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PRACTICE POINTS

Ministers & Missionaries Benefit Board v. Snow: Holding Parties to Their Bargain When It Comes to Contractual Choice-of-Law Provisions

Given the widespread prevalence of contractual choice-of-law provisions, this five-year-old case warrants much greater attention from courts, practitioners, and litigants alike.

By John T. Duffey

Contractual choice-of-law provisions give parties a measure of predictability concerning how future disputes will be resolved. In many jurisdictions, though, these provisions are not enforceable unless they can satisfy a rigorous conflicts analysis. This was the case in New York until *Ministers & Missionaries Benefit Board v. Snow*, 26 N.Y.3d 466 (2015), in which the Court of Appeals held that New York courts should no longer subject contractual choice-of-law provisions to a conflicts analysis.

Ministers, however, has been frequently overlooked in the five years since its issuance. Given the widespread prevalence of contractual choice-of-law provisions, *Ministers* warrants much greater attention from courts, practitioners, and litigants alike.

The Landscape Before *Ministers*

Prior to *Ministers*, New York courts enforced contractual choice-of-law provisions only if "the state selected [had] sufficient contacts with the transaction." *Hartford Fire Ins. Co. v. Orient Overseas Containers Lines (UK) Ltd.*, 230 F.3d 549, 556 (2d Cir. 2000). To measure those contacts, New York courts generally employed the "substantial relationship" approach stated in Section 187 of the Restatement (Second) of Conflict of Laws. *See, e.g.*, *Ayco Co., L.P. v. Frisch*, 795 F. Supp. 2d 193, 200–01 (N.D.N.Y. 2011). Under this approach, a contractual choice-of-law provision is enforceable "unless (1) the chosen state has no substantial relationship to the parties; or (2) applying the law of the chosen state would contravene a fundamental policy of a state that has a materially greater interest than does the chosen state." *Id*. Unsurprisingly, this conflicts analysis led to the invalidation of many contractual choice-of-law provisions—and thereby introduced significant uncertainty into a wide range of contractual relationships.

Ministers and Its Impact

The New York Court of Appeals eliminated this uncertainty in *Ministers*. As the majority recognized, "[w]hen parties include a choice-of-law provision in a contract, they intend that the law of the chosen state—and no other state—will be applied." 26 N.Y.3d at 476. By subjecting choice-of-law provisions to a conflicts analysis, courts override this intention and "contravene the primary purpose of including a choice-of-law provision in a contract—namely, to avoid a conflict-of-laws analysis and its associated time and expense." *Id.* at 475. Therefore, to give proper effect to the parties' bargain, the Court of Appeals determined that "New York courts *should not engage in any conflicts analysis* where the parties include a choice-of-law provision in their contract." *Id.* at 474 (emphasis added).

Following *Ministers*, many courts have heeded this instruction. *See, e.g.*, *Tanzanian Royalty Expl. Corp. v. Crede CG III, Ltd.*, No. 18 CIV. 4201 (LGS), 2019 WL 1368570, at *14 n. 9 (S.D.N.Y. Mar. 26, 2019); *Capstone Logistics Holdings, Inc. v. Navarrete*, No. 17-CV-4819 (GBD), 2018 WL 6786338, at *20–22 (S.D.N.Y. Oct. 25, 2018). Several, though, have continued to scrutinize contractual choice-of-law provisions using the "substantial relationship" test, seemingly unaware that *Ministers* expressly prohibits them from engaging in this type of conflicts analysis. *Power Up Lending Grp., Ltd. v. Cardinal Energy Grp., Inc.*, No. 2:16-cv-1545(DRH)(GRB), 2019 WL 1473090, at *3–4 (E.D.N.Y. Apr. 3, 2019); *TGG Ultimate Holdings, Inc. v. Hollett*, 16 Civ. 6289 (VM), 2017 WL 1019506, at *3–6 (S.D.N.Y. Feb. 24, 2017). Presumably, these instances will become less frequent as time rolls on—but until then, attorneys practicing in New York courts should give a much closer look at *Ministers*.

John T. Duffey is a partner with Maslon LLP in Minneapolis, Minnesota.

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