Employee Relations
LAW JOURNAL

From the Courts

Discrimination and Non-Competition Developments in New York

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This column discusses a number of recent employment discrimination cases and cases involving complaints stemming from non-competition agreements. All of the decisions analyzed in this column are by New York courts – federal and state. The courts' decisions have broad applicability and illustrate key principles about federal and state employment discrimination laws as well as the enforceability of non-compete agreements under New York law.

Second Circuit Court of Appeals Upholds Dismissal of Plaintiff's Retaliation Claim But Finds That Complaint Sufficiently Asserted Employment Discrimination Claim

The U.S. Court of Appeals for the Second Circuit has upheld a district court's decision to dismiss a plaintiff's First Amendment retaliation claim against his employer. The circuit court also decided that the district court had erred when it refused to consider the plaintiff's employment discrimination claim.

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The Case

The plaintiff in this case, a lieutenant "of Hispanic origin" with the police department in Binghamton, New York, alleged that, since at least 2014, he had been subjected to discriminatory "humiliation and ridicule" in his workplace. According to the plaintiff, the department's assistant chief repeatedly called him "Ricky Ricardo," mimicked the plaintiff when he was speaking Spanish "by imitating him in a derogatory manner," made "derogatory references" to the plaintiff with comments such as "you are good [at] jumping fences," stated that the plaintiff "ran with gangs [and] knew how to steal cars and pick locks" in his youth, and said that the plaintiff was "classy Spanish" while another Hispanic officer was "Mexican Spanish."

The plaintiff claimed that the discriminatory conduct "extended to the rank-and-file" within the department, alleging that a colleague had used an ethnic slur to describe a Hispanic officer "several times in front of other officers." He also asserted that the department's chief had "acquiesc[ed]" in or had "ratifi[ed]" the assistant chief's conduct, and that the city's mayor had known "or should have known of the severe racism" existing in the department yet had not taken "any steps in ameliorating the same."

The plaintiff maintained that "but for the discriminatory conduct based on his Hispanic origin," he "would likely have been further advanced in his career." In particular, the plaintiff alleged, he had been "passed over" in 2018 for promotion to captain, and "a Caucasian who was clearly less qualified" had been selected instead.

In addition, the plaintiff contended that he had been retaliated against after he had a meeting with the city's personnel director and corporation counsel.

The plaintiff sued the city and several individual defendants, asserting a "claim for discriminatory conduct based on Hispanic origin . . . pursuant to 42 U.S.C. § 1981." The plaintiff's complaint described various alleged acts of racial harassment, but it enumerated only one cause of action: "retaliation which plaintiff seeks to remedy through 42 U.S.C. § 1983 ["Section 1983"]."

The defendants moved to dismiss the plaintiff's complaint, and the U.S. District Court for the Northern District of New York granted the motion. The district court concluded that the plaintiff's complaint enumerated only one claim: for First Amendment retaliation. It decided that the retaliation claim failed because the plaintiff had not identified any instances of retaliation occurring after he had engaged in protected activity. The district court declined to consider any discrimination claim asserted by the plaintiff, declaring that it "will not, and does not, construe claims not specifically alleged in the complaint."

The plaintiff appealed to the Second Circuit. He first asserted that the district court should not have dismissed his First Amendment retaliation

claim because he sufficiently pled a causal connection between protected speech and retaliatory action. He also argued that the district court had incorrectly construed his complaint as not raising a claim for employment discrimination because of its inadequate "enumeration." In the plaintiff's view, his complaint contained enough information to articulate an employment discrimination claim.

The Second Circuit's Decision

The Second Circuit first agreed with the dismissal of the plaintiff's First Amendment retaliation claim, finding that the complaint did not support an inference that he had been punished for engaging in protected First Amendment speech.

The circuit court explained that Section 1983 allows plaintiffs to sue municipalities for deprivations of constitutional rights, including the First Amendment's guarantee of freedom of speech, which "prohibits [the government] from punishing its employees in retaliation for the content of their protected speech." To state a First Amendment retaliation claim, the circuit court continued, a plaintiff "must plausibly allege that (1) his or her speech or conduct was protected by the First Amendment; (2) the defendant took an adverse action against him or her; and (3) there was a causal connection between this adverse action and the protected speech."

Here, the Second Circuit ruled, the plaintiff failed to state a retaliation claim because he alleged no speech or conduct protected by the First Amendment for which the defendants had punished him, and it therefore rejected the plaintiff's first ground for appeal.

The circuit court, however, reached a different result with respect to the plaintiff's second ground for appeal. In particular, it decided that although the plaintiff's complaint did not "enumerate" a claim for discrimination alongside the cause of action it specifically asserted for retaliation, the plaintiff's complaint did identify a discrimination claim.

The circuit court conceded that it was true that the plaintiff's complaint identified "a single cause of action for retaliation" and that it did not similarly label a cause of action for discrimination. It ruled, however, that "this failure" was "not fatal here."

The circuit court found that the plaintiff's complaint did "in fact" assert a discrimination claim. The circuit court explained that the introduction of the plaintiff's complaint specified that he was bringing a "claim for discriminatory conduct based on Hispanic origin . . . pursuant to 42 U.S.C. § 1981." Moreover, the circuit court continued, the plaintiff alleged in his complaint that he had been "consistently and systematically the victim of discriminatory treatment based on his [national] origin" and that he had "sustained damages as a result of being discriminated against on the basis of his Hispanic origin."

Faced with these allegations, the circuit court said, the defendants were on notice of the plaintiff's discrimination claim and they could not assert any prejudice from his failure to include a separate section in his complaint enumerating discrimination as a cause of action.

Accordingly, the Second Circuit held that the plaintiff's complaint sufficiently "informed [the defendants] of the factual basis for" a discrimination claim despite its failure to enumerate that claim as a separate cause of action. In conclusion, the circuit court noted that the question of whether the plaintiff's complaint sufficiently identified a discrimination claim at all, such that the district court should have addressed it, was separate from whether the complaint's factual allegations showed that the claim had "substantive plausibility." The question of the complaint's "plausibility" was for the district court to address on remand, the Second Circuit ruled.

The case is *Quinones v. City of Binghamton*, No. 20-3078 (2d Cir. May 12, 2021).

Federal Court Dismisses All Claims Against Former Employer and Supervisor, Other Than One Claim It Orders to Arbitration

The U.S. District Court for the Southern District of New York has dismissed all employment discrimination claims brought by a plaintiff against his former employer and supervisor, except for one claim that the court ordered to arbitration.

The Case

The plaintiff in this case began working as a porter for the Harvard Maintenance Company in 2017. On July 18, 2018, the plaintiff filed a complaint with the New York State Division of Human Rights ("NYSDHR") charging Harvard Maintenance with an unlawful discriminatory practice relating to employment because of age and race/color in violation of the New York State Human Rights Law ("NYSHRL").

After investigating and reviewing the information and evidence, the NYSDHR concluded that there was "NO PROBABLE CAUSE to believe that the Respondent has engaged in or is engaging in the unlawful discriminatory practice complained of."

On December 13, 2018, the plaintiff subsequently contended, he was at work when a co-worker insulted him in Spanish. He said that he reported the incident to his supervisor and to his union. The next day, the plaintiff rejected a Christmas bonus check, telling his supervisor that his "supervisors, painters, and coworkers" harassed him to "get rid of [him]." The plaintiff was fired in December 2018.

On December 20, 2018, the plaintiff filed a complaint with the NYSDHR alleging that Harvard Maintenance had unlawfully discriminated against him on the basis of his age, marital status, race, and sexual orientation and had retaliated against him in violation of the NYSHRL. After investigating, the NYSHDR rejected the plaintiff's claim, finding that there was a lack of evidence in support of the plaintiff's employment discrimination claim on the basis of age, race, national origin, marital status, or sexual orientation and concluding that none of those characteristics were factors in the plaintiff's termination.

The plaintiff filed an employment discrimination lawsuit against Harvard Maintenance and his former supervisor on January 4, 2020, asserting claims under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act ("ADEA"), and the New York City Human Rights Law ("NYCHRL").

The defendants moved to dismiss.

The District Court's Decision

The court dismissed the NYCHRL and the ADEA claims against both defendants, as well as the Title VII claim against the plaintiff's former supervisor.

In its decision, the court first found that it lacked subject matter jurisdiction over the plaintiff's NYCHRL claim. The court explained that the plaintiff filed a complaint with the NYSDHR on December 20, 2018 alleging that Harvard Maintenance had unlawfully discriminated against him on the basis of his age, marital status, race, and sexual orientation and had retaliated against him in violation of the NYSHRL, which the NYSHDR had rejected after an investigation. The court reasoned that the facts underlying the plaintiff's lawsuit arose from the operative facts that he had previously presented to the NYSDHR. The court ruled that because the underlying facts of the plaintiff's claim were "almost identical" to those alleged in his lawsuit, it did not have jurisdiction to consider his NYCHRL claim.

The court then considered the plaintiff's federal claims under Title VII and the ADEA against his former supervisor. It ruled that those claims should be dismissed because "neither of those statutes impose individual liability."

Next, the court dismissed the plaintiff's ADEA claim against Harvard Maintenance, finding that the plaintiff failed to plausibly allege "any facts" indicating that age was the "but-for" cause of an adverse employment action. According to the court, the plaintiff's complaint was "devoid of any non-conclusory allegations of age discrimination," the plaintiff pointed to "no adverse actions that were taken as a result of his age," and the plaintiff provided "no basis to support even a minimal inference of discriminatory motivation on the basis of age."

Finally, the court converted the motion to dismiss into a motion for summary judgment as to the Title VII claim against Harvard Maintenance, and then granted the motion to the extent that the plaintiff's claims were predicated on his termination. Among other things, the court observed that an arbitrator had concluded that Harvard Maintenance had just cause to dismiss the plaintiff. That decision, the court said, was a final adjudication on the merits of the plaintiff's complaint regarding his termination and was barred by the doctrine of res judicata.

Because the arbitration had focused on whether Harvard Maintenance had just cause to discharge the plaintiff in December 2018, the court said that it was not persuaded that res judicata barred the plaintiff's Title VII claim of harassment and hostile work environment. However, it found that the plaintiff's Title VII harassment and hostile work environment claim, to the extent not predicated on his termination, was subject to arbitration and it granted Harvard Maintenance's request to compel arbitration as to that claim.

The case is *Acevedo v. Harvard Maintenance Co.*, No. 20-cv-721 (AJN) (S.D.N.Y. March 31, 2021).

Federal Court Rejects Plaintiff's Disability Discrimination and Retaliation Claims Under the Rehabilitation Act

The U.S. District Court for the Eastern District of New York has granted a university's motion for summary judgment in an action brought by a former assistant professor under the federal Rehabilitation Act.

The Case

The plaintiff in this case initially was hired by the university for a three-year term appointment as a full-time assistant professor in the Department of Materials Science and Engineering, effective September 1, 2012 through August 31, 2015.

The plaintiff's term appointment was not renewed and, on July 24, 2015, the plaintiff filed a New York State Division of Human Rights ("NYSDHR") complaint with the assistance of counsel, alleging disability discrimination. In her NYSDHR complaint, the plaintiff stated that she suffered from bipolar disorder and that, because of her disability, she was fired, harassed (but not sexually harassed), and denied an accommodation for her disability.

The university asserted that the plaintiff had never disclosed that she suffered from bipolar disorder and had not requested any accommodations due to her mental health condition.

The plaintiff subsequently sued the university in court, asserting claims for disability discrimination and retaliation pursuant to the federal Rehabilitation Act.

The university moved for summary judgment.

The Court's Decision

The court granted the university's motion.

In its decision, the court explained that, to assert a claim of disability discrimination under the Rehabilitation Act, a plaintiff must demonstrate:

- That the plaintiff is an individual with a disability that substantially limits a major life activity, including "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working";

- That the plaintiff was otherwise qualified for the position or benefit denied;

- That the plaintiff suffered an adverse employment action because of the plaintiff's disability; and

- The program sponsoring the plaintiff's position receives federal funding.

Here, the court ruled, the plaintiff's disability failed to survive the test for an impairment that substantially limits a major life activity. The court explained that the plaintiff generally asserted that her bipolar disorder "substantially limits one or more of the major life activities" without elaborating or pointing to any evidence in the record to corroborate that statement. The court added that the plaintiff did not even "raise an argument that her bipolar disorder limited, let alone substantially limited, her ability to work" at the university.

In any event, the court added that even if the plaintiff suffered from bipolar disorder from the outset of her term appointment at the university, she continued to work throughout that time period, and "[m]erely having an impairment does not make one disabled."

The court also decided that the plaintiff failed to demonstrate that she was "regarded as having an impairment" by the university.

Accordingly, the court said that it was "unable to conclude" that the plaintiff was under a disability or was regarded as having a disability as defined by the Rehabilitation Act, and it granted the university's motion for summary judgment as to the plaintiff's claim for disability discrimination.

The court reached the same result with respect to the plaintiff's retaliation claim under the Rehabilitation Act.

The court explained that a plaintiff asserting a retaliation claim under the Rehabilitation Act had to show that:

- The plaintiff engaged in protected activity;
- The employer was aware of this activity;
- The plaintiff was subjected to an adverse employment action; and
- A causal connection existed between the alleged adverse employment action and the protected activity.

The court focused on the fourth factor, explaining that a causal connection in retaliation claims can be shown either "(1) indirectly, by showing that the protected activity was followed closely by discriminatory treatment, or through other circumstantial evidence such as disparate treatment of fellow employees who engaged in similar conduct; or (2) directly, through evidence of retaliatory animus directed against the plaintiff by the defendant."

The court found that the plaintiff had not demonstrated the existence of a causal connection, and it granted the university's motion for summary judgment on this claim, too.

The case is *Gentleman v. State University of New York*, No. CV 16-2012 (JMA) (AKT) (E.D.N.Y. March 31, 2021).

Federal District Court in New York Dismisses All Employment Discrimination Claims Brought Against the VA

The U.S. District Court for the Eastern District of New York has granted summary judgment in favor of the U.S. Department of Veterans Affairs ("VA") in an employment discrimination lawsuit brought by a plaintiff asserting that his employment had been terminated because of his race, color, national origin, and sex; asserting claims for hostile work environment and retaliation, in violation of Title VII of the Civil Rights Act of 1964; and alleging that the VA had terminated his employment based on his mental disability, in violation of the Americans with Disabilities Act ("ADA").

The Case

The plaintiff, an African American male of Jamaican origin, was hired in November 2012 by the U.S. Department of Veterans Affairs ("VA") as a medical support assistant in the Post-Traumatic Stress Disorder Clinic (the "Clinic") of the VA New York Harbor Health Care System in Brooklyn, New York, which serves military veterans. The plaintiff's employment

was conditioned on his successful completion of a one-year probationary period.

After a 10-month probationary review of the plaintiff's job performance, it was decided that he should not be retained because his performance was unsatisfactory and he did not have the necessary skill set to perform his role. The plaintiff met with his supervisor and, as he began to receive negative feedback, said that he contemplated suicide. The plaintiff postponed the remainder of the meeting and sought immediate medical attention.

On October 1, 2013, the plaintiff checked himself into the psychiatric ward of New York Harbor Healthcare System, Manhattan Campus, out of concern that he might hurt himself or others; he remained a patient there from October 1, 2013 to October 9, 2013.

The plaintiff's termination letter, dated October 11, 2013, was signed by the VA's acting chief of human resources management.

Following his termination, the plaintiff filed an administrative complaint of employment discrimination. An administrative law judge ("ALJ") dismissed the plaintiff's complaint, finding that the plaintiff had failed to establish a prima facie case of discrimination under Title VII of the Civil Rights Act of 1964 based on the plaintiff's race, color, sex, or national origin and that, even if the plaintiff had established a prima facie case, the defendant had articulated a legitimate non-discriminatory reason for terminating the plaintiff due to his unsatisfactory work performance.

The ALJ also dismissed the hostile work environment claim asserted by the plaintiff on the ground that he had not shown that he had been discriminated against based on a protected characteristic. In addition, the ALJ dismissed the disability discrimination claim asserted by the plaintiff, finding that he had not shown that the defendant was aware of his alleged mental disability or that he had requested a reasonable accommodation.

The VA's Office of Employment Discrimination Complaint Adjudication ("OEDCA") accepted the ALJ's decision but nevertheless issued the plaintiff a right to sue letter. The plaintiff then filed a lawsuit against the VA, alleging that it had terminated his employment based on his race, color, national origin, and sex, hostile work environment and retaliation in violation of Title VII, and based on his mental disability, in violation of the Americans with Disabilities Act ("ADA").

The defendants moved for summary judgment.

The Court's Decision

The court granted the defendants' motion for summary judgment.

