

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**State of West Virginia ex rel.
Steve Gorlin and the Gorlin Companies, LLC,
Defendant Below, Petitioners,**

vs) No. 19-0423 (Kanawha County No. 18-C-1204)

**The Honorable Carrie L. Webster,
Judge of the Circuit Court of Kanawha County,
Robert Scott Long, Stephen B. Farmer, Ralph Lewis
Ballard, III, JL Dickinson Trust AAP FBO JKTP, Payne-
Gallatin Company, Boone Coal and Timber Co.,
Spruce Boone Land Co., Andrew A. Payne, III, RL
Rooke for William W. Rooke, Bruce Cameron
Conway, Bryan Mcshane, and George B. Lucas, Jr.,
Plaintiffs Below, Respondents.**

**FILED
November 8, 2019**

released at 3:00 p.m.
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioners Steve Gorlin (sometimes referred to as “petitioner Gorlin”) and The Gorlin Companies, LLC (referred to collectively as “petitioners”), by counsel Richard D. Jones and Shereen Compton McDaniel, petition this Court to invoke its original jurisdiction pursuant to Rule 16 of the West Virginia Rules of Appellate Procedure. Petitioners seek a writ of prohibition, against respondents, the Honorable Carrie L. Webster, Judge of the Circuit Court of Kanawha County, Robert Scott Long, Stephen B. Farmer, Ralph Lewis Ballard, III, JL Dickinson Trust AAP FBO JKTP, Payne-Gallatin Company, Boone Coal and Timber Co., Spruce Boone Land Co., Andrew A. Payne, III, RL Rooke for William W. Rooke, Bruce Cameron Conway, Bryan McShane, and George B. Lucas, Jr.,¹ by counsel Shawn P. George and Jennie Ovrom Ferretti, requesting the Court vacate the circuit court’s order denying petitioners’ motion to dismiss the complaint and directing the case be remanded for entry of an order dismissing it because under the applicable forum-selection clause, proper venue is in the State of Florida.

Upon thorough consideration of the petition for writ of prohibition, respondents’ brief, the parties’ oral arguments, and the appendix record, this Court concludes that petitioners are entitled to the relief requested and grant a writ of prohibition. Because we discern no new or substantial question of law in connection with the petition, a memorandum decision granting the requested writ is the

¹For purposes of this decision, the use of respondents refers to the plaintiffs below and not the circuit judge.

appropriate disposition pursuant to Rule 21 of the West Virginia Rules of Appellate Procedure.

I. Facts

The action before the Court arises from respondents' investments in Nano Technology Corporation ("NTC" or "Nano"), which is a private Samoan (or Cayman Island) corporation and is in the business of nanotechnology.² NTC has plants and equipment in China that were managed and operated by two Chinese nationals, who founded the company. As respondents allege in their complaint, each of them "*purchased the common stock of Nano* as a direct result and in justifiable reliance on the representations and solicitations by Defendants. Each of the Plaintiffs held and maintained their investment *due to the continued representations of Defendants after Plaintiffs' investment.*" (Emphasis added). Respondents aver that they collectively invested over \$1.9 million in NTC by the purchase of common stock.

According to respondents, petitioner Gorlin was the managing member of The Gorlin Companies and Chairman of the Board of NTC at the time respondents decided to invest in NTC in 2007. Petitioners "actively engaged in the solicitation" of respondents and others to invest in Nano by purchasing stock in the company. Respondents alleged that the basis for their investments was petitioners' representations that they would not sell any share of Nano common stock, or any right related to it, "unless Plaintiffs had the same right at the same time on the same terms to sell their shares[;]" and that petitioner Gorlin "made oral statements to the effect that Gorlin was prevented, individually, or in any representative capacity, from selling shares, options or any interest in any such right, without Plaintiffs then having the same corresponding right to sell their interests." Further, petitioner Gorlin allegedly assured respondents that he would "remain active" in NTC and continue to oversee and supervise its operations "for as long as it took for the investment to reap a return either by purchase by another entity, or by Nano becoming a publicly traded entity yielding several times any money invested." Respondents claim these representations by petitioners played an integral role in respondents' decision to invest in NTC because they were concerned about the lack of oversight or control of NTC should they invest in the company. Respondents, however, apparently did not reduce all these oral "representations" made by petitioners to writing.

Contrary to respondents' allegations of oral representations made by petitioners upon which they relied in making their decisions to invest in NTC, each respondent was given an Amended and Restated Private Placement Memorandum ("PPM"), which provided information about NTC and their potential investments. The PPM contained the following representation:

Offers and sales of Shares will be made on our behalf by our directors and executive officers The Gorlin Companies, LLC, a Florida limited liability company controlled by Steve Gorlin, a principal shareholder and a director of . . . [NTC] . . . has an agreement with . .

²According to an allegation in the complaint, nanotechnology is "the science of manipulating atomic and subatomic particles, with specific emphasis on coatings."

. [NTC] pursuant to which it will receive (i) 5% of the proceeds of any investment made by an investor it introduces to . . . [NTC] in this offering, and (ii) a warrant to purchase, at the same price as the offering price, 5% of the number of Shares sold to an investor it introduces to . . . [NTC] in this offering. In addition, our directors and executive officers will be reimbursed for their reasonable expenses incurred in this offering.

The PPM also contained the following representation:

No person has been authorized to give any information or to make any representations other than those contained in this Memorandum, and if given or made, such information or representations must not be relied upon as having been authorized by our agents or us. We will give you the opportunity to ask questions of, and receive answers from, our representatives concerning the terms and conditions of this offering and to obtain additional information, to the extent such information is possessed or can be obtained without unreasonable effort or expense.

(Emphasis added).

In addition to the foregoing language, the Subscription Agreement that was signed by each respondent³ provides:

The undersigned acknowledges that the undersigned has been offered the opportunity to obtain information, to verify the accuracy of the information received by him, her or it and to evaluate the merits and risks of this investment and to ask questions of and receive satisfactory answers concerning the terms and conditions of this investment. *The undersigned has received and reviewed a copy of the Memorandum, including all Exhibits thereto, and represents that he, she or it understands the information set forth therein.* The undersigned has received copies of such documents and information as he, she or it has deemed necessary in order to make an informed investment decision with respect to the investment being made hereby and the Company has made its officers available to the undersigned to answer questions concerning the Company and the investment being made hereby. *In*

³One Subscription Agreement was executed by Huntington National Bank c/f Stephen B. Farmer, IRA—Respondent Stephen B. Farmer’s predecessor-in-interest. The other Subscription agreement for R.L. Rooke for William W. Rooke—Respondent, R.L. Rooke Trust FBO WW Rooke’s predecessor-in-interest—was signed by Andrew Rooke, co-trustee.

making the decision to purchase the Common Stock, the undersigned has relied and will rely solely upon independent investigations made by him, her or it. . . .

. . . .

The undersigned has such knowledge and experience in financial and business matters that he, she or it is capable of evaluating the merits and risks of an investment in the Common Stock.

(Emphasis added).

Significant to determining the issue presented in the instant case, the Subscription Agreement also contains the following forum-selection clause:

(A) THIS SUBSCRIPTION AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES, (B) *THE UNDERSIGNED HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY FLORIDA STATE COURT OR UNITED STATES FEDERAL COURT SITTING IN THE STATE OF FLORIDA, OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SUBSCRIPTION AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY, AND (C) THE UNDERSIGNED HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH FLORIDA STATE OR FEDERAL COURT.* THE UNDERSIGNED FURTHER WAIVES ANY OBJECTION TO VENUE IN SUCH COURT AND ANY OBJECTION TO AN ACTION OR PROCEEDING IN SUCH COURT ON THE BASIS OF A NON-CONVENIENT FORUM. THE UNDERSIGNED FURTHER AGREES THAT ANY ACTION OR PROCEEDING BROUGHT AGAINST THE COMPANY SHALL BE BROUGHT IN SUCH COURTS. THE UNDERSIGNED AGREES TO WAIVE ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SUBSCRIPTION AGREEMENT OR ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY.

(Emphasis added).⁴

According to respondents, petitioners intentionally deceived them by selling common stock of NTC to Ivy Capital and “facilitated an identical sale” for another NTC Option Holder. Petitioners and the other NTC Option Holder allegedly received \$3 million for this sale. Respondents aver that they did not have knowledge of this sale because petitioners did not disclose the transaction to the NTC shareholders. Further, according to respondents, petitioners have refused or failed to respond to repeated requests for information. Respondents allege that petitioners have abandoned NTC in violation of the representations they made to respondents and they “fear” that NTC is no longer solvent and that they have lost their \$1.9 million investment.

Consequently, respondents filed a complaint against petitioners alleging counts for breach of contract, promissory estoppel/detrimental reliance, negligence, fraud, civil conspiracy and constructive trust. They seek compensatory damages in the amount of \$1.9 million and unspecified punitive damages. In their complaint, respondents never used the terms Subscription Agreement or PPM; however, they repeatedly refer to their “investment,” and the amount of compensatory damages sought equals the price paid for their respective stocks as indicated in each Subscription Agreement.

In response to the complaint, petitioners filed a motion to dismiss, pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure, alleging that the circuit court lacked venue. Petitioners asserted that respondents’ claims are “arising out of or relating to this subscription agreement” and, therefore, under the forum-selection clause found in the Subscription Agreement, the proper venue is Florida or federal court in Florida.⁵

On March 6, 2019, a hearing was held on the motion to dismiss. By order entered April 8, 2019, the circuit court denied the motion. The circuit court determined, inter alia, that petitioners failed to identify “anything in the Subscription Agreement upon which Plaintiffs are relying to support their claims[;]” petitioners failed to “identify anything in the Subscription Agreement that must be interpreted or applied to support or defend Plaintiffs’ claims[;]” “[p]laintiffs’ Complaint does not reference the Subscription Agreement, or rely upon it, in whole or part[,] in any way[;] and “[t]he claims asserted in Plaintiff’s [sic] Complaint do not arise from or relate to the Subscription Agreement[.]” Further, the circuit court determined that the parties involved in the civil action are not subject to the forum-selection clause, because in order to benefit from or be subject to the forum-selection clause, “the non-signatory [petitioners] must be closely related to the dispute such that it becomes foreseeable that the non-signatory may benefit from or be subject to the” clause and “[t]here

⁴The parties agree that the forum-selection clause is clear and unambiguous. Further, in footnote 1 of their response to the petition for writ of prohibition, respondents state the applicable law is well-settled “and the contract is not ambiguous.”

⁵Respondents filed a response in opposition to the motion dismiss, to which petitioners filed a reply.

is no such finding of foreseeability here.” (Citation omitted).

Petitioners filed a petition for writ of prohibition in this Court requesting that we vacate the circuit court’s order and direct the circuit court to issue an order dismissing the civil action pursuant to West Virginia Rule of Civil Procedure 12(b)(3).

II. Standard of Review

We consider the following criteria in deciding whether to grant a writ of prohibition where the lower court is acting within its jurisdiction but alleged to have exceeded its powers:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal’s order is clearly erroneous as a matter of law; (4) whether the lower tribunal’s order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal’s order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996). Moreover, this Court has previously entertained writs of prohibition where the issue is whether venue is proper. *See State ex rel. Thornhill Grp., Inc. v. King*, 233 W. Va. 564, 567, 759 S.E.2d 795, 798 (2014) (“That the issue of venue may properly be addressed through a writ of prohibition is well-settled.”); *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 124, 464 S.E.2d 763, 766 (1995) (“Considering the inadequacy of the relief permitted by appeal, we believe this issue should be settled in this original action if it is to be settled at all. In recent times in every case that has had a substantial legal issue regarding venue, we have recognized the importance of resolving the issue in an original action.”). The Court also held in syllabus points one and two of *Caperton v. A. T. Massey Coal Co.*, 225 W. Va. 128, 690 S.E.2d 322 (2009) that

“[t]his Court’s review of a trial court’s decision on a motion to dismiss for improper venue is for abuse of discretion.” Syllabus point 1, *United Bank, Inc. v. Blosser*, 218 W. Va. 378, 624 S.E.2d 815

(2005)[;] [but] [o]ur review of the applicability and enforceability of a forum-selection clause is *de novo*.

225 W. Va. at 132, 690 S.E.2d at 326, Syl. Pts. 1 and 2.

Because the parties agree that a writ of prohibition is an appropriate means to challenge the circuit court's order denying petitioners' motion to dismiss, in determining whether extraordinary relief is warranted in this case, we turn our focus to whether petitioners meet the third *Hoover* factor—whether the circuit court's order is clearly erroneous as a matter of law. 199 W. Va. at 14-15, 483 S.E.2d at 14-15, Syl. Pt. 4, in part.

III. Discussion

The issue before the Court is whether the circuit court erred in denying petitioner's motion to dismiss by determining that Kanawha County was the proper venue because the forum-selection clause in the Subscription Agreement did not apply to respondents' claims. Both parties agree that the law enunciated by the Court in *Caperton* is controlling. *See* 225 W. Va. 128, 690 S.E.2d 322. In *Caperton*, the Court held the following in syllabus point four:

Determining whether to dismiss a claim based on a forum-selection clause involves a four-part analysis. The first inquiry is whether the clause was reasonably communicated to the party resisting enforcement. The second step requires classification of the clause as mandatory or permissive, *i.e.*, whether the parties are *required* to bring any dispute to the designated forum or are simply *permitted* to do so. The third query asks whether the claims and parties involved in the suit are subject to the forum-selection clause. If the forum-selection clause was communicated to the resisting party, has mandatory force and covers the claims and parties involved in the dispute, it is presumptively enforceable. The fourth, and final, step is to ascertain whether the resisting party has rebutted the presumption of enforceability by making a sufficiently strong showing that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.

Id. at 132, 690 S.E.2d at 326, Syl. Pt. 4.

Applying the four-part test set forth in *Caperton* to determine whether the circuit court should have granted the motion to dismiss, the parties do not dispute that the forum-selection clause was clearly and expressly communicated to respondents and that the forum-selection clause is mandatory. *Id.* at 132, 690 S.E.2d at 326, Syl. Pt. 4. Both parties agree that what is at issue is whether the claims and parties are governed by the forum-selection clause. *Id.*

To resolve this issue, we first examine whether the respondents' claims are subject to the forum-selection clause. The forum-selection clause found in the subject Subscription Agreement expressly governs "over any action or proceeding *arising out of or relating to* this subscription or any agreement contemplated hereby[.]" (Emphasis added). Because the parties concede that the terms at issue in the Subscription Agreement are unambiguous, its plain language requires that any actions or proceeding arising therefrom "shall be governed by and construed in accordance with the internal laws of the State of Florida[.]" Under Florida contract law, which is the same on this issue as West Virginia law,⁶ "[i]n the absence of ambiguity, the language itself [in a contract] is the best evidence of the parties' intent and its plain meaning controls." *Gold Grown Resort Mktg. Inc. v. Phillpotts*, 272 So.3d 789, 792 (Fla. Dist. Ct. App. 2019) (quoting *Burns v. Barfield*, 732 So.2d 1202, 1205 (Fla. Dist. Ct. App. 1999)(internal citation omitted)).

In examining the plain language contained within the forum-selection clause, the term "arising," is defined as "to originate from a source." *Arise*, Merriam-Webster's Collegiate Dictionary (11th ed. 2005). Further, the term "relating," is defined as "to show or establish logical or causal connection between" or "to have relationship or connection[.]" *Relate*, Merriam-Webster's, *supra*. According to Florida law, the use of the phrase "relating to" causes the forum-selection clause to be broad. *See Inspired Capital, LLC v. Condé Nast*, 225 So.3d 980, 982 (Fla. Dist. Ct. App. 2017) ("In the instant case, the forum selection clause utilized the term 'relating to,' and therefore, the scope of the forum selection clause is broad."); *Fairbanks Contracting and Remodeling, Inc. v. Hopcroft*, 169 So.3d 282, 283 (Fla. Dist. Ct. App. 2015) ("By its terms, the forum selection clause in the present case unambiguously applies to 'any proceeding *relating to*' the contract. . . . *See Jackson v. Shakespeare Found., Inc.*, 108 So.3d 587, 593 (Fla. 2013) (explaining that an arbitration provision that applies to any claim 'relating to' a contract is broader than a provision that applies only to claims 'arising out of' a contract").⁷ Similarly, in the instant case, the language of the forum-selection

