United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-7014 **September Term, 2019**

FILED ON: MAY 12, 2020

EL-SAYED DAHMAN,
APPELLANT

v.

EMBASSY OF THE STATE OF QATAR AND STATE OF QATAR,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-02628)

Before: SRINIVASAN, *Chief Judge*, RAO, *Circuit Judge*, and SILBERMAN, *Senior Circuit Judge*

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and arguments of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED and ADJUDGED that the judgment of the district court be affirmed for the reasons stated in the memorandum accompanying this judgment.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

El-Sayed Dahman v. Embassy of the State of Qatar and State of Qatar
No. 19-7014

MEMORANDUM

Plaintiff El-Sayed Dahman appeals the dismissal of his complaint against the Embassy and the State of Qatar on grounds of *forum non conveniens*. We conclude that any error in the district court's analysis was harmless and that the court did not abuse its discretion, so we affirm.

Dahman began working at the Embassy of the State of Qatar as an accountant in 1995. He was soon promoted to Director of the Accounting Department under the terms of an employment contract. Those terms stated that the employment contract would expire when Dahman turned 64 years old, which he did in February 2011. Dahman nonetheless continued to work in his position until he was terminated by the Embassy in January 2016. The Equal Employment Opportunity Commission issued Dahman a right-to-sue notice on a charge of age discrimination, over the Embassy's objection.

Dahman filed the present suit against the Embassy and the State of Qatar, alleging unlawful age discrimination under both the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634, and the District of Columbia Human Rights Act, D.C. Code §§ 2-1401.01 to -1404.04. The Embassy and the State of Qatar did not respond to the complaint, nor did they make an appearance to oppose Dahman's eventual motion for default judgment. The district court granted the motion as to liability and scheduled a hearing to determine damages. Three days before the damages hearing, the defendants appeared and requested a continuance so that they might raise certain legal defenses. The district court granted a continuance over Dahman's objection. The defendants then moved to vacate the default judgment and dismiss the complaint on multiple grounds.

The district court vacated the default judgment under Federal Rule of Civil Procedure 60(b)(6) and dismissed Dahman's complaint on grounds of *forum non conveniens*. *Dahman v. Embassy of Qatar*, 364 F. Supp. 3d 1, 3, 9 (D.D.C. 2019). Under the two-step approach set out in *Atlantic Marine Construction Co. v. U.S. District Court*, 571 U.S. 49 (2013), the district court first determined that Dahman's claims were governed by a mandatory arbitration clause in his employment contract that dictated Qatar as the place of arbitration. *Dahman*, 364 F. Supp. 3d at 5, 8. The court then concluded that Dahman had not carried his burden to show that the public interest overwhelmingly disfavored enforcing that forum-selection clause. *Id.* at 9. Dahman raises a number of issues on appeal.

Dahman first contends that Rule 60(b) was an inappropriate mechanism for vacating the district court's default judgment. Rule 60(b) provides grounds for relief from "a final judgment." Fed. R. Civ. P. 60(b). Since the court had yet to determine the damages to which Dahman was entitled, he argues the default judgment as to liability was not "final" within the meaning of that Rule. But to the extent that the court should

have relied on its inherent power to reconsider interlocutory judgments or on another Rule, any such error was harmless. A movant under Rule 60(b)(6) must demonstrate "extraordinary circumstances" to justify relief from a final judgment. *Salazar ex rel. Salazar v. Dist. of Columbia*, 633 F.3d 1110, 1116 (D.C. Cir. 2011) (internal quotation omitted). The Rules governing revision of interlocutory judgments, by contrast, permit relief "for good cause," *Gilmore v. Palestinian Interim Self-Gov't Auth.*, 843 F.3d 958, 966 (D.C. Cir. 2016) (quoting Fed. R. Civ. P. 55(c)), and "as justice requires," *Cobell v. Jewell*, 802 F.3d 12, 25 (D.C. Cir. 2015) (internal quotation omitted) (describing standard under Rule 54(b)). Those standards are less demanding than the requirements governing relief from final judgments, *see Jackson v. Beech*, 636 F.2d 831, 835–36 (D.C. Cir. 1980); *cf. Cobell*, 802 F.3d at 25, and Dahman does not challenge the district court's general conclusion that the defendants' *forum non conveniens* argument, if meritorious, satisfied the more demanding Rule 60(b)(6) standard. Any error in relying on that Rule was therefore harmless.[1]

Turning to the district court's *forum non conveniens* analysis, Dahman argues that the court conflated the initial question of the enforceability of the arbitration clause in his employment agreement with the subsequent step of weighing the public interest factors, contrary to our intervening decision in *Azima v. RAK Investment Authority*, 926 F.3d 870 (D.C. Cir. 2019). In *Azima*, we stated that when a court considering *forum non conveniens* dismissal is faced with an applicable and mandatory forum-selection clause, it should presume the clause to be legally valid and enforceable. *Id.* at 874. That presumption applies absent a strong showing that, *inter alia*, enforcing the clause would be unreasonable and unjust, enforcing the clause would contravene a strong public policy of the present forum, or trial in the preselected forum would be so gravely difficult that the plaintiff effectively would be deprived of his day in court. *Id.* at 874–75. For example, a forum-selection clause is unenforceable if the preselected forum "is substantially deficient—for instance, because it is effectively inaccessible or unable to afford the plaintiff any relief." *Id.* at 875 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 & n.22 (1981)). But if a forum-selection clause is applicable, mandatory, valid, and enforceable, we explained, a court need not go on to consider whether the preselected forum is "available, adequate, or best for the parties' private interests." *Id.* In sum, *Azima* makes clear that arguments about the ability of the preselected forum to provide the plaintiff with relief go to the question of enforceability; they are irrelevant once a forum-selection clause is determined to be enforceable.

