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Florida Supreme Court Modifies State Forum Non Conveniens Doctrine as to the Level of Deference Owed to an Out-of-State Plaintiff's Choice of Forum

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On June 20, 2013, the Florida Supreme Court issued its decision in *Cortez v. Palace Resorts, Inc.*, Case No. SC11-1908, addressing Florida's *forum non conveniens* doctrine (a version of the federal standard). The case involved a "negligent vacation packaging" lawsuit by a California plaintiff against several Florida-based entities involved with the management and promotion of a Mexican resort and Mexican timeshares. The trial court and intermediate appellate court dismissed the lawsuit in favor of its reinstatement in an appropriate Mexican court because the lawsuit arose from an assault occurring at the Mexican resort and, unlike a Florida plaintiff, the out-of-state California plaintiff's choice of a Florida forum was not owed great deference. The Florida Supreme Court reversed. In the process, it made at least two significant clarifications of Florida's *forum non conveniens* doctrine. First, all U.S. plaintiffs – not just Florida residents – are owed substantial deference in their forum choice when they sue in a Florida court, and to overcome that presumption, the defendant will have to show "evidence of unusually extreme circumstances" sufficient to "thoroughly convince[] [the Florida court] that material injustice" will take place if the case is litigated in Florida. Second, in all *forum non conveniens* inquiries, the court must consider not just private interest factors affecting the relative convenience of the parties, but also the public interest factors regarding the competing forums' interests in the action. The decision is noteworthy in another regard. The Florida Supreme Court allowed the lawsuit to proceed against parent and affiliate entities based in Florida that handled logistical and promotional activities for the Mexican resort despite the fact that those entities did not appear to directly own and operate the subject Mexican resort where the plaintiff suffered the alleged assault. The plaintiff had voluntarily dismissed the Mexican entities, which therefore were not involved in the case by the time it reached the appellate courts. For such Florida and U.S.-based entities that handle booking and other logistics for international resorts there is a

well-established mechanism to potentially avoid the result that occurred in this case – a mandatory, international forum-selection clause selecting a rationally related forum preferred by the resort (*e.g.*, the jurisdiction in which the resort is located or the jurisdiction in which the resort company has its principal place of business). Such clauses have been enforced in similar circumstances when included in initial guest booking materials, provided to the guest before check-in through mail or e-mail, and then included in the guest's check-in materials upon arrival. *See, e.g.*, *Krenkel v. Kerzner Int'l Hotels, Ltd.*, 579 F.3d 1279 (11th Cir. 2009) (affirming enforcement of such a clause against U.S. guests who sued a Bahamas resort with logistics and support operations in Florida – clause selected an appropriate Bahamian court to resolve "any claims" against the U.S. and Bahamian resort-related entities "resulting from any events occurring in the Bahamas"). Florida has adopted the federal *Bremen* standard, which favors the enforcement of such clauses. *See Manrique v. Fabri*, 493 So. 2d 437, 440 (Fla. 1986). To ensure the best possibility of enforcement of such clauses in the resort context, the clause should be communicated to the guest(s) at every stage of the reservation and booking process - i.e., not just upon check-in. Based on case law, this type of forum-selection clause should be communicated on the booking website, in pre-stay mail and e-mail communications with the guest, and then once again at physical check-in. Consistent with the same case law, the clause must also be reasonably communicated to the guest and must bear a reasonable relationship to the location of the resort.

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