



T-H ALERT

July 24, 2020

THE ENFORCEABILITY OF FORUM SELECTION CLAUSES AGAINST CALIFORNIA RESIDENTS

There is a potentially important development pending with the Supreme Court of California concerning whether a New York forum selection clause in a contract governed by New York law is enforceable against a California resident when that contract also contains a pre-dispute jury trial waiver, which is prohibited under California law. In *Handoush v. Lease Finance Group, LLC*, the California Court of Appeal for the First Appellate District, reversing the trial court, held that such a clause is *not* enforceable because it may diminish a California resident's substantive rights under California Law. Lease Finance Group, LLC appealed, and the Supreme Court of California granted its petition for review.

On June 30, 2020, the International Swaps and Derivatives Association, Inc., the Chamber of Commerce of the United States of America and the Securities Industry and Financial Markets Association submitted an amicus letter in support of the defendant-appellees. In the amicus letter, it was proposed that the Supreme Court of California dismiss the petition for review for failure to prosecute and "depublish" the appellate court's opinion.

Background.

In 2016, Plaintiff Zeadd Handoush, a California resident, sued Lease Finance Group, LLC ("LFG") in California, alleging LFG had defrauded Plaintiff in relation to its lease agreement with Plaintiff.¹ The lease agreement designated New York law as the governing law and contained a jury trial waiver and forum selection clause, selecting the federal or state courts located in the State and County of New York for disputes.² Handoush argued, *inter alia*, that the forum selection clause would deprive him of his substantive right to a jury trial pursuant to California law.³ LFG moved to dismiss on the basis of the forum selection clause, the trial court granted LFG's motion to dismiss, and Handoush appealed.⁴

The appellate court reversed, however, holding that the party seeking enforcement of such a clause has the burden to show why litigating claims in the contractually designated forum "will not diminish in any way the substantive rights afforded under...California law" where "claims at issue are based on unwaivable rights created by California Statutes", such as the right to a jury trial.⁵ Noting that New York law does not similarly prohibit pre-dispute jury trial waivers, the court found that LFG "failed to show that enforcement of the forum selection clause would not substantially diminish the rights of California residents" in violation of California public policy.⁶ LFG appealed to the Supreme Court of California.

¹ *Handoush v. Lease Fin. Grp. LLC*, 254 Cal. Rptr. 3d 461, 462 (Ct. App. 2019).

² *Id.*

³ *Id.* at 463.

⁴ *Id.*

⁵ *Id.* at 464 (quoting *Verdugo v. Alliantgroup, L.P.*, 187 Cal. Rptr. 3d 613, 618 (Ct. App. 2015)). Under California law, the right to a jury trial may be waived under certain circumstances *after* a dispute has arisen. See, e.g., Cal. Civ. Proc. Code § 631.

⁶ *Id.* at 469.



After the Supreme Court of California granted LFG’s petition for review on February 11, 2020, a New York state court, in an unrelated proceeding, enjoined LFG from “conducting the business of equipment finance leasing or collection of debts under equipment finance leases and from purchasing, financing, transferring, servicing, or enforcing equipment finance leases.”⁷ Consequently, it appears that LFG is no longer pursuing its appeal, meaning that the Supreme Court of California will not have the opportunity to review the decision of the appellate court.

Amicus Letter.

The amicus letter raises several concerns regarding the implications of the appellate court’s decision in *Handoush*. In particular, it was noted that the appellate court’s decision:

1. threatens to invalidate “thousands, if not millions,” of contracts to which Californians are a party that are governed by non-California law and contain pre-dispute jury trial waivers;
2. disrupts the settled expectations of contracting parties with respect to a key contractual term; and
3. represents an unconstitutional “extraterritorial application of State law” and violates “common-law principles of comity” in allowing California law to override the “policy choices of a sister State.”

In the amicus letter, the following requests were made: (i) that the Supreme Court of California dismiss LFG’s petition given that LFG has presumably chosen to abandon its appeal in light of the New York court’s injunction, thereby preserving the status quo between the parties and (ii) that the Supreme Court of California “depublish” the appellate court’s opinion pursuant to California Rule of Court 8.1105—which would nullify its precedential effect since LFG’s apparent abandonment will prevent the court from reviewing the opinion.

If you have any questions regarding the above, please contact:

Ryan Patino	+1 212 269 1451	<u>rpertino@t-hllp.com</u>
Alexander Hunt	+1 212 269 5371	<u>ahunt@t-hllp.com</u>
Michael Kalan	+1 212 269 1014	<u>mkalan@t-hllp.com</u>

Teigland-Hunt LLP
127 West 24th Street, 4th Fl, New York, NY 10011
www.t-hllp.com

Notice: This publication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon the content of this publication without seeking advice from professional advisers.

Attorney Advertising - For purposes of compliance with New York State Bar rules, our headquarters are Teigland-Hunt LLP, 127 West 24th Street, 4th Fl, New York, NY 10011, +1.212.269.1600. Prior results described herein do not guarantee a similar outcome.

⁷ *State of N.Y. v. Northern Leasing Systems, Inc.*, No. 450460, 2020 WL 3628330, at *44 (N.Y. Sup. Ct. May 29, 2020).