In Dahman's case, it is not clear that the district court's approach differed materially from the one we set out in *Azima*. In any event, our review of the enforceability question is *de novo*, *id.* at 876, and Dahman did not present enough

[1]Dahman argues that a remand is required nonetheless because under Rule 55(c)—in his view, the rule most relevant to this case—a district court is required to consider a defendant's willfulness in allowing a default and the prejudice to the plaintiff if the default is vacated. *See Gilmore*, 843 F.3d at 966. True enough, but the "good cause" standard of Rule 55(c) is to be applied in light of all the circumstances of an individual case, *see id.*, and in applying the doctrine of *forum non conveniens* the district court necessarily took into account the private and public interests at stake. *See Atl. Marine*, 571 U.S. at 62, 64, 66 n.8.

evidence to overcome the presumption that the forum-selection clause in his employment agreement is enforceable. Dahman contended that enforcing the clause would contravene the District's public policy of eliminating age discrimination because Qatar would not vindicate his claims. In support of that latter assertion, Dahman said that "Qatari law or policy, as articulated to Mr. Dahman by Embassy officials and supported by Mr. Dahman's Local Employment Contract with Defendants, supports the mandatory retirement of its citizens over the age of 64." J.A. at 77. He also claimed that the defendants' conduct would not be held to "the same high standard of social justice" as it would in the District. J.A. at 74. But those statements, without more, do not establish that Qatar will leave Dahman entirely without a remedy, especially when it is conceivable that the arbitral panel dictated by the employment agreement could apply U.S. law to the present dispute. *Cf. Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 636–37 & n.19 (1985). Nor do the inconveniences to Dahman of arbitrating in Qatar demonstrate that he effectively will be deprived of his day in court. Dahman did not make the "strong showing" required to render the forum-selection clause unenforceable. *Azima*, 926 F.3d at 874 (internal quotation omitted).

We have no trouble concluding that the district court did not abuse its discretion when weighing the public- and private-interest factors. Given the enforceable forum-selection clause in Dahman's employment agreement, the private-interest factors weighed entirely in favor of Qatar as the preselected forum. *Atl. Marine*, 571 U.S. at 64. Dahman thus had the heavy burden of demonstrating that the public-interest factors alone overwhelmingly disfavor the dismissal. *See id.* at 67. Dahman argued that litigating his claims in the District would present few administrative difficulties or choice-of-law issues, but he pointed to only one public-interest factor as *disfavoring* arbitration in Qatar: the District's interest in keeping localized controversies that turn on the District's law in the District's courts. That is a legitimate interest, *see Azima*, 926 F.3d at 880, but it is not enough on its own to tip the scales, much less render the district court's conclusion an abuse of discretion.[2]

Dahman's remaining arguments lack merit. He contends that the district court abused its discretion by failing to hold an evidentiary hearing on the question of enforceability. As noted above, however, Dahman presented scant evidence that would warrant an evidentiary hearing, and he also never requested one. Dahman next contends that the defendants waived their right to enforce the arbitration clause in the employment agreement by failing to raise it prior to filing their Rule 60 motion. The premise of that argument is simply false: the defendants asserted their rights under the arbitration clause in the proceedings before the Equal Employment Opportunity Commission. Dahman now raises a new argument that the arbitration clause was not a material term of the employment agreement and thus it did not survive once he turned 64, when the agreement was said to expire according to its express terms. That

[2]Dahman complains that the district court did not discuss these specific public-interest factors and contends that a remand is therefore required for the court to reweigh the private- and public-interest factors in the first instance. Even if that were so, there is no need to remand where, as here, the outcome of the interest analysis is so clear that a contrary ruling would constitute an abuse of discretion. *See Azima*, 926 F.3d at 880.

proposition is debatable, *see Atl. Marine*, 571 U.S. at 66, but we decline to consider it as it was raised for the first time on appeal. *See Salazar ex rel. Salazar v. Dist. of Columbia*, 602 F.3d 431, 437 (D.C. Cir. 2010). Dahman additionally asks us to deem the defendants' *forum non conveniens* motion as untimely on equitable grounds. But we have permitted a foreign state to raise an arbitration-clause defense more than a year after entry of a default judgment, explaining that "it is important that [a foreign state's legal] defenses be considered carefully and, if possible, that the dispute be resolved on the basis of . . . all relevant legal arguments." *Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1552 (D.C. Cir. 1987) (internal quotation omitted); *see id.* at 1545, 1551. Thus even if we were inclined to draw an equitable line at some point, Dahman's case, with less than three months between the default judgment and the defendants' Rule 60(b) motion, would not be the appropriate occasion.