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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

DOV CHARNEY, Plaintiff and Appellant, v. STANDARD GENERAL, L.P. et al., Defendants and Respondents.	B269631 (Los Angeles County Super. Ct. No. BC586119)

APPEAL from an order of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed.

Keith A. Fink & Associates, Keith A. Fink and Olaf J. Muller for Plaintiff and Appellant.

Debevoise & Plimpton, Shannon Rose Selden, Erich O. Grosz, and Derek Wikstrom; Walker Stevens Cannom Yang, Bethany M. Stevens for Defendants and Respondents Standard General, L.P.; Standard General Master Fund, L.P.; P Standard General LTD.

No appearance for Defendant and Respondent American Apparel, Inc.

Sheppard, Mullin, Richter & Hampton, John P. Stigi III, John M. Landry, Jonathan D. Moss, and Andrea N. Feathers for Defendants and Respondents Allan Mayer, David Danzinger, Robert Greene, Marvin Igelman and William Mauer.

Shearman & Sterling, Patrick D. Robbins for Defendant and Respondent John Luttrell.

Dov Charney appeals from an order staying his lawsuit against respondents Standard General, L.P.; Standard General Master Fund, L.P.; P Standard General LTD (collectively Standard General); American Apparel, Inc. (American Apparel)[1]; Allan Mayer; David Danzinger; Robert Greene; Marvin Igelman; William Mauer; and John Luttrell (five former directors and the former chief financial officer (CFO) of American Apparel). We find no prejudicial abuse of discretion and affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

Charney is the founder and former chief executive officer (CEO) of Los Angeles-based clothing company American Apparel, a Delaware corporation. He is a California resident. In June 2015, Charney filed this case against respondents, alleging that the board of directors of American Apparel and CFO Luttrell

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[1] The appeal as to American Apparel has been stayed due to pending bankruptcy proceedings. (*In re American Apparel* (Bankr. D. Del., case No. 16-12551, filed Nov. 14, 2016).)

fraudulently induced him to raise cash for the company through an equity offering that significantly diluted his majority ownership stake in exchange for an "earn-out" arrangement that did not materialize. Instead, in June 2014, Charney was suspended as CEO, allegedly after he voted his shares to reelect board members.

Charney alleged further that he was fraudulently induced to give Standard General, a hedge fund entity, control of his American Apparel stock. Standard General allegedly is based in New York, but does business in California. Under a letter agreement, Standard General was to buy at least 10 percent of American Apparel's outstanding stock and then lend Charney funds to buy that stock from Standard General. The shares were to be voted pursuant to a cooperation agreement that gave Standard General control over Charney's voting rights. Charney was to pledge all his shares as collateral for the loan. In addition, a warrant agreement gave Standard General the right to buy a certain percentage of Charney's shares from him. Charney claims he was induced to enter into these agreements based on fraudulent assurances that Standard General would help him regain control of American Apparel and that, if he paid off the loan, Standard General would relinquish the cooperation and warrant agreements.

Later, Charney entered into a three-way standstill agreement with Standard General and American Apparel. As alleged in the complaint, representatives of Standard General told Charney that, in order to appease American Apparel's board of directors and Standard General's investors who opposed a hostile proxy takeover, the standstill agreement would not include the promise to reinstate him as CEO, but that Standard

General would remain committed to help him regain control. Under the standstill agreement, Charney and the majority of the American Apparel directors resigned from the board, allegedly allowing Standard General to take control of the company by appointing new directors. Under the same agreement, Charney allegedly was subjected to an unfair, protracted, and costly investigation that led to his termination as CEO.

The first cause of action was for violation of Corporations Code section 25401 (fraud in the offer, sale, or purchase of securities),[2] and was asserted only against Standard General. It referenced generally the agreements surrounding Charney's purchase of American Apparel shares from Standard General, but specifically sought rescission only of the warrant agreement, and unspecified damages.

The complaint asserted eight other causes of action. Among them were claims for intentional and negligent misrepresentation and breach of fiduciary duty against all respondents. Those claims were based, on the one hand, on the actions of the American Apparel board that led to the dilution of Charney's shares and his ouster as CEO, and, on the other hand, on the representations that induced him to enter into the series of agreements with Standard General and into the three-way standstill agreement. A separate claim for fraud in the inducement and rescission was asserted against Standard General and American Apparel, seeking rescission of the letter, cooperation, warrant, and standstill agreements. A conspiracy claim was asserted against all respondents, based on allegations that they colluded to oust Charney from American Apparel and to

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[2] Unless otherwise indicated, subsequent undesignated statutory references are to the Corporations Code.

prevent him from regaining control of the company. Claims of intentional and negligent infliction of emotional distress were premised on the American Apparel board's allegedly "outrageous" treatment of Charney "like a criminal," and its alleged collusion with Standard General. Finally, the complaint sought a declaration that the investigation of Charney was unfair, that he was entitled to reinstatement as CEO, and that the agreements with Standard General and American Apparel were fraudulently induced and therefore void.

The cooperation, warrant, and standstill agreements contain mandatory forum selection clauses, in which the parties agreed to subject themselves to the jurisdiction of the Delaware courts and not sue in any other state. The agreements also contain choice of law provisions, selecting Delaware law to govern the resolution of any disputes related to them.[3]

Standard General moved to stay Charney's lawsuit on the ground that the cooperation, warrant, and standstill agreements contained forum selection clauses giving Delaware exclusive jurisdiction over disputes arising out of those agreements. Standard General advised of two pending Delaware cases that sought to enforce the agreements against Charney. (*American Apparel v. Charney* (Del. Ch., case No. 11033-CB, filed May 15, 2015); *Standard General L.P. v. Charney* (Del. Ch., case No. CV

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[3] The letter agreement does not include a forum selection clause, and its choice of law provision selects New York law. The record does not include the loan and pledge agreements referenced in the letter agreement, but in its complaint filed in Delaware, Standard General alleged that those agreements are governed by New York law as well.

11287-CB, filed July 13, 2015).)[4] Standard General argued that "the inclusion of a token California statutory claim" was not a sufficient basis for suing in California since the complaint was largely based on contracts with Delaware forum selection clauses. American Apparel and all individual respondents joined in Standard General's motion.

Charney opposed, arguing that the court must deny the motion under section 25701, which voids any provision purporting to waive the Corporate Securities Law of 1968 (§ 25000 et seq.) as against public policy, citing *Hall v. Superior Court* (1983) 150 Cal.App.3d 411 (*Hall*). Charney argued further that the Delaware securities law differed from its California counterpart, and that Delaware had no substantial connection to the parties or transactions in the lawsuit. He claimed the alleged events and transactions occurred in either California or New York, and the only connection with Delaware was American Apparel's incorporation in that state. In addition, Charney contended the forum selection clauses were unenforceable because he had been fraudulently induced to enter into the agreements.

In reply, Standard General argued that Charney had "repackaged" common law fraud claims as a securities fraud claim; that the complaint did not allege the forum selection provisions were themselves fraudulently induced; that Delaware had a substantial connection to the agreements as the situs of the stock; that Delaware securities law was more favorable than its

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[4] In a third case, Charney sued American Apparel for unpaid legal fees under his employment agreement. (*Charney v. American Apparel* (Del. Ch., case No. 11098-CB, filed June 4, 2015).)

California counterpart; and that were California to proceed with the lawsuit, it would result in piecemeal and potentially conflicting resolutions by the Delaware and California courts.

In December 2015, the trial court allowed the requested joinders and stayed the entire action until final resolution or dismissal of the lawsuits filed in Delaware on the same issues and involving the same parties, or until further order of the court. The court reasoned that section 25701 prevented it from dismissing or staying the first cause of action, citing *Hall*, *supra*, 150 Cal.App.3d 411. The court found that Charney was a purchaser of stock in California and had the unwaivable right to have the California Securities Law applied to any dispute arising out the transaction. Nevertheless, the court chose to enforce the forum selection clauses in the agreements as to the remaining causes of action, reasoning that the agreements were the cornerstone of the complaint, and that the forum selection clauses themselves had not been obtained by fraud. The court then stayed the first cause of action under its inherent authority to avoid inconsistent rulings with the pending Delaware cases.

This appeal followed.[5] The individual defendants have

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[5] After the case was stayed, in June 2016 Charney filed an answer and counterclaims that "comprise his California allegations" in Standard General's Delaware case, and he sought discovery in that case. (*Standard General L.P. v. Charney* (Del. Ch., Dec. 12, 2016, No. CV 11287-CB) 2016 WL 7212303.) A special master was appointed, who recommended a trial date in December 2017. (*Id.*) Discovery was still ongoing in April 2017, when the special master stayed certain discovery until Chancellor Bouchard could render a decision on Standard General's motion for judgment on the pleadings. (See *Standard*

joined in Standard General's respondent's brief on appeal.[6]

DISCUSSION

A mandatory forum selection clause, which requires the parties to litigate exclusively in an agreed-upon forum, will generally be given effect unless enforcement would be unreasonable or unfair. (*Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 147 & fn. 2 (*Verdugo*).) Such a clause "is reasonable if it has a logical connection with at least one of the parties or their transaction. [Citations.]" (*Id*. at p. 147.) "Nonetheless, 'California courts will refuse to defer to the selected forum if to do so would substantially diminish the rights of California residents in a way that violates our state's public policy.' [Citations.]" (*Ibid*.)

"The party opposing enforcement of a forum selection clause ordinarily 'bears the "substantial" burden of proving why it should *not* be enforced.' [Citations.] That burden, however, is reversed when the claims at issue are based on unwaivable rights created by California statutes. In that situation, the party seeking to enforce the forum selection clause bears the burden to show litigating the claims in the contractually-designated forum 'will not diminish in any way the substantive rights afforded . . . under California law.' [Citations.]" (*Verdugo*, *supra*, 237 Cal.App.4th at pp. 147–148.)

General L.P. v. Charney (Del. Ch., Apr. 11, 2017, No. CV 11287-CB) 2017 WL 2491519.)

[6] On appeal, Charney does not separately address the propriety of staying the action against respondents other than Standard General—the only respondent identified in the opening brief.

Under the majority rule, a trial court's decision to enforce a forum selection clause is reviewed for abuse of discretion. (*Verdugo*, *supra*, 237 Cal.App.4th at p. 148.) The parties agree we should apply that standard here. An abuse of discretion occurs when the trial court takes an action that is arbitrary, capricious, or without a basis in reason. (*Buehler v. Alpha Beta Co.* (1990) 224 Cal.App.3d 729, 735.) The trial court's exercise of its "inherent and statutory authority to control . . . the litigation" is subject to the same standard of review. (*People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 23–24 [court's power to provide for orderly conduct of proceedings is reviewed for abuse of discretion], citing Code Civ. Proc., § 128, subd. (a)(3).)

I

The trial court's discretion to enforce a forum selection clause is limited by section 25701, which "applies where there is an offer to sell or buy securities in California" and "renders void any provision purporting to waive or evade the Corporate Securities Law."[7] (*Hall*, *supra*, 150 Cal.App.3d at pp. 417, 418.) Section 25701 compels denial of enforcement of such a clause if the chosen forum is likely to apply its own law because "the right of a buyer of securities in California to have California law and its concomitant nuances apply to any future dispute arising out of the transaction is a 'provision' within the meaning of section 25701 which cannot be waived or evaded by stipulation of the parties to a securities transaction." (*Hall*, at p. 418.) Later cases have modified the rule stated in *Hall* to require that a defendant

[7] Section 25701 provides: "Any condition, stipulation or provision purporting to bind any person acquiring any security to waive compliance with any provision of this law or any rule or order hereunder is void."

either show "the foreign forum provides the same or greater rights than California, or the foreign forum will apply California law on the claims at issue." (*Verdugo*, *supra*, 237 Cal.App.4th at p. 157.)

The trial court expressly agreed with Charney that his first cause of action could not be dismissed or stayed because section 25701 prevented enforcement of the forum selection clauses as to his claim for securities fraud under section 25401. Nevertheless, on its own motion, the court stayed this cause of action under its plenary power to control the proceedings before it. That power is not unlimited as the court may not enforce "a general rule where the Legislature validly mandated an exception." (See *Koch-Ash v. Superior Court* (1986) 180 Cal.App.3d 689, 697–698 ["an express legislative mandate for immediate trial to serve substantive public policy concerns may supersede the general inherent administrative powers of trial courts"].) Since the court concluded it had no discretion to stay the first cause of action under the specific mandate of section 25701, it was unreasonable for it to then conclude it had discretion to stay the same cause of action under its plenary power.

Although the court's reasoning may be internally inconsistent and legally flawed, it is not the end of our inquiry because, under the abuse of discretion standard, reversal is required only if "'it appears that there has been a miscarriage of justice.' [Citation.]" (*Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 80.) In other words, if the trial court reaches the correct result, we will not disturb its decision on appeal merely because the court gave the wrong reasons for its ruling. (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18–19.)

Standard General argues that by its express terms section 25701 protects only buyers of securities, and that Charney is not entitled to its protection because he does not seek to rescind the actual purchase of securities, but only the warrant agreement. As a general rule, a complaint is to be read liberally to determine "'if upon a consideration of all the facts stated it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, . . . although the facts may not be clearly stated, or may be intermingled with a statement of other facts irrelevant to the cause of action shown, or although the plaintiff may demand relief to which he is not entitled under the facts alleged.' [Citation.]" (*Chase Chemical Co. v. Hartford Accident & Indemnity Co.* (1984) 159 Cal.App.3d 229, 242.) In some parts of the complaint, Charney alleges that he was fraudulently induced to purchase securities from Standard General, and he seeks to rescind more than just the warrant agreement. Therefore, the complaint may be read, at least in part, as seeking relief for the purchase of securities.

Assuming that section 25701 applies based on the allegations in the complaint, we consider whether the court had discretion to enforce the forum selection clause as to the securities fraud cause of action either because Delaware "provides the same or greater rights than California," or because Delaware "will apply California law on the claims at issue." (*Verdugo*, *supra*, 237 Cal.App.4th at p. 157.) Charney, as appellant, must establish both error and prejudice on appeal. (*Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341, 1369.) We do not find his analysis sufficient to meet that burden.

The parties and the trial court assumed that a Delaware court would apply the Delaware Securities Act (Del. Code Ann.

tit. 6, § 73-101 et seq.) to Charney's first cause of action. Standard General argued that the fraud provisions and remedies of that statute (*id.*, §§ 73-201, 73-605)[8] would not diminish Charney's rights under the comparable provisions of California's Corporate Securities Law (§§ 25401, 25501).[9] In his reply brief,

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[8] "It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly: [¶] (1) To employ any device, scheme or artifice to defraud; [¶] (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or [¶] (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person." (Del. Code Ann. tit. 6, § 73-201.)

"Any person who . . . [¶] . . . [o]ffers, sells or purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading (the buyer or seller not knowing of the untruth or omission), and who does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known of the untruth or omission, is liable to the person buying or selling the security from or to him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with the interest at the legal rate from the date of payment costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security." (Del. Code Ann. tit. 6, § 73-605(a)(2).)

[9] Section 25401 makes it illegal to "offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue

Charney argues that Standard General did not meet its burden to show that his rights will not be diminished because it did not offer a comprehensive overview of the Delaware securities fraud statutory scheme. But neither does Charney on appeal. Nor does he point to any significant differences in the substantive rights provided under the statutory provisions Standard General offered for comparison. The only difference Charney notes is that the definition of "sale" in section 25017, subdivision (a) appears to be broader because it includes not only "every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value" but also "any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities."[10] He does not explain how that broader definition gives him greater substantive rights.

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statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

Section 25501 establishes civil liability for a violation of section 25401: "Any person who violates Section 25401 shall be liable to the person who purchases a security from him or sells a security to him, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may be, no longer owns the security), unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know (or if he had exercised reasonable care would not have known) of the untruth or omission."

[10] Compare Del. Code Ann. tit. 6, § 73-103(a)(17) which defines "sale" as "every contract of sale of, contract to sell or disposition of a security or interest in a security for value."

We do not ordinarily consider arguments raised for the first time in a reply brief. (*American Indian Model Schools v. Oakland Unified School District* (2014) 227 Cal.App.4th 258, 275.) Even were we to do so here and agree that California securities fraud law is more favorable to Charney's statutory fraud claim, a recent decision of the Delaware Chancery Court indicates the parties' assumption that Delaware would apply its securities statute to that claim is unwarranted. (See *FdG Logistics LLC v. A&R Logistics Holdings, Inc.* (Del. Ch. 2016) 131 A.3d 842 (*FdG Logistics*).)

In *FdG Logistics*, *supra*, 131 A.3d 842, Chancellor Bouchard, the judicial officer assigned to hear the pending Delaware case involving Standard General and Charney, explained that under existing precedent "the Delaware Securities Act 'only applies where there is a sufficient nexus between Delaware and the transaction at issue,'" which requires more than a company's incorporation in Delaware. (*Id*. at p. 853, citing *Singer v. Magnavox Co.* (Del. 1977) 380 A.2d 969, 981, overruled on other grounds by *Weinberger v. Uop, Inc.* (Del. 1983) 457 A.2d 701; *Dofflemyer v. W.F. Hall Printing Co.* (D.Del. 1983) 558 F.Supp. 372, 377.) A contractual choice of law provision selecting Delaware law does not change that result. (*FdG Logistics*, at pp. 853–854.)

At oral argument, counsel for Charney claimed a Delaware court may decline to apply California law as well, citing *Martinez v. E.I. DuPont de Nemours and Co., Inc.* (Del. 2014) 86 A.3d 1102 (*Martinez*). In that case, the Delaware Supreme Court affirmed the grant of a *forum non conveniens* motion. The court's holding was based in part on "the novelty and importance of the legal issues presented in this case—especially since the governing law

is set forth in Spanish, not English." (*Id.* at p. 1106.) The court held that those issues "were more appropriately determined by the courts of the only sovereign whose law is at stake—Argentina—just as this Court has recognized that novel or important issues of Delaware law are best determined by Delaware courts." (*Id.* at pp. 1106–1107, fn. omitted.)

Martinez, *supra*, 86 A.3d 1102 does not suggest that a Delaware court would decline to apply the law of another jurisdiction as a matter of course. In fact, in *Bell Helicopter Textron, Inc. v. Arteaga* (Del. 2015) 113 A.3d 1045, a choice of law case, the Delaware Supreme Court concluded that Mexican law should govern the resolution of a tort case against a Delaware company filed in a Delaware court. (*Id.* at p. 1048.) The concern about applying a law written in a foreign language (*id.* at pp. 1059–1060; *Martinez*, at p. 1106) is not present in the application of the statutory law of a sister state, and the Delaware Chancery Court has had no problem applying the securities law of another state. (See, e.g., *Kronenberg v. Katz* (Del. Ch. 2004) 872 A.2d 568, 595–602 [applying Pennsylvania Securities Act].)

As *FdG Logistics*, *supra*, 131 A.3d 842 indicates, it is unlikely that a Delaware court would apply that state's own securities law to Charney's statutory securities fraud claim. Thus, under the authorities on which Charney relies, enforcing the forum selection clauses would not diminish his unwaivable rights under the California Corporate Securities Law. (*Verdugo*, *supra*, 237 Cal.App.4th at p. 157; *Hall*, *supra*, 150 Cal.App.3d at pp. 418–419.) It follows that section 25701 does not prevent the trial court from staying Charney's first cause of action.

In his reply brief, Charney also argues that California has an interest in enforcing the "fundamental" right to a jury trial, which he would be denied in Delaware Chancery Court. We decline to find reversible error on this belatedly raised issue. The right to a jury trial in California is not all encompassing; rather, it is available as "'"a matter of right in a civil action at law, but not in equity." [Citations.]' [Citations.]" (*Nmsbpcsldhb v. County of Fresno* (2007) 152 Cal.App.4th 954, 958.) Charney does not address this distinction.

The agreements at issue here include jury trial waivers, which are unenforceable under California law. (See *Rincon EV Realty LLC v. CP III Rincon Towers, Inc.* (2017) 8 Cal.App.5th 1, 12, citing *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 950, 956–958, 961, 967 [contractual predispute jury trial waivers unenforceable].) However, Charney did not rely on those waivers in the trial court, nor does he argue on appeal that such waivers are enforceable in Delaware. Contrary to his representation, the forum selection clauses do not require that an action be tried in the Delaware Chancery Court to the exclusion of Delaware federal and state courts.

Most importantly, Charney cites no authority for the proposition that unwaivable rights under section 25701 may be strictly procedural, or may extend beyond the provisions of the Corporate Securities Law itself. To the contrary, the cases upon which Charney relies suggest that the forum selection clauses may not diminish *substantive* rights. (See e.g. *Verdugo, supra,* 237 Cal.App.4th at pp. 147–148, quoting *Wimsatt v. Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1520–1524 [forum selection clause may not "'diminish in any way the substantive rights afforded . . . under California law'"].) By its

own terms, section 25701, which is part of the Corporate Securities Law, voids only waivers "of compliance with any provision of this law," not all waivers of California law.

