Continued Support for Forum Selection Clauses

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Little more than a month ago, we looked at the United States District Court's application of a recent Fourth Circuit opinion that relied, in turn, on a United States Supreme Court opinion addressing venue challenges in light of forum selection clauses (*click here to view original article*). The District Court once again analyzed the now recognized approach to a motion to transfer venue in light of a mandatory forum selection clause in *ARCpoint Financial Group, LLC v. Blue Eyed Bull Investment Corporation, et al* 2018 WL 2971205 (June 13, 2018).

ARCpoint and Blue Eyed Bull Investment Corporation (BEBIC) entered into a franchise agreement pursuant to which BEBIC was granted authority to operate business in exchange for certain payments of royalties and technology and advertising fees to ARCpoint as required by the agreement. Following BEBIC's failure to make payments late last year, it advised ARCpoint it wished to end the franchise agreement. This litigation followed.

ARCpoint is a South Carolina limited liability company with its principal place of business in Greenville, South Carolina. BEBIC is a Kansas corporation authorized to do business in Missouri and operated the business in those two states. ARCpoint initiated this action in the United States District Court, Greenville Division, alleging various causes of action. BEBIC moved to dismiss for improper venue, or in the alternative, to transfer venue. Those motions were denied.

Because venue is proper where a substantial part of the events giving rise to a claim occurred, or where a substantial part of the property subject to the action is located, it is possible for venue to be proper in more than one judicial district. Having convinced the court that a significant part of the events giving rise to its claim occurred in South Carolina, ARCpoint prevailed and the court denied BEBIC's motion to dismiss, turning its attention to BEBIC's motion to transfer venue.

Following the Fourth Circuit's recent outline for evaluating a forum selection clause as it relates to venue, the court reiterated that a mandatory forum selection clause should be enforced unless unreasonable to do so. While traditionally an exceedingly inconvenient venue and the existence of an adequate alternative supported a motion to dismiss pursuant to *forum non conveniens*, a mandatory forum selection clause enjoys a presumption of enforceability. Here, the franchise agreement included the requisite forum exclusivity language and was thus determined mandatory and enforceable.

That determination made, the court turned its focus to whether the case should be transferred under 28 U.S.C. §1404(a), which generally calls for the evaluation of both the convenience of parties and witnesses and other public interest considerations. The Fourth Circuit employs four factors in such an evaluation: the weight given to plaintiff's choice of venue; witness convenience and access; convenience of the parties and the interests of justice. However, a mandatory forum selection clause also requires adjustment of the customary §1404(a) analysis. Where, as here, a plaintiff files in a forum other than the one specified in the selection clause, that choice is assigned no weight. As to the next two factors, when a party agrees to a forum selection clause, it waives the right to challenge the convenience of the chosen forum for itself and for its witnesses. Finally, without articulating its specific basis, the court found insufficient evidence that would offend the interests of justice in the present case.

Clearly, federal public policy supports the enforceability of forum selection clauses. The court has made clear its dedication to honoring that policy in this and other recent opinions as it continues to afford strength to those clauses that qualify as mandatory. Parties should carefully consider the court's position and negotiation forum selections clauses accordingly.

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