

Smiths Detection Inc. v MRE Tech. Solutions LLC

2023 NY Slip Op 32208(U)

June 27, 2023

Supreme Court, New York County

Docket Number: Index No. 654278/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

-----X

SMITHS DETECTION INC.

Plaintiff,

- v -

MRE TECHNOLOGY SOLUTIONS LLC,

Defendant.

-----X

INDEX NO. 654278/2022

MOTION DATE 06/23/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for DISMISS.

Defendant’s motion to dismiss the complaint is denied.

Background

Plaintiff brings this case about a service agreement between the parties which included a forum selection clause that required suits to be brought in this county in either federal or state courts. It alleges that defendant previously commenced an action in Anne Arundel County in Maryland and plaintiff successfully obtained a dismissal of that case based upon the forum selection clause. Plaintiff now brings this case for reasonable legal fees as the prevailing party in that action under the terms of the subject service agreement.

Defendant moves to dismiss on the grounds that the instant claim is time-barred, that plaintiff failed to comply with a condition precedent to bringing this case, and that plaintiff should have asserted its claim for fees in the Maryland action. It claims that the agreement contained a two-year limitations period arising from the date the cause of action first accrues. Defendant maintains that the claim first arose on July 7, 2020, when plaintiff appeared in the

Maryland action, which is more than two years before this case was commenced. Defendant also points out that the agreement contains a provision requiring the parties to negotiate in good faith for 30 days prior to filing an action based upon the service agreement.

In opposition, plaintiff argues that the limitations period for this suit did not begin to accrue until it prevailed in the underlying litigation Maryland. Plaintiff observes that it obtained a dismissal of the Maryland action on November 9, 2020, when the Maryland Court dismissed that action and so this complaint (filed on November 9, 2022) was timely. It also insists that the good-faith negotiation provision is not a condition precedent for this lawsuit. Plaintiff argues that to adopt defendant's view of this provision would require the Court to rewrite the language of this section. Finally, plaintiff argues that defendant's arguments about Maryland procedural rules (that plaintiff should have cited or included arguments about its right to recover as a prevailing party) is without merit because the agreement requires that New York law be applied.

Defendant did not submit a reply.

Discussion

The limitations provision of the parties' agreement provides that "No action in law or equity arising out of this Agreement may be brought by either party more than two years after the cause of action has first arisen" (NYSCEF Doc. No. 8, ¶ 21[g]). The same paragraph also provides that "The prevailing party shall have the right to collect reasonable expenses from the other party, including attorneys' fees, incurred in enforcing this Agreement" (*id.*).

Here, the Court finds that plaintiff correctly argued that the limitations period began to accrue when it became the prevailing party—November 9, 2020. On that date, the Maryland Court dismissed the case and plaintiff "prevailed." Defendant's attempt to assert that the applicable date should be when plaintiff appeared and moved to dismiss is without merit as that

is simply the date plaintiff raised an argument. That the claim later turned out to be successful does not make it the date plaintiff became the prevailing party.

Defendant's second claim—that there is a condition precedent—is also without merit. This part of the agreement states that “Any dispute between the Parties in connection with or arising out [of] the existence, validity, construction, performance and/or termination of this Agreement (or any terms hereof) which cannot be resolved within thirty (30) days of good faith negotiations by the Parties, shall be submitted to the exclusive jurisdiction and venue of the federal and state courts located in Manhattan, New York, NY, in any legal suit, action or proceeding arising out of or based upon this Agreement” (*id.*).

Defendant did not establish, on a motion to dismiss, that this 30-day period is a condition precedent. The fact is that this case arises out of defendant's decision to commence an action in Maryland so it strains credulity (and common sense) to dismiss this case because plaintiff did not negotiate in good faith prior to bringing a lawsuit about defendant's own lawsuit. And, in any event, plaintiff correctly pointed out that defendant raised similar arguments about this negotiation requirement in a separate litigation between these same parties and that effort was unsuccessful (*see* NYSCEF Doc. Nos. 21 and 23).

Plus, plaintiff points out that it reached out to defendant on two occasions prior to bringing this action (in May and November 2022) regarding the demand for legal fees that forms the basis of this complaint (NYSCEF Doc. No. 1, ¶¶ 14, 15). These allegations, when taken as true (as the Court must on a motion to dismiss) prevent the Court from dismissing the case on this basis.


Defendant's final argument, that plaintiff should have raised these claims in the Maryland case, is also without merit. As plaintiff points out, the Maryland procedural rule that requires a

party to seek legal fees in a pleading (Rule 2-705[B]) only applies to the demand’s inclusion in a pleading. But plaintiff never filed a pleading in Maryland; it only moved to dismiss and then commenced this action to seek relief that it alleges is permissible under the parties’ agreement.

Accordingly, it is hereby

ORDERED that defendant’s motion to dismiss is denied and defendant is directed to answer pursuant to the CPLR.

Conference: August 1, 2023 at 11:30 a.m. By July 25, 2023, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required). If nothing is uploaded by July 25, 2023, the Court will adjourn the conference.

<p><u>6/27/2023</u> DATE</p>			 <hr/> ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE