Court Upholds Forum Selection Clause Over Plaintiff's Claims of Inconvenience and Expense

Insights
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A senior manager alleging claims against his former employer arising out of the early termination of an incentive plan will have to take his case abroad. In *Wolf v. TBG Limited, C.A. No. 13-3315* (Jan. 28, 2014), the United States District Court for the Eastern District of Pennsylvania recently upheld the forum selection clause in the employee's long- term incentive plan and held that the employee had to litigate his claims in England.

The lead defendant, Megger Group Limited, is a provider of electric testing equipment and measuring instruments for electrical power applications with its main offices in Kent, England. In March 2010, Megger announced a new bonus incentive plan to its senior management, including the plaintiff who lived and worked in Pennsylvania. The plan was set to run from fiscal year 2010 through fiscal year 2014, with a bonus payable at the end of the contract's term. However, Megger terminated the program in April 2013, well before the expiration of its five-year term, and offered a buyout to its employees, including the plaintiff. The plaintiff brought claims for negligence and intentional misrepresentation, contract claims, and state wage law violations against Megger.

Megger and its co-defendants moved to dismiss all the plaintiff's the claims pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Although motions to dismiss for improper venue are typically brought under Rule 12(b)(3), the 3rd Circuit has held that dismissal under Rule 12(b)(6) where a forum selection clause designates another court as the exclusive venue for litigation.

The plaintiff made two arguments for the invalidation of the forum selection clause. First, the plaintiff argued that the forum selection clause should be held unenforceable because it was an adhesion contract and "the product of undue influence and overwhelming bargaining power." The Court rejected this argument, noting that employment contracts are not contracts of adhesion under Pennsylvania law " even when an employee is told to 'sign or be terminated.'" The Court also stated that "[i]nequality of bargaining power . . . does not render a contract or its terms unenforceable."

The plaintiff then argued that the forum selection should be held unenforceable because the expense and inconvenience of litigating in England "would effectively deprive Plaintiff of his day in court." The Court rejected this argument as well. While the Court acknowledged that forcing the plaintiff to litigate his claims in England would increase his costs, "numerous courts have rejected similar arguments and have enforced forum selection clauses requiring matters to be litigated in

similar arguments and have enforced forum selection clauses requiring matters to be litigated in England." Following the United States Supreme Court's recent decision in *Atlantic Marine Constr. Co. V. U.S. Dist. Court for Western Dist. Of Texas, 571 U.S. ___, 134 S.Ct. 568* (2013), the Court applied only the public-interest forum non-conveniens factors "because those factors [i.e., the public-interest factors] will rarely defeat a transfer motion, the practical result is that forum selection clauses should control in unusual cases." Because the plaintiff raised no public-interest factors, the Court rejected this argument and dismissed the case.

This case provides strong support for employers who would seek to contractually require employees to litigate their claims in a foreign jurisdiction. Recent Supreme Court precedent makes it unlikely that personal expense or inconvenience will be sufficient to invalidate a forum selection clause. Rather, employees will have to "bear the burden of showing that public-interest factors overwhelmingly disfavor a transfer."