

LG Funding, LLC v Four Paws Orlando LLC
2017 NY Slip Op 32391(U)
November 9, 2017
Supreme Court, Nassau County
Docket Number: 606790/17
Judge: Thomas Feinman
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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU**

Present:

Hon. Thomas Feinman
Justice

LG FUNDING, LLC,

Plaintiff,

- against -

FOUR PAWS ORLANDO LLC d/b/a
FOUR PAWS ORLANDO and
JAMES PELLET a/k/a JAMES FRANCIS PELLET,

Defendants.

TRIAL/IAS PART 6
NASSAU COUNTY

INDEX NO. 606790/17

MOTION SUBMISSION
DATE: 9/28/17

MOTION SEQUENCE
NO. 1

The following papers read on this motion:

Notice of Motion and Affidavits.....	<u> X </u>
Memorandum of Law in Support of Motion.....	<u> X </u>
Affirmation in Opposition.....	<u> X </u>
Memorandum of Law in Support of Opposition.....	<u> X </u>
Reply Affirmation.....	<u> N/A </u>

The defendants move for an order pursuant to CPLR §510(1) changing the venue of this action to Kings County. The defendants submit a Memorandum of Law in support of its motion. The plaintiff submits opposition, and a Memorandum of Law in support of the opposition.

The plaintiff initiated this action sounding in breach of contract seeking damages and attorneys fees. The defendants, by way of the instant motion, argue that the proper venue is Kings County.

The subject contract contains the following forum selection clause:

“Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if LG so elects, be instituted in any court sitting in New York State (the “Acceptable Forums”). The parties agree that the Acceptable Forums are convenient, and submit to the jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue.”

It is well settled that forum selection provisions are prima facie valid. (*Brooke Group v. JCH Syndicate*, 87 NY2d 530). In order to set aside a forum selection clause, a party must demonstrate that:

“[E]nforcement would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the forum set in the contract would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court.” (*Hunt v. Landers*, 309 AD2d 900, quoting *Hirschman v. National Textbook Co.*, 184 AD2d 495; *Koko Contracting, Inc. v. Continental Environmental Asbestos Removal Corp.*, 272 AD2d 585).

“Forum selection clauses are enforced because they provide certainty and predictability in the resolution of disputes.” (*Brooke Group v. JCH Syndicate*, 87 NY2d 530). When a forum selection clause lacks specificity regarding any particular jurisdiction, and a defendant has no way of knowing what state in the union they would be required to litigate, the forum selection clause has not been enforced. (*Sterling National Bank v. Til-Mar Design, Inc.*, Index No. 59981/2004, Civ.Ct.NY, April 28, 2005). In *Sterling National Bank, supra*, the court stated that the forum selection provision, was a “floating forum selection” clause which did not satisfy the purpose of providing certainty and predictability to the parties. In *Sterling National Bank, supra*, the agreement provided that the parties agreed to be sued not only in any state where the plaintiff had a principal office, but also in any state where any future unidentified assignee of the agreement had a principal office, and allowed the plaintiff, or a future assignee, to choose to sue in federal or state court. The court further clarified that public policy dictates that the forum selection clause be “clear and specific.” (*Id.*)

Here, the forum selection clause is clear and specific and designates New York courts. The contract contains a forum selection clause which provides that any action proceeding under the subject contract shall be brought in any court sitting in New York and the parties waived any objections to venue. Forum selection clauses have been held to be valid and binding upon the parties. (*D.O.T. Tidedown & Lifting Equipment v. Wright*, 272 AD2d 290; *Koko Contracting, Inc. v. Continental Environmental Asbestos Removal Corp.*, 272 AD2d 585). Such forum selection clauses have been upheld in written agreements which a party expressly consents to the jurisdiction of the New York courts. (*Creative Resources, Inc. v. Rumbellow*, 244 AD2d 383; *Banco Do Commercio E Industria v. Esusa Engenharia E. Construcoes*, 173 AD2d 340).

Accordingly, as the forum selection clause is valid and binding upon the parties, this Court has jurisdiction over the defendants, and venue is proper.

In light of the foregoing, the defendants’ motion is denied.

ENTERED
NOV 14 2017
NASSAU COUNTY
COUNTY CLERK'S OFFICE

ENTERED

J.S.C.

ORIGINAL

Dated: November 9, 2017