Park That Shelby (Litigation) Right Here!

Hooked On (A) Forum Selection Claus

What do Dorothy from *The Wizard of Oz* and probably every sports team have in common? The fervent belief, as expressed by the agrarian heroine who traveled quite far afield, that, in toto[**1**], "There's no place like home." Athletes speak of (and fight strenuously for) the cherished "home field advantage," believing that the chance of success is greater when playing amidst familiar surroundings.

Such sentiments are expressed in the legal arena as well. Litigants often believe that it is in their interest to have a case heard in a local court, for reasons such as the party's familiarity with local procedures, and the convenience and reduced expense and disruption of not having to travel to another jurisdiction (while making your adversary do so).

To ensure that a party's desires on this point are fulfilled, contracts often include a "forum selection clause". This is a provision that requires that any disputes or litigation resulting from the contract, such as an action for breach of contract, is to be adjudicated in a specified court in a particular jurisdiction.

Such a clause may be accompanied by a "choice of law" provision that specifies which state or other jurisdiction's law will be used to resolve disputes or lawsuits between the parties to the contract.

A forum selection clause was at issue in *Shelby American Automobile Club, Inc.*, v. Carroll Shelby Licensing, Inc., decided on June 5, 2008 by the United States District Court for the District of Massachusetts.

According to the Court, plaintiff Shelby American Automobile Association ("SAAC") is an association of Shelby automobile owners and enthusiasts. SAAC brought a trademark lawsuit in Massachusetts against Carroll Shelby Licensing, Inc. ("CSLI"), a company affiliated with Carroll Shelby. The Court described Mr. Shelby as "a storied race car driver and automobile designer": "After retiring from racing in October of 1959, Shelby designed and built the family of 'Cobra' cars, the GT40, the Mustang-based Shelby G.T.350 and Shelby G.T.500, and the most popular of his designs, the 427 Shelby Cobra. Shelby worked variously with divisions of Ford, Chrysler, and General Motors to develop and build high-performance cars."

The dispute involved SAAC's use of the Shelby name under a licensing agreement with CSLI. That agreement contained a forum selection clause designating California for venue (where the case would be heard) and choice of law purposes. CSLI moved to dismiss the Massachusetts case and have the matter heard instead in a case filed in California pursuant to the clause. SAAC opposed dismissing the Massachusetts case, arguing that CSLI fraudulently induced SAAC to enter into the licensing agreement and the court should, therefore, not enforce the forum selection clause.

Out west, SAAC moved in the California case to dismiss the California action. The California court denied the motion, finding the forum selection clause controlling. "Forum selection clauses are prima facie valid, and are enforceable absent a strong showing by the party opposing the clause 'that enforcement would be unreasonable or unjust, or that the clause [is] invalid for such reasons as fraud or overreaching. . . . [B]road and conclusory allegations of fraud without offering any specific factual allegations or evidentiary support' are not sufficient to negate a forum selection clause. . . . [I]f general assertions of fraud were enough, every forum selection clause could be negated by artful pleading "and the policy in favor of the enforcement of forum selection provisions would be frustrated.'"

"Here, the Shelby Club [SAAC] offers nothing but conclusory allegations as to fraud. No information is provided as to who made any fraudulent representations or when they were made or to whom. Without more, the Court does not find it credible that the Shelby Club thought that the detailed twelve-page license agreement it entered into had no binding effect."

"Accordingly, the Shelby Club's motion to dismiss, stay or transfer this [California] action is DENIED."

Back east, the Massachusetts Court deferred to the California Court's ruling. Therefore, the Massachusetts Court granted the motion to dismiss the Massachusetts action.

The Massachusetts Court specifically noted that its ruling only dealt with the enforcing the provision of the contract specifying where the litigation had to be conducted (*i.e.*, California), and did not address the substantive merits of the case: "Because a dismissal to enforce a forum selection clause is not a determination on the merits of any cause of action, it is appropriately 'without prejudice' so that the merits can be litigated elsewhere."

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The lesson of this case is that, when negotiating and/or entering into a contract, consider the desirability and/or effect of a forum selection clause. Such consideration could help reduce the risk of a funny thing happening to you on the way to the forum – maybe even to Zero.

[1] toto caelo Latin for "by the entire extent of the heavens"

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