
JUSTICE

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