

**BLOGS**

Choice of Forum/Venue

First Circuit Upholds Forum Selection Clause in Sales Invoices

The United States Court of Appeals for the First Circuit recently affirmed a decision enforcing a forum selection clause contained in sales invoices that partially governed the relationship between a manufacturer and its local retailer. *Carter's of New Bedford, Inc. v. Nike, Inc.*, 2015 U.S. App. LEXIS 10692 (1st Cir. June 24, 2015). The dispute arose when Nike notified Carter's, a clothing and footwear business located in Massachusetts and longtime retailer of Nike products, that it was terminating the parties' relationship. When Carter's brought suit in Massachusetts seeking to prevent the termination, Nike moved to dismiss the case on the grounds that the forum selection clause contained in invoices exchanged between the parties required Carter's to file its claims in Oregon. The district court found that Carter's had not met its burden to show that the clause was unconscionable or inapplicable and granted Nike's motion.

On appeal, the First Circuit agreed that the forum selection clause was valid and enforceable and that the action was properly dismissed. The court noted that Carter's had admitted in its complaint that the terms and conditions of the invoices, in addition to other agreements, defined the parties' business relationship. The court also rejected Carter's position that the forum selection clause should be limited to issues concerning the goods covered by each invoice, instead finding that the broad terms of the clause encompassed all claims. The court further determined that Carter's had waived any argument that Nike unilaterally added the forum selection clause to the invoices without bargaining for its inclusion. Finally, the court concluded that enforcement of the clause was not unreasonable, unjust, or contrary to Massachusetts public policy and that Carter's was capable of litigating its claims against Nike in Oregon.

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