

<b>Arya's Collection Inc. v Brink's Global Servs. USA, Inc.</b>
2008 NY Slip Op 32818(U)
October 8, 2008
Supreme Court, New York County
Docket Number: 112127/07
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUSTICE DORIS LING-COHAN

PART 36

*Justice*

Arya's Collection Inc.,

INDEX NO. 112127/07

- v -

Brink's Global Services  
USA, Inc.

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for dismiss

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

PAPERS NUMBERED

1, 2

Answering Affidavits -- Exhibits \_\_\_\_\_

3

Replying Affidavits \_\_\_\_\_

4

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion to dismiss is granted  
in accordance with the attached memorandum  
decision.

**FILED**

OCT 15 2008

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 10/8/08



J.S.C.

**JUSTICE DORIS LING-COHAN**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 36

-----X

ARYA'S COLLECTION INC.,

Plaintiff,

Index No.:  
112127/07

- against -

Motion Seq: 002

BRINK'S GLOBAL SERVICES USA, INC.,

**FILED**

OCT. 15 2008

-----X  
Defendant

DORIS LING-COHAN, J:

**COUNTY CLERK'S OFFICE  
NEW YORK**

In this negligence action, defendant Brink's Global Services, U.S.A., Inc., s/h/a Brink's Global Services USA, Inc. (Brink's) moves pursuant to CPLR 3211 (a) (10) and CPLR 1003, for an order dismissing the amended complaint on the ground that plaintiff Arya's Collection Inc. (Arya), has failed to join a necessary and indispensable party to the action. In the alternative, defendant moves pursuant to CPLR 3211 (a)(2), for an order dismissing the amended complaint on the ground that the court does not have subject matter jurisdiction to hear the matter.

For the following reasons, defendant's motion is granted.

**Background**

In October 2006, plaintiff, a jeweler, entered into a written agreement with defendant, a company engaged in the service of transporting high-value goods, for the transport of plaintiff's jewelry from its place of business to the Jewelers International Showcase trade show (JIS trade show).

On October 18, 2006, defendant picked up the jewelry for transport and plaintiff was provided with three show receipts in connection with the shipment (see show receipts dated October 18, 2006, Notice of Motion, Exh. E). Various "Terms and Conditions" are set forth on the backs of each receipt (id.). Paragraph XI of the "Terms and Conditions" provides:

"[c]laims relating to Shipments solely within the United States shall be governed by Connecticut law other than the law relating to conflicts and You agree that any such claim shall be adjudicated in the United States District Court for the District of Connecticut".

(id.). Pursuant to Paragraph I.5 of the Terms and Conditions, the term Shipment is defined as "a distinctively and securely sealed or locked container(s) of Property, collected or received in one place at any one time, with one or more designated Destinations or Consignees" (id.).

On October 20, 2006, plaintiff acknowledged receipt of the jewelry delivery (see Delivery Receipt, Affidavit in Opposition, Exhibit A). The "Acknowledgment of Receipt" portion of the Delivery Receipt provides:

"I acknowledge that I have inspected and received the pouch(es) described above, and, unless otherwise noted on the face of this receipt, that each pouch was securely sealed upon it's [sic] delivery to me, and that no pouch showed any evidence of tampering upon such delivery to me. \*\*\* I understand that Brink's will not be liable for any claimed loss of or damage to any of the contents of any pouch unless (1) the pouch is not securely sealed or shows evidence of tampering at the time of its delivery to me; (2) I note that

fact on the face of this receipt; and (3) Brink's is otherwise liable for the loss or damage under the applicable agreement(s) with my company. I also understand that in no event will Brink's be liable for any consequential or incidental losses or damages, including loss of profits \*\*\*"

(id.). The Delivery Receipt also indicates in a box on the right hand side of the bottom stating "Outbound Data: Back to Origin"(id.).

The JIS trade show was held from October 21 to October 24, 2006 at the Miami Beach Convention Center in Miami, Florida. Plaintiff claims the value of the jewelry delivered has a value of \$763,471.50, although the show receipts reflect that the total liability of the shipment was valued at \$250,000.00 (see show receipts dated October 18, 2006, Notice of Motion, Exh. E).

