A CONTRACTUALLY AGREED FORUM MAY PROVE INEFFECTIVE:

THE LIMITS OF SUBMISSION CLAUSES IN ADHESION CONTRACTS AND PROMISSORY NOTES

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Executive Summary

- Today, most financing arrangements —a car loan or a revolving line of credit— are documented through standard forms in which the customer only signs and does not negotiate the clauses or terms. These are known as adhesion contracts.
- Adhesion contracts are characterized by the fact that all substantive terms —price, form, place, terms and conditions— are set by one party alone, leaving the other with no choice but to accept or reject them as a whole, with no room to negotiate.
- Among the clauses typically included in these contracts is the one designating the courts that will resolve any disputes arising from the agreement. As a general rule, the selected forum is the jurisdiction where the drafting party is domiciled.
- A recent precedent from the First Circuit (Mexico City) confirms that this clause will not always be effective. When an adhering debtor is forced to litigate away from its own domicile, thereby incurring extraordinary expenses, the court may disregard the agreed forum and refer the matter to the defendant's domicile.

WHAT IS THE PROBLEM?

For financial institutions, the submission clause serves a logistical purpose: it concentrates all collection proceedings in a single venue, avoiding the need to litigate debtor by debtor across the country.

The problem is that this very clause, when embedded in an adhesion contract or in the promissory note that secures it, does not arise from a genuine negotiation between the parties. It arises from a unilateral stipulation in which the debtor never discussed its terms and conditions, and it is precisely that absence of negotiation that makes it vulnerable.

WHAT DID THE COURT HOLD?

A Collegiate Circuit Court in Mexico City, in resolving a series of amparo proceedings brought by financial institutions, established the precedent I.10o.C. J/2 C (12a.), which holds that an submission clause contained in promissory notes and adhesion contracts is not effective to fix the competent court when litigating in that forum would impair the adhering party's access to justice.

The reasoning is grounded in the general rule set forth in articles 1092 and 1093 of the Commercial Code, which allows the parties to choose the courts before which their disputes will be resolved. But that authority presupposes a negotiated agreement. When one party merely signed a form drafted unilaterally by the other, the "choice of forum" is a fiction.

On that basis, the debtor would be forced to mount its defense in a city other than its own, with the time and extraordinary costs that this entails, turning the clause into a barrier to the access to justice protected by article 17 of the Constitution. Accordingly, the precedent holds that the interpretation most favorable to the right of access to justice must prevail, using the debtor's domicile as the reference point.

This criterion is not new. The former First Chamber of the Supreme Court had already established, in jurisprudence 1a./J. 1/2019, that the general rule does not apply to submission clauses in bank adhesion contracts where access to justice is undermined. What the Collegiate Circuit Court does is extend that same logic to promissory notes and adhesion contracts.

The criterion does not give the debtor free rein to resolve its disputes wherever it pleases. This protection operates only where two conditions concur: (i) that the document is genuinely of adhesion, and (ii) that the location of the agreed courts imposes on the debtor a burden that obstructs its defense.

Indeed, the precedent itself recognizes that the creditor's legitimate interest must also be protected. But if the creditor has a domicile, infrastructure, or presence in the place where the debtor resides, there is no obstruction of access to justice. In other words, the rule corrects the imbalance of dragging the adhering party to a distant forum when the creditor could perfectly well have sued in the debtor's own jurisdiction.

WHAT SHOULD BE KEPT IN MIND REGARDING THIS CLAUSE?

For the creditor, the submission clause currently included in its standard contract forms does not guarantee that collection efforts will be concentrated in a single forum. If the debtor is domiciled in another jurisdiction and litigating in the designated place would be onerous for it, the court may decline jurisdiction from the very first order issued on the complaint.

For the creditor, this translates into dispersed collection efforts, local counsel, and additional costs that are worth taking into account. This criterion is an invitation to revisit the design of contract forms and review their clauses, as well as to weigh the territorial strategy in light of this ruling.

In conclusion, the express submission clause remains valid and useful, but it is no longer absolute when contained in adhesion contracts and promissory notes. Its enforceability depends on whether there was genuine negotiation and on whether the agreed courts do not impair the debtor's access to justice.

Jaime Gortarez
Associate
jaime.gortarez@s-s.mx