

## Puerto Rico Supreme Court Continues to Follow Federal Precedent on Forum Selection Clauses

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Forum selection clauses, also known as choice of forum clauses, are contractual commitments to resolve disputes in a given court and widely used in commercial contracts. In Unisys v. Ramallo Brothers, 128 D.P.R. 842 (1991) the Puerto Rico Supreme Court (“PRSC”) adopted the federal precedent favoring the enforcement of forum selection clauses, unless it can be proven that they are unreasonable under the circumstances, which began with the Supreme Court of the United States’ Opinion in The Bremen v. Zapata Offshore, 407 U.S. 1 (1972). However, the PRSC had yet to weigh in on the standard for review of allegations of fraud that invalidate forum selection clauses. The PRSC has now adopted the federal “severability doctrine” whereby allegations of fraud directed at an entire contract are insufficient to void consent and avoid enforcement of a forum selection clause because the clause is deemed to be “severable” from the rest of the contract.

In Bobé, et al. v. UBS Financial Services Incorporated of Puerto Rico, 2017 TSPR 67, the PRSC revoked a Puerto Rico Court of Appeals ruling whereby allegations questioning the validity of a contract between the plaintiffs and UBS regarding a series of credit lines nullified the contract’s forum selection clause. Pursuant to that clause, any suit, action or proceeding arising in relation to the contract had to be brought and maintained exclusively in the courts of Utah.

In keeping with federal precedent, the PRSC ruled that the allegations that can nullify a forum selection clause are not those directed at proving fraud or deceit with regards to the entire contract. Rather, the allegations capable of invalidating the forum selection are those targeted at exposing the fraudulent inclusion of the forum selection clause. Consequently, the PRSC returned the case to the Court of First Instance to consider the inclusion of the choice of forum clause in light of this ruling.

The PRSC’s adoption of federal precedent in this area should promote predictability and respect for contract-backed expectations of where to resolve disputes.

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