STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA KUHLMAN,

Plaintiff-Appellant,

v

TDP CAPITAL ACCESS, LLC, d/b/a TDP ADVISORS, LLC, BLUE MOON CAPITAL, LLC, and BLUE MOON FINANCIAL, LLC,

Defendants-Appellees.

UNPUBLISHED
July 15, 2010

No. 291348
Kent Circuit Court
LC No. 08-008642-CZ

Before: HOEKSTRA, P.J., AND JANSEN AND BECKERING, JJ.

PER CURIAM.

Plaintiff Cynthia Kuhlman appeals by right the trial court's March 11, 2009, opinion and order, which granted defendants' motion for summary disposition. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In November 2002, plaintiff saw an Internet advertisement for an allegedly profitable business opportunity. At the time, plaintiff was "out of work and in desperate need of income." The advertisement encouraged individuals to join defendant TDP Capital Access, LLC, d/b/a TDP Advisors, LLC, ("TDP"), a company that promised to provide training and a plan for finding local, undervalued property that could be purchased, repaired, and then resold quickly for a profit. After filling out an application, plaintiff received a telephone call from Tom Beaber, who was a representative of TDP. Beaber explained that the plan provided that if plaintiff's research on a piece of property reflected that TDP could receive a 30 percent profit from the transaction, TDP would allow plaintiff to use TDP's money to purchase the property. Thereafter, plaintiff would have the property repaired, and then quickly sell the property while keeping a portion of the profit for herself. Beaber indicated that in order to receive TDP's training and use TDP's money to purchase property, plaintiff was required to "buy a seat" in TDP for $30,000. Beaber informed plaintiff that this seat would result in plaintiff being TDP's exclusive advisor in her region. Plaintiff dismissed the notion of paying so much money for a seat in the company.

Plaintiff alleges that in an attempt to persuade her to join the company, Beaber guaranteed that she would make her money back within the first year. Plaintiff expressed reluctance regarding her ability to find, and part with, so much money. Consequently, Beaber

suggested that plaintiff borrow the money from her retirement fund. Beaber further informed plaintiff that the price of a seat would be going up soon so she needed to act quickly. In addition, Beaber told plaintiff that "she was lucky" because he was able to get his boss to reduce the price of a seat to $20,000. On January 7, 2003, plaintiff signed an affiliation agreement with TDP and withdrew $20,000 from her retirement fund. She forwarded the money to TDP. Plaintiff later received four three-ring binders with information about real estate markets, foreclosures, and property valuation from TDP.

Over the next several months, plaintiff spent a significant amount of time and money conducting research on prospective properties and submitting detailed reports to TDP, which were sometimes over 30 pages in length. After almost a year, plaintiff had submitted reports on 32 properties, but none were approved by TDP. Due to plaintiff's financial position worsening, she subsequently transferred her seat in TDP to Florida so that she could live in Florida with her mother. While in Florida, the pattern of never allowing plaintiff to bid on property continued. There was one occasion when TDP authorized plaintiff to buy a piece of real estate, but because TDP set the maximum bid price just above the outstanding mortgage on the property, the property sold to another bidder. In April 2004, plaintiff returned to Michigan. After speaking to an alleged expert in foreclosure sales who indicated that no property yields a 30 percent return, plaintiff filed a complaint in Michigan on August 20, 2008, against TDP and defendants Blue Moon Capital, LLC, and Blue Moon Financial, LLC, alleging fraudulent and innocent misrepresentation, breach of contract, and a violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*. There were no specific allegations in plaintiff's complaint that described how the Blue Moon defendants were involved in the transactions.

On January 23, 2009, defendants moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that the forum-selection clause in the contract signed by plaintiff designated Colorado as the agreed upon forum for litigation and that the clause was enforceable. In addition, defendants asserted that the complaint did not contain any specific allegations involving the Blue Moon defendants. Hence, defendants averred that plaintiff's complaint should be dismissed in its entirety because it failed to state a claim upon which relief could be granted. The trial court subsequently granted defendants' motion, finding that the forum-selection clause was mandatory and would be enforceable under either Michigan or Colorado law. In addition, the trial court concluded that the contract was not void as violating the MCPA. The trial court recognized that at the hearing on the motion, plaintiff alleged that the Blue Moon defendants were liable under a piercing the corporate veil theory. Nevertheless, the trial court indicated that granting leave for plaintiff to amend her complaint to properly bring a cause of action against the Blue Moon defendants was unnecessary considering the court dismissed her claims against TDP due to the forum-selection clause.

