Radioactive J.V. v. Manson

153 F.Supp.2d 462
United States District Court for the Southern District of New York
July 29, 2001

RADIOACTIVE, J.V., Plaintiff, v. Shirley MANSON, Defendant. No. 01 Civ.1948(SAS). COUNSEL: Steve A. Marenberg, Charles E. Elder, Irell & Manella LLP, Los Angeles, California, Andrew H. Bart, David S. Levine, Pryor, Cashman, Sherman & Flynn LLP, New York, New York, for Plaintiff. Marc Marmaro, Elizabeth Barrowman Gibson, Christina Harvell Brown, Jeffer, Mangels, Butler & Marmaro LLP, Los Angeles, California, Robert Jossen, Louis Solomon, Swidler Berlin Shereff Friedman,LLP, New York, New York, for Defendant.

SCHEINDLIN, District Judge.

On March 7, 2001, Radioactive Records, J.V. ("Radioactive") filed this diversity action against Shirley Manson, a well-known singer and performer, alleging, inter alia, a claim for breach of contract. Manson now moves to dismiss this action in favor of parallel state court proceedings in California, arguing that the California Action was filed first and that this Court should abstain from exercising jurisdiction. Radioactive cross-moves for partial summary judgment on two issues: (1) that New York law governs the recording contract between Manson and Radioactive; and (2) because New York law governs, California Labor Code § 2855 ("section 2855") is inapplicable to that recording contract. For the reasons set forth below, both motions are granted.

I. BACKGROUND

A. The Relevant Contracts

On February 23, 1993, Manson, a resident of Scotland, signed a recording contract with Radioactive, a joint venture between Radioactive, Inc. and MCA Records (now Universal Music Group ("UMG")) (the "Manson-Radioactive Agreement"). See Plaintiff's Statement Pursuant to Local Rule 56.1 ("Pl.56.1") ¶¶ 1, 2, 10; 4/27/01 Declaration of Shirley Manson in Support of Motion to Dismiss ("Manson Decl. I") ¶ 2. That contract obligates Manson to deliver at least one album and, at the sole option of Radioactive, up to six additional albums. See Complaint ¶¶ 7. The contract also designates New York as the forum of choice and New York law as the rule of decision in any future dispute over the contract. See Pl. 56.1 ¶ 3; 2/23/93 Manson-Radioactive Agreement, Ex. G to 4/25/01 Declaration of Elizabeth Barrowman Gibson, Manson's counsel ("Gibson Decl."), at 40.

˘The Manson-Radioactive Agreement provides:

> This agreement has been entered into in the State of New York. The validity, interpretation and legal effect of this agreement is governed by the laws of New York applicable to contracts entered into and performed entirely within such State. The New York courts (state and federal), only, will have jurisdiction over any controversies regarding this agreement, and the parties hereto consent to the jurisdiction of said courts.^

In late 1994, Butch Vig, Steve Marker, and Doug (Duke) Erikson formed the band Garbage in Madison, Wisconsin and signed a recording contract with Almo Records ("Almo"). See 12/21/94 Agreement between Almo and Garbage ("Almo-Garbage Agreement"), Ex. A to 5/21/01 Declaration of William A. Berrol, counsel for defendant, in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Berrol Decl. II"). As veteran music producers, Vig, Marker, and Erickson wanted to ensure that their endeavor would be directed by Jerry Moss, a legendary figure in the music industry. See First Amended Complaint ("FAC") in Garbage, Inc. v. Almo Sounds, Inc., No. BC244047 (Cal. Supp. filed Jan. 29, 2001) ("Garbage v. Almo"), Ex. A to Gibson Decl, ¶ 2. To that end, Garbage negotiated the inclusion of a "Key Man" clause in its agreement. See Almo-Garbage Agreement at 78. Garbage would only be bound to Almo Records as long as Jerry Moss was Chairman. See id. The contract also designates California as the forum of choice and California law as the rule of decision. See id. at 62.

Having seen Manson in an Angelfish video on MTV, Garbage invited Manson to record with them as the band's lead singer. See 5/18/01 Declaration of Shirley Manson in Opposition to Motion for Partial Summary Judgment ("Manson Decl. II") ¶ 11; see also Manson Decl. I ¶ 4. On August 10, 1994, Manson entered into a written agreement with Garbage-an agreement which was negotiated and entered into in California ("Manson-Garbage Agreement"). See Manson's Response to Plaintiff's Statement Pursuant to Local Rule 56.1 ("Def.56.1") ¶ 23; Manson Decl. I ¶ 10. On December 21, 1994, Manson and Radioactive executed an Inducement Letter as a material part of the Garbage-Almo Agreement ("Manson Inducement Letter"). See Def. 56.1 ¶ 24; Manson Decl. I ¶ 9. The Manson Inducement Letter contains a California choice of forum and a California choice of law provision. See Def. 56.1 ¶ 14; Manson Inducement Letter, Ex. 5 to 5/23/01 Declaration of Marc Marmaro, Manson's counsel, in Opposition to Plaintiff's Motion for Partial Summary Judgment ("Marmaro Decl."), at 149.

Shortly thereafter, Radioactive was asked to allow Manson to record one song with Garbage. See Complaint ¶ 9. Radioactive granted such permission and subsequently agreed to let Manson record an entire album with Garbage. See Pl. 56.1 ¶ 13; Complaint ¶ 10. The album, eponymously named "Garbage," was very successful, selling over 4 million copies worldwide and garnering three Grammy

nominations. See Complaint ¶ 11; FAC in Garbage v. Almo ¶ 1. By agreement dated September 1, 1997, Radioactive agreed to allow Manson to record a second album with Garbage in return for a portion of the royalties. See Pl. 56.1 ¶ 14; Def. 56.1 ¶ 25; see also 9/1/97 Agreement between Almo and Radioactive ("Almo-Radioactive Agreement"), Ex. 6 to Marmaro Decl.; FAC in Garbage v. Almo ¶ 1. The Almo-Radioactive Agreement also contained California choice of forum and choice of law clauses. See Def. 56.1 ¶ 25; Almo-Radioactive Agreement at 166. Garbage's second album, titled "Garbage Version 2.0," was also successful, selling another 4 million copies. See FAC in Garbage v. Almo ¶ 1. By Garbage's estimation, Radioactive garnered more than $1,000,000 in royalties from the album's sales. See Def. 56.1 ¶ 55.

In 2000, Moss sold his publishing company, which included Almo, among other affiliates, to UMG, the successor to MCA Records. See Berrol Decl. ¶ 10; see also Irv Lichtman, "Moss, Alpert Sell Rondor to Universal, Settle Lawsuit," Billboard, August 12, 2000, Ex. C. to Berrol Decl. II, at 395. Thereafter, invoking the Key Man clause, Garbage sought on October 25, 2000 to terminate its contract with Almo on the assumption, supported by press coverage, that Jerry Moss was no longer the Chairman of Almo. See Barrol Decl. ¶ 11; FAC in Garbage v. Almo ¶ 2. According to Garbage, the band met with representatives of UMG, who informed them that even if they could terminate their contract, UMG would still control Manson's original contract with Radioactive. See Berrol Decl.¶ 12; FAC in Garbage v. Almo ¶ 2.

B. The California Action

On January 29, 2001, Manson and Garbage filed suit in California state court essentially seeking to become "free agents" (the "California Action"). See Pl. 56.1 ¶ 15. Their complaint seeks a declaratory judgment that both the Almo-Garbage Agreement and the Almo-Radioactive Agreement are unenforceable and/or have terminated. See Complaint in Garbage v. Almo ¶¶ 25-28. On February 5, 2001, the plaintiffs in the California Action filed the FAC, adding a claim that the Manson-Radioactive Agreement, executed in February 1993, become unenforceable after February 23, 2000 pursuant to California Labor Code § 2855 ("section 2855"), which provides that personal service contracts "may not be enforced ... beyond seven years from the commencement of service under" the contract. See FAC in Garbage v. Almo ¶ 26.

ˇSection 2855 states, in pertinent part:

> [A] contract to render personal service, other than a contract of apprenticeship as provided in Chapter 4 (commencing with Section 3070), may not be enforced against the employee beyond seven years from the commencement of service under it.^

On March 8, 2001, one day after filing the instant complaint, Radioactive moved to dismiss the declaratory judgment claim in the California Action

asserting that any claim regarding the Manson-Radioactive Agreement must be brought in New York. See Gibson Decl. ¶ 5. Then, on March 15, 2001, Radioactive filed a Cross-Complaint against Manson in the California Action. See id. at 3; see also Conditional Cross-Complaint of Radioactive J.V., Ex. E to Gibson Decl. The Cross-Complaint asserted the same claims and factual allegations brought in the instant action. See Gibson Decl. ¶ 6.

Radioactive's motion to dismiss was denied on April 10. The California court noted that both of the relevant contracts-the Almo-Garbage Agreement and the Manson-Radioactive Agreement-were inextricably intertwined, that dismissal would lead to piecemeal litigation, and that it expected the New York federal court to respect its decision. See 4/10/01 Minute Order of the Honorable Marvin M. Lager ("California Order"), Ex. C to Gibson Declaration; 4/10/01 Transcript of Proceedings before the Honorable Marvin M. Lager ("California Tr."), Ex. D to Gibson Decl., at 4-6, 10, 22, 25. On June 25, the California Court of Appeal denied Radioactive's petition for writ of mandate seeking review of the California court's order. See Radioactive Records, J.V. v. Shirley Manson, No. B149619 (Cal.App. 4th June 25, 2001), Ex. A to 6/26/01 Letter from Elizabeth Barrowman Gibson.

C. The Instant Action

Radioactive filed this action more than five weeks after the California Action was filed. In this action, Radioactive asserts three claims. In Claim I, plaintiff contends that Manson breached the Manson-Radioactive Agreement by repudiating her obligations in the recording contract and refusing to deliver the required additional six albums. See Complaint ¶¶ 18-23. In Claim II, plaintiff maintains that in the event that section 2855 is deemed to render the Manson-Radioactive Agreement unenforceable, Radioactive should still be awarded damages pursuant to California Labor Code § 2855(b)(3) for Manson's failure to deliver the remaining six albums. See id. ¶¶ 25-27. Finally, in Claim III, plaintiff seeks a declaration that the California Action violates the choice of law and choice of forum clauses in the Manson-Radioactive Agreement, and that the Manson-Radioactive Agreement is enforceable. See id. ¶¶ 29-31.

II. PLAINTIFF'S SUMMARY JUDGMENT MOTION˘

B. Choice of Law

"Federal courts sitting in diversity in New York must apply New York's choice-of-law rules when determining the law that governs the contract." Lehman Bros. Commercial Corp. v. Minmetals Int'l Non-Ferrous Metals Trading Co., No. 94 Civ. 8301, 2000 WL 1702039, at*11 (S.D.N.Y. Nov. 13, 2000)˘. New York courts follow the test laid out in the Restatement (Second) of Conflicts of Laws § 187.

˘Restatement (Second) of Conflicts of Laws § 187(2) provides:

> The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

Accordingly, a court may refuse enforcement of a choice-of-law clause only where (1) there is no reasonable basis for the parties' choice, or (2) the application of the chosen law would violate a fundamental public policy of another jurisdiction with materially greater interests in the dispute. See Lehman Bros. Commercial Corp., 2000 WL 1702039, at *12; see also *470Hartford Fire Ins. Co. v. Orient Overseas Containers Lines (UK) Ltd., 230 F.3d 549, 556 (2d Cir.2000) ("New York law is clear in cases involving a contract with an express choice-of-law provision: Absent fraud or violation of public policy, a court is to apply the law selected in the contract as long as the state selected has sufficient contacts with the transaction.")^.

Manson, however, argues that the enactment of New York General Obligation Law § 5-1401 ("section 5-1401") in 1984 created an exception to this general rule with respect to personal service contracts. See Manson's Memorandum of Points and Authorities in Opposition to Plaintiff Radioactive Records, J.V.'s Motion for Partial Summary Judgment ("Def.Sum.Jud.Opp.") at 6-10. Section 5-1401 provides that for certain commercial contracts of at least $250,000, but explicitly excluding contracts for personal services, the parties' selection of New York law in the contract is enforceable even if the transaction itself bears no reasonable relation to New York.

ˇSection 5-1401 provides:

> 1. The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars ... may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears any reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal service, [or] (b) relating to any transaction for personal, family or household services ...

> 2. Nothing contained in this section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement or undertaking.^

According to Manson, section 5-1401 carved out an exception for personal service contracts-such contracts are governed by the law of the state with the most significant contacts to the contract and parties (the "center of gravity" test) even where there is a contractual choice of law provision. See id.

Manson appears to have badly misread section 5-1401. By enacting that statute, "New York sought to secure and augment its reputation as a center of international commerce." See Lehman Bros. Commercial Corp., 2000 WL 1702039, at *12. The exclusion of personal service contracts from that law's purview merely establishes that the older reasonable basis standard still applies to choice of law clauses in those contracts.^

The Manson-Radioactive Agreement expressly designates New York law as the rule of decision in any dispute over the contract. Thus, Radioactive need merely show that New York has a "substantial relationship to the parties or the transaction," or that there was a "reasonable basis for the parties' choice." Restatement (Second) of Conflicts of Laws § 187. Manson's contention that California has the most substantial contacts with the contract and parties, therefore, is simply irrelevant to the choice-of-law inquiry.

ˇManson recites a litany of contacts with California: (1) Radioactive exercised the option in Manson's contract in California; (2) the Almo-Radioactive Agreement and the Manson Inducement Letter had California choice of forum and law clauses and were executed in California; (3) the Manson-Garbage Agreement was negotiated and executed in California; (4) all of Garbage's negotiations took place in Los Angeles, California; (5) Garbage's attorney, William Berrol, is located in Los Angeles; (6) Radioactive's representatives and counsel are located in Los Angeles; (7) Manson's representatives were directed to negotiate with Radioactive in Los Angeles; (8) Manson attended business meetings with the band in Los Angeles; (9) Manson's professional services as lead singer of Garbage have all been performed in either California or Wisconsin; (10) marketing, promotions, and videos for Garbage have all been performed in California; (11) witnesses and documents germane to this dispute are located in California; and finally, (12) Radioactive had represented in an earlier dispute involving Garbage and its foreign distributors that Radioactive is a California-based Joint Venture. See Def. Sum. Jud. Opp. at 1, 10-18; Defendant's Memorandum of Points and Authorities in Support of the Motion to Dismiss or, in the Alternative, to Stay this Action ("Def.Mem.") at 7-8.

Each party has provided reams of materials to dispute the "facts" asserted by the other. Radioactive asserts that its principal place of business is New York; Manson asserts that it is California. Radioactive asserts that its President Gary Kurfirst is based in New York; Manson asserts that he is based in Los Angeles. Luckily, these disputed facts are immaterial to the choice of law inquiry. Even if one accepts Manson's version of the facts, Radioactive and Manson had a

reasonable basis for choosing New York law. Manson is a resident of Scotland, and New York may have seemed the most convenient forum for both parties. At least some of Manson's negotiations with Radioactive took place in New York. See Manson Decl. II at 3. UMG regularly put New York choice of law provisions in recording contracts. See Plaintiff's Memorandum of Points and Authorities in Support of Radioactive Records, J.V.'s Motion for Partial Summary Judgment at 4 ("New York federal and state courts have significant experience with music industry contracts, and the parties wanted to avail themselves of that experience by selecting a New York forum and New York law."). Manson's first album, "Angelfish", was recorded in the New York metropolitan area under the supervision of New York-based employees of Radioactive. See Manson Decl. II at 2-3. The album was mastered in New York and delivered to Radioactive in New York. See id. at 2. At the time the contract was executed, a time before any relationship with Garbage was envisioned, New York had sufficient contacts with the Manson-Radioactive transaction and New York law was a perfectly reasonable choice for the parties.