In its decision, the court first declared that the plaintiff had not shown that he was qualified for the position. The court noted that although the Clinic had hired the plaintiff, he had not completed his probationary

period successfully and he had "repeatedly received negative performance evaluations for the full duration of his employment."

Finding that the plaintiff failed to demonstrate that he had been terminated on the basis of his race, national origin, color, or sex, the court dismissed the plaintiff's discrimination claims.

Next, the court rejected the plaintiff's hostile work environment claim. For this claim, the court said, a plaintiff must produce enough evidence to show that the workplace was "permeated with discriminatory intimidation, ridicule, and insult" that was "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." The court found that the plaintiff failed to present evidence that the VA had discriminated against him based on any protected characteristic to support his hostile work environment claim.

The court reached the same result with respect to the plaintiff's retaliation claim. It explained that before bringing a claim in federal court under Title VII, a plaintiff first must file a complaint with the Equal Employment Opportunity Commission ("EEOC") or an equivalent state agency. The court pointed out that, in this case, the plaintiff had not asserted a retaliation claim in the administrative complaint he had filed. It therefore dismissed his retaliation claim.

Finally, the court addressed the plaintiff's ADA claim. Because as a former employee of the federal government, the plaintiff had no remedy for employment discrimination under the ADA, the court construed the plaintiff's disability discrimination claim to be made pursuant to Section 504 of the federal Rehabilitation Act rather than under the ADA.

The court then ruled that the plaintiff had not established that he was "disabled" within the meaning of the Rehabilitation Act. The court acknowledged that the plaintiff claimed that he was mentally disabled because he suffered from depression, stress, migraines, and headaches, but found that he did not identify any major life activity that was impaired by these conditions. In fact, the court noted, the plaintiff confirmed that he had "no limitation" with respect to his mental conditions and had asserted that his "mental state of mind doesn't affec[t] [his] ability to work or to learn new pro[cedures]."

Accordingly, the court concluded, the plaintiff failed to demonstrate that he was "disabled" under the Rehabilitation Act and it dismissed his disability discrimination claim.

The case is *Henry v. McDonald*, No. 15-CV-4030 (DLI) (SJB) (E.D.N.Y. March 31, 2001).

New York Appellate Court Upholds Preliminary Injunction Issued in Noncompete Case

An appellate court in New York has upheld a trial court's issuance of a preliminary injunction in a case in which the plaintiffs asserted that the

defendant had breached a noncompete provision in restrictive covenants related to the sale of his business to the plaintiffs.

The Case

The plaintiffs in this case alleged that they had purchased the defendant's investment brokerage and advisory business for a significant sum and that the defendant had agreed to work for the plaintiffs for five years for further substantial consideration. The plaintiffs terminated the defendant and filed a lawsuit.

In their action, the plaintiffs asserted that the defendant was bound by restrictive covenants that included a noncompete provision stemming from their purchase of his business, and they moved for a preliminary injunction in aid of arbitration.

The Supreme Court, New York County, granted the plaintiffs' motion, and the defendant appealed to the Appellate Division, First Department.

The Appellate Court's Decision

The First Department affirmed, finding that the trial court had properly exercised its discretion in granting the preliminary injunction.

In its decision, the appellate court found that the plaintiffs had met their burden of showing a probability of success on the merits. In the appellate court's view, the restrictive covenants and the noncompete provision were not overbroad as restraints on trade or in their geographical or temporal scope.

Moreover, the appellate court continued, under the circumstances, it was reasonable to conclude that the defendant's services were unique or extraordinary for purposes of enforcing the noncompete provision.

The First Department added that the defendant's contentions that the plaintiffs had breached the agreements at most raised issues of fact in response to the plaintiffs' prima facie showing of justification for terminating him. Issues of fact, the appellate court continued, also existed as to which party was in breach. The First Department then upheld the issuance of the preliminary injunction, pending a "definitive resolution by the arbitrator of the parties' claims, including the issues of breach."

In conclusion, the appellate court rejected the defendant's contention that the trial court had erred in granting the preliminary injunction pending the arbitration, rather than limiting it to the term provided in the agreements. It noted that the agreements themselves provided that, in the event of any violation of the restrictive covenants, the restricted periods "will toll and will continue thereafter to run from the first date on which the violation has ceased." Thus, the appellate court said, it will be up to the arbitrator to determine which party breached, and for how

long, and the duration of the resulting toll of the restrictive covenants, if any.

The case is *Bruderman Brothers, LLC v. Goldberg*, 193 A.D.3d 478 (1st Dep't 2021).

Assignees May Not Enforce Noncompete Clause, New York Appellate Court Rules

The Appellate Division, First Department, has affirmed a trial court's decision dismissing claims by an assignee alleging breach of a noncompete clause.

The Case

The plaintiff in this case, Norberto Jorge Levin, was the majority partner of Fondo De Inversion Privado Levin Global (the "Fund"), a Chilean "society." The Fund was the owner of Corporate Assets S.L. ("Corporate Assets"), a Spanish holding company for various Levin business entities, including Organizacao Levin do Brasil Ltda. and Organizacion Levin de Argentina S.A. (together, "Levin Brazil/Argentina").

According to the plaintiff, the Fund was owned by six equity partners, including Carlos Luis Salvini and Valentim Gugliano, known as "Contributors." The partnership was governed by an agreement called the "Contributors Agreement" that contained a noncompete clause that provided, in part:

> Contributors undertake to not engage, directly or indirectly through Related Companies, in any activity whatsoever (investment, administration, advising, etc.) that is currently engaged in by the Fund or by any of the companies or entities controlled by the Fund.

The plaintiff sued Salvini and Gugliano in a New York court, alleging that they had breached the noncompete clause by creating a competing firm in Brazil, while still employed by Levin entities, and that they had deliberately caused a Levin Brazil project to fail to bolster their competing firm.

Levin sued individually as a Contributor to recover damages under the Contributors Agreement; he also asserted claims purportedly assigned to him by Levin Brazil/Argentina to recover significant damages they allegedly had sustained as a direct result of the defendants' alleged competition and the resulting failure of the project.

The trial court granted the defendants' motion to dismiss claims asserted by Levin as assignee of Levin Brazil/Argentina, and Levin appealed.

The Appellate Court's Decision

The appellate court affirmed, holding that the trial court had correctly decided that it did not have subject matter jurisdiction over the assigned claims of Levin Brazil/Argentina.

In its decision, the appellate court explained that the sole basis for jurisdiction in a New York court was the forum selection clause in the Contributors Agreement, which encompassed claims (i) that arise under the Contributors Agreement, and (ii) that "arise between Contributors, or those that are Companies related to one of the Contributors, or between the latter and the Fund."

The First Department was not persuaded that Levin Brazil/Argentina's claims arose under the Contributors Agreement because they were third-party beneficiaries of the noncompete clause in the Contributors Agreement. The appellate court pointed out that the Contributors Agreement did not expressly mention these entities or otherwise demonstrate an intent to confer any benefit on them.

Moreover, the First Department continued, the Contributors Agreement did not "evince a discernible intent to allow recovery for the specific damages to the third part[ies] that result from a breach thereof." Indeed, the appellate court noted, a provision in the Contributors Agreement only allowed for the "Remaining Contributors," including Levin, to recover damages for any breach. Thus, the appellate court found, the Levin Brazil/Argentina entities were, at most, "incidental beneficiaries."

The appellate court also decided that, under a reasonable reading of the Contributors Agreement as a whole, the reference to "Companies related to one of the Contributors" in the forum selection clause did not encompass claims between Levin Brazil/Argentina and the defendants, as Contributors. According to the appellate court, under the Contributors Agreement, the term "Related Companies" applied to companies such as the firm through which the defendants allegedly competed with the business of the Fund and Levin Brazil/Argentina. Extending that clause to entities controlled by the Fund would be "inconsistent with the reasonable expectations of the parties," the First Department decided.

The First Department ruled that because the claims assigned by Levin Brazil/Argentina were not encompassed by the forum selection clause, they could not enforce the forum selection clause as parties "closely related" to Levin, as one of the signatories, even if they had shown a relationship "sufficiently close," such that such enforcement of the forum selection clause would be foreseeable.

The appellate court concluded that the purported assignments of Levin Brazil/Argentina's claims to Levin were "irrelevant" because New York did not have jurisdiction over these claims, and a mere assignment did not include them within the purview of the Contributors Agreement.

The case is *Levin v. Salvini*, No. 2020-01798 (1st Dep't April 1, 2021).