

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-79

Filed 7 October 2026

Mecklenburg County, No. 25CV017575-590

SUPERIOR CRANES, INC., Plaintiff,

v.

NEW-INDY CATAWBA LLC, Defendant.

Appeal by Defendant from order entered 25 September 2025 by Judge Sherri Wilson Elliott in Mecklenburg County Superior Court. Heard in the Court of Appeals 17 September 2026.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Anna C. Majestro, David N. Allen, Benjamin S. Chesson, and Christopher B. Dodd, for Plaintiff-Appellee.

Burr & Forman, LLP, by Ellen T. Mathews and Mason Veal, for Defendant-Appellant.

COLLINS, Judge.

Defendant appeals from the trial court's order denying its motion to dismiss for improper venue. For the reasons stated herein, we affirm.

I. Background

Superior Cranes, Inc. ("Plaintiff") is a North Carolina corporation engaged in crane rental, rigging, and heavy hauling services. New-Indy Catawba, LLC ("Defendant") owns and operates a linerboard and pulp manufacturing mill in

Catawba, South Carolina. Plaintiff provided crane services to Defendant's South Carolina mill starting in May 2022.

Defendant discovered a significant crack in its lime kiln and contacted Plaintiff on 7 January 2025 seeking emergency crane support. Plaintiff emailed Defendant an estimate for a one-week rental of a 600-ton crane, a 1300-ton crane, and an around-the-clock crew, totaling \$695,387. After Defendant verbally approved the project scope and terms, Plaintiff began supplying cranes and personnel to Defendant's mill in South Carolina. Defendant sent Plaintiff a purchase order for \$695,387 the following day.

After the kiln cracked further, Defendant requested that Plaintiff extend the rental period and provide an additional 120-ton crane and around-the-clock crew. Plaintiff sent Defendant two additional invoices: \$609,037 for the extended rental period and \$151,019 for the 120-ton crane and crew. Defendant issued a purchase order for \$760,056, which included both estimates. Plaintiff sent multiple invoices to Defendant's accounting department for the services performed between 7 January 2025 and 4 February 2025, totaling \$1,482,254.13. Defendant did not pay any of these invoices, nor did it pay several other outstanding invoices for past rentals.

Plaintiff filed suit in Mecklenburg County Superior Court on 7 April 2025, asserting claims for breach of contract and open account, and seeking a declaratory judgment that Defendant is obligated to pay Plaintiff for the services provided. Defendant moved to dismiss for improper venue under Rule 12(b)(3) on the grounds

that the purchase orders incorporated a South Carolina forum selection clause contained in the “Standard Terms and Conditions” on its website. Plaintiff opposed the motion, arguing that Defendant’s website contained four different sets of “Standard Terms and Conditions,” each with different venue provisions, and that Plaintiff never received or assented to any of them. Following a hearing, the trial court entered an order denying Defendant’s motion to dismiss. Defendant appealed.

II. Discussion

A. Appellate Jurisdiction

As a threshold issue, we must determine whether we have jurisdiction to review the appeal of this interlocutory order.

“An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. City of Durham*, 231 N.C. 357, 362 (1950) (citation omitted). “As a general rule, there is no right of appeal from an interlocutory order.” *Larsen v. Black Diamond French Truffles, Inc.*, 241 N.C. App. 74, 76 (2015) (citation omitted). “There is a statutory exception to this general rule when the challenged order affects a substantial right.” *Cape Homeowners Ass’n, Inc. v. S. Destiny, LLC*, 292 N.C. App. 374, 378 (2024) (quotation marks and citations omitted). “Although a denial of a motion to dismiss is an interlocutory order, where the issue pertains to applying a forum selection clause, our case law establishes that [a] defendant may nevertheless immediately appeal the order because to hold

otherwise would deprive [it] of a substantial right.” *Hickox v. R&G Grp. Int’l*, 161 N.C. App. 510, 511 (2003) (citation omitted).

Here, the trial court’s order denying Defendant’s rule 12(b)(3) motion to dismiss is interlocutory. *See Veazey*, 231 N.C. at 362. Although such orders are generally not appealable, *Larsen*, 241 N.C. App. at 76, an immediate appeal lies when a substantial right is affected. *Cape Homeowners Ass’n*, 292 N.C. App. at 378. Because the denial of a motion to dismiss based on a forum selection clause affects a substantial right, *Hickox*, 161 N.C. App. at 511, we have jurisdiction to review this appeal.

B. Standard of Review

“The disposition of a case involving a forum selection clause is highly fact-specific.” *SED Holding, LLC v. 3 Star Props., LLC*, 246 N.C. App. 632, 636 (2016) (quotation marks and citation omitted). We thus review a trial court’s order denying a motion to dismiss for improper venue in cases involving a forum selection clause for abuse of discretion. *Wall v. Automoney, Inc.*, 284 N.C. App. 514, 529 (2022). “Under the abuse-of-discretion standard, we review to determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.” *Mark Grp. Int’l, Inc. v. Still*, 151 N.C. App. 565, 566 (2002) (citation omitted).

