Alliance Entertainment LLC v Belong Gaming, LLC
2026 NY Slip Op 30236(U)
January 20, 2026
Supreme Court, New York County
Docket Number: Index No. 152586/2025
Judge: Nicholas W. Moyne
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NICHOLAS W. MOYNE** **PART** **41M**

Justice

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ALLIANCE ENTERTAINMENT LLC,

Plaintiff,

- v -

BELONG GAMING, LLC,ANGELO ROSSI

Defendant.

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INDEX NO. 152586/2025

MOTION DATE 08/01/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

Plaintiff, Alliance Entertainment LLC, commenced the underlying action against the defendants, Belong Gaming, LLC and Angelo Rossi, as personal guarantor, to recover for amounts owed due to alleged non-payment for certain goods, wares and merchandise pursuant to a written agreement between the parties. In the complaint, plaintiff asserts causes of action sounding in breach of contract, breach of guaranty, and account stated. In Motion Sequence 001, Rossi moves for an order, pursuant to CPLR § 3211(a)(1) and 22 NYCRR § 130-1.l(a), dismissing the plaintiff's complaint based on documentary evidence and awarding sanctions. For the reasons set forth below, the motion is granted in part.

The underlying dispute arises out of the defendants' alleged non-payment and/or failure to perform pursuant to an Alliance Entertainment Credit Application ("Agreement") entered between the parties. Defendant moves to dismiss the complaint, pursuant to CPLR § 3211(a)(1), asserting that the parties' contract contains a mandatory forum selection clause requiring that any dispute be brought in Florida. "When, as here, a defendant moves for dismissal of a cause of

action under CPLR 3211(a)(1), their documentary evidence must utterly refute the plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 175 [2021] [internal quotation marks omitted]). "[W]here a written agreement ... unambiguously contradicts the allegations supporting a litigant's cause of action for breach of contract, the contract itself constitutes documentary evidence warranting the dismissal of the complaint pursuant to CPLR 3211(a)(1)" (*Madison Equities, LLC v Serbian Orthodox Cathedral of St. Sava*, 144 AD3d 431 [1st Dept 2016] [internal citation omitted]).[1]

In support of the motion, defendant provides the Agreement, asserting that the claims must be dismissed because the terms of the contract and the forum selection clause confers exclusive jurisdiction to the courts in Florida. "[I]t is the well-settled policy of the courts of this State to enforce contractual provisions for choice of law and selection of a forum for litigation" (*Sterling Nat. Bank as Assignee of NorVergence, Inc. v E. Shipping Worldwide, Inc.*, 35 AD3d 222 [1st Dept 2006]). "[A] contractual forum selection clause is documentary evidence that may provide a proper basis for dismissal pursuant to CPLR 3211(a)(1)" (*Landmark Ventures, Inc. v Birger*, 147 AD3d 497, 497 [1st Dept 2017]). Here, the parties' Agreement contains a "Terms and Conditions" section, which includes the following provisions:

> (1) The laws of the State of Florida shall be applicable to all disputes arising under this Credit Application or as a result of any extensions of credit by Company to the Applicant.
> (2) The undersigned and the Applicant agree to remit payment for any credit extended at Company principal place of business; and it shall be conclusively presumed that the failure to perform any such obligation shall give jurisdiction to the courts of the State of Florida. Further, should a dispute arise as a result

[1] Contrary to defendant's assertion, factual affidavits do not constitute documentary evidence and are not appropriate proof on a CPLR 3211(a)(1) motion to dismiss (*Johnson v Asberry*, 190 AD3d 491, 492 [1st Dept 2021]). However, affidavits may be an appropriate vehicle for authenticating and submitting relevant documentary evidence (*Muhlhahn v Goldman*, 93 AD3d 418, 418 [1st Dept 2012]).

> of the extension of credit, then venue shall be at Broward County (NYSCEF Doc. No. 10 at 7).

Considering the above, the documentary evidence conclusively demonstrates that the Agreement contains a forum selection clause mandating that this action seeking damages due to an alleged breach of the terms be brought in Florida (*see Kravitz v Chicken Soup for the Soul, LLC*, 227 AD3d 500, 500-01 [1st Dept 2024]), and plaintiff has not argued and/or demonstrated any of the grounds for non-enforcement of the clause (*Amazing Home Care Services, LLC v Applied Underwriters Captive Risk Assur. Co. Inc.*, 191 AD3d 516, 518 [1st Dept 2021]). In opposition, plaintiff does not dispute that the Agreement contains provisions regarding choice of law and jurisdiction but asserts that there is a dispute as to whether the provision is mandatory or permissive. However, contrary to plaintiff's assertions, the inclusion of a specified forum and the word "shall" makes the clause mandatory (*JD2 Realty Mgt. LLC v Evojets LLC*, 221 AD3d 407, 408 [1st Dept 2023]; *Spirits of St. Louis Basketball Club, L.P. v Denver Nuggets, Inc.*, 84 AD3d 454, 455 [1st Dept 2011]), and a clause "does not, by failing explicitly to bar litigation in other venues, merely permit, but not mandate, litigation" in said designated place (*Union Bancaire Privee v Nasser*, 300 AD2d 49, 50 [1st Dept 2002]).

Accordingly, "[t]he contractual language here provides unambiguously that any disputes are to be decided in the courts of [Florida] and that [Florida] law should govern. The parties thus waived any privilege to have their claims heard elsewhere" (*Boss v Am. Express Fin. Advisors, Inc.*, 6 NY3d 242, 246 [2006]). "Since dismissal was proper based on the forum selection clause, we need not reach plaintiff's arguments regarding forum non conveniens" (*Landmark Ventures, Inc. v Birger*, 147 AD3d 497, 498 [1st Dept 2017]). Finally, the court, in its discretion, denies the portion of the motion seeking to impose sanctions and costs under 22 NYCRR § 130-1.1 on grounds that the conduct herein was not frivolous within the meaning of the statute (*Sydney*

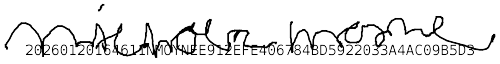
Attractions Group Pty Ltd. v Schulman, 74 AD3d 476, 477 [1st Dept 2010]; *In re Kover*, 134 AD3d 64, 74 [1st Dept 2015]). Therefore, the motion may be granted on the grounds set forth herein, and the complaint and above-entitled action must be dismissed (*see Sydney Attractions Group Pty Ltd. v Schulman*, 74 AD3d 476, 477 [1st Dept 2010]).

Accordingly, it is hereby

ORDERED that Motion Sequence 001, the motion by Angelo Rossi, is GRANTED IN PART, to the extent that the portion of the motion seeking to dismiss the complaint based on documentary evidence is GRANTED, but the motion is otherwise DENIED; and it is further

ORDERED that, pursuant to the forum selection clause, the complaint and the above-entitled action are dismissed in their entirety, without prejudice to plaintiff's right to pursue its' claims in the designated forum; and it is further

ORDERED that the Clerk is hereby directed to enter judgment accordingly.



1/20/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE