

Litigator of the Week: A Most Convenient Win

O'Melveny & Myers partner Abby Rudzin scores a big win in an area of the law coming under greater scrutiny as investors cross national boundaries to seek out opportunities in growing markets.

By Colby Hamilton

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“America First” may be an oft-heard political slogan these days, but a significant ruling out of the U.S. Court for the Southern District of New York shows it doesn't always apply to the federal court system.

Sometimes, the Cayman Islands is the right choice—just ask O'Melveny & Myers partner Abby Rudzin, our litigator of the week.

Rudzin prevailed on behalf of E-Commerce Dangdang Inc., a Beijing, China-based online retailer that competes with the likes of Alibaba and Amazon, in a putative class action by investors.

The investors—an American joined by two foreign funds—sued over a “going private” merger that they challenged on a number of grounds, including breach of fiduciary duties, violations of U.S. securities law and New York common law.

But U.S. District Judge Katherine Polk Failla didn't focus on the merits of their claims. Instead, she considered whether U.S. federal court was the right place to make them at all.

Rudzin, a New York-based securities and antitrust litigation expert, argued that the answer was no. In a motion to dismiss filed on forum non conveniens grounds, she asserted that the Cayman



Abby F. Rudzin, partner with O'Melveny & Myers.

Islands—where Dangdang is incorporated—is the proper place for litigation, not Manhattan federal court, even if the company was exclusively listed on the New York Stock Exchange.

Late last week, Failla agreed.

“Though both the Cayman Islands and New York have a legitimate interest in adjudicating this dispute, the Cayman Islands has a closer nexus to the parties and events that are at the heart of this case,” she wrote on Dec. 29. “Simply put, the most critical parties are registered in, and the events giving rise to the suit took place in, the Cayman Islands, not the United States.”

The decision was a big win for Rudzin, in an area of the law coming under greater scrutiny as investors cross national boundaries to seek out opportunities in growing markets.

“These investors do this with eyes wide-open,” she said. “They’re doing it chasing higher returns because the Chinese e-commerce industry has exploded... You want to chase that return, but you don’t want to take the other side of it, which is: if you don’t like how the company is managed, you have to sue in the Cayman Islands.”

Rudzin’s comments allude to a core issue that led to victory for her clients. The claims in the case, as Judge Failla pointed out, are grounded largely outside of New York and the U.S.

“The action involves a Cayman Islands company with its principal place of business in China, a merger executed in the Cayman Islands, and a dispute governed principally, if not exclusively, by Cayman Islands law,” she wrote in her decision.

While plaintiffs allege U.S. securities violations, Failla said it was “unclear” whether the claims would survive a motion to dismiss. Moreover, Failla found “little doubt” that the applicable laws for the principle causes of action—“misrepresentation, breach of fiduciary duties, and the fairness of consideration paid to minority shareholders”—were Cayman Islands laws.

Rudzin noted that even in the U.S., corporations incorporate themselves in Delaware, in part, because of the state’s adroit legal system.

“In terms of the case law and judicial system, corporations would rather be sued in Delaware than a lot of other states in America, because the Chancery Court judges are familiar with these types of cases,” she said.

Failla’s ruling on forum non conveniens was a recognition for Rudzin that “We shouldn’t be such snobs” about the U.S. judicial system—especially given the ever-evolving international business climate.

“I certainly think there’s a perception that a lot of American courts are a more plaintiff-friendly forum than the rest of the world,” she said. “I think the forum non conveniens doctrine and the whole adequacy of the alternative forum is sort of designed to counteract that presumption that America is Number One and that we’re the only ones who get it right.

“If the Cayman Islands want to have rules that give their corporations a little bit better protections,” she said, “Why shouldn’t that be allowed, and why shouldn’t that be enforced?”

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