

Ankura Consulting Group, LLC v Mortazavi

2023 NY Slip Op 31312(U)

April 10, 2023

Supreme Court, New York County

Docket Number: Index No. 656835/2021

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

ANKURA CONSULTING GROUP, LLC,

Plaintiff,

- v -

MOHAMMAD MORTAZAVI,

Defendant.

-----X

INDEX NO. 656835/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant's motion to dismiss or transfer is denied and Plaintiff's cross motion for partial summary judgment is denied. 1

Background

Plaintiff is a resident in the State of California. Defendant is a consulting company with a principal place of business in the State of New York. Defendant retained Plaintiff to provide professional consulting services concerning a pending California lawsuit. In exchange for Plaintiff's services, Defendant agreed to pay Plaintiff for the services upon receipt of invoices. Plaintiff rendered professional consulting services on Defendant's behalf and delivered invoices for the services and expenses incurred, amounting to \$177,722.42. Plaintiff alleges Defendant has failed to pay the amount in full and is in breach of the agreement between the parties.

1 The Court would like to thank Sarah Silbowitz for her assistance in this matter.

Pursuant to the agreement between the Plaintiff and Defendant, each party agreed that all disputes arising out of the agreement shall be brought and maintained exclusively in New York, and waived any claim or objection based on lack of personal jurisdiction, improper venue, and forum non-conveniens. Plaintiff commenced this action in the State of New York seeking judgment against Defendant in the amount of \$162,722.42 plus interest. Defendant moves to dismiss the complaint or transfer to the Superior Court of the State of California based on forum non conveniens. Plaintiff opposes and cross-moves for partial summary judgment on its cause of action for an account stated.

Discussion

Motion 002 (Defendant's Motion to dismiss or transfer based on forum non conveniens)

The First Department has held “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 National Bank v. Eastern Shipping Worldwide, Inc.*, 35 A.D.3d at 223; see *Express Trade Capital, Inc. v. Horowitz*, 198 A.D.3d 529, 530 (1st Dep’t 2021); *National Union Fire Insurance Co. of Pittsburgh, Pa v. Worley*, 257 A.D.2d at 232. A written agreement that is clear and unambiguous on its face must be enforced according to the plain meaning of its terms. *Welsbach Electric Corp. v. MasTec North America, Inc.*, 7 N.Y.3d 624, 629 (2006); see *Banco Espirito Santo, S.A. v. Concessionaria Do Rodoanel Oeste, S.A.*, 100 A.D.3d 100, 106 (1st Dep’t 2012). Forum selection clauses are “prima facie valid because they provide certainty and predictability in the resolution of disputes.” *Brooke Group, Ltd. V. JCH Syndicate* 488, 87 N.Y.2d 530, 534 (1996); see *Sterling National Bank v. Eastern Shipping Worldwide, Inc.*, 35 A.D.3d at 222; *Siroy v. Jobson Healthcare Information LLC*, 2016 N.Y.

Misc. LEXIS 1920, at *3 (Sup. Ct., New York County 2016) It has been held that forum selection clauses “are not to be set aside unless a party demonstrates that the enforcement of such ‘would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum 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.’” Sterling National Bank v. Eastern Shipping Worldwide, Inc., 35 A.D.3d at 222 (quoting British West Indies Guaranty Trust Co., Ltd. V. Banque Internationale A Luxembourg, 172 A.D.2d 234, 567 N.Y.S.2d 731, 732 (1st Dep’t 1991); see Siroy v. Jobson Healthcare Information LLC, 2016 N.Y. Misc. LEXIS 1920, at *3.

Defendant alleges that the Complaint should be dismissed or transferred to the State of California on the grounds of forum non conveniens. Plaintiff alleges that the motion to dismiss or transfer should be denied because the parties’ agreement to the choice of law, forum selection, and waiver of objections based on lack of personal jurisdiction, improper venue, and forum non-conveniens should be enforced.

To this Court, the agreement between Plaintiff and Defendant was an arm’s length negotiation which should be enforced according to the plain meaning of its terms. Both parties were represented by counsel at the time of the signing of the agreement. Moreover, the plaintiff’s principal place of business is New York. Thus, one of the parties was going to be inconvenienced by the choice of venue. In addition, there is no evidence supporting the forum selection clause is unreasonable and unjust, or that the clause is invalid because of fraud or overreaching. Furthermore, Defendant has not shown that a trial in the contractual forum of New

York would be so gravely difficult and inconvenient that the party would be deprived of his day in court, especially where virtual proceedings can be held as necessary.

Motion 003 (Plaintiff's Cross-motion for Summary Judgment)

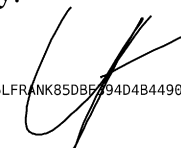
A party may move for summary judgment after issue has been joined. See CPLR §3212(a). Joinder of issue requires the service of a complaint by the plaintiff and an answer or counterclaim by the defendant. *Shaibani v. Soraya*, 71 A.D. 3d 1121 (2d Dep't 2010).

Plaintiff's motion for partial summary judgment is denied as premature because there has been no answer or counterclaim filed by Defendant. Based on the foregoing, it is hereby

ADJUDGED that the motion for dismissal or transfer is denied; and it is further

ADJUDGED that the cross-motion for summary judgment is denied without prejudice, and it is further

ORDERED that defendant shall answer the complaint in this matter not more than twenty days following service of this Decision and Order with notice of entry.


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LYLE E. FRANK, J.S.C.

4/10/2023
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE