

**CFG Merchant Solutions, LLC v Canyon Power
Solutions LLC**

2022 NY Slip Op 31649(U)

May 16, 2022

Supreme Court, Kings County

Docket Number: Index No. 531293/2021

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: COMMERCIAL PART 8

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CFG MERCHANT SOLUTIONS, LLC,

Plaintiff, Decision and order

- against -

Index No. 531293/2021

CANYON POWER SOLUTIONS LLC; SAYERS
CONSTRUCTION LLC; POWER SOLUTIONS
GROUP LLC and MARK SAYERS,

Defendants,

May 16, 2022

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PRESENT: HON. LEON RUCHELSMAN

The defendants Sayers Construction LLC d/b/a Sayers Construction and Power Solutions Group LLC d/b/a Power Solutions Group have moved seeking to dismiss the complaint pursuant to CPLR 3211(a)(8) on the grounds the court lacks jurisdiction over them and the lawsuit cannot proceed. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On September 23, 2021 the plaintiff entered into an agreement with Canyon Power Solutions LLC, d/b/a Canyon Power Solutions, whereby the plaintiff purchased \$355,000 of future receivable for \$250,000. The agreement provides that the seller agrees that "all actions or proceedings relating directly or indirectly hereto shall, at the option of Buyer, be litigated in courts located within" New York State, and unless the defendants initiate the action the defendants consent "to the jurisdiction and venue of any such court" in New York (see, Purchase

Agreement, § 27). An additional seller addendum was entered into between the parties which added defendants Sayers Construction LLC d/b/a Sayers Construction and Power Solutions Group LLC d/b/a Power Solutions Group as additional sellers. The addendum was signed by Mark Sayers the owner of the original defendant and the owner of the additional sellers as well. Paragraph 1 of the addendum states that "each Additional Seller is fully bound by all of the terms, conditions, representations, warranties and covenants of the Agreement. The Purchase Agreement is fully incorporated into this Addendum by reference, and binds and inures to the benefit of each of the Parties" (id).

The complaint alleges the defendants breached the agreements on November 24, 2021 and the plaintiff filed suit shortly thereafter alleging causes of action for breach of contract and breach of a guaranty. The defendants Sayers Construction LLC d/b/a Sayers Construction and Power Solutions Group LLC d/b/a Power Solutions Group have moved seeking to dismiss the complaint on the grounds they are not bound by the clauses in the original agreement whereby the defendants consented to jurisdiction in New York. Therefore, they contend the complaint must be dismissed. As noted the motion is opposed.

Conclusions of Law

A party may move to dismiss a complaint on the grounds that

the court lacks personal jurisdiction over the defendant (CPLR §3211(a)(8)).

It is well settled that when a subsequent agreement incorporates all the terms of the original agreement then all the terms of the original agreement remain binding on the parties (International Technologies Marketing Inc., v. Verint Systems Ltd., 157 F.Supp3d 352 [S.D.N.Y. 2016]). In Paxi, LLC v. Shiseido Americas Corp., 636 F.Supp3d 275 [S.D.N.Y. 2009] the court held that an addendum to a retailer agreement that contained a clause that stated "all the remaining covenants, terms and conditions of the Retailer Agreement remain in full force and effect" bound the parties to all the terms of the original retailer agreement since such terms were all incorporated into the addendum.

The cases cited by the defendants do not hold otherwise. New York Telephone Company v. Alvord & Swift, 49 AD2d 726, 372 NYS2d 671 [1st Dept., 1975] merely held that where a contract specifically does not incorporate provisions from an earlier contract then the parties are not bound by the provisions of the earlier contract. Again, Caravousanos v. Kings County Hospital, 22 Misc3d 1117(A), 880 NYS2d 222 [Supreme Court Kings County 2009] held that incorporation clauses in a construction subcontract bind a subcontractor only relating to the scope and quality of work performed by the subcontractor (see, Adams v.

Boston Properties Ltd., Partnership, 41 AD3d 112, 837 NYS2d 86 [1st Dept., 2007]); That case does not govern the facts of this case at all. CooperVision Inc., v. Intek Integration Tech Inc., 7 Misc3d 592, 794 NYS2d 812 Supreme Court Monroe County 2005] held that a forum selection clause contained in a software license agreement was not incorporated into a new implementation agreement. The court explained that the language of the implementation agreement "did not, as a general matter, expressly make each term of each writing a part of the others as if included therein, and did not, in specific and express terms, make the forum selection clause in the software license agreement a part of the implementation agreement. Each agreement served its own purpose and the software license agreement was referred to in the implementation agreement only for the purpose of identifying what the entire agreement of the parties consisted of, and what was to be done if a conflict in subject matter as between the separate agreements was discovered" (id). Thus, this case merely stands for the proposition, not relevant here, that a subsequent agreement cannot incorporate terms of an earlier agreement where such incorporation is not express.

As noted, in this case, however, the addendum clearly states that the purchase agreement is fully incorporated into the addendum. This means all clauses including the forum selection clause are legally contained in the addendum as well.

Consequently, the moving defendants have likewise adopted the forum selection clause of the purchase agreement.


Therefore, the moving defendants are subject to the jurisdiction and venue of this court.

Thus, the motion seeking to dismiss the complaint is denied.

So ordered.

ENTER:

DATED: May 16, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC