

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02618-RPM

CARMEL COMMUNITY LIVING CORPORATION,

Plaintiff,

v.

NETSUITE INC.,

Defendant.

ORDER DENYING MOTION TO DISMISS

On November 13, 2009, the defendant filed a motion to dismiss this civil action, contending that a forum selection clause in the written agreement between the plaintiff and Netsuite contains a forum selection clause providing exclusive jurisdiction of the state and federal courts in California where the defendant is based. The parties filed papers supporting and opposing the motion. The complaint in this case seeks rescission of that contract as the remedy for fraud, negligent misrepresentation and concealment in the inducement of entry into the agreement. Because the contract is considered void or voidable if the allegations of the complaint are proven, the agreement would be negated in its entirety and the forum selection clause has no application to this dispute. Accordingly, it is

ORDERED that the motion to dismiss is denied.

Dated this 28th day of January, 2010.

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge