

CLIENT ALERT

**O&B PARTICIPATES IN IMPORTANT
CASES CLARIFYING FORUM SELECTION,
CHOICE OF LAW AND ARBITRATION CLAUSES**

January 2018

O'Neill & Borges LLC recently participated in two judicial victories that crystallized the Puerto Rico landscape regarding forum selection, choice of law, and arbitration clauses. In each case, plaintiffs challenged the applicability of individual provisions by attacking the underlying contracts. O&B litigators, working in tandem with attorneys from WilmerHale, succeeded in enforcing the applicable clauses.

Forum selection, arbitration, and choice of law clauses are frequently included in commercial contracts. They are useful because they allow parties to pre-select the forum that will resolve any disputes that may arise - and the legal framework it must apply. Given their nature, it is important that courts enforce the clauses at the outset of litigation. But plaintiffs often go to great lengths to avoid their applicability. This is precisely what happened in Bobé v. UBS Fin. Servs. Inc. of Puerto Rico, Inc., 2017 TSPR 67 (2017) and Pérez v. UBS Fin. Servs. Inc., No. 15-3081 (GAG) (D.P.R. Sept. 29, 2016).

These decisions are important tools to combat cases where parties seek to undermine these types of clauses by attacking the underlying contracts

In Bobé, the Supreme Court of Puerto Rico ("SCPR") adopted the "severability doctrine" used in federal court -and applied it in Puerto Rico for the first time. To wit, the plaintiffs attempted to attack the validity of a forum selection clause designating the courts of Utah as the correct venue for disputes regarding the contract. They did so by arguing that the underlying contract was the product of fraud. The SCPR rebuffed their attempts and held that parties must prove that the clause itself is the product of fraud to successfully invalidate it. The SCPR remanded the case to Puerto Rico's Court of First Instance for it to determine if plaintiffs made that showing. That court granted defendants' Motion for Summary judgment and dismissed the case on December 7, 2017 because plaintiffs did not proffer evidence demonstrating that the forum selection clause was fraudulently induced.

Similarly, in Pérez plaintiff attacked the inclusion of choice of law (selecting New York law) and arbitration clauses. Plaintiff argued that the choice of law clause was unreasonable. And that a change-in-terms provision disarmed the contract's arbitration clause. The United States District Court for the District of Puerto Rico (the "District") applied the federal doctrine regarding forum selection clauses to choice of law provisions. The District held that the plaintiff did not show that the choice of law clause itself was unreasonable, so that New York law governed the agreement. And that the attack premised on the change-in-terms provision was directed at the contract as a whole, and not to the arbitration clause. Consequently, the District referred the case to arbitration.

Note: This Newsletter contains only a general summary of relevant legal developments and is not intended to be a comprehensive summary of matters covered herein. Because of the general nature and informative purpose of this newsletter, nothing herein should be considered as legal advice or a legal opinion or that it establishes in any way whatsoever an attorney-client relation or engagement for legal services with any reader.



O'NEILL & BORGES LLC

250 Muñoz Rivera Ave., Suite 800
San Juan, Puerto Rico 00918-1813
Tel.: 787-764-8181