Dealer Solutions USA Inc. v Hopkins
2023 NY Slip Op 31806(U)
May 25, 2023
Supreme Court, New York County
Docket Number: Index No. 650817/2023
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

---X

DEALER SOLUTIONS USA INC.,

Plaintiff,

- v -

JASON "JAY" HOPKINS, EMILY BOURNE

Defendant.

---X

INDEX NO. 650817/2023

MOTION DATE 05/24/2023

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISS.

Defendants' motion to dismiss is denied.

Background

In this action for breach of contract, misappropriation of trade secrets and unfair competition, plaintiff alleges that defendants violated the terms of the confidentiality agreements they signed. Plaintiff contends that defendant Hopkins started working for a direct competitor and used confidential client information in that role. It alleges that defendant Bourne engaged in similar conduct.

Defendants move to dismiss on the grounds that this Court lacks personal jurisdiction over defendants and, in the alternative, on the doctrine of *forum non conveniens*. They admit that they each signed confidentiality agreements that contained a choice-of-law and forum selection provision stating that cases would be brought in New York. However, they argue that this provision is unenforceable because each defendant worked at plaintiff's office in Chicago and

performed their job duties in the Midwest. Defendants argue that they have no connection to New York and so this Court lacks any long arm jurisdiction over them.

Defendants insist, in the alternative, that the Court dismiss this case on *forum non conveniens* grounds. They maintain that this Court should view the forum selection clause as permissive, rather than mandatory, and therefore this Court can dismiss this case. Defendants point out that the specific phrasing of the relevant clause identifies New York as a "non-exclusive jurisdiction" for a lawsuit arising out of the agreement. They also detail the potential hardships involved in permitting plaintiff to pursue its case in New York given that they both live in Illinois.

Defendants also insist that there is a burden on New York Courts and point out that the Civil Branch of Supreme Court in New York County decided over 33,000 motions in 2018. They argue that because there is no nexus to New York, the parties should not burden this Court with another case and its associated motions.

In opposition, plaintiff emphasizes that both defendants signed agreements that contained a forum selection clause that allows plaintiff to bring a case in New York. It argues that neither defendant offers arguments about why the forum selection clauses should be invalidated, such as claims that the agreements were signed under duress or were the product of fraud, and instead they simply claim that they do not want to follow the clear terms of the agreement. Plaintiff also argues that defendants seem to conflate the choice-of-law provision with the forum selection clause and cite to inapposite cases dealing with choice-of-law issues. Plaintiff maintains that the *forum non conveniens* arguments are without merit and that there is no reason to dismiss the case on that ground.

In reply, defendants argue that they have no connection to New York and are both nonresidents. They insist that the forum selection clause should be given little deference. Defendants maintain that this type of clause is generally not enforced and that the relevant factors suggest the Court should dismiss, in any event, on *forum non conveniens* grounds.

Discussion

"It is well-accepted policy that forum-selection clauses are prima facie valid. In order to set aside such a clause, a party must show that enforcement would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court" (*Br. W. Indies Guar. Tr. Co., Ltd. v Banque Internationale a Luxembourg*, 172 AD2d 234, 234 [1st Dept 1991]).

The relevant part of the parties' confidentiality agreements state that "Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New York" (NYSCEF Doc. No. 2, ¶ 8[b]).

The Court finds that defendants failed to meet their burden to invalidate a clear and unambiguous forum selection clause related to an agreement that they both signed. The fact is that both defendants entered into consulting agreements that required, according to plaintiff, access to confidential information about clients and prospective clients. That is why plaintiff says it made defendants sign the confidentiality agreements.

In other words, defendants got the benefit of working for plaintiff (purportedly as independent contractors) and part of that agreement involved signing the confidentiality agreement. Defendants cannot get that benefit and then insist they need not follow a contractual provision simply because they do not want to follow it. They do not assert they were forced to

sign the agreement under duress or that it was the product of fraud. Rather, this record suggests that they want the Court to rewrite the agreement to remove this provision. The Court declines to do so.

Defendants devote considerable time making arguments about the fact that the forum selection clause is non-exclusive. But that portion of the clause simply means that although the parties could, theoretically, bring a lawsuit elsewhere, they agreed to submit to the jurisdiction of courts in New York. A plain reading of this clause would permit plaintiff (or defendants) to bring a case in Illinois, for example, but it also stated that defendants "irrevocably submit[]" to jurisdiction in New York courts. The Court is unable to ignore this language.

The Court also declines to dismiss on *forum non conveniens* grounds. "The application of the doctrine of *forum non conveniens* is a matter of discretion to be exercised by the trial court and the Appellate Division" (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478, 478 NYS2d 597 [1984]. "The burden rests upon the defendant challenging the forum to demonstrate relevant private or public interest factors which militate against accepting the litigation and the court, after considering and balancing the various competing factors, must determine in the exercise of its sound discretion whether to retain jurisdiction or not. Among the factors to be considered are the burden on the New York courts, the potential hardship to the defendant, and the unavailability of an alternative forum in which plaintiff may bring suit" (*id*. at 479).

The Court finds that there is little burden to this Court, despite defendants' recitation of the number of motions decided in New York County. Another case and its associated motions will not overwhelm this part, which routinely decides over 1,000 motions a year. And while forcing two Illinois residents to litigate a case in New York is not the most convenient, the fact is that non-New York residents have cases in New York all the time. Under defendants'

formulation, this Court would be compelled to ignore all manner of forum selection clauses simply because defendants reside outside of New York. That is not the law and the Court declines to ignore the terms of the parties' agreement. If the parties thought enough of our courts to agree to have us resolve their dispute, we are happy to do so.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is denied and they are directed to answer pursuant to the CPLR.

Conference: August 3, 2023 at 10:30 a.m. By July 27, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a discovery stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no discovery agreement could be reached. Based on these submissions, the Court will assess whether an in-person conference is necessary. The failure to upload anything by July 27, 2023 will result in an adjournment of the conference.

5/25/2023			ARLENE P. BLUTH, J.S.C.
DATE			

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