

Protectionist statutes can lead to tricky business with Latin America

BY JULIA NEYMAN

While South Florida businesses have mastered the language and culture of Latin America, many struggle with the protectionist statutes of several countries in the region.

Now a series of judgments, the last of which was won by a Miami lawyer just weeks ago, seem to favor contract law over such statutes, making it safer and easier to do business with Latin American companies.

On July 19, Canon Latin America successfully stopped its former Costa Rican distributor from suing the multinational in Costa Rican court for terminating the relationship between the two parties.

The decision set a precedent in the 11th Judicial Circuit of Florida that contract trumps statute, said Michael Diaz, of Diaz, Reus, Rolff & Targ LLP, who represented Canon in the suit.

The contract between the two parties stated that Canon could work with distributors other than Lantech, and mandated that any disputes would be handled in Miami courts, Diaz said. However, Costa Rican statute 6209 states that, regardless of the contract's provisions, Lantech must remain the exclusive distributor and, if Canon dropped Lantech, the distributor could sue in Costa Rican court.

"Clever lawyers in Latin America use this statute as an opportunity to extort money from international companies," Diaz said, adding that after Canon dropped Lantech, the multinational had to post a \$1 million bond to keep importing into Costa Rica. "This will help multinational corporations doing business in Latin America understand what standards they have to meet if they are sued pursuant to one of these protectionist statutes."

Miami attorney Jose Astigarraga, who won a similar anti-suit injunction for General Electric against a Brazilian distributor in 2004, said the problems Canon encountered are hardly unique.

"It's almost a dime a dozen that distributors get assigned contracts with multinationals, and distributors sue in their home country," said Astigarraga, of Astigarraga Davis.

STEPPING ON TOES

The difficulty, both lawyers agreed, is that American judges often feel enjoining companies from suing in their home countries steps on the toes of foreign courts. The circuit courts are currently split in how they treat these types of cases, and both lawyers agreed the issue will likely make its way to the Supreme Court.

The difficulties Canon and General Electric faced point to a larger problem that arises when multinationals deal with countries that have had a history of being taken advantage of, said Tomas Nassar, the Costa Rican attorney who helped Diaz with the Canon case. He said many of these countries – including Guatemala, Honduras and El Salvador – twist old laws to take multinationals for a ride.

"Many of the local people try to use this law to make money in the wrong way," Nassar said, adding that he is currently defending the Gillette Co. in a similar suit by a distributor in Costa Rica. "It is very usual in our country to have these kinds of disputes."

Nassar said multinationals must be aware

of these laws and reinforce agreements to "overprotect" themselves from a suit.

Astigarraga said companies should conduct thorough due diligence on a prospective partner, and bolster contracts with clauses for international arbitration, which is governed by international conventions instead of domestic laws.

But, if all else fails, Diaz suggests: "Sue first."

jneyman@bizjournal.com | (954) 942-7511



Attorney Michael Diaz takes a snapshot of Carlos Crosa, VP and GM of Canon Latin America.

MARK FREERKS