

**Briere v Salvati Retail Inc.**

2008 NY Slip Op 32745(U)

October 2, 2008

Supreme Court, New York County

Docket Number: 117203/07

Judge: Martin Shulman

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

MARTIN SHULMAN

PRESENT:

J.S.C.

PART 1

Index Number : 117203/2007

BRIERE, FREDERIC

VS.

SALVIATI RETAIL INC.

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO.

117203/07

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

this motion to/for

PAPERS NUMBERED

Notice of Motion/ ~~Order to Show Cause~~ - Affidavits - Exhibits ...

Answering Affidavits - Exhibits

Replying Affidavits

1

2

3, 4

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

FILED

OCT 07 2008

COUNTY CLERK'S OFFICE  
NEW YORK

OCT - 2 2008

Dated:

MARTIN SHULMAN

J.S.C.

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 1

-----x  
FREDERIC BRIERE,

Plaintiff,

-against-

SALVIATI RETAIL INC., SALVIATI INC., SALVIATI  
RETAIL SAS, ARC INTERNATIONAL, LAURENCE  
BUI HAI, and PATRICK GOURNAY,

Defendants.  
-----x

Index No. 117203/07

**Decision & Order**

**FILED**

OCT 07 2023

COUNTY CLERK'S OFFICE  
NEW YORK

**Martin Shulman, J.:**

Plaintiff Frederic Briere (“plaintiff” or “Briere”) commenced this action against defendants, Salviati Retail Inc., Salviati Inc., Salviati Retail SAS, Arc International, Laurence Bui Hai and Patrick Gournay (collectively “defendants”), alleging unlawful discrimination on the basis of sexual orientation, in violation of the Executive Law of the State of New York, New York State Human Rights Law (“NYSHRL”), §296, *et seq.* and the Administrative Code of the City of New York, New York City Human Rights Law (“NYCHRL”), §8-101, *et seq.* Defendants move to dismiss the complaint based upon the forum selection clause in Article 7 of Plaintiff’s employment agreement, or alternatively, on the grounds of *forum non conveniens* pursuant to CPLR 327.

Defendant Arc International (“Arc”) is a French corporation with its headquarters in France. Defendant Salviati Retail SAS (“Salviati SAS”), a related business entity, is a French corporation with its headquarters in France, which does business in New York through defendants Salviati Retail Inc. and Salviati Inc., (collectively “Salviati USA”), its wholly-owned subsidiaries. The Salviati USA entities are Delaware corporations with their sole place of business located in New York City. Plaintiff is the only executive of

Salviati SAS and Salviati USA located in New York state. Defendant Laurence Bui Hai is the CEO of Salviati SAS. Defendant Patrick Gournay is the CEO of Arc and Director of Salviati Retail Inc. and Salviati Inc.

Briere is a native French citizen who has resided in New York City since December 2006, and also maintains a permanent residence in France. Plaintiff's employment contract with defendants was executed in March of 2005 in France. The contract, which is written in French,<sup>1</sup> provides a forum selection clause that states, "In the event of litigation, the sole competent jurisdictions shall be jurisdictions in France." The employment contract outlines plaintiff's responsibilities to develop a United States branch of Salviati SAS. To further this objective, Briere was transferred to New York for a duration of up to five years as stipulated in the employment contract. To enable him to work in the U.S., Defendant corporations obtained a U.S. L-1A visa for plaintiff in December 2006. The L-1A visa is a non-immigrant visa for executives and managers of foreign corporations that are sent to the U.S. as a part of temporary intra-company transfers. Plaintiff is able to live and work in the U.S. only due to his L-1A visa and his position as an executive with Arc. All documents related to Briere's employment are located in France.

In June 2007, Arc decided to sell Salviati USA. All activities related to the decision to sell the division originated in France. All employees with information regarding the decision are located in France, and all of the documents related to the sale, which are in French, are located in France. However, plaintiff brought this action

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<sup>1</sup> Defendants' motion includes a certified translation of the contract. Plaintiff does not dispute the accuracy of the translation.

in New York, alleging that after he told defendant Bui Hai in February 2007 that he was a homosexual male, defendants began to engage in discriminatory conduct against him. As a result, plaintiff claims that he was denied wages, benefits, and promotional opportunities that would have accrued from his title and salary, commensurate with his experience and qualifications, causing him to suffer loss of back pay and forward pay, mental anguish, emotional distress and loss of enjoyment of life.<sup>2</sup>

In support of its motion to dismiss, defendants first contend that Briere agreed in the employment contract that any litigation must be brought in France. That clause alone, defendants argue, is sufficient to dismiss the present action. In opposition, plaintiff argues that the contract provision is inapplicable because this is not a breach of contract action, but an action brought to remedy employment discrimination under New York State and New York City Human Rights Laws. Briere further cites New York's public policy interest in protecting all individuals within the state from discrimination.