To the extent an appeal requires interpretation of a forum selection clause or determination of the place of contract formation, those issues are questions of law,

reviewed de novo. *US Chem. Storage, LLC v. Berto Constr., Inc.*, 253 N.C. App. 378, 382 (2017); *Schwarz v. St. Jude Med., Inc.*, 254 N.C. App. 747, 754 (2017). Under de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court. *Sony Ericsson Mobile Commc'ns. U.S.A., Inc. v. Agere Sys., Inc.*, 195 N.C. App. 577, 579 (2009).

C. Standard Terms and Conditions

Defendant first argues that the trial court erred by denying its motion to dismiss because “the parties’ contract validly incorporates [Defendant’s] Standard Terms and Conditions” and the forum selection clause “is mandatory and requires litigation in South Carolina.” (capitalization altered).

This Court generally interprets a contract according to the intent of the parties to the contract. *Peter Millar, LLC v. Shaw’s Menswear, Inc.*, 274 N.C. App. 383, 390 (2020). “When a contract expressly incorporates a document by reference, . . . that document becomes a part of the parties’ agreement.” *Montessori Children’s House of Durham v. Blizzard*, 244 N.C. App. 633, 637 (2016) (citation omitted).

Here, the purchase order provides:

THE PURCHASE OF PRODUCTS AND/OR SERVICES
HEREUNDER IS EXPRESSLY CONDITIONED UPON
AND SUBJECT TO SELLER’S ASSENT TO ALL TERMS
AND CONDITIONS SET FORTH HEREIN AND IN
BUYER’S STANDARD TERMS AND CONDITIONS OF
PURCHASE ORDER *ATTACHED HERETO* AND
INCORPORATED HEREIN BY REFERENCE. BUYER’S
STANDARD TERMS AND CONDITIONS OF PURCHASE
ORDER ARE ALSO AVAILABLE AT

<https://newindycontainerboard.com/terms-conditions/>.

(emphasis added). The “Standard Terms and Conditions” were not attached to the purchase order. Furthermore, the linked website where Defendant’s “Standard Terms and Conditions of Purchase are also available” contains four different links to four different documents titled “Standard Terms and Conditions,” each containing a different forum selection clause—California, Illinois, Indiana, and South Carolina. (capitalization altered). The purchase order does not identify which of the four forum selection clauses apply, and the website does not provide any guidance for selecting amongst them.

On this record, the trial court could reasonably conclude that the purchase order did not expressly incorporate Defendant’s “Standard Terms and Conditions” containing the South Carolina forum selection clause. Accordingly, we cannot say that the trial court’s decision to deny enforcement of the South Carolina forum selection clause was manifestly unsupported by reason.

The trial court thus did not abuse its discretion by denying Defendant’s motion to dismiss. Although this conclusion is dispositive, we address Defendant’s argument that N.C. Gen. Stat. § 22B-3 does not bar enforcement of the contract.

D. Last Act

Defendant argues that N.C. Gen. Stat. § 22B-3 does not bar enforcement of the contract because the last act necessary to form the contract occurred in South Carolina.

N.C. Gen. Stat. § 22B-3 provides, “Except as otherwise provided in this section, any provision in a contract entered into in North Carolina that requires the prosecution of any action . . . that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable.” N.C. Gen. Stat. § 22B-3 (2025). This section does not apply to any action “that is commenced in another state pursuant to a forum selection provision with the consent of all parties to the contract at the time that the dispute arises.” *Id.* “Under North Carolina law, a contract is made in the place where the last act necessary to make it binding occurred.” *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 365 (1986) (citation omitted). “The last act necessary to contract formation usually occurs at the place of acceptance.” *Schwarz*, 254 N.C. App. at 756.

Even if the South Carolina forum selection clause had been expressly incorporated into the parties’ agreement, N.C. Gen. Stat. § 22B-3 bars enforcement because the contract was entered into in North Carolina. Defendant initiated the transaction by contacting Plaintiff’s representative in North Carolina for emergency crane support after discovering a significant crack in its lime kiln. Plaintiff then emailed Defendant an estimate for a one-week rental of a 600-ton crane, a 1300-ton crane, and an around-the-clock crew, totaling \$695,387. Plaintiff began supplying cranes and personnel to Defendant’s mill in South Carolina after Defendant verbally approved the project scope and terms. The following day, Defendant emailed the purchase order to Plaintiff’s representative in North Carolina. Plaintiff’s North

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Carolina representative approved the purchase order, and that approval constituted the last act necessary to make the contract binding. Because the contract was entered into in North Carolina, the South Carolina forum selection clause is unenforceable as a matter of law under N.C. Gen. Stat. § 22B-3.

III. Conclusion

As the trial court did not err by denying Defendant's motion to dismiss for improper venue, we affirm the trial court's order.

AFFIRMED.

Judges STADING and MURRY concur.