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The Devil is in the Details in Forum Selection Clauses

Contractual forum selection clauses are a must-have in any litigation-focused review. In drafting these clauses, clients are well advised to select dispute resolution forums that are both convenient and well suited for the level of complexity attendant to their contracts and business relationships. A key question to consider when deciding the language in the clause is whether litigation should be brought exclusively in federal or state court, or whether either will serve their purposes. A recent case in the Southern District of New York addressed the federal versus state court question and serves as an important reminder that precision in drafting can make the difference between a properly venued lawsuit and a lawsuit that is dismissed for failure to comply with the forum selection clause.

The Case: *Carl Zeiss Microscopy, LLC v. Vashaw Scientific, Inc.*

In *Carl Zeiss Microscopy, LLC v. Vashaw Scientific, Inc.*, Docket No. 19-CV-3450 (United States District Court for the Southern District of New York, January 2, 2020), the plaintiff, Carl Zeiss Microscopy, LLC, filed suit against the defendant, Vashaw Scientific, Inc. for, *inter alia*, breach of contract. The contract contained a forum selection clause that mandated the venue for claims arising out of the agreement be in the Westchester County, New York courts. Based on the provision, the defendant moved to dismiss the complaint for lack of jurisdiction and improper venue, contending that the only proper jurisdiction was in *state court* in Westchester County, not in federal court. Recognizing that the United States Court of Appeals for the Second Circuit permits parties to craft forum selection clauses that specify either state or federal court, Judge Vincent Louis Briccetti declined to find such exclusivity in this case and denied the defendant's motion to dismiss. As the court explained, "the provision does not specify whether the language restricting lawsuits to the courts of Westchester County was intended to encompass only New York state courts in Westchester County. Therefore, the court refuses to resolve any ambiguity in favor of state court exclusivity."

Takeaway

The moral of this story is to be as specific and clear as possible when drafting forum selection clauses in contracts you draft and/or when reviewing contracts with which you enter. If you do not want disputes to end up in either federal or state courts, say so. The devil is in the details of these provisions and careful drafting will help ensure you get the forum you want if litigation arises.