II. STANDARDS OF REVIEW

We review a "trial court's decision on a motion for summary disposition de novo." *Hansen Family Trust v FGH Indus, LLC*, 279 Mich App 468, 474; 760 NW2d 526 (2008). A motion for summary disposition pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Dolan v Continental Airlines*, 454 Mich 373, 380; 563 NW2d 23 (1997). The motion may not be supported with documentary evidence, affidavits, admissions, or depositions because the trial court must only rely on the pleadings pursuant to MCR 2.116(G)(5). *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All well-pleaded factual allegations are

accepted as true and construed in the light most favorable to the nonmovant. *Wade v Dep't of Corrections*, 439 Mich 158, 162-163; 483 NW2d 26 (1992). "However, the mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance, Inc*, 204 Mich App 392, 395; 516 NW2d 498 (1994). A motion under MCR 2.116(C)(8) may be granted only where the claims alleged "are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade*, 439 Mich at 163.

MCL 600.745 provides for the enforcement of forum-selection clauses, subject to certain exceptions. MCL 600.745(3). "Whether a forum-selection clause is enforceable under MCL 600.745 presents a question of statutory interpretation, which we also review de novo." *Hansen Family Trust*, 279 Mich App at 474-475. In addition, "[t]he legal effect of a contractual clause is a question of law that we review de novo." *Turcheck v Amerifund Fin, Inc*, 272 Mich App 341, 345; 725 NW2d 684 (2006). "The trial court's decision whether to grant leave to amend a pleading is reviewed for an abuse of discretion." *Kimmelman v Heather Downs Mgt Ltd*, 278 Mich App 569, 571; 753 NW2d 265 (2008).

III. ANALYSIS

Plaintiff argues that the trial court erred in concluding that the forum-selection clause in the contract between plaintiff and TDP is mandatory and vests exclusive jurisdiction in Colorado. The pertinent language of the contract is as follows:

> This Agreement shall be governed by, interpreted and construed in all respects in accordance with the laws of the State of Colorado irrespective of the place of domicile or residence of either party, and without giving effect to any choice or conflict of laws provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Colorado. The parties agree that venue and jurisdiction for any controversy or litigation arising out of, related to, or regarding the validity or construction of this Agreement *will lie in* the District or County Court in the County of Denver, State of Colorado, and further agree and consent that personal service of process in any such action or proceeding outside of the State of Colorado shall be tantamount to service in person within the State of Colorado and shall confer personal jurisdiction upon said court. [Emphasis added.]

Plaintiff contends that the phrase "will lie in" is permissive, not mandatory. As the trial court noted, Michigan courts have not considered the specific phrase, "will lie in," when determining whether a forum-selection clause is permissive or mandatory. Other courts, however, have held that such language is mandatory. See, e.g., *Leasing Serv Corp v Graham*, 646 F Supp 1410, 1413, 1415 (SD NY, 1986) (holding that signed leases, which specified that jurisdiction and venue will lie in New York, resulted in the complaining party submitting to jurisdiction in New York); *Merrell v Renier*, unpublished order of the United States District Court for the Western District of Washington, entered June 6, 2006 (Docket No. C06-404JLR) (holding that when a forum-selection clause uses mandatory language like "will" or "shall" coupled with a choice of venue, the clause is not permissive). See also *Docksider, Ltd v Sea Technology, Ltd*, 875 F2d 762, 763-764 (CA 9, 1989), and the cases cited therein. The definition

of "will" generally contains the affirmative word "am," such as "am (is, are, etc.) expected or required to," and the definition of "lie" sets forth affirmatively "to consist or be grounded (usu. fol. by *in*)." *Random House Webster's College Dictionary* (1997). We also recognize that the definition of "lie" includes "[*l*]*aw*. to be sustainable or admissible, as an action or appeal," *id*., which suggests a permissive meaning. Nevertheless, we find that the phrase "will lie in," as set forth in the contractual provision in this case, provides a mandatory provision and not a permissive one. Plaintiff agreed by mandatory language that venue and jurisdiction for any controversy and litigation arising out of the contract would lie in Colorado. Thus, pursuant to the intent of the parties as expressed in the contractual language, venue and jurisdiction lie exclusively in Colorado.

Plaintiff also argues that Michigan courts must first determine whether a valid contract exists, and that in this case, a valid contract did not exist because the contract violated the MCPA. Thus, plaintiff argues that the forum-selection clause was ineffective. "A contractual forum selection clause, though otherwise valid, may not be enforced against one not bound by the contract." *Offerdahl v Silverstein*, 224 Mich App 417, 420; 569 NW2d 834 (1997). As noted by the Court in *Offerdahl*, "we believe the courts of the state 'where the cause of action arose,' have jurisdiction to determine the threshold issue whether a party is bound by a contract, and, accordingly, any forum selection and choice-of-law provision in the contract." *Id*. (citation omitted). "Thus, where a party asks a Michigan court to enforce a forum-selection or choice-of-law provision of a contract that would give another state personal jurisdiction over the parties, the Michigan court may examine whether a binding agreement exists in order to determine whether the forum-selection or choice-of-law provision is enforceable." *Blackburne & Brown Mtg Co v Ziomek*, 264 Mich App 615, 622; 692 NW2d 388 (2004).

Plaintiff alleged in her complaint claims based on fraudulent and innocent misrepresentation, breach of contract, and violations of the MCPA. Specifically, with regard to plaintiff's allegations relating to the MCPA, plaintiff alleged that "Defendants' actions are covered by the MCPA because they presented Ms. Kuhlman with a 'business opportunity' from which they 'guaranteed that the purchaser will derive income . . . that exceeds the price paid for the business opportunity.' MCL 445.902(1)(a)(iii)." Further, "Defendants employed unfair, unconscionable, and deceptive methods when presenting and selling their business opportunity to Ms. Kuhlman in violation of the MCPA. MCL 445.903 *et. seq*." Hence, plaintiff asserted that defendants' actions and methods were covered by the MCPA and were deceptive, not that the written contract itself was not binding. Stated another way, although this case involved a contract, plaintiff did not argue that a binding agreement did not exist, but rather, that she was entitled to recover damages due to defendants' misrepresentations, breach of contract, and violations of the MCPA.

In *Maids Int'l, Inc v Saunders, Inc*, 224 Mich App 508; 569 NW2d 857 (1997), the Court recognized "that contracts founded on acts prohibited by statute, or contracts in violation of public policy, are void." *Id*. at 511. Despite this recognition, the Court found that "[t]his case involves a contract to enter into a franchise business and does not involve the enforcement of a contract that calls for the commission of an act that violates either a statute or public policy." *Id*. Hence, the Court concluded that the trial court improperly determined that the franchise agreements were unenforceable because they violated the Franchise Investment Law (FIL), MCL 445.1501 *et seq*. *Maids Int'l*, 224 Mich App at 511-512. Similar to the Court's conclusion in

Maids Int'l, we conclude that this case "does not involve the enforcement of a contract that calls for the commission of an act that violates" the MCPA. *Id*. at 511. Therefore, the contract is not void, see *id*. at 512, and the forum-selection clause is effective.

Turning to plaintiff's other arguments, we initially note that because this claim was filed in Michigan, despite the parties designating Colorado in the choice-of-law provision and forum-selection clause, it is "necessary to determine which state's law will govern the enforceability of the forum-selection clause itself." *Turcheck*, 272 Mich App at 346. The Court in *Turcheck* noted that "Michigan courts have never squarely addressed whether the enforceability of a contractual forum-selection clause should be governed by the law of the state where the action was filed, or in the alternative, the law selected by the parties in the choice-of-law provision." *Id*. at 347 n 3. Contrast this to the Court's conclusion in *Offerdahl* that "we believe the courts of the state 'where the cause of action arose,' have jurisdiction to determine . . . any forum selection and choice-of-law provision in the contract." *Offerdahl*, 224 Mich App at 420 (citation omitted). The Court in *Turcheck* ultimately concluded that when it has been determined "that the forum-selection clause in the parties' contract would have been equally enforceable under" the law of either state, it is not necessary to "decide which state's law would otherwise have governed the clause's applicability." *Turcheck*, 272 Mich App at 348. We find that this is the case here.

"Michigan courts generally enforce contractual forum-selection clauses." *Id*. This enforcement "is premised on the parties' freedom to contract." *Hansen Family Trust*, 279 Mich App at 476. Exceptions to this rule are stated in MCL 600.745(3)(a)-(e), which provides:

> If the parties agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court shall dismiss or stay the action, as appropriate, unless any of the following occur:
>
> (a) The court is required by statute to entertain the action.
>
> (b) The plaintiff cannot secure effective relief in the other state for reasons other than delay in bringing the action.
>
> (c) The other state would be a substantially less convenient place for the trial of the action than this state.
>
> (d) The agreement as to the place of the action is obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.
>
> (e) It would for some other reason be unfair or unreasonable to enforce the agreement.

Unless one of the statutory exceptions set forth in MCL 600.745(3) applies, "Michigan courts will enforce a forum-selection clause as written." *Turcheck*, 272 Mich App at 348. A party seeking to avoid the enforcement of a forum-selection clause bears a "heavy burden" of proving that one of the exceptions set forth in MCL 600.745(3) applies. *Id*.

Plaintiff argues that her pleadings satisfy MCL 600.745(3)(b), (d), and (e). With regard to MCL 600.745(3)(b), plaintiff argues that she will not be able to secure effective relief in

Colorado because the attorney general of Colorado has indicated that franchises and business opportunities are not regulated in Colorado, whereas in Michigan, the MCPA protects citizens from fraudulent business opportunities. In Colorado, the federal trade commission "regulates franchisors under the Franchise Rule (rule), 16 CFR §§ 436.1 to 436.11 (2007), which seeks to prevent deceptive and unfair practices in the sale of franchises by requiring specific pre-sale disclosures to prospective franchisees." *Colorado Coffee Bean, LLC v Peaberry Coffee Inc*, ___ P3d ___ (Colo App, 2010). The Colorado Consumer Protection Act (CCPA), CRS § 6-1-101, *et seq*., was also "enacted to regulate commercial activities and practices which, because of their nature, may prove injurious, offensive, or dangerous to the public." *Rhino Linings USA, Inc v Rocky Mountain Rhino Lining, Inc*, 62 P3d 142, 146 (Colo, 2003) (internal quotations and citations omitted). See also *id*. at 146-147 (stating the elements for establishing a private cause of action under the CCPA).

In addition, recovery is permissible in Colorado on the common law claims of breach of contract, fraudulent misrepresentation, and innocent misrepresentation. See *Marquardt v Perry*, 200 P3d 1126, 1129 (Colo App, 2008) (stating the elements of a common law breach of contract claim); *Nielson v Scott*, 53 P3d 777, 779-780 (Colo App, 2002) (stating the elements of a common law fraudulent misrepresentation claim); *Bohe v Scott*, 83 Colo 374, 378; 265 P 694 (1928) (stating that "[o]ne who after making an innocent misrepresentation discovers the truth, yet thereafter silently allows another to act on the misrepresentation is guilty of fraud" (quotations and citation omitted)). Further, although plaintiff will not be able to utilize in Colorado the specific provisions of the MCPA, which protect against fraudulent business opportunities, "[i]t defies reason to suggest that a plaintiff may circumvent [a] forum selection . . . clause[] merely by stating claims under laws not recognized by the forum selected in the agreement." *Roby v Corp of Lloyd's*, 996 F2d 1353, 1360 (CA 2, 1993). See also *Haynsworth v Corp*, 121 F3d 956, 969 (CA 5, 1997). Based on the foregoing, we find plaintiff's argument that she will not be able to secure effective relief in Colorado to be without merit.

With regard to MCL 600.745(3)(d), plaintiff simply argues that she pled in her complaint that the contract was obtained by fraud and defendants have not pled any allegations to the contrary. Based on the plain language of the statute, a court need not dismiss an action pursuant to a forum-selection clause unless the agreement "as to the place of the action is obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means." MCL 600.745(3)(d). Because plaintiff made no specific allegations in her complaint or on appeal that her agreement to the forum selected was obtained by such means, we conclude that MCL 600.745(3)(d) is not applicable.

With regard to MCL 600.745(3)(e), plaintiff argues that it would be unfair and unreasonable to force her to litigate this action in Colorado considering she liquidated her retirement account to pay for this business opportunity, spent years trying to make it work with no income, and thus, has no funds to bring an action in Colorado. As stated by the Court in *Turcheck*, 272 Mich App at 350, "[a]llowing a party who is disadvantaged by a contractual choice of forum to escape the unfavorable forum-selection provision on the basis of concerns that were within the parties' original contemplations would unduly interfere with the parties' freedom to contract and should generally be avoided." Here, as articulated by plaintiff in her complaint, at the time she entered into the agreement, "she was out of work and in desperate need of income." Thus, at the time plaintiff entered into the agreement, she arguably did not

have sufficient funds to bring an action in Colorado. Nevertheless, Colorado was the forum to which she acquiesced. Hence, although plaintiff may be disadvantaged by having to incur additional costs in order to pursue a cause of action in Colorado, this was a concern when the parties entered into the contract. See *id*. Therefore, we find that MCL 600.745(3)(e) does not apply under the circumstances of this case. Based on the foregoing, plaintiff has not met her "heavy burden" of proving that one of the exceptions set forth in MCL 600.745(3) applies. See *Turcheck*, 272 Mich App at 348. Therefore, under Michigan law, the forum-selection clause should be enforced as written. See *id.*

Pursuant to Colorado law, we reach the same conclusion. Plaintiff argues that, under Colorado law, the forum-selection clause would be unenforceable. We disagree. Plaintiff relies on the fact that, under Colorado law, "[a] contract's forum selection clause should be held unenforceable if its enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision." *Morris v Towers Fin Corp*, 916 P2d 678, 679 (Colo App, 1996). In Michigan, "[a] fundamental policy may be embodied in a statute which (1) makes one or more kinds of contracts illegal or (2) which is designed to protect a person against the oppressive use of superior bargaining power." *Martino v Cottman Transmission Sys, Inc*, 218 Mich App 54, 61; 554 NW2d 17 (1996). Accordingly, plaintiff argues that the MCPA makes contracts like the one she entered into illegal and that the MCPA seeks to protect Michigan citizens against oppressive use of superior bargaining power by placing regulations on what business opportunities may be sold in Michigan. Plaintiff cites *Martino* for support. However, *Martino* involved the Michigan Franchise Investment Law (MFIL), which specifically provides that certain contractual provisions are void and unenforceable. See MCL 445.1527. "Included is the requirement that, at least ten business days before executing a franchise agreement, the franchisor must notify the prospective franchisee of contractual provisions which the statute renders unenforceable." *Martino*, 218 Mich App at 60. The Court in *Martino* found that, although the choice of law provision in the contract was Pennsylvania, because "franchisors under Pennsylvania law do not have to provide the notice required by the MFIL, Pennsylvania's franchise law violates the fundamental public policy of Michigan." *Id*. at 61. Thus, Pennsylvania law should not apply. *Id*. Here, the MCPA does not specifically provide that certain contractual provisions are void and unenforceable. Consequently, the statutes are not analogous. Further, as noted above, the MCPA does not make the contract like the one plaintiff entered into illegal because the contract does not call "for the commission of an act that violates" the MCPA. *Maids Int'l*, 224 Mich App at 511. In addition, plaintiff provides no support for her assertion that the MCPA was designed to protect citizens from the oppressive use of superior bargaining power. We will not search for authority to sustain or reject a party's position and the failure to cite authority in support of an issue results in it being deemed abandoned on appeal. See *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995). Further, "[i]t is undisputed that Michigan's public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions." *Turcheck*, 272 Mich App at 345. Hence, we conclude that the enforcement of the clause would not contravene a strong public policy in Michigan. See *Morris*, 916 P2d at 679.

We further conclude that the forum-selection clause would be enforceable under Colorado law. Generally, Colorado courts will enforce a forum-selection clause as written. See *Edge Telecom, Inc v Sterling Bank*, 143 P3d 1155, 1158, 1161 (Colo App, 2006). Specifically,

in Colorado, "a forum selection clause will be enforced unless the party seeking to avoid its effect proves that enforcement would be unfair or unreasonable" or that agreement to the forum selected was fraudulently induced. *Id*. A party seeking to avoid a forum-selection clause has the burden of proof. *Id*. at 1160. "Mere inconvenience or additional expense is not the test of unreasonableness." *Adams Reload Co, Inc v Int'l Profit Assocs, Inc*, 143 P3d 1056, 1060 (Colo App, 2005). Further, "[f]or inconvenience to constitute unreasonableness, the party seeking to nullify the provision must show that the party will, for all practical purposes, be deprived of a day in court." *Edge Telecom*, 143 P3d at 1162. "'Absent that, there is no basis for concluding that it would be unfair, unjust or unreasonable to hold that party to his bargain.'" *Adams Reload*, 143 P3d at 1060 (citation omitted). In addition, "so long as a forum selection clause is itself not the result of fraud, the parties can fairly expect to litigate any issues, including the plaintiff's general allegations of fraud, in the designated forum." *Edge Telecom*, 143 P3d at 1162. Moreover, whether it was reasonably foreseeable at the time of contracting that litigating in a particular forum would be inconvenient may be considered. *Adams Reload*, 143 P3d at 1060-1061.

We conclude that plaintiff has not met her burden of proving that she will be deprived of her day in court. See *Edge Telecom*, 143 P3d at 1162. Plaintiff alleges unfairness and unreasonableness based on her having a lack of funds to bring a cause of action in Colorado. Additional expense, however, does not equate to unreasonableness. *Adams Reload*, 143 P3d at 1060. Further, no evidence has been presented that plaintiff's agreement to the forum selected was the result of fraud. See *Edge Telecom*, 143 P3d at 1162. Moreover, as already noted, it was foreseeable at the time that the contract was entered into that Colorado was an inconvenient forum for litigation. See *Adams Reload*, 143 P3d at 1060-1061. Based on the foregoing, we conclude that, under Colorado law, the forum-selection clause would be enforceable. See *Edge Telecom*, 143 P3d at 1158, 1161. Consequently, the trial court correctly concluded that summary disposition was proper because the forum-selection clause would be enforceable under either Michigan or Colorado law. See *Hansen Family Trust*, 279 Mich App at 474.

Plaintiff also argues that she should be granted leave to amend her complaint to properly allege that the Blue Moon defendants are intimately intertwined with or are alter egos of TDP. The trial court denied plaintiff's request to amend her complaint in light of the court's decision to dismiss the claims against TDP based on the forum-selection clause. "Leave to amend the pleadings should be freely granted to the nonprevailing party upon a grant of summary disposition unless the amendment would be futile or otherwise unjustified." *Lewandowski v Nuclear Mgt, Co, LLC*, 272 Mich App 120, 126-127; 724 NW2d 718 (2006). In this case, an amendment would be futile considering our conclusions. Thus, the trial court did not abuse its discretion by denying plaintiff's request. See *Kimmelman*, 278 Mich App at 571.

Plaintiff next argues that because defendants attached the contract to their motion for summary disposition and moved for summary disposition pursuant to MCR 2.116(C)(8), which requires considering the pleadings alone, the trial court should have denied defendants' motion. Further, plaintiff argues that defendants' summary disposition motion was founded on allegations not contained in the complaint and interpretations of the complaint, which were not presented in the light most favorable to plaintiff. We note that these latter arguments were not contained in the statement of questions presented. "An issue not contained in the statement of

questions presented is waived on appeal." *English v Blue Cross Blue Shield of Mich*, 263 Mich App 449, 459; 688 NW2d 523 (2004). Nevertheless, we find that these arguments lack merit.

Here, the contract was not attached to the complaint, but was provided as an attachment to defendants' motion for summary disposition. Because plaintiff's complaint was based on a written contract, plaintiff was required to attach the contract to the complaint, pursuant to MCR 2.113(F)(1). The contract would have then been considered part of the pleadings, even for purposes of considering a MCR 2.116(C)(8) motion. MCR 2.113(F)(2); *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007). We find no error in defendants attaching the contract to their motion for summary disposition because the contract should have been incorporated as part of plaintiff's pleading.

In addition, although plaintiff argues that defendants' summary disposition motion was founded on allegations not contained in the complaint and not presented in the light most favorable to plaintiff, plaintiff only provides one example to support her assertions. Specifically, plaintiff references defendants' allegation that the parties negotiated the cost of the seat with TDP, which resulted in plaintiff paying $20,000 for the seat, instead of $30,000. Plaintiff asserts that her complaint indicated no such negotiation, but rather demonstrated that defendants used high-pressure tactics in selling her the "business opportunity." Plaintiff's complaint provided that when she was told that a seat would cost $30,000, she "demurred at the notion of putting up so much money" and expressed that to the representative. Further, plaintiff's complaint provided that she expressed doubt that she could find, let alone part with, $30,000. We find that plaintiff's statements to the representative could be interpreted as negotiation tactics and thus decline to conclude that defendants' summary disposition motion was founded on allegations not contained in the complaint. In addition, even if defendants did not present some of the facts in the light most favorable to plaintiff, the dispositive facts in this case involved the forum-selection clause. Viewing the forum-selection clause in the light most favorable to plaintiff, plaintiff's complaint failed to state a claim upon which relief could be granted, pursuant to MCR 2.116(C)(8), because the forum-selection clause was enforceable as written. See *Wade*, 439 Mich at 162-163; *Turcheck*, 272 Mich App at 348; *Edge Telecom*, 143 P3d at 1158, 1161.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Jane M. Beckering