⁶*See Syl. Pt 3*, in part, *Kanawha Banking & Trust Co. v. Gilbert*, 131 W. Va. 88, 46 S.E.2d 225 (1947) ("When a written contract is clear and unambiguous its meaning and legal effect must be determined solely from its contents and it will be given full force and effect according to its plain terms and provisions.").

⁷*Compare with Caperton*, 225 W. Va. at 147, 690 S.E.2d at 341 (finding that scope of forum-selection clause, providing that it applied to "[a]ll actions brought in connection with this Agreement[.]" was "to be quite broad[.]" and so long as the claims asserted bore "a logical relationship to the 1997 CSA," the claims fell within the scope of the forum-selection clause, regardless of whether they sounded "in contract, tort, or some other area of the law."); *see also Huffington v. T.C. Grp., LLC*, 637 F.3d 18, 22 (1st Cir. 2011) ("So, too, courts describe the phrase 'with respect to' as synonymous with the phrases 'with reference to,' 'relating to,' 'in connection with,' and 'associated with,' and they have held such phrases to be broader in scope than the term 'arising out of,' to be broader than the concept of a causal connection, and to mean simply 'connected by reason of an established or discoverable relation.' *Coregis Ins. Co. v. Am. Health Found., Inc.*, 241 F.3d 123, 128-29 (2^d Cir. 2001) (Sotomayor, J.) (collecting authorities); *see also* (continued...)

clause, which provides that it applies to any action or proceeding that either arises out of or relates to the Subscription Agreement, was intended to be very broad in its application.

We now consider the claims asserted in respondents' complaint, which sound in breach of contract, promissory estoppel/detrimental reliance, negligence, fraud, civil conspiracy and constructive trust. In reviewing the allegations contained in respondents' complaint, respondents' factual basis for their alleged causes of action is based upon their reliance on "the representations and solicitations by" petitioners, as well as "continued representations of . . . [petitioners] *after* . . . [respondents'] investment." (Emphasis added). Respondents further allege that petitioners breached those representations made to them "both before and after each invested in Nano based upon" petitioners' representations. Even though respondents do not specifically mention the Subscription Agreement in their complaint, they repeatedly reference their investment(s) in NTC. By referring to their investment(s) in NTC, respondents implicitly rely upon their respective Subscription Agreements because had respondents never signed the Subscription Agreements, there would have been no investment(s) or stock purchases in NTC. Further, even respondents' claimed compensatory damages in the amount of \$1.9 million exactly equals the amount of their alleged collective investment in NTC, which occurred as a result of their execution of Subscription Agreements. Consequently, assuming, *arguendo*, that petitioners made all the representations that respondents alleged in their complaint and breached those representations, if respondents had not executed a Subscription Agreement as part of their collective purchase of stock in NTC, there would be no actionable claims against petitioners. Conversely stated, respondents did not plead any counts in their complaint that are outside the scope of the respective Subscription Agreements, or unrelated and not arising out of the Subscription Agreements they each signed.⁸

Moreover, language in the Subscription Agreement unambiguously provides that "[i]n making the decision to purchase the Common Stock, the undersigned has relied and will rely *solely* upon independent investigations made by him, her, or it." (Emphasis added). Further, respondents agreed by signing the Subscription Agreement that they had "such knowledge and experience in financial

⁷(...continued)

John Wyeth & Bro. Ltd. v. CIGNA Int'l Corp., 119 F.3d 1070, 1074-75 (3d Cir.1997) (Alito, J.)."

