

Litigation - Canada

Know Your Limits: Forum Selection Clauses Do Not Govern All Disputes

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In *Matrix Integrated Solutions Ltd v Naccarato* the Ontario Court of Appeal judicially considered a contractual forum selection clause by which the parties had agreed that the courts of Texas were to exercise exclusive jurisdiction over claims "arising out of or in connection with" their agreement.⁽¹⁾ Despite the apparent breadth of this clause, the court nonetheless imposed limits. Only claims that related specifically to the agreement were caught; claims based on breach of fiduciary duty and conspiracy were not.

Facts

Matrix Integrated Solutions Ltd and Radiant Hospitality Systems Limited entered into a reseller agreement in 2007. The reseller agreement appointed Matrix as an authorized, non-exclusive reseller of Radiant's products in Ontario. The reseller agreement contained the following clause:

"This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Texas, U.S.A. In any civil action by either party relating to this Agreement, the prevailing party shall recover from and be reimbursed by the other party for all costs, reasonable attorneys' fees and related expenses. [Matrix] hereby consents and submits to the exclusive jurisdiction and venue over any action, suit or other legal proceeding that may arise out of, or in connection with this Agreement, by any state or federal court located in Tarrant County in the State of Texas, U.S.A. Reseller shall bring any action, suit or other legal proceeding to enforce, directly or indirectly, this Agreement or any right based upon it only in Tarrant County in the State of Texas, U.S.A. The parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this Agreement."

Matrix later commenced an action in Ontario, alleging that two of its former employees in positions of trust and confidence had left Matrix to form Radeon Technologies Ltd, and to compete against Matrix. Contemporaneously, Radiant had apparently terminated the reseller agreement and entered into a new agreement with Radeon. In its action Matrix asserted claims against Radiant for conspiracy and for knowingly assisting Matrix's former employees in breaching their fiduciary duties. Matrix did not seek damages against Radiant for breach of the reseller agreement.

Radiant brought a motion to stay Matrix's court action on the basis that the forum selection clause required that the case be prosecuted in Texas.

Motion Judge Decision

The motion judge granted the motion, finding that the claims advanced by Matrix and some of the defences raised by Radiant were sufficiently connected with the reseller agreement so as to engage the forum selection clause. The motion judge found that the forum selection clause applied unless Matrix could show "strong cause" why it should not.⁽²⁾ Matrix appealed the motion judge's decision.

Court of Appeal Decision

Referring to *Precious Metal Capital Corp v Smith* the court of appeal reiterated that in order to determine whether a claim for breach of fiduciary duty falls within the reach of a forum selection clause, an important first step is to characterize the "pith and substance" of the claim as set out in the statement of claim.⁽³⁾

In this case the court found that the claims for breach of fiduciary duty and conspiracy could not fairly be described as contractual in substance. In this context the court noted

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that the reseller agreement was merely part of the factual background explaining the existence and nature of the relationship that existed between Matrix and Radiant prior to the alleged wrongs. However, in the court's view the claims advanced did not arise out of or in connection with the provisions of the reseller agreement. Nor did the constituent elements of the causes of action depend on the reseller agreement, and the reseller agreement could "be removed from the picture without undermining those claims".

In responding to the appeal, Radiant had relied on a line of authority construing arbitration clauses, holding that words such as 'relating to', 'respecting', 'in connection with' or 'concerning' are expansive terms that reflect an intention of the parties to embrace claims beyond those that may be brought 'under' the contract or that are founded 'upon' the contract.⁽⁴⁾

The court held that the interpretative approach reflected in these authorities did not go so far as to justify the stay granted by the motion judge in this case. The court found that clauses employing such broad language are engaged only if either the claimant or the defendant relies on the existence of the contractual obligation as a necessary element to create the claim or to defeat it; or so long as the matter in dispute is referable to the interpretation or implementation of some provision of the contract in question.

Comment

This case demonstrates the importance of drafting forum selection clauses with a view to giving full force and effect to the parties' intentions. Any ambiguity in the drafting of such clauses can result, as was the case here, in commercial uncertainty and increased costs (on the appeal alone the unsuccessful respondents were ordered to pay C\$10,000 to Matrix, in addition to whatever costs were payable in respect of the underlying motion).

This case would appear to apply not only to the issue of forum selection, but also to questions relating to arbitration procedures. It is therefore an important decision in the area of international commercial arbitration, as well as alternative dispute resolution in general.

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Endnotes

(1) [2009] OJ No 3187; 2009 ONCA 593.

(2) *ZI Pompey Industrie v ECU Line NV* [2003] 1 SCR 450, at paras 20-21.

(3) (2008), 92 OR (3d) 701 (CA).

(4) See *Mantini v Smith Lyons LLP* (2003), 64 OR (3d) 505, at para 19 (CA); *Woolcock v Bushert* (2004), 246 DLR (4th) 139 at para 22 (Ont CA).

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