

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 26-C-177

NOLA TERMINAL LLC

versus

BRIAN MILES AND ONSITE CONCRETE SOLUTIONS LLC

**IN RE ON-SITE CONCRETE SOLUTIONS, LLC
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
FRANK A. BRINDISI, DIVISION "E", NUMBER 870-402**

TRUE COPY

May 18, 2026



**LINDA TRAN
DEPUTY CLERK**

Panel composed of Judges Susan M. Chehardy,
Jude G. Gravois, Marc E. Johnson, Scott U. Schlegel, and Timothy S. Marcel

WRIT DENIED

Relator, Onsite Concrete Solutions, LLC (“OnSite”), seeks review of the trial court’s judgment that overruled its declinatory exception of improper venue in favor of Respondent, Nola Terminal, LLC (“Nola Terminal”). In its exception, OnSite argued that Nola Terminal’s petition for damages was improperly filed in the 24th Judicial District Court. It contended that, pursuant to a forum selection clause contained with several agreements¹ between the parties, the 25th Judicial District Court is exclusively the proper state venue intended for any action filed by either party. In response, Nola Terminal argued that Jefferson Parish is the proper venue

¹ OnSite referred to the “Docking, Access, Throughput, and Indemnity Agreement”, “Amended and Restated Docking, Access, Throughput, and Indemnity Agreement”, and “Second Amended and Restated Docking, Access, Throughput, and Indemnity Agreement” executed between it and NOLA Terminal.

because: 1) OnSite's solidary obligor, Brian Miles, is domiciled in Jefferson Parish; 2) the lease at issue was executed in Jefferson Parish; and 3) because venue is proper for one of its claims, Jefferson Parish is the ancillary venue for all of its asserted claims.

A hearing on OnSite's exception was held on March 19, 2026. A review of the minute entry in the official record shows that the trial court accepted two documents into evidence: Nola Terminal's copy of a "Ground Lease" executed between the parties and Nola Terminal's "Description of the Premises." In a judgment rendered on March 30, 2026, the trial court overruled OnSite's declinatory exception of improper venue.

A trial court's ruling on an exception of improper venue is a question of law that is reviewed *de novo*. *Woods v. Ace American Insurance Company*, 23-450, p. 3-4 (La. App. 5 Cir. 10/31/23), 2023 WL 7140887. Pursuant to La. C.C.P. art. 930, evidence may be presented at a hearing on a declinatory exception. *Id.* If evidence is admitted at a hearing on a declinatory exception, the exception must be resolved on the evidence presented, rather than on the allegations in the petition. *Id.*

Here, evidence was introduced at the hearing on the exception of improper venue. The minute entry does not reflect that any exhibits introduced by OnSite were accepted into evidence by the trial court. Therefore, the "Docking, Access, Throughput, and Indemnity Agreement", "Amended and Restated Docking, Access, Throughput, and Indemnity Agreement", and "Second Amended and Restated Docking, Access, Throughput, and Indemnity Agreement" attached as exhibits to OnSite's brief are not properly before this Court for review, although they are attached as exhibits to Onsite's brief. Exhibits and attachments not properly and official offered and admitted into evidence cannot be considered, even if it is physically filed into the trial court record. *Woods, supra*, citing *Denoux v. Vessel Mgmt, Services, Inc.*, 07-2143 (La. 5/21/08), 983 So.2d 84, 88. A review of the

“Ground Lease” that was accepted into evidence does not contain a forum selection clause. OnSite failed to present any evidence to support its claim that Jefferson Parish is an improper venue. When considering the evidence properly presented before this Court on *de novo* review, we find the trial court did not err in overruling OnSite’s exception of improper venue.

In any event, even if the “Docking, Access, Throughput, and Indemnity Agreement”, “Amended and Restated Docking, Access, Throughput, and Indemnity Agreement”, and “Second Amended and Restated Docking, Access, Throughput, and Indemnity Agreement” were properly before this Court for review, we would find that the permissive language in the agreements allow for an action to be filed in Jefferson Parish. Under the “Dispute resolution; waiver of jury trial; attorney’s fees” section, the “Second Amended and Restated Docking, Access, Throughput, and Indemnity Agreement” (“the Agreement”) provides,

13.1 As the exclusive means of bringing adversarial proceedings to resolve any dispute arising out of this Agreement or the subject matter of this Agreement, a party may bring such a proceeding in the U.S. District Court for the Eastern District of Louisiana in New Orleans. If (and only if) that federal court lacks subject-matter jurisdiction, a party *may* bring such a proceeding in the 25th Judicial District for Plaquemines Parish, Louisiana.²
(Emphasis added).

In this instance, pursuant to the Agreement, the U.S. District Court (E.D. La.) is the “exclusive” venue to resolve disputes, as long as such court has subject matter jurisdiction over the dispute in question; that does not appear to be the case here. The parties also agreed in the next sentence of this provision that Plaquemines Parish is a *permissive* venue where either party could file suit concerning any dispute arising out of the Agreement (whether or not it is a proper venue under the applicable venue statutes), should either of them desire to do so. However, we find that this provision of the Agreement does not make Plaquemines Parish the exclusive parish

² The same provision is included in the “Docking, Access, Throughput, and Indemnity Agreement” and the “Amended and Restated Docking, Access, Throughput, and Indemnity Agreement.”

where state court actions have to be filed. Rather, the parties' use of the permissive word "may" in that sentence of the Agreement means that any state court actions between the parties could be filed in any other parish besides Plaquemines Parish, as long as such parishes are proper venues—which Jefferson Parish is in this matter.³ We conclude that use of the word "may" and intentional lack of use of the word "exclusive" in the second sentence of the forum selection clause allows Nola Terminal's suit to proceed in Jefferson Parish.

Accordingly, the writ application is denied.

Gretna, Louisiana, this 18th day of May, 2026.

MEJ
JGG
TSM

³ We note that Nola Terminal's allegations that OnSite negligently disregarded laws, rules, and regulations and damaged its property, and OnSite breached its commercial lease for the 4.08 acres owned by Nola Terminal are properly filed in Jefferson Parish.

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CHEHARDY, C.J., DISSENTS WITH REASONS

I respectfully dissent and reject the majority’s interpretation of the venue selection cause contained in the contract between the parties. It seems impossible to reconcile the parties’ use of the word “may” in the first sentence of the clause following the use of “exclusive” for federal court venue and its use of “may” in the second sentence with respect to state court venue. Because of the parties’ use of “may” in both sentences—and their specifying the Eastern District in the first and Plaquemines Parish in the second—it seems illogical to conclude that the parties intended for the first sentence to be mandatory, but for the second sentence to be permissive. For this reason, I would grant the writ application and remand the matter for further proceedings.

SMC

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**SCHLEGEL, J., DISSENTS FOR THE REASONS ASSIGNED BY
CHIEF JUDGE CHEARDY**

SUS

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAIOSN, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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SUSAN S. BUCHHOLZ
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LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **05/18/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-177

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Frank A. Brindisi (DISTRICT JUDGE)
Patrick S. McGoey (Respondent)
Andrea V. Timpa (Respondent)

Corey E. Dunbar (Relator)
McClain R. Schonekas (Respondent)

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