

District Court Decides Contract's Forum-Selection Clause Applies to Non-Party's Individual Claims

By former Associate Jeffrey Hord

Many contracts (of all kinds) contain "forum-selection clauses," or provisions in which the parties to the contract stipulate that any lawsuit arising from the contract shall be litigated in a particular court or jurisdiction. These clauses are often very helpful to companies that do business all across the country, or whose employees are scattered across many states, as the company can typically avoid the risk of facing an unfamiliar judge and the added expense associated with learning the laws of an unfamiliar jurisdiction. While a forum-selection clause can generally be enforced only against the parties who signed the agreement in question, the U.S. District Court for the District of Maryland issued an opinion this week illustrating why that's not always the case.

In *Olawole v. ActioNet, Inc.* (No. 1:17-cv-00408-TSE/TCB), a network engineer named Charles Olawole sued his former employer, ActioNet, Inc. ("ActioNet") for alleged race and national origin discrimination, defamation, and breach of contract. Olawole alleged that he was hired as an at-will employee of ActioNet in January 2014 and assigned to one of the company's contracts in Silver Spring, Maryland. In April 2014, Olawole requested a pay increase; shortly thereafter, Olawole and ActioNet decided to enter into a new "Consultant Agreement" between ActioNet and Olawole's consulting business, Graffiti Consulting, Inc. ("Graffiti"). Ostensibly, Graffiti would provide network consulting services to ActioNet, meaning Olawole would be an employee of Graffiti and an independent contractor of ActioNet. Olawole signed the Consulting Agreement on behalf of Graffiti, but he (individually) was not a party to the contract.

ActioNet is a large, multistate company with more than 1,000 employees stretched across at least 6 states, the District of Columbia, and Guam. Not surprisingly, its contract with Graffiti contained a mandatory forum-selection clause whereby any action or suit arising under the Agreement had to be brought exclusively in Virginia (where ActioNet's headquarters is located), even though Olawole resides in Prince George's County and performed his work in Montgomery County, MD.

After ActioNet terminated its contract with Graffiti in May 2014, effectively terminating Olawole's employment, Olawole filed suit in the Circuit Court for Montgomery County. ActioNet removed the case to federal court on the basis that Olawole had asserted a claim under a federal statute (the Civil Rights Act). The defendant then moved to transfer the case from the District of Maryland to the Eastern District of Virginia pursuant to the Consulting Agreement's forum-selection clause. Olawole opposed ActioNet's motion, arguing that because he'd asserted his claims against ActioNet as an individual, and as he was not a party to the Consulting Agreement in his individual capacity, the forum-selection clause could not reach his individual claims.

In granting ActioNet's motion, the district court applied a three-step analysis to assess the enforceability and applicability of the clause to Olawole. Citing precedent, the court explained that a forum-selection clause reaches individuals who are not parties to the contract "so long as their alleged conduct is 'closely related' to the contract in question." Even though Olawole was not himself a party to the Consulting Agreement, the court found that he was subject to the forum-selection clause "because his employment relationship with Graffiti and ActioNet [was] 'closely related' to the terms of the Consulting Agreement."

It is important to note that this “closely related” analysis flows upward as well as downward. In Olawole’s case, the individual employee/principal was held to the terms of the forum-selection clause even though the Agreement itself was between two corporations. In *Tech USA v. Evans*, 592 F.Supp.2d 852 (D.Md. 2009), the same district court held that a forum-selection clause in an individual employee’s confidentiality and non-compete agreement applied to the corporation of which he was an officer and shareholder, even though the corporation was not a party to the agreement. In each case, the court looked to whether the plaintiff’s claims were “closely related” to those of the actual signatory.

This ruling is sure to delight companies who favor forum-selection clauses in their contracts, especially if many of those agreements are with consultants and independent contractors. The district court’s decision increases the chances that such provisions can be applied to—and enforced against—individuals affiliated with the contracting parties, even if those individuals aren’t signatories or parties themselves. Conversely, if you are an individual who provides services through your small business, don’t make the mistake of thinking the terms and conditions of your company’s agreements can’t affect your individual rights.