LONG & LEVIT LLP

EMPLOYMENT LAW UPDATE

July 25, 2006 *Issue No. 174*

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California Law

A forum selection and choice-of-law clause in an employment contract is upheld and may encompass discrimination claims under California law.

Olinick v. BMG Entertainment (Apr 27 2006) 138 Cal.App.4th 1286. Court of Appeal, Second District, Division 3, California.

By Jason A. Geller and John S. Hong

In 2003, after thirty-two years of employment with BMG Entertainment ("BMG") and RCA Records (BMG's predecessor), attorney Martin Olinick ("Olinick") was terminated. Olinick filed a complaint in the Los Angeles Superior Court alleging age discrimination under the Fair Employment and Housing Act ("FEHA") and wrongful discharge in violation of California's public policy against age discrimination. BMG, a New York general partnership, filed a motion to stay or dismiss on the ground of inconvenient forum.

BMG asserted that California was an inconvenient forum because Olinick was bound by the choice of law and forum selection clauses for New York in his employment contract. The relevant provision in the contract states that the "Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York … for the resolution of all disputes arising under this Agreement." BMG supported its motion by asserting that (1) its principal place of business is in New York, (2) the employment contract between the parties was extensively negotiated and entered into in New York, (3) Olinick traveled regularly to New York to perform his duties, and (4) all its witnesses and documents are located in New York. Besides, BMG argued, the contract provided Olinick could be terminated without cause. Finally, notwithstanding the "without cause" provision, Olinick could find substantial justice in New York because its courts are just as likely as California courts to enforce anti-discrimination laws.

In opposing the motion, Olinick argued that his California-based discrimination claim did not relate to his contract and therefore could not arise under the contract, for purposes of enforcing the forum-selection clause. Olinick also opposed the *forum non-conveniens* motion by stating that (1) he worked and lived in California, (2) one of the BMG defendants is a California citizen, (3) many of the witnesses are in California, and (4) the age discrimination claims

were based purely on violations of California laws. He further contended that dismissal would be improper because California has an interest in protecting its citizens' rights and the age discrimination claims were time-barred under New York law.

The trial court denied BMG's motion to dismiss but issued a stay to enable Olinick to file suit in New York. Upholding the choice of law and forum selection clauses, the court stated that not enforcing the agreement "would fly in the face of logic and in the face of the [principle] of orderly conduct of commerce."

The California Court of Appeal affirmed the trial court's decision to uphold the applicability of the forum selection clause to Olinick. Though Olinick's FEHA claim was not predicated on the contract, the legal relationship between the parties emanated from the contract, and as such, the choice of law and forum clauses apply to all causes of action "arising from or related to that agreement, regardless of how they are characterized." The Court noted that Olinick's FEHA claim was "inextricably intertwined" with the "without cause" provision in the employment agreement because the latter would serve as the basis for a defense that BMG "inevitably will assert." Thus the Court held that New York law applied, encompassing Olinick's California age discrimination claims.

The Court also rejected Olinick's public policy argument that the agreement is unenforceable because California had a vested interest in protecting its residents from discrimination. The Court held that because New York law provides Olinick with an adequate remedy for his age discrimination claim (i.e. compensatory and punitive damages pursuant to the New York City Human Rights Law), the choice of law and forum selection clauses would not violate California's public policy against age discrimination.

Moreover, the Court stated that another factor for enforcing the choice of law and forum selection clauses is that the FEHA does not contain an antiwaiver provision. After listing numerous statutes that expressly prohibit the selection of a forum, the Court found that "[h]ad the Legislature intended to prohibit . . . agreements containing choice-of-law and forum selections clauses in lieu of the protections conferred by the FEHA, it would have so provided, because it plainly knows how to do so."

In concluding that New York affords Olinick with an adequate forum, applying similar laws with satisfactory remedies, the Appellate Court held that the trial court properly stayed the action for a refiling in New York.

The Olinick decision suggests for California employers that parties to an employment agreement must clearly articulate all actions covered, as well as actions excluded, by the agreement. Public policy does not easily overcome the terms of an agreement and if it does, it will depend on many factors, including the types of parties, their intent, and the forum's ability to sufficiently address the claims of the aggrieved party.

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