

Glynn v Chubb Natl. Ins. Co.

2024 NY Slip Op 32114(U)

June 21, 2024

Supreme Court, New York County

Docket Number: Index No. 653143/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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KARA C GLYNN,

Plaintiff,

- v -

CHUBB NATIONAL INSURANCE COMPANY, VALLEY
DELUXE CLEANERS & INTERIORS INC.,MADAME
PAULETTE BYNEXT, LLC

Defendant.

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INDEX NO. 653143/2023

MOTION DATE 01/12/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 29, 32, 33, 34, 35, 36, 37

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents and following oral argument, for the reasons indicated below, the motion to amend and dismiss by defendant Valley Deluxe Cleaners & Interiors Inc. D/B/A Nard by Fabric Renewal (“Fabric Renewal”) is granted.¹

This case arises from an action in connection to Plaintiff Glynn’s loss and damage at her residence due to a water event that occurred on October 9, 2021. Fabric Renewal was retained by Defendant Chubb National Insurance Company (“Chubb”), Plaintiff’s insurance agency, to provide services, including but not limited to, the removal, cleaning, and restoring of Plaintiff’s household items and articles of clothing (the “textiles”) in connection with Plaintiff’s October 9, 2021 loss. Defendant Fabric Renewal removed Plaintiff’s textiles from her residence on October 25-26, 2021, and upon returning some of the items to Plaintiff on November 11, 2021, presented her with an Authorization Form, which Plaintiff later signed on November 12, 2021. Within this

¹ The Court would like to thank Sophia Hartman for her assistance in this matter.

Authorization Form was a forum selection clause. (“This Agreement shall be governed by the laws of the State of New Jersey. New Jersey shall have exclusive jurisdiction over and shall be the exclusive forum for any claims or disputes arising from the subject matter contained herein.”).

Fabric Renewal moves to amend its Answer, pursuant to CPLR § 3025 (b), to assert affirmative defenses premised upon the forum selection clause of the contract it entered into with Plaintiff. Fabric Renewal also moves to dismiss Plaintiff’s second cause of action as to Fabric Renewal’s alleged negligence on the grounds of improper forum pursuant to CPLR § 3211(a)(1) and (a)(7). For the foregoing reasons, both parts of Fabric Renewal’s motions are hereby granted.

Fabric Renewal’s request for leave to amend its Answer is unopposed. A motion for leave to amend is committed to the broad discretion of the court (*see Ravnikar v Skyline Credit-Ride, Inc.*, 79 AD3d 1118, 1119 [2010]), the motion is granted. Furthermore, “[a]pplications for leave to amend pleadings under CPLR 3025 (b) should be freely granted unless the proposed amendment (1) would unfairly prejudice or surprise the opposing party, or (2) is palpably insufficient or patently devoid of merit” (*Maldonado v. Newport Gardens, Inc.*, 91 AD3d 731, 731-732 [2012]; *see RCLA, LLC v 50-09 Realty, LLC*, 48 AD3d 538 [2008]). Accordingly, this Court finds that Fabric Renewal’s motion to amend the answer is proper as Plaintiff will not be unfairly prejudiced or surprised, and further deems Fabric Renewal’s proposed Amended Verified Answer filed and served as of the date of the granting of this motion.

The central issue presented to this Court on the dismissal part of the motion is whether Plaintiff’s claim against Fabric Renewal has been brought in the proper forum. Fabric Renewal asserts that this Court is not the proper forum for Plaintiff’s claim because of the forum selection clause contained within the Authorization Form, requiring all actions in connection with the

agreement to be brought in New Jersey. Plaintiff opposes this by claiming that the agreement is not an enforceable contract that binds Plaintiff to litigating this claim in New Jersey, as the agreement does not govern the subject matter of the Plaintiff's claim.

In the Authorization Form, Plaintiff agreed to allow Fabric Renewal to accept payments for its services from Chubb on her behalf, and furthermore consented to being held liable for any payments due to Fabric Renewal not paid for by Chubb. It has been held that a contract need not be signed by both parties to be enforceable where part-performance and intent to be bound is present. *See Perfectly Reliable Constr., Inc. v 213 E. 26, LLC*, 216 A.D.3d 580 [1st Dep't 2023] (“[E]ven though the contracts were unsigned, objective evidence corroborated the existence and terms of the agreements and established that the parties intended to be bound by them.”); *see also Flores v Lower E. Side Serv. Ctr., Inc.*, 4 NY3d 363 [2005] (“We have long held that a contract may be valid even if it is not signed by the party to be charged, provided its subject matter does not implicate a statute -- such as the statute of frauds (General Obligations Law § 5-701) -- that imposes such a requirement”). In the instant matter, the party to be charged (Plaintiff) signed the Authorization Form, indicating that she intended to be bound by the contents of the agreement. As such, while the contract may fall under the statute of frauds, Plaintiff's signature satisfies the statute's requirements, making it a binding contract upon Plaintiff.

While Plaintiff argues that New Jersey as a forum is not convenient, she has not overcome the burden of showing that her inconvenience would be so grave that she would be deprived her day in court. *See Br. W. Indies Guar. Tr. Co., Ltd. V. Banque Internationale a Luxembourg*, 172 AD2d 234 [1st Dept 1991] (“In order to set aside such a [forum selection] clause, a party must show that enforcement 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.”). New Jersey clearly does not present such challenges.

Based on the foregoing, it is hereby

ORDERED that the motion of Defendant Valley Deluxe Cleaners & Interiors Inc. to amend their complaint is granted, and the proposed amended answer annexed to said Defendant’s answer is deemed served; and it is further

ORDERED that the motion of Defendant Valley Deluxe Cleaners & Interiors Inc. to dismiss the complaint as against them herein is granted and the complaint is dismissed in its entirety as against said Defendant, and the Clerk of the Court is directed to enter judgment accordingly in favor of said Defendant; and it is further

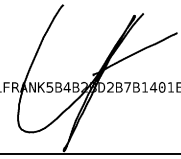
ORDERED that the action is severed and continued against the remaining Defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

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6/21/2024

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE