

Revenued LLC v J&L Hardscapes LLC
2025 NY Slip Op 35434(U)
January 21, 2025
Supreme Court, Nassau County
Docket Number: Index No. 610216/2024
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Supreme Court Justice

REVENUED LLC,

Plaintiff,

- against -

J&L HARDSCAPES LLC and
JOHN-ANTHONY CASTELAN,

Defendants.

TRIAL/IAS PART 27
NASSAU COUNTY

Index No.: 610216/2024
Motion Seq. No.: 01
Motion Date: 08/29/2024

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affirmation, Memorandum of Law	<u>1</u>
Affirmation in Opposition and Exhibits, Memorandum of Law and Exhibit	<u>2</u>

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendants move, pursuant to CPLR § 3211(a)(8), for an order dismissing plaintiff's Verified Complaint. Plaintiff opposes the motion.

In support of the motion, counsel for defendants submits, in pertinent part, that, "Defendant, JOHN-ANTHONY CASTELAN ("CASTELAN"), is a resident of the State of Texas with no ties to the State of New York. J&L HARDSCAPES LLC is a Texas entity with no ties to the State of New York. None of the entities are authorized to conduct business or have conducted business in the State of New York.... Plaintiff fails to meet their (*sic*) burden of proving this court has personal jurisdiction

over the non-resident Defendants. The Defendants are located outside the State of New York and are residents of the State of Texas. The Defendants do not have a residence or office within the State of New York and they derive no income and have no contacts within the State of New York. Plaintiff fails to allege in their (*sic*) Complaint how this Court maintains personal jurisdiction over the out-of-state Defendants. Defendants deny having acted in any way to subject themselves to the jurisdiction of the New York Courts under the long-arm statute, CPLR § 302. Plaintiff fails to allege that Defendants acted in [any] way to subject themselves to the Courts of New York State. The Complaint, as alleged, does not meet the standard necessary for Plaintiff to prove this Court has personal jurisdiction over the out-of-state Defendants. Should this Honorable Court find that Plaintiff has (*sic*) does have the capacity to sue and maintain this action, that Plaintiff has met it's (*sic*) burden of proving personal jurisdiction over the Defendants, then it is respectfully requested that Defendants' time to interpose an Answer be extended by thirty (30) days from the date of the Court's Order pursuant to CPLR § 2004."

In opposition to the motion, plaintiff submits the Affirmation of Ellie Friedman ("Friedman"), the Chief Underwriting Officer for plaintiff corporation. *See* Plaintiff's Affirmation in Opposition.

In further opposition to the motion, counsel for plaintiff asserts, in pertinent part, that, "Defendants argue that this court lacks personal jurisdiction over the Defendants because this court does not maintain personal jurisdiction over the Defendants. This argument must fail as a matter of law because this court maintains specific jurisdiction over the Defendants based on the jurisdiction clauses contained in the **Agreement** [Master Revenue Purchase Agreement].

It should be noted that Defendants have not, either in the Affirmation in Support of
Racher Lee Dreher [counsel for defendants] dated 07/18/2024 (the “Dreher Affirmation”, ...) or in their Memorandum of Law in Support ... objected to or challenged the service of process of the instant summons and complaint on the Defendants. Defendants argue that because this court does not maintain personal jurisdiction over the Defendants, the matter must be dismissed. However, this argument is belied by the facts of the instant matter. Counsel for Defendants alleges that ‘Defendants deny having acted in any way to subject themselves to the jurisdiction of the New York Courts under the long-arm statute, CPLR § 302.’ ... However, counsel for the Defendants totally ignores the plain and unambiguous language of the forum selection clause (and venue provision) contained in section 4.5 of the **Agreement** ..., which reads as follows: ‘This Agreement shall be governed by and construed in accordance with the laws of the state of New York, without regards to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if Revenued so elects, be instituted in any court sitting in New York, (the ‘Acceptable Forums’). Merchant agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue.’

In simple terms, courts have uniformly held that when the parties to a contract agree to the personal jurisdiction of a court or forum, such provisions are upheld. [citation omitted]....

In the current instance the Agreement states that the Defendants ‘submit[s] to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue.’

Acceptable forums are defined in the agreement as ‘any court sitting in New York.’

The cases cited by the Defendants do not address agreements in which the Defendants

specifically consented to the jurisdiction of the state of New York and as such are applicable and not comparable to the case at bar.... Due to the fact that Defendants submitted to the jurisdiction of this court and waived their right to object to the jurisdiction of this court, this court has should properly confer jurisdiction over the Defendants. Because the Defendants consented to the jurisdiction and the forum, and agreed the forum was convenient to them, ... the parties cannot come now and make the argument that it is not.” See Plaintiff’s Affirmation in Opposition Exhibits A and B.

Forum selection clauses, like the one contained in the subject Master Revenue Purchase Agreement, are *prima facie* valid and should be enforced unless the resisting party clearly proves that enforcement would be unreasonable and unjust, or that the clause arises from fraud or overreaching, or that enforcement would contravene strong public policy of the forum where the suit is brought. *Trump v. Deutsche Bank Trust Co. Americas*, 65 A.D.3d 1329, 887 N.Y.S.2d 121 (2d Dept. 2009). Any alleged overreaching, which is an exception to the general rule that forum selection clauses are *prima facie* valid, must be based on something more than the mere fact that the clause was a boilerplate provision printed on the back of a form contract. Under the fraud exception, a forum selection clause in a contract is not enforceable if the inclusion of that clause in the contract was the product of fraud or coercion. Contractual forum selection clauses are *prima facie* valid and should be enforced absent some compelling reason to the contrary. See *Bernstain v. Wysoki*, 77 A.D.3d 241, 907 N.Y.S.2d 49 (2d Dept. 2010).

In the instant matter, the subject Master Revenue Purchase Agreement contains a forum selection clause that defendants were aware of when they executed said Agreement. See Plaintiff’s Affirmation in Opposition Exhibit A. The Court finds that defendants have not

made the requisite strong showing that the subject Master Revenue Purchase Agreement was the product of overreaching or was unreasonable, or that its enforcement would be unjust. *See DiRuocco v. Flamingo Beach Hotel & Casino, Inc.*, 163 A.D.2d 270, 557 N.Y.S.2d 140 (2d Dept. 1990).

Therefore, based upon the above, defendants' motion, pursuant to CPLR § 3211(a)(8), for an order dismissing plaintiff's Verified Complaint, is hereby **DENIED**. And it is further

ORDERED that defendants shall serve an Answer upon plaintiff within thirty (30) days from the date of this Decision and Order. And it is further

ORDERED that the parties shall appear for a Preliminary Conference on **March 10, 2025, at 9:30 a.m.**, at the Preliminary Conference Desk in the lower level of 100 Supreme Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this Order shall be served on all parties. There will be no adjournments, except by formal application pursuant to 22 NYCRR § 125.

This constitutes the Decision and Order of this Court.

ENTER:

DENISE L. SHER, J.S.C.

Dated: Mineola, New York
January 21, 2025

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE