BLOGS

Choice of Forum/Venue

Federal Court Upholds Clause Selecting South Carolina Venue

A South Carolina federal court has denied a franchisee's motion to dismiss for improper venue, as well as the franchisee's alternative motion to transfer venue, based on a forum selection clause in the parties' franchise agreement. *ARCpoint Fin. Grp., LLC v. Blue Eyed Bull Inv. Corp. (BEBIC*), 2018 WL 2971205 (D.S.C. June 13, 2018). In denying franchisee BEBIC's motion to dismiss for improper venue, the court held that franchisor ARCpoint had made a prima facie showing that venue was proper because a substantial part of the events giving rise to its claims occurred within the court's jurisdiction.

The court then considered BEBIC's alternative motion to transfer the case from the District of South Carolina to the District of Kansas. As a threshold matter, the court found that the contractual forum selection clause was mandatory, as opposed to permissive, and that it was therefore entitled to a presumption of enforceability. The court further held that the clause was in fact enforceable because its application would not be unreasonable under the circumstances. Having determined validity, the court then applied a balancing test to determine whether to transfer venue but emphasized that under the U.S. Supreme Court's decision in *Atlantic Marine Constr. Co. v. U.S. Dist. Court for the W. Dist. of Texas*, 571 U.S. 49 (2013), a valid forum selection clause should be given controlling weight in "all but the most exceptional cases." The court ultimately denied BEBIC's motion to transfer venue, holding that BEBIC had not made the requisite showing that the interests of convenience and justice favored the proposed transfer.

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