⁸Based upon the facts before us, we reject respondents' argument that "the gist of the claims asserted exceeds the scope of the contract containing the forum-selection clause, or are based on fraud or conduct that pre-dates the contract containing" the clause. *See Farmland Indus., Inc. v. Frazier-Parrott Commodities, Inc.*, 806 F.2d 848, 852 (8th Cir. 1986), *abrogated on other grounds*, *Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495 (1989) (finding that causes of action did not all arise directly or indirectly from the agreement, the court found lawsuit to be broader than the scope of the forum selection clause); *Armco Inc. v. N. Atlantic Ins. Co.*, 68 F. Supp. 2d 330, 338 (S.D.N.Y. 1999) (finding that forum-selection clause was not applicable where action did not "arise out of or in connection with' the Sale Agreement," but involved an alleged fraudulent course of conduct that pre-dated signing of contract).

and business matters that he, she or it is capable of evaluating the merits and risks of an investment in the Common Stock.” Finally, contained in the PPM given to respondents prior to the Subscription Agreements, but referenced in the Subscription Agreements, was the following language: “*No person has been authorized to give any information or to make any representations other than those contained in this Memorandum, and if given or made, such information or representations must not be relied upon as having been authorized by our agents or us.*” (Emphasis added). Given the foregoing language, contrary to the circuit court’s findings that respondents’ claims “do not require . . . reliance on the Subscription Agreement,” disposition of respondents’ claims will involve the Subscription Agreement. Respondents’ causes of action against petitioners are based upon purported representations and disclosures that are inconsistent with the representations and warranties each respondent made when purchasing NTC common stock by executing the Subscription Agreement, as they represented, by signing those agreements, that they were not relying on any information outside the investment documents.

Turning to the question of whether the parties are governed by the forum-selection clause, we held in syllabus point eight of *Caperton*, that

[a] range of transaction participants, signatories and non-signatories, may benefit from and be subject to a forum selection clause. In order for a non-signatory to benefit from or be subject to a forum selection clause, the non-signatory must be closely related to the dispute such that it becomes foreseeable that the non-signatory may benefit from or be subject to the forum selection clause.

Id. at 133, 690 S.E.2d at 327, Syl. Pt. 8.

In the instant case, even though petitioners are non-signatories to the Subscription Agreements that were entered into between respondents and NTC, at the time the agreements were executed, Mr. Gorlin was Chairman of NTC’s Board, a shareholder in NTC, and, as asserted by respondents in their complaint, solicited respondents to purchase common stock in NTC. Further, petitioners’ relationship with NTC was memorialized in the PPM provided to respondents and recognizes that petitioners made the investment offerings to respondents on NTC’s behalf. The PPM further recognizes that NTC was paying petitioners a cash commission based upon investments petitioners procured on behalf of NTC. Thus, based upon law enunciated in *Caperton*, petitioners are closely related to the instant dispute such that it becomes foreseeable that they, as non-signatories, may benefit from or be subject to the forum-selection clause. *See id.*

Because we find that both the claims and the parties are subject to the forum-selection clause in this case, we find that the forum-selection clause was presumptively enforceable. *See id.*, Syl. Pt. 4. Further, respondents have failed to rebut “the presumption of enforceability by making a sufficiently strong showing that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.” *Id.* Indeed, respondents have offered nothing to even suggest that the forum-selection clause is unreasonable, unjust, or invalid.

Accordingly, we find that respondents' claims should have been dismissed for improper venue because the forum-selection clause requires the action to be brought in Florida. *See Caperton*, 225 W. Va. at 132, 690 S.E.2d at 326, Syl. Pt. 4. The circuit court erred as a matter of law in failing to do so and, therefore, we grant the requested writ of prohibition. *Hoover*, 199 W. Va. at 15, 483 S.E.2d at 15, Syl. Pt. 4.

IV. Conclusion

Based upon the foregoing, we vacate the circuit court's April 8, 2019, order, and remand the case to the circuit court for entry of an order dismissing the civil action due to improper venue pursuant to Rule 12(b) (3) of the West Virginia Rules of Civil Procedure.

Writ Granted.

ISSUED: November 8, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Margaret L. Workman
Justice Tim Armstead
Justice Evan H. Jenkins
Justice John A. Hutchison