Charney has not shown that his unwaivable rights under section 25701 would be diminished by enforcing the forum selection clauses.

II

In the alternative, Charney argues that enforcing the forum selection clauses would be unreasonable and unjust because Delaware has no substantial relationship to the parties or transactions at issue. Such clauses "must have some rational basis in light of the facts underlying the transaction. [Citations.]" (*CQL Original Products, Inc. v. National Hockey League Players' Assn.* (1995) 39 Cal.App.4th 1347, 1354.) According to Charney, American Apparel's incorporation in Delaware does not provide a rational basis for the forum selection clauses since the company is a party only to the standstill, but not to the other agreements, and no other party or event is related to Delaware.[11] We are not convinced.

Although the Delaware securities law does not apply to Charney's statutory fraud claim, other aspects of Delaware law may reasonably apply to his common law claims because American Apparel is incorporated in the state. (See, e.g., *Kronenberg v. Katz, supra,* 872 A.2d at p. 589 [reasoning Delaware fraud law may apply to fraud in inducement to set up

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[11] The record is unclear on this point. In its Delaware complaint, Standard General alleges that one of its partnerships, Standard General, L.P., is organized under Delaware law. In his complaint, Charney alleges that the same partnership is organized under New York law.

Delaware corporation, but concluding Delaware law similar to Pennsylvania law "for all relevant purposes"].) California courts recognize that the state of incorporation has "a keen and intimate interest in internal corporate affairs, including the purchase and sale of its shares, as well as corporate management and operations. [Citation.]" (*Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 467–468.) "'The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands.' [Citations.] 'States normally look to the State of a business' incorporation for the law that provides the relevant corporate governance general standard of care.' [Citation.]" (*Vaughn v. LJ Internat., Inc.* (2009) 174 Cal.App.4th 213, 223.) While in some cases California courts may, in the interest of justice, take jurisdiction over the internal affairs of a foreign corporation, declining to do so is not necessarily an abuse of discretion. (See generally 9 Witkin, Summary of Cal. Law (10th ed. 2005) Corporations, § 239.)

Charney highlights the facts that he is a California resident and American Apparel is based in California, but he also acknowledges that when he took the company public in 2007, he chose to reincorporate it in Delaware. The crux of the current dispute is Charney's attempt to regain control of the company he founded and controlled for many years, and from which he was ousted after an internal investigation. Although the attempted takeover involved buying shares through an intermediary and encumbering his outstanding shares and voting rights, it is not

unreasonable to conclude that to a large extent Charney's claims implicate the internal affairs of the corporation. Delaware would be the proper place to resolve them, especially since Charney himself made the decision to reincorporate American Apparel there. (Cf. *Mallinckrodt, Inc. v. E–Z–EM Inc.* (D.Del.2009) 670 F.Supp.2d 349, 356 ["when a corporation chooses to incorporate in Delaware and accept the benefits of incorporating in Delaware, it cannot complain once another corporation brings suit against it in Delaware"].)

Finally, Charney argues the forum selection clauses are unenforceable because the agreements were allegedly induced by fraud. That claim has been rejected in cases enforcing arbitration clauses in agreements allegedly induced by fraud. (See *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 416–417, citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.* (1967) 388 U.S. 395, 402.) The court in *Rosenthal* distinguished between fraud in the execution or inception, which renders an arbitration provision void along with the entire contract, and fraud in the inducement, which does not affect the arbitration provision unless it is specifically alleged as to that provision. (*Id.* at pp. 415–419.)

Courts have applied the same reasoning to forum selection clauses. (See e.g. *Scherk v. Alberto-Culver Co.* (1974) 417 U.S. 506, 519, fn. 14 ["an arbitration or forum-selection clause in a contract is not enforceable if the inclusion of that clause in the contract was the product of fraud or coercion"]; *Moses v. Business Card Express, Inc.* (6th Cir.1991) 929 F.2d 1131, 1138 [general allegation of fraud does not nullify forum selection clause].) Here, Charney has not alleged the forum selection clauses were induced by fraud. The clauses, therefore, are enforceable.

In sum, Charney has not shown that the trial court prejudicially abused its discretion in enforcing the forum selection clauses and staying this case in its entirety.

DISPOSITION

The order is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.