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BLOGS

Choice of Forum/Venue

Forum-Selection Clause of Expired Supplier Agreements Not Enforceable

In *Webb Candy, Inc. v. Walmart Stores*, 2010 U.S. Dist. LEXIS 55985 (D. Minn. June 7, 2010), the court examined the viability of a forum-selection clause after the expiration of the underlying distribution agreements. In this case, Walmart had one-year vendor contracts with two companies that allowed individual stores to buy merchandise directly from those two companies without contacting Walmart's corporate office. Both of those contracts had expired, but the vendor identification numbers of the companies were still in effect. Webb Candy, a third-party vendor that did not have its own contract with Walmart, subsequently paid those companies for the use of their vendor identification numbers and delivered merchandise directly to several Walmart stores. Webb Candy did not receive payment for the merchandise and sued Walmart in Minnesota. Walmart then moved to enforce the Arkansas forum-selection clause that was originally in the now-expired contracts with the two other companies. The plaintiffs conceded that had the agreements not expired, the clause would have been enforceable.

Walmart argued that the expired contracts (and therefore the forum-selection clause) still governed the transactions under the theories that the terms of the contracts were evergreen (they applied to all sales, even those made years after expiration), the expiration dates were waived by course of performance, and continuing to do business after expiration created a new contract under the same terms. The court was unconvinced. Noting the "sizable gap between the contracts' expiration dates and the plaintiff's deliveries, the paucity of evidence about the parties' course of performance before and after expiration, the contract's specific, repeated assurances that renewal would require a written agreement, [...and the lack of clarity that the parties] intended the forum-selection clause to carry forward into [any implied or new] contract," the court denied Walmart's motion to dismiss or to transfer to an Arkansas court.