Defendants' second argument is predicated upon the doctrine of *forum non conveniens*. Specifically, defendants argue that: 1) this action has no relationship to New York and will present a substantial financial and administrative burden to New York courts; 2) litigation in New York will be unduly burdensome to defendants due to the significant cost of repeatedly sending its employees and witnesses between New York and France and the additional financial burden of providing certified translations of

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<sup>2</sup> The complaint alleges that when Arc and Salviati SAS decided to sell Salviati USA, all executives except Briere were offered significant stay on bonuses for staying with the company for six months after the sale. Plaintiff further alleges that defendants minimized plaintiff's accomplishments when marketing Salviati USA to potential buyers and failed to consider plaintiff's proposed offer to buy Salviati USA.

thousands of pages of documents; 3) France is an available alternative forum for Briere to bring his suit; and 4) all of the transactions and activities alleged by plaintiff to be discriminatory occurred in France.

Plaintiff counters that there are sufficient connections to New York since: 1) the parties and most of the necessary witnesses speak English; 2) two of the four corporate defendants are American companies with their principal place of business in New York; 3) documents relating to the sale of Salvati USA are all available in English; 4) plaintiff has a lease for an apartment in New York, has moved all of his personal belongings here and pays income taxes in the United States and to the State of New York; and 5) French law allows for discovery of only those documents on which the party disclosing them is intending to rely, thus plaintiff would be prejudiced in France since he would be unable to obtain any documents in the defendants' possession that would support his position in the case.

### **Analysis**

Forum selection clauses are routinely enforced in New York "because they provide certainty and predictability in the resolution of disputes, particularly those involving international business agreements (citations omitted)." *Brooke Group Ltd. v. JCH Syndicate* 488, 87 N.Y.2d 530, 534, 640 N.Y.S.2d 479, 482 (1996); see also, *Boss v. American Express Fin. Advisors, Inc.*, 6 N.Y.3d 242, 247, 811 N.Y.S.2d 620 (2006). Such clauses are considered prima facie valid unless a party can clearly show that its "enforcement would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would . . . be deprived of his or her

day in court (citations omitted)." *British West Indies Guar. Trust Co., Ltd. v. Banque Internationale A Luxembourg*, 172 A.D.2d 234, 567 N.Y.S.2d 731 (1st Dept. 1991).

Here, Article 7 of the subject employment agreement contains broad, mandatory language and is unambiguous on its face. As defendants argue, the contract was entered into by two French parties and executed in France. It is thus clear from the outset of the agreement that the parties' reasonable expectations were that all litigation would take place in France, and not the location of Briere's temporary employment. See *Boss v. American Express Fin. Advisors, Inc.*, *supra*. Further, plaintiff does not allege any fraud or overreaching, nor does he deny that he would be denied his day in court if his discrimination claims are heard in France. *British West Indies Guar. Trust Co.*, *supra*. In fact, Briere's only objection to proceeding in France is his claim that French discovery rules are less favorable. Accordingly, the agreement should be enforced as written to encompass all disputes that arise in the scope of Briere's employment and his temporary transfer to New York.

Plaintiff contends that forum selection clauses may be avoided upon a showing that enforcement would contravene a strong public policy of the forum. *Red Bull Associates v. Best Western Int'l, Inc.*, 862 F.2d 963 (2<sup>nd</sup> Cir. 1988)(implementation of forum selection clause would frustrate public policy favoring enforcement of civil rights laws). Here, Briere cites New York's public policy interest in protecting all individuals within the state from discrimination.

*Red Bull Associates*, however, is distinguishable from the instant case in that the court found that had the action been transferred to the contracted forum, the opposing party would be unable or unwilling to pursue it. *Id.* at 966. In the instant case, Briere

has not shown that he is unable or unwilling to bring this action in France. Furthermore, “[a] party cannot defeat a neutral forum selection clause by filing suit in the local forum and claiming that the local interest in resolving the dispute prevails.” *Huntingdon Eng’g & Envtl. Inc. v. Platinum Software Corp.*, 882 F.Supp. 54, 58 (W.D.N.Y. 1995).

Dismissing this action in New York does not violate the state’s public policy to prevent discrimination based on sexual orientation.<sup>3</sup> France, the contractual forum, has laws to protect French residents from discrimination. Bringing suit in France will serve the dual purpose of furthering New York interests in protecting against discrimination within the state, and French interests in protecting French citizens from discrimination by French companies.

Having determined that the complaint should be dismissed based upon the forum selection clause, the court need not address the parties’ *forum non conveniens* arguments. For the reasons set forth above, the complaint must be dismissed.

Accordingly, it is hereby

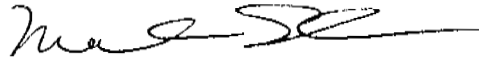
ORDERED that defendants’ motion to dismiss the complaint is granted. The Clerk is directed to enter judgment accordingly.

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<sup>3</sup> In a similar vein, New York courts have enforced provisions in employment contracts requiring arbitration and have interpreted such clauses as applying to NYHRL claims. See *South Huntington Jewish Center, Inc. v. Heyman*, 282 A.D.2d 684, 723 N.Y.S.2d 511 (2<sup>nd</sup> Dept. 2001)(broad arbitration clause in employment contract encompassed claim of wrongful discharge based on a physical disability and court found “no public policy reasons for not enforcing anticipatory agreements to arbitrate statutory employment discrimination claims”).

This constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for plaintiff and defendants.

Dated: New York, New York  
October 2, 2008



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HON. MARTIN SHULMAN, J.S.C.

**FILED**  
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