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11th Circuit Rejects Litigant's "Creative Effort" To Escape Forum Selection Clause Requiring Federal Forum

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Common practice dictates that plaintiffs often prefer to be in state court – and will sometimes go to great lengths to avoid federal court jurisdiction. That was the case in *Deroy v. Carnival Corporation*, a recent Eleventh Circuit decision, wherein the court rejected a plaintiff's "creative effort" to escape a forum-selection clause requiring her to litigate in federal court.

The plaintiff, DeRoy, was injured onboard defendant Carnival Corporation's cruise ship. DeRoy's ticket contract with Carnival contained a forum-selection clause that required her to bring any claim in the United States District Court for the Southern District of Florida if it was jurisdictionally possible to do so. The clause provided:

> [I]t is agreed . . . that all disputes and matters whatsoever arising under, in connection with or incident to . . . the Guest's cruise . . . shall be litigated, if at all, before the United States District Court for the Southern District of Florida in Miami, or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida . . .

Claiming that she was exploiting a loophole in the forum-selection clause that no one had previously thought of, DeRoy simultaneously sued Carnival Corporation in both state and federal court for common law negligence. Her federal court complaint, however, was dedicated to attempting to establish that the district court lacked subject matter jurisdiction and to requesting dismissal of the complaint for lack of subject matter jurisdiction.

The district court held that, as the master of her own complaint, DeRoy had pleaded a claim over which the district court lacked subject-matter jurisdiction and the parties consent to jurisdiction in the forum-selection clause did not create jurisdiction. The district court thus dismissed the complaint. On appeal, the Eleventh Circuit reversed, holding that the failsafe within the forum-selection clause for cases to which the Federal Courts of the United States lack subject matter jurisdiction "is not an invitation to forum shop."

The Eleventh Circuit emphasized that regardless of what a complaint may say about a court's jurisdiction to entertain it, "we look beyond the labels to the underlying facts of the complaint to evaluate jurisdiction." And, in this case, DeRoy's complaint alleged a simple personal-injury claim by a cruise-ship passenger which *could have been* pled squarely within federal-court admiralty jurisdiction (although DeRoy had pleaded her complaint in an effort to avoid such jurisdiction).

The court then explained why the alleged loophole discovered by DeRoy does not exist. The first half of the forum-selection clause—"all disputes . . . shall be litigated, if at all, before the United States District Court for the Southern District of Florida in Miami"—means that "if a dispute can be litigated in the Southern District of Florida, that is the only place it can be litigated."

And the second half of the clause — "or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida . . ." permits a plaintiff to file in state court only when the federal court does not have subject-matter jurisdiction over the claim. In other words, the provision serves as a "failsafe that guards against the possibility that a plaintiff with a potentially viable claim will not be able to have her claim heard because federal jurisdiction is lacking over the facts of the claim." The fact that the plaintiff has declined to invoke such jurisdiction is not enough. If it were, a party to a forum-selection clause could simply decline to invoke the federal court's jurisdiction (in this case admiralty jurisdiction, but the court noted the logic applies equally to diversity jurisdiction) to get into state court at will, essentially nullifying the contractually agreed-upon federal forum.

Noting that a “loophole” has come to mean a “means of escape . . . often applied to an ambiguity or omission in statute etc., which affords opportunity for evading its intention,” the Eleventh Circuit rejected DeRoy’s assertion that she had discovered any sort of “loophole” in the forum-selection clause. On the contrary, the court held that the forum-selection clause’s consequences were ironclad, and that consistent with the clause, DeRoy must proceed, if at all, in federal court.

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