

JD2 Realty Mgt. LLC v Evojets LLC

2022 NY Slip Op 32484(U)

July 25, 2022

Supreme Court, New York County

Docket Number: Index No. 650751/2022

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. LYLE E. FRANK</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>JD2 REALTY MANAGEMENT LLC,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>EVOJETS LLC, MY JET SAVER LLC</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 11M</p> <p>INDEX NO. <u>650751/2022</u></p> <p>MOTION DATE <u>03/10/2022, 06/02/2022</u></p> <p>MOTION SEQ. NO. <u>001 002</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15
 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25
 were read on this motion to/for DISMISSAL.

This action arises out of an alleged breach of contract. Defendants now move to dismiss the complaint. Plaintiff opposes the instant motion. For the reasons set forth below, both motions to dismiss are granted and the complaint is dismissed in its entirety¹.

Facts

In December 2020, plaintiff entered into a contract with defendant Evojets LLC to provide two private flights, from White Plains, New York to Saint John’s, Antigua, and back. Evojets then entered a contract with My Jet Saver (“MJS”) on December 15, 2020, agreeing that MJS would provide the aircraft for the flights. The first flight, to Saint John’s, left on December 19, 2020, and went as planned. The second flight, coming back to White Plains, was delayed, and departed on January 4, 2021. The flight was originally scheduled to leave on January 3,

¹ The Court would like to thank Andrew Bronstein for his assistance in this matter.

2021. Defendants claim that the delay was caused by mechanical issues. Plaintiff then asked for defendants to provide proof of this mechanical issue, but defendants did not produce this information right away. Subsequently, plaintiff brought this action for breach of contract, as they allege that defendants intentionally rebooked the aircraft with another party who agreed to pay significantly more for the flight.

Motion Sequence 1

Defendant MJS contends that the contract entered into between Evojets and MJS states that MJS is not liable for any delays, changes, or cancellations. In addition, MJS contends that plaintiff's second cause of action for a third-party beneficiary breach of contract is defeated by this contract, as the contract never mentions plaintiff. Thus, this does not manifest intent to primarily benefit plaintiff or manifest intent to permit enforcement by plaintiff. Further, MJS contends that the choice of law/venue provision of its' contract with plaintiff advises that this action should have been brought in Florida, pursuant to the laws of Florida.

In opposition, plaintiff contends that the motion fails because the liability limitations do not apply to delays caused by false mechanical claims used to disguise its decision to prioritize another customer. However, the contract clearly states that MJS is not liable for any type of delay, regardless of what causes it. As such, it is clear from the papers that MJS is not liable for any damages resulting from the type of harm that occurred to plaintiff. Notably, co-defendant Evojets has not opposed the instant motion.

To confer enforceable third-party beneficiary rights, both New York and Florida law requires the clear or manifest intent of the contracting parties that the contract primarily and directly benefit the third party, that no one other than the third party can recover if the promisor breaches the contract, and an intent to permit enforcement by the third party. *See, Barnum v*

Millbrook Care Ltd. P'ship, 850 F. Supp. 1227, 1233 (S.D.N.Y.), *aff'd*, 43 F.3d 1458 (2d Cir. 1994). The complaint is further subject to dismissal pursuant to CPLR § 3211(a)(2) and (8), due to the choice of law/venue provision. *See, e.g., Welsbach Elec. Corp. v MasTec N. Am., Inc*, 7 NY3d 624, 629 (2006).

The Court finds that MJS has established that plaintiff has failed to plead that it is a third-party beneficiary of the contract. Moreover, even assuming that there was privity of contract, the contract contains a choice of law provision that renders this venue inappropriate. The choice of law/venue provision plainly advises that this case should have been brought in Florida. This irrefutable documentary evidence establishes that this Court should not have jurisdiction over this issue. Accordingly, MJS's motion to dismiss is granted in its entirety.

Motion sequence 2

Defendant Evojets contends that plaintiff's complaint lacks specificity as to the breach and is too broad. Plaintiff merely alleges that one or both defendants breached the contract. These allegations are conclusory, and Evojets has provided plaintiff with repair records of the aircraft. Additionally, the limitation of liability in the contract exculpates Evojets from liability resulting from delay beyond the control of Evojets. Evojets has also contended that the delay was caused by a mechanical issue, and that MJS has provided sworn statements affirming this.

In opposition, plaintiff contends that the Court must accept the complaint's factual allegations as true when facing a motion to dismiss. Plaintiff also argues that the limitation of liability applies only to claims for delays that were beyond Evojets' control; but that the complaint alleges that the delay was caused by factors within Evojets control.

Dismissal under CPLR § 3211(a)(1) is warranted where documentary evidence "conclusively establishes a defense to the asserted claims as a matter of law." *Gottesman Co. v*

A.E.W, Inc., 190 AD3d 522, 24 (1st Dept 2021). Additionally, if there is no allegation, let alone conduct, that “smack[s] of intentional wrongdoing;” allegations of gross negligence cannot stand where they are not distinguished between defendants. *See, e.g., Metropolitan Life Ins. Co. v Noble Lowndes Intern., Inc.*, 84 NY2d 430, 438-39 [1994]. Further, the First Department has held that “a party can intentionally breach a contract to advance a ‘legitimate economic self-interest’ and still rely on the contractual limitation provision.” *Electron Trading, LLC v Morgan Stanley & Co. LLC*, 157 AD3d 579, 581 [1st Dept 2018].

The Court finds that the complaint should be dismissed against Evojets due to the limitation of liability in the contract. In attempting to bypass this clause, plaintiff has failed to identify which entity allegedly rebooked the second flight. Without such specificity, this allegation is insufficient as pleaded. As such, the Court agrees with Evojets in that the allegations lack specificity and are conclusory, and therefore should be dismissed.

Moreover, plaintiff has failed to sufficiently rebut the affidavit of Maria Alejandra Marin corporate representative at MJS, attesting that the flight was delayed due to a mechanical issue. Accordingly, it is hereby

ORDERED that both defendants’ motions to dismiss are granted; and it is further ORDERED that the Clerk enter judgment accordingly.


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LYLE E. FRANK, J.S.C.

7/25/2022
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	NON-FINAL DISPOSITION
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<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
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<input type="checkbox"/>	SUBMIT ORDER
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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