

Honeywell Intl., Inc. v Arc Energy Servs., Inc.
2016 NY Slip Op 32557(U)
December 16, 2016
Supreme Court, New York County
Docket Number: 653341/2015
Judge: Charles E. Ramos
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----x
HONEYWELL INTERNATIONAL, INC.,

Plaintiff,

Index No. 653341/2015

- against -

ARC ENERGY SERVICES, INC. and NATIONAL
OILWELL VARCO,

Defendants.
-----x

Hon. C. E. Ramos, J.S.C.:

In motion sequence 002, plaintiff Honeywell International, Inc. ("Honeywell") moves pursuant to CPLR 2221 to reargue this Court's prior determination wherein this Court granted defendant Arc Energy Services, Inc.'s ("Arc's") motion to dismiss the complaint based on the doctrine of *forum non conveniens* pursuant to CPLR 327.

For the reasons set forth below, the Court grants leave to reargue, and upon reargument, denies the motion to reargue and adheres to its prior decision.

Background

According to the complaint, Honeywell is a Delaware corporation, having an office and principal place of business in New Jersey (Complaint, ¶ 1). Arc is a foreign corporation with its principal place of business in South Carolina (*id.* at ¶ 2). Defendant National Oilwell Varco ("NOV") is a foreign corporation with its principal place of business in Texas (*id.* at ¶ 3). Honeywell operates a chemical manufacturing plant in Virginia

(the "Plant") (*id.* at ¶ 6).

On March 13, 2013, Honeywell and Arc executed a Service Agreement (the "Agreement") pursuant to which Arc would provide construction services at the Plant (Affirmation of Sambursky ["Sambursky Aff."], ¶ 4). Section 13.14 of the Agreement, which governs the choice of law and forum, states that:

"[t]he federal and state courts located within New York City, New York will have exclusive jurisdiction to adjudicate any dispute arising out of or related to this Agreement" (Affirmation in Support of Motion to Dismiss of Ayes ["Ayes Aff."], Ex. B).

On September 25, 2014, Honeywell issued and Arc accepted Purchase Order number 4502133775 (the "Purchase Order") for Arc's replacement of an agitator shaft (Complaint, ¶ 15). The Purchase Order provides that the work performed was subject to the terms and conditions of the Agreement (Sambursky Aff. at ¶ 16). Section 29 of the Purchase Order states that:

"[t]he federal and state courts located within New York City, New York will have exclusive jurisdiction to adjudicate any dispute" (Ayes Aff. at Ex. C).

In October 2014, Arc performed the services pursuant to the Purchase Order at the Plant (*id.* at ¶ 12).

In October 2015, Honeywell commenced this action alleging that Arc breached the Purchase Order, breached the express and implied warranties in the Purchase Order, and acted negligently in the performance of its obligations (Complaint, at ¶¶ 45-64). Arc moved pursuant to CPLR 327 to dismiss the complaint on the

basis of *forum non conveniens* (Motion 001) (NYSCEF Doc. No. 5). The Court's decision granted the motion on condition that Arc submits to personal jurisdiction and venue in Virginia (NYSCEF Doc. No. 33).

Discussion

Honeywell moves to reargue the decision on the basis that Arc waived its right to challenge the Court's jurisdiction based on *forum non conveniens*, and otherwise, that the elements of dismissal based on *forum non conveniens* should be denied under CPLR 327.

CPLR 2221(d)(2) provides that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." Reargument does not allow an unsuccessful party to argue again the questions previously decided or to assert new arguments different from the original arguments (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]).

In support of its motion to reargue, Honeywell argues that a motion to dismiss for *forum non conveniens* should not be entertained where a party has entered into a contract containing a forum selection clause. This argument is identical to its previous, unsuccessful argument it posited on the prior motion, and is not a proper argument on a motion to reargue.

In addition, Honeywell contradicts its previous argument

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that CPLR 327 is inapplicable and asserts a new argument that the Court misapplied the law under CPLR 327 in dismissing the complaint.

A forum selection clause is prima facie valid and enforceable unless it is unreasonable (*Brooke Group v JCH Syndicate* 488, 87NY2d 534 [1996]). New York courts may decline to exercise jurisdiction over a cause of action upon consideration of justice, fairness and convenience and "need not entertain causes of action lacking a substantial nexus with New York" (*Martin v Mieth*, 35 NY2d 414, 417-18 [1974]). Under CPLR 327, the trial court, in its discretion, may consider factors such as the existence of an adequate alternative forum, the residency of the parties, and the potential hardship to the defendant (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984]).

Here, the Court in its discretion, declines to impose jurisdiction because the cause of action has no nexus with New York. None of the parties are domiciled in New York, Arc's principal place of business is in South Carolina, and the Agreement and Purchase Order do not involve services or transactions performed in New York. The Plant is located in Virginia, and the alleged breaches took place in Virginia. Furthermore, the relevant witnesses are located in Virginia. The potential hardship to Arc includes traveling to New York to litigate and producing witnesses to testify in New York.

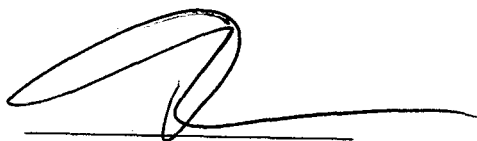
Moreover, Arc has consented to personal jurisdiction and venue in Virginia. Therefore, this Court determined that Virginia is an adequate alternative forum for litigating this action.

Accordingly, it is

ORDERED that the motion for leave to reargue is granted, and upon reargument, the Court adheres to its prior decision granting defendants' motion to dismiss the complaint. The clerk is directed to enter judgment accordingly.

Dated: December 16, 2016

ENTER:

A handwritten signature in black ink, appearing to be 'Charles E. Ramos', written over a horizontal line.

J.S.C.

HON. CHARLES E. RAMOS