

8 | NEWS

SOUTH FLORIDA BUSINESS JOURNAL | JULY 4-10, 2008



FILE PHOTO  
Michael Diaz Jr., founding partner at Diaz Reus Rolff & Targ, represented Canon Latin America.

## Canon Latin America to fend for itself in Costa Rica courts

### Supreme Court declines further appeal in forum selection case

BY PAUL BRINKMANN

The U.S. Supreme Court's recent docket announcement left off an important case for international business in Miami.

The result could be growing confusion over when it is possible to force foreign

companies to honor agreements over where they will file lawsuits — in the U.S. or in their own country.

"We have a great deal of confusion now about when forum selection can be enforced with anti-suit injunctions," said attorney Gray Davidson, of counsel with Diaz Reus Rolff & Targ in Miami. "This creates uncertainty in the marketplace and the legal situation, and it will cause a further shift away from international litigation and toward arbitration."

Diaz Reus represented Canon Latin America in a dispute with Lantech S.A. of Costa Rica that stemmed from distribution agreements in that country. A ruling by the 11th Circuit Court of Appeals held that an anti-suit injunction wasn't enforceable in that case. That contrasts with other circuits, where injunctions have been upheld.

U.S. companies that do business in Latin America generally prefer to settle disputes in U.S. courts. Often, they will sign agreements with foreign entities that require U.S. jurisdiction, but sometimes those agreements aren't followed.

In 2004, Lantech sued in Costa Rican court because Canon wanted to bring in a second distributor. But, Canon alleged Lantech had agreed to settle such disputes in the U.S., and filed for an anti-suit injunction in U.S. District Court in Miami.

### CANON WON FIRST ROUND, LOST AN APPEAL

Canon won the first round, but Lantech won on appeal to the 11th Circuit Court. The Supreme Court declined further appeal from Canon Latin America. On May 27, Canon filed a new lawsuit against Lantech in Miami federal courts seeking to recover litigation expenses.

The earlier case could have helped define the enforceability of foreign anti-suit injunctions.

Miami attorneys representing Lantech said the case won't have much impact on other anti-suit injunctions because the 11th Circuit ruled Canon's case didn't meet threshold factors to consider the forum selection clause in the Canon contract.

For one thing, Lantech is suing the other Canon distributor in Costa Rica, Santa Barbara Technology. But that company wasn't part of Canon's litigation in Miami.

Traci Rollins, who represents Lantech for Squire Sanders & Dempsey in Miami, said "Canon argued there was a split of authority; we said no. It's just a matter of some courts being more clear and explicit about the threshold factors."

Rollins said Lantech continues to pursue about \$6 million in claims against Canon in Costa Rica.

Keith Rosenn, professor of Latin American law at the University of Miami, said any court ruling about foreign anti-suit injunctions is closely watched by Miami's international business community. "Generally, each side prefers their home territory. There are some weird agreements over this, and it's a perennial problem," he said.

For example, Rosenn said suits are sometimes filed in two countries, with a race for judgment.

xlarkin@bqjournal.com | (561) 949-7562