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EDVA Judge Dismisses Saudi Arabian Contract Dispute Based on Forum Non Conveniens

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It is not uncommon for plaintiffs based in the United States to bring claims against foreign parties in U.S. federal courts to obtain a favorable venue and avoid any bias in foreign courts in favor of local defendants. A recent decision by Judge Brinkema in the EDVA involving a contract dispute between a U.S. company and a Saudi Arabian shipyard and the Saudi Ports Authority, however, demonstrates the limits of that strategy.

Background

AdvanFort Co. v. Zamil Offshore Svcs. Co., Case No. 1:23CV906, 2023 U.S. Dist. LEXIS 214545 (E.D. Va. Dec. 1, 2023), involved claims by a Virginia company, AdvanFort, for damage to a ship that AdvanFort brought to a Saudi Arabian shipyard operated by Zamil in 2013. A fire broke out during repairs to the ship's electrical system, leading to a dispute between Zamil and AdvanFort about the cause of the fire and responsibility for damages to the ship and the shipyard. AdvanFort brought a civil action against Zamil in 2014 for the damage to the ship, and Zamil countersued for berthing fees and repair costs. The suit languished until 2017, when the Saudi Arabian court issued a ruling dismissing AdvanFort's claims and awarding Zamil $40,000 in damages. Another five years passed until 2022, when an AdvanFort marine expert inspected the ship and found that it had been stripped bare and rendered inoperable, allegedly because the shipyard failed to take any efforts to protect the ship.

Rather than returning to the Saudi Arabian courts to recover for damage to the ship since the fire, AdvanFort filed suit in the EDVA asserting claims of conversion, breach of bailment, negligence and gross negligence. Zamil responded by moving to dismiss for lack of personal jurisdiction and pursuant to *forum non conveniens*.

Forum Non Conveniens Required Dismissal of AdvanFort's Claims

The doctrine of *forum non conveniens* bears many similarities to a motion to transfer venue under 28 U.S.C. § 1404(a). Both doctrines evaluate the convenience to parties and witnesses as well as public interests such as court congestion and deciding localized controversies where they arise. Unlike a motion under § 1404, which seeks transfer to another federal court, a motion based on *forum non conveniens* seeks dismissal of a suit, and so typically arises in cases involving foreign defendants.

Forum non conveniens requires that an alternative forum is (i) available to all defendants; (ii) adequate; and (iii) more convenient in light of the private public interests involved. AdvanFort claimed that the Saudi Arabian courts

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were unavailable because its claims against Zamil and the Saudi Ports Authority would have to be brought in separate Saudi courts. Judge Brinkema rejected this argument, finding that an alternative court was unavailable only where a plaintiff would have to bring claims against foreign defendants in two different *countries* not two different courts in the same country.

AdvanFort also argued that the Saudi Arabian courts were not adequate because the Saudi judiciary was controlled by the Saudi government, which was a defendant through the Saudi Ports Authority and is subject to corruption and delay. Judge Brinkema rejected this argument as well, holding that American courts have "routinely" found the Saudi courts to be adequate. Judge Brinkema cited two recent decisions from other courts, specifically rejecting anecdotal evidence of corruption and delay in Saudi courts as insufficient to conclude that a foreign court is inadequate.

The private and public interest factors under the doctrine of *forum non conveniens* are very similar to the considerations in a motion to transfer under § 1404. The private interest factors include ease of access to sources of proof, the availability of compulsory process, the cost of obtaining testimony from willing witnesses and other practical issues.

Here, all those factors favored Zamil. While a showing of convenience by a plaintiff who has sued in its home forum will normally outweigh inconvenience to a defendant, AdvanFort could not make any showing that Virginia was more convenient than Saudi Arabia. AdvanFort had elected to do business with Zamil in Saudi Arabia, the conduct at issue occurred in Saudi Arabia, and all the physical and testimonial evidence was in Saudi Arabia. Given the more than 10-year history of the events involving the ship, Judge Brinkema noted, it was likely that the case would involve testimony from third-party witnesses who were not controlled by the parties and whom the court could not compel to attend a trial in Virginia.

Likewise, all the public interest factors favored dismissal. Virginia's interests in the case were minimal compared with Saudi Arabia's. Moreover, a Virginia court would have to apply Saudi law under Virginia's choice of law rules, and Virginia courts should not be clogged by a case that had little contact with the U.S.

Takeaways

The federal courts in the EDVA are often an attractive forum for disputes involving foreign defendants because of the high number of multinational companies located there in order to service the U.S. government. *AdvanFort* demonstrates, however, that the availability of the EDVA as a forum for civil litigation is limited to disputes with some connection to the U.S. The court is not likely to take jurisdiction over purely foreign disputes simply because the litigation happens to involve a plaintiff based in the U.S.

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