Manson argues, however, that section 2855 reflects a powerful California interest in controlling California employers, thus requiring that the New York choice of law clause be ignored. See Def. Sum. Jud. Opp. at 1-2. This argument is unavailing. In the primary California decision concerning the scope of section 2855, De Haviland v. Warner Bros. Pictures, Inc., 67 Cal.App.2d 225, 235-36, 153 P.2d 983 (1944), the court found that the California legislature enacted section 2855 in an effort to protect California employees.

˘The court did not discuss whether section 2855 would cover out-of-state employees. The court held that the legislature enacted section 2855 pursuant to its powers under the California Constitution "to provide for the comfort, health, safety and general welfare of any or all employees." De Haviland, 67 Cal.App.2d at 236, 153 P.2d 983.

Manson does not contend that she is a California employee. See Def. Sum. Jud. Opp. at 20 ("regardless of whether Ms. Manson is or is not a California resident...."). Only one New York case has addressed section 2855's applicability to non-California employees. See Ketcham v. Hall Syndicate, Inc., 37 Misc.2d 693, 236 N.Y.S.2d 206 (Sup.Ct.N.Y.Co.1962), aff'd, 19 A.D.2d 611, 242 N.Y.S.2d 182 (1st Dept.1963). That court held that section 2855 does not trump a New York conflict of laws determination that New York law should apply. See id. at 211-12; see also Foxx v. Williams, 244 Cal.App.2d 223, 242, 52 Cal.Rptr. 896 (1966) (noting that the court in Ketcham held that "section 2855 did not apply, both because plaintiff was not an employee, and because the law of New York, not California, governed"). No court, in any state including California, has reached a contrary result. Moreover, as Radioactive points out, a determination that section 2855 applies to non-California employees of California employers would be problematic. Foreign employees of California businesses would suddenly receive the benefits of California's "7-year rule," a result the California legislature could not have intended.

˘Manson also argues that this Court should look to California Business and Professions Code § 16600 ("section 16600") and cases that have held it

applicable to non-California employees of California employers. This argument is without merit. Section 16600 provides that "[e]xcept as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." Cal. Bus. & Prof.Code § 16600 (West 2000). The cases cited by Manson applying section 16600 deal primarily with non-compete clauses.^ There is no non-compete clause in dispute. Radioactive does not seek to enjoin Manson from contracting with another record label after her contract with Radioactive is terminated. Rather, Radioactive seeks to enforce its current contract. Moreover, the cases cited by Manson applying section 16600 to non-California employees bear considerably more connection to California than the case at bar.^ Further, insofar as the decisions in those cases reflect an important California interest in California employers, it is an interest in protecting those employers, not limiting them.^

Much like the "dog that did not bark," the overwhelming silence concerning section 2855 is the strongest clue. See Arthur Conan Doyle, "Silver Blaze," in The Complete Sherlock Holmes 347, 349 (Doubleday 1922) (1892). Section 2855 was enacted in 1937. Application of the law to non-California employees of California employers would have wide-reaching consequences. The fact that only one court has addressed its applicability to non-California employees-and held that it does not apply-militates against a finding that the California legislature intended to cover non-California employees.

Accordingly, plaintiff's motion for partial summary judgment is granted. New York law governs the Manson-Radioactive Agreement. Because New York law applies, section 2855 is not applicable to the Manson-Radioactive Agreement.

˘To borrow a phrase used by the California court, this Court expects the California court to respect this decision. See California Tr. at 12; supra Part I.B.˜