

XM Enters. LLC v Roberson

2019 NY Slip Op 33287(U)

September 4, 2019

Supreme Court, Queens County

Docket Number: 717747/2018

Judge: Denis J. Butler

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ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

-----x
XM ENTERPRISES LLC,

Plaintiff(s),

Index
Number: 717747/2018

-against-

Motion Date:
July 9, 2019

SEAN W. ROBERSON,
WESTLAKE SERVICES LLC d/b/a
WESTLAKE FINANCIAL SERVICES,

Defendant(s).
-----x

Motion Seq. No.: 002

The following papers were read on this motion by defendant Westlake Services LLC d/b/a Westlake Financial Services for an order, pursuant to CPLR 3211 (a), dismissing plaintiff's complaint for lack of venue and failure to state a cause of action upon which relief can be granted and for attorney's fees and costs.

	<u>Papers Numbered</u>
Notice of Motion, Affirmation, Affidavit, Exhibits.....	E17-22
Affirmation In Opposition, Affidavit, Exhibits....	E33-37
Reply Affirmation, Affidavit, Proposed Order, Exhibit.....	E39-42

Upon the foregoing papers, it is ordered that this motion is determined as follows:

This case involves the alleged prospective sale of a 2014 Nissan Maxima by plaintiff XM Enterprises LLC ("XM"), an automobile dealer, to defendant Sean W. Roberson on or around September 27, 2017.

Westlake is a consumer finance company engaged in the business of purchasing and servicing motor vehicle retail installment sales contracts pursuant to dealer agreements with dealers such as XM.

XM alleges causes of action against Westlake for promissory estoppel and negligent misrepresentation, surrounding the alleged prospective financing of defendant Roberson's purchase of the 2014 Maxima.

XM now moves to dismiss the complaint based upon a forum selection clause.

Forum selection clauses are prima facie valid and will not be set aside unless there is evidence of fraud, overreaching, or if enforcement of the clause would be unreasonable and unjust (see *Brooke Group Ltd. v JCH Syndicate* 448, 87 NY2d 530 [1996]; *Shah v Shah*, 215 AD2d 287 [1st Dept 1995]). When a contract is clear and unambiguous, a court must enforce the plain meaning of the agreement (see *Greenfield v Philles Records, Inc.*, 98 NY2d 562 [2002]). When a court upholds a forum selection clause, dismissal of the complaint is proper (see *British W. Indies Guar. Trust Co., Ltd. v Banque Internationale A Luxembourg*, 172 AD2d 234 [1st Dept 1991]).

Here, the forum selection clause of the master dealer agreement dated March 24, 2017, is clear and unambiguous. Specifically, paragraph 15 of the master dealer agreement provides as follows:

"Any actions or proceedings arising out of this Agreement, including, but not limited to, actions pertaining to the formation, validity, interpretation or alleged breach of this Agreement shall be brought against the Parties in the State of California, County of Los Angeles. Each Party consents to the jurisdiction of such courts in any action or proceeding and waives any objection to venue laid therein."


Paragraph 15 of the master dealer agreement covers all disputes arising from, or relating to, the relationship between XM and Westlake.

XM has failed to set forth any allegation of fraud or overreaching by Westlake. Additionally, "where a party to a contract has agreed to submit to the jurisdiction of a court, that party is precluded from attacking the court's jurisdiction on forum non conveniens grounds" (*Sterling Natl. Bank v Eastern Shipping Worldwide, Inc.*, 35 AD3d 222 [1st 2006]; see also *National Union Fire Ins. Co. of Pittsburgh, Pa. v Worley*, 257 AD2d 228 [1st Dept 1999]). XM, a business entity, is charged with awareness of the terms of the master dealer agreement.

Accordingly, the motion is granted to the extent that XM's complaint is hereby dismissed as against Westlake.

This constitutes the decision and order of the court.

Dated: September 4, 2019



Denis J. Butler, J.S.C.

FILED
SEP 09 2019
COUNTY CLERK
QUEENS COUNTY