

Start Spreadin' the News: California Court Says No to New York, New York; Rejects Forum Selection Clause

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Sinatra may have found success in the city that never sleeps, but a California court has just made it more difficult for any party doing business with a California resident to do the same. At least, when it comes to resolving disputes without a jury in a New York courtroom, or in the courtroom of any other jurisdiction that enforces pre-dispute jury trial waivers. This case will be of major interest to commercial lenders, and other businesses, who prefer to use New York as their jurisdiction of choice for governing law and adjudicating disputes.

While it is well-settled law in California that pre-dispute contractual jury waivers are unenforceable (see, e.g., *Grafton Partners L.P. v. Superior Court* (2005) 36 Cal. 4th 944 (“Grafton”)), in most instances forum selection and choice-of-law provisions have been respected by California courts. However, the Court of Appeal for the First Appellate District recently expanded upon Grafton in *Handoush v. Lease Financing Group, LLC*. The Court dealt a commercial equipment lessor a significant blow by holding that the equipment lessee who signed a lease agreement with the lessor that was governed by New York law, identified New York as the appropriate forum for resolving disputes and included a pre-dispute jury waiver (which is enforceable under New York law), was nevertheless entitled to a trial by jury in California.

Background

Zaad Handoush, an individual California resident and store-owner, filed a lawsuit against Lease Finance Group, LLC (“LFG”) regarding a lease agreement between them for credit card processing equipment. Handoush’s complaint alleged causes of action for fraud, rescission, injunctive relief and violation of California’s Business and Professions Code Section 17200. The lease agreement provided that New York law would apply to any disputes between the parties, and that the parties waived their respective rights to a jury trial:

“GOVERNING LAW; CHOICE OF FORUM; WAIVER OF JURY TRIAL; LIMITATION OF ACTION. ... This Lease, and any and all actions, proceedings, and matters in dispute between you and us, whether arising from or relating to the Lease itself, or arising from alleged extra-contractual facts prior to, during, or subsequent to the Lease (all collectively referred to hereafter as a ‘Dispute’), shall be

governed by the laws of the State of New York ... All Disputes shall be instituted and prosecuted exclusively in the State and County of New York notwithstanding that other courts may have jurisdiction over the parties and the subject matter. YOU AND WE WAIVE, INSOFAR AS PERMITTED BY LAW, TRIAL BY JURY IN ANY DISPUTE...”

LFG moved to dismiss the lawsuit based on the above forum selection and choice of law provision. In LFG’s view, if Handoush wished to pursue claims against LFG, he would need to make brand new start of it in a New York court. Handoush argued, among other things, that the provision was unenforceable because it would deprive him of his substantive right to a jury trial. The trial court dismissed the lawsuit, and Handoush appealed.

The Court of Appeal Rejects The Forum Selection Clause

On appeal, the Court of Appeal reversed the trial court’s dismissal of the lawsuit despite acknowledging that California generally favors contractual forum selection clauses. In doing so, the Appellate Court held that even though Handoush’s claims were not based on any statutory rights under California law, the right to a jury is a fundamental right that cannot be waived in pre-dispute contracts and “California Courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates our state’s public policy.” The Appellate Court then determined that the LFG failed to carry its burden of proof that “enforcement of the forum selection clause would not substantially diminish the rights of California residents in a way that violates our public policy.”

Takeaway: You May Not Make It There

What does this decision mean for the interpretation of other contracts with mandatory forum selection/choice of law clauses that include a pre-dispute jury trial waiver? If there are claims at issue for which a jury trial right exists under California law, this decision provides a basis to challenge the forum selection and choice of law provisions on the grounds that they essentially circumvent California’s fundamental public policy protecting the right to a jury trial. While the Court’s decision does not describe the underlying facts in detail, LFG may have had tactical options available that would have improved its chances of enforcing the forum selection clause. This decision cautions though that if a lawsuit is filed in California, you may very well find yourself litigating your claims before a California jury even if your agreement expressly provides otherwise.

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