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Judge upholds contracts that require international business disputes to be resolved in U.S. courts

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A federal court ruling in a case involving Japanese camera and copier giant Canon could bolster efforts by companies to litigate international disputes in U.S. courts.

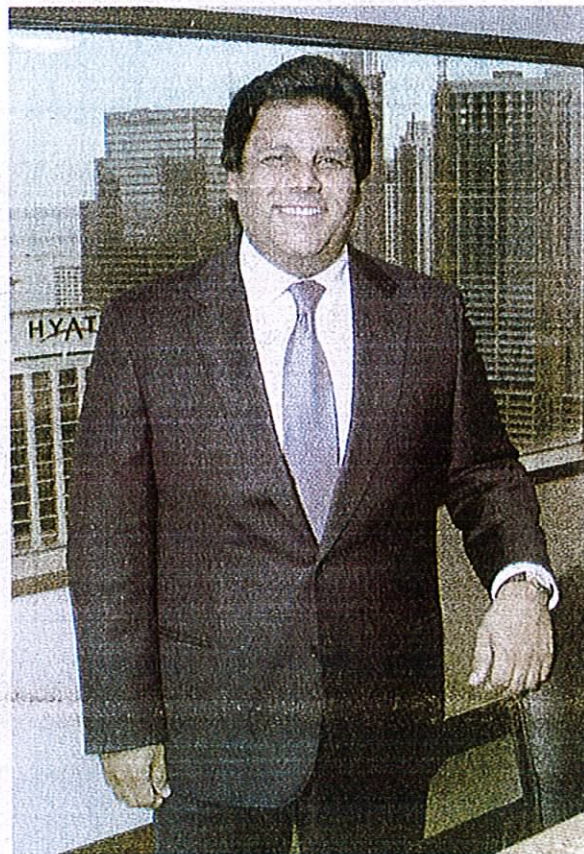
Last week, U.S. Magistrate Judge Stephen T. Brown in Miami permanently blocked a lawsuit in Costa Rica against Canon's Latin American division.

The plaintiff, a local Canon distributor, argued the lawsuit had to be brought in the Central American country because of a Costa Rican law requiring certain business disputes be settled there.

Companies, particularly multinationals, prefer to litigate disputes in the United States because they have faith in the court system, particularly compared to courts in the developing world. Foreign businesses view U.S. courts as being speedier and of higher quality. And when a multinational corporation contracts with companies in Latin America or parts of the world, having the ability to litigate in the U.S. provides a uniform dispute resolution system, which makes business more predictable.

The case is expected to end up before the

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Michael Diaz Jr., who represented Canon Latin America, says a Costa Rican company 'jumped the gun' when it sued his client in its home county.

To view the judge's order, go to
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CANON

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11th U.S. Circuit Court of Appeals, which could establish a precedent on how to interpret forum selection clauses in contracts. The 11th Circuit has never issued a binding ruling on that topic.

Lantech (CR) S.A., a Costa Rican distributor, sued Miami-based Canon Latin America in a Costa Rican court, seeking \$6.3 million in damages for breaching its alleged exclusive business relationship. The suit was filed under a Costa Rican statute stating that if a foreign manufacturer rescinds an agreement for reasons beyond the control of the local distributor, it must pay damages. The law also says the jurisdiction of the Costa Rican courts can't be waived.

After the suit was filed, a Costa Rican court ordered Canon to post a \$1 million bond to continue importing its products into the country.

Canon Latin America then sued Lantech in U.S. District Court in Miami to block the Costa Rican suit. Canon sought a ruling that the forum selection clause in its contracts with Lantech — stating any disputes have to be resolved in Florida state or federal courts under Florida state law — was enforceable. Canon also sought an anti-suit injunction to force Lantech to abandon its suit in Costa Rica.

In his ruling granting summary judgment for Canon, Brown ruled last week the forum selection clause in the contract is valid and enforceable. He said litigation should be conducted in Florida state or federal courts and imposed a permanent anti-suit injunction against Lantech.

"Lantech jumped the gun, and instead of being sued in Miami for breach of contract, it sued us in Costa Rica," said Canon's attorney,

Michael Diaz Jr., a partner at Diaz Reus Rolff & Targ in Miami. "What makes this case onerous was that we had no choice but to put up the \$1 million bond."

Lantech's U.S. counsel, Traci Rollins, a partner at Squire Sanders & Dempsey in West Palm Beach, did not return a call for comment by deadline.

Last October, Lantech filed an appeal of a preliminary anti-suit injunction imposed by Magistrate Judge Brown. Oral arguments are scheduled for this October, but Canon moved to dismiss the appeal since Brown has issued a final decision in the case.

Whether or not that appeal is dismissed, Diaz said he expects Lantech will appeal Brown's decision to toss its suit.

Leon Patricios, the head of litigation at Zumpano Patricios & Winker in Coral Gables who deals in international litigation but is not involved in the case, said forum selection clauses are important in contracts with Caribbean and Latin American companies so that companies can select court systems they have confidence in, are conveniently located and have familiar procedures.

Patricios said the 11th Circuit needs to make clear whether it will enforce anti-suit injunctions in contracts containing forum selection clauses. Otherwise, companies won't feel secure in crafting contract provisions governing forum selection for disputes.

\$1 million bond

Canon is a Japanese public company that specializes in document reproduction, including the manufacturing of printers, copiers and cameras. It reported sales of nearly \$35 billion in 2006. Canon Latin America is a Miami-based sales subsidiary of Canon.

According to court documents, Canon Latin America contracted with San Jose-based Lantech in 1996 and again in 2003 to distribute its products in Costa Rica. Both agreements stated Lantech was not the exclusive distributor.

Court documents state Lantech failed to pay nearly \$250,000 owed to Canon Latin America. As a result, Canon found another distributor in summer 2004. Canon terminated the agreement when Lantech did not pay the money owed.

In November 2004, Lantech sued Canon in Costa Rica over the contract termination.

In February 2005, Canon Latin America sued Lantech in U.S. District Court in Miami to block the Costa Rican suit. Canon claimed it was never served in the Costa Rican lawsuit.

Canon asked for a ruling on the enforceability of the forum selection clause in its contracts with Lantech that stated the agreement would be governed by the laws of Florida.

The agreement stated that "in the event of any litigation between the parties,

[Lantech] consents to the jurisdiction and venue of the state and federal courts situated within the state of Florida." Lantech agreed any suits it files "shall be brought exclusively in a state or federal court situated within the state of Florida."

Canon also sought a declaratory judgment that its relationship with Lantech was not exclusive, as well as an anti-suit injunction against Lantech. A later amended complaint claimed breach of contract for Lantech's failure to pay the money owed and unjust enrichment. Lantech subsequently agreed to pay the \$250,000 it owed to Canon.

Costa Rica may repeal law

Last September, Brown granted Canon preliminary injunctive relief. Brown wrote, "The court finds that Lantech's filing of the Costa Rica action had the evasive effect of attempting to avoid the forum selection clause of the agreement in the first instance." Brown wrote that Lantech's agreement with Canon prevented it from litigating in Costa Rica.

On Brown's orders, Lantech twice stayed its Costa Rican suit, in December 2006 and April 2007.

In the interim, Canon filed for summary judgment. Brown's decision granting summary judgment forces Lantech to dismiss its Costa Rican case for good. He did not rule on Canon's argument that its contract with the Costa Rican distributor was not exclusive.

If Lantech doesn't drop the suit, the distributor could face sanctions and contempt charges in U.S. District Court in Miami.

Brown said in its initial pleadings Lantech failed to mention the Costa Rican law mandating that Costa Rica was the exclusive venue for the dispute. Brown said that issue was critical in his analysis leading to his preliminary injunction last October.

Brown also said Lantech's case based on



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the Costa Rican venue law is weakened by the fact that Costa Rican lawmakers are considering a bill to repeal sections of that statute.

Following Brown's decision, Canon Latin America filed a motion for sanctions against Lantech totaling \$101,000 for its failure to alert Canon's attorneys that it wouldn't produce three witnesses during the Canon attorneys' trip to Costa Rica.

Diaz said he's confident his client will prevail in Lantech's appeal. "We have very strong facts in this case, and we look forward to an appeal," he said. ■

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Litigator Leon Patricios says forum selection clauses are critical to companies doing business with Caribbean and Latin American firms.