Plaintiff alleges that on October 24, 2006, at approximately 4:00 P.M., at the conclusion of the JIS trade show, the jewelry was picked up and stolen by a former employee of defendant, Joseph Esposito, who was allegedly wearing a Brink's uniform, and in possession of official Brink's identification at the time of the theft. According to defendant, Esposito's last month of employment was March 2006 (see Affidavit of Kim Christian, manager of Brink's human resources department, Notice of Motion, Exh. E).

**Discussion**

The court will first address the issue concerning whether or not the court has subject matter jurisdiction to hear the claim.

[\* 5 ]

Defendant argues that the parties entered into a contractual forum selection clause, selecting the United States District Court of Connecticut as the forum to adjudicate the parties claims, and therefore, this court lacks jurisdiction. Specifically, defendant points to "Terms and Conditions" set forth on the show receipts.

Plaintiff argues that the show receipts only concerned delivery of Aryas' property to the JIS trade show. Plaintiff further asserts that it signed a receipt for its property on October 20, 2006 (see Delivery Receipt, Opposition to Motion, Exh. A), which it claims constituted a re-contract for the return trip of its merchandise. Plaintiff claims that there were no terms and conditions printed on the Acknowledgment of Receipt and therefore, it cannot be held to the forum selection clause as set forth on the show receipts.

It is well settled that forum selection clauses are prima facie valid and should be enforced unless the party objecting to the enforcement shows that the clause results from fraud, is overreaching, unreasonable or unfair, or that it violates public policy (Sterling Natl Bank v Eastern Shipping Worldwide, Inc., 35 AD3d 222 [1<sup>st</sup> Dept 2006]; Boss v American Express Fin. Advisors, Inc., 15 AD3d 306 [1<sup>st</sup> Dept 2005], affd 6 NY3d 242 [2006]).

Here, a review of the Terms and Conditions indicates that the claims concern not only delivery of the property to the JIS

[\* 6]

trade show but also any claims relating to the shipment of merchandise. Plaintiff's claim concerns defendants' alleged negligence in securing the pick-up of merchandise for shipment back to New York, which occurred on October 24, 2006. Moreover, the Delivery Receipt, is simply that, an acknowledgment that plaintiff received the jewelry on October 20, 2006 for the JIS Trade Show, which ran from October 21, 2006 through to October 24, 2006. While the Delivery Receipt indicates that the merchandise was being sent back to its origin, there is nothing to indicate that the Delivery Receipt reset the "Terms and Conditions" relating to the return shipment, as plaintiff suggests. The forum selection clause as set forth on the show receipts is therefore applicable.

As plaintiff has not shown that the forum selection clause results from fraud, is overreaching, unreasonable or unfair, or violates public policy (see Sterling Nat'l Bank, 35 AD3d 222; Boss, 15 AD3d 306), defendant's motion to dismiss based on the forum selection clause is granted.

Based on the foregoing, the court need not reach the remainder of defendant's arguments.

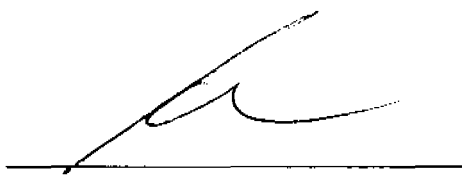
Conclusion

Accordingly, it is

ORDERED that the motion to dismiss by defendant Brink's Global Services, U.S.A., Inc., s/h/a Brink's Global Services, USA, Inc. is granted and the Clerk of the Court is directed to enter judgment in favor of defendant dismissing the complaint in its entirety, with costs and disbursements to defendant as taxed by the Clerk; and it is further

ORDERED that within 30 days of entry of this order, defendant shall serve a copy upon plaintiff with notice of entry.

Dated: October 8, 2008



Hon. Doris Ling-Cohan, J.S.C.

**FILED**  
OCT 15 2008  
COUNTY CLERK'S OFFICE  
NEW YORK