

**Marquis Certified Home Care, LLC v Wellsky Fin.
Servs. LLC**

2024 NY Slip Op 35378(U)

November 26, 2024

Supreme Court, Albany County

Docket Number: Index No. 906829-24

Judge: Peter A. Lynch

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

MARQUIS CERTIFIED HOME CARE, LLC,

Plaintiffs,

-against -

DECISION
And ORDER
Index No. 906829-24
(Hon. P. Lynch, J.)
Mot. Seq. No. 1

WELLSKY FINANCIAL SERVICES LLC,

Defendants.

INTRODUCTION

This is a breach of contract action for money damages. At issue, is the enforceability of a forum selection clause in the agreement between the parties.

On March 16, 2022, the parties entered the “Wellsky Financial Services, Master Services Agreement” (hereinafter the “Agreement”).¹ The “General Provisions” part of the Agreement included the following provision:

9.6. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Kansas, excluding its rules of conflicts of law. Parties hereby **consent to and submit to the courts located solely in the State of Kansas.**² (Emphasis added)

¹ NYSCEF Doc. No. 2 - Master Services Agreement

² NYSCEF Doc. No. 2 - Master Services Agreement ¶ 9.6.

(Section 9.6 will be referred to as the “forum selection clause”). The questions are whether that provision clearly evinces an intent of the parties to limit contract disputes to the exclusive jurisdiction of courts located in the State of Kansas, and, if so, whether it is enforceable.

FACTS

Plaintiff is a New York State Department of Health Certified Home Health Agency (“CHHA”), and its principal place of business is 1762 Central Avenue, Albany, New York.³ Plaintiff provides health care services to individuals, subject to Medicare and Medicaid reimbursement.⁴ Plaintiff provides services to its customers, exclusively in New York.⁵ Plaintiff hired Defendant as an approved Vendor to distribute, collect, and submit surveys on Plaintiff’s behalf to the Department of Health and Human Services, Centers for Medicare & Medicaid Services (“CMS”), in accordance with federal rules and regulations, and in furtherance of Medicare and Medicaid reimbursement to Plaintiff. Defendant has its headquarters in Kansas.

MOTION TO DISMISS

The CPLR R 3211 review standard requires that a Court “must give the pleadings a liberal construction, accept the allegations as true and accord the Petitioners every possible favorable inference” (Chanko v. Am. Broad Companies, Inc., 27 N.Y. 3d 46, 52 [2016]; see also, Conklin v Laxen, 180 A.D.3d 1358, 1362 [4th Dept. 2020]; Piller v Tribeca Dev. Group LLC, 156 A.D.3d 1257, 1261 [3d Dept. 2017]). In Wedgewood Care Ctr. v. Kravitz, 198 A.D.3d 124, 130 [2d Dept. 2021], the court held,

On a motion to dismiss for failure to state a cause of action, the pleading is to be afforded a liberal construction. The facts alleged in the complaint must be accepted as true, and the plaintiff is entitled to receive the benefit of every possible favorable inference.

³ NYSCEF Doc. No. 1 – Complaint ¶ 1, 6.

⁴ NYSCEF Doc. No. 1 – Complaint ¶ 7,8.

⁵ NYSCEF Doc. No. 14 – Rosen Affidavit ¶ 10 and 11.

Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, **or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.**

However, allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration, nor to that arguendo advantage." (Internal quotations and citations omitted; emphasis added).

The issue distills to whether Plaintiff has a right of recovery in New York State, or whether it must seek relief in Kansas.

Defendant moved to dismiss the action pursuant to CPLR 3211 (a) (1) [documentary evidence]. A claim will be dismissed "if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (Fontanetta v. John Doe 1, 73 A.D. 3d 78, 83 [2d Dept. 2010]; see also, S & J Serv. Ctr., Inc. v. Commerce Commercial Group, Inc., 2019 NY Slip Op 09049 [2d Dept. 12/18/19]). Here, the documentary evidence consists of the Agreement between the parties. Defendant contends the Agreement limits jurisdiction of contract disputes to the courts located in the State of Kansas.

In Air-Sea Packing Group, Inc. v. Applied Underwriters, Inc., 228 A.D. 3d 20 [2d Dept 2024], the Court held,

" [A] contractual forum selection clause is documentary evidence that may provide a proper basis for dismissal pursuant to CPLR 3211 (a) (1). " (Id. at p. 24)

The Court recognized, "the enforceability of a forum selection clause involves a procedural rather than a substantive issue." (Id. at p. 24) The Court noted,

"Although once disfavored by the courts," New York law now recognizes that contracting parties may freely select a forum to "resolve any disputes over the interpretation or performance of the contract. A contractual forum selection clause **is prima facie valid**

and enforceable **unless it is shown by the challenging party to be unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching, or it is shown that a trial in the selected forum would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court.**"(Id. at p. 25) (Emphasis added)

Plaintiff claims it would be unreasonable to limit jurisdiction to Kansas, since its contacts are solely in New York. In this Court's view, the initial determination is to identify the intent of the parties from the plain language of the forum selection clause.

In Boss v. Am. Express Fin. Advisors, Inc. 6 N.Y.3d 242, 245-246 [2006], the Court upheld the enforceability of the following forum selection clause:

"This Agreement is a Minnesota contract, governed by Minnesota law. All of the payments you make to IDS Life are payable in Hennepin County, Minnesota. You expressly waive any privileges contrary to this provision. You agree to the jurisdiction of [the] State of Minnesota courts for determining any controversy in connection with this Agreement."

In so doing, the court recognized,

"Forum selection clauses are enforced because they provide certainty and predictability in the resolution of disputes" (Id. at p. 246)

The court also recognized that all the contacts were in Minnesota and the reasoned expectation was that litigation would be in Minnesota, finding,

"The Supreme Court noted that all of the proceedings regarding the contract and the employment training took place in Minnesota. Further, defendants, incorporated in Delaware, had their principal places of business in Minnesota. All paychecks were generated from the Minnesota office. There does not appear to be a reason why IDS or AEFA would contemplate coming into New York for litigation. Here it is clear from the setup of the agreement that plaintiffs' reasonable expectations were that all litigation would take place in Minnesota, not New York." (Id. at p. 246)

It is manifest that the Court identified the intent of the parties when they crafted the language of the forum selection provision based on the underlying acts of the parties in furtherance of contract formation and performance.

Here, the text of the forum selection clause 9.6 is a mixed bag. The first sentence (“This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Kansas, excluding its rules of conflicts of laws.”) speaks to the substantive law applicable to the case. The second sentence (“Parties hereby consent to and submit to the courts located solely in the State of Kansas”) is procedural. In this Court’s view, the operative word is “solely” which must be given its plain meaning.

The Webster’s Dictionary definition of the word “solely” is,

(1) “Without another; singly; alone.” (2) Exclusively; entirely.”

In fine, the parties agreed to submit all disputes exclusively to courts in the state of Kansas. That does not, however, end the inquiry.

The next question whether enforcement would be “unreasonable, unjust, in contravention of public policy, invalid due to fraud or overreaching” or whether enforcement “would be so gravely difficult that the challenging party would, for all practical purposes, be deprived of its day in court.” I think not!

It is manifest that the parties are sophisticated business entities, with equal bargaining power. There is nothing in the record to suggest fraud or overreaching. There is nothing to suggest that it would be more reasonable or just to have the litigation in New York, distinct from Kansas, where, as here, defendant is headquartered in Kansas. Based on the express terms of the contract, there is no reason why defendant would contemplate having to come to New York to

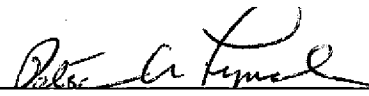
litigate a dispute between the parties. Last, there has not been any showing that the forum selection clause violates New York State Policy (Cf. Air-Sea Packing Group, Inc. v. Applied Underwriters, Inc., supra.). In fine, the time for Plaintiff to challenge the enforceability of the forum clause was during contract negotiation and formation, not after the fact.

CONCLUSION

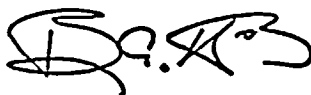
For the reasons more fully stated above, Defendant's motion to dismiss the complaint is Granted, and the Complaint is dismissed.

This memorandum constitutes the decision and order of the Court.⁶

Dated: Albany, New York
November 26, 2024


PETER A. LYNCH, J.S.C.

PAPERS CONSIDERED:
All e-filed pleadings, with exhibits.
NYSCEF Doc. Nos. 1 to 20


11/26/2024

To: POLSINELLI PC
By: Daniel K. Winters, Esq
Leo D. Bronshteyn, Esq
Attorneys for Defendant
600 Third Avenue, 42nd Floor
New York, New York 10016

CERTILMAN BALIN ADLER & HYMAN, LLP
By: Glenn B. Gruder, Esq.
Attorneys for Plaintiff
100 Motor Parkway, Suite 560
Hauppauge, New York 11788

⁶ Notice of Entry and service in accord with CPLR R 2220 is required.