This month, the Ninth Circuit’s decision in DePuy Synthes Sales v. Howmedica Osteonics held that a U.S. district court in California properly invalidated a foreign choice-of-law and forum selection provision under California Labor Code § 925, and denied a motion to transfer the case to a different venue. While this might seem at first blush like a technical issue of federalism and contractual interpretation, the decision indicates that federal courts in the Ninth Circuit will also apply California’s partial prohibition on the use of foreign forum-selection and choice-of-law clauses as to employees.

In September 2017, Jonathan L. Waber, a California resident, was hired as a sales
associate for Howmedica Osteonics Corp. (“HOC”) and signed an employment agreement with HOC’s parent company, Stryker Corporation (“Stryker”). The contract included a one-year non-compete clause and a forum-selection and choice-of-law clause requiring contract disputes to be adjudicated in New Jersey under New Jersey law. In July 2018, Waber left Stryker to work at DePuy, an HOC competitor, in violation of the non-compete clause in his employment agreement. Stryker sent Waber a cease and desist letter threatening to enforce the non-compete clause, but Waber responded by stating that he was voiding the forum-selection and choice-of-law clause under California Labor Code § 925, which allows employees to void such clauses in certain circumstances.

Waber and DePuy then sought declaratory judgment in the Central District of California, seeking a ruling that the forum-selection and choice-of-law clauses were void under California Labor Code § 925, that California law governed the dispute, that the non-compete clause was void under California Business and Professions Code § 16600, and that DePuy was not subject to a tortious interference claim. Stryker sought to enforce the forum-selection clause by moving to transfer the case to the District of New Jersey under 28 U.S.C. § 1404(a).

The district court found that the forum-selection and choice-of-law clause was void under the California Labor Code § 925, then denied the transfer motion after considering traditional factors such as the plaintiff’s choice of forum, convenience to the parties, familiarity with the governing law, and California’s public policy against enforcing out-of-state forum-selection clauses. The district court later granted partial summary judgment to DePuy, holding that the non-compete clause was unenforceable under California Business and Professions Code § 16600 and that the forum-selection and choice-of-law clause were void under California Labor Code § 925.

On appeal before the Ninth Circuit, HOC argued that, under Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988), 28 U.S.C. § 1404(a) preempted state law concerning forum-selection clauses, and that the District Court abused its discretion by applying California Labor Code § 925 to deny the transfer motion instead of relying on general contract law principles. The Ninth Circuit disagreed, reasoning that HOC overstated the holding of Stewart. The Court held that while federal law governed the enforceability of the forum-selection clause, state law governed the threshold issue of the validity of the forum-selection clause. Thus, the District Court properly applied California Labor Code § 925 in finding that the forum-selection and choice-of-law clause was void, then properly considered the convenience of the parties and public policy factors in denying the motion for transfer.

This case underscores that foreign forum-selection and choice-of-law provisions can only be used under certain circumstances in California in the context of contracts between employers and employees. Experienced counsel should be consulted in the course of preparing any such agreements.

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