

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ITNAmerica,)	
)	
Plaintiff,)	
)	
v.)	Docket no. 2:16-cv-409-GZS
)	
Senior Ride Connection,)	
)	
Defendant.)	

ORDER DENYING MOTION TO DISMISS

Before the Court is Defendant’s Motion to Dismiss or in the Alternative Stay Concurrent Action (ECF No. 10). For reasons briefly explained herein, the Court DENIES the Motion.

The pending dispute involves two nonprofit organizations that provide community-based transportation services for senior citizens. Plaintiff ITNAmerica (“ITNA”) has its principal place of business in Westbrook, Maine, and has built a transportation network by partnering with various local affiliates. Defendant Senior Ride Connection, formerly known as ITN Charleston Trident, was one of those affiliates based in South Carolina. In August 2007, ITNA and Senior Ride Connection entered into an Affiliate Agreement, which is attached to the Complaint as Exhibit A (ECF No. 1-1). ITNA’s Complaint (ECF No. 1), which was filed on August 10, 2016, alleges that Senior Ride Connection breached various provisions of this Affiliate Agreement (Counts I-III), as well as asserting claims for misappropriation of trade secrets (Count IV), unjust enrichment (Count V), and accounting (Count VI).

On October 18, 2016, Defendant filed the pending Motion seeking dismissal or a stay of this action. At that time, Defendant indicated that there was a substantially similar case already pending in South Carolina, Senior Ride Connection v. ITNAmerica, Charleston County Civil No.

2016-CP-10-1629, which had been filed prior to Plaintiff's filing of this action. Plaintiff opposed Defendant's Motion explaining that the Affiliate Agreement at the heart of the parties' dispute contained a forum selection clause reflecting an agreement that "any suit, action, or proceeding between them which concerns this Agreement shall be brought and heard in federal or state court in Portland, Maine." (Ex. A (ECF No. 1-1), Page ID # 40.)

Since the initial briefing on the pending Motion, Plaintiff has filed two supplemental filings (ECF Nos. 13 & 14) providing updates regarding the South Carolina case. As indicated in Plaintiff's Second Notice of Supplemental Authority (ECF No. 14), on December 21, 2016, Charleston County Circuit Court Judge Cooper entered an order dismissing the South Carolina case pursuant to the doctrine of forum non conveniens and indicating that "the parties' forum selection clause should be enforced according to its plain language." (Dec. 21, 2016 Order (ECF No. 14-1), Page ID # 146.) Given this development, there is no longer a South Carolina action pending. Thus, there is no basis for this Court to abstain. Moreover, the Court concurs with Judge Cooper to the extent his recent order concluded that "this case is properly adjudicated in Maine" given the clear forum selection clause of the Affiliate Agreement. (Id.)

Therefore, the Court hereby DENIES Defendant's Motion to the extent it sought dismissal and MOOTS the alternative request for a stay pending resolution of Senior Ride Connection v. ITNAmerica, Charleston County Civil No. 2016-CP-10-1629.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 10th day of January, 2017.