

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**WODIKA DEVINE, INC,
Plaintiff,**

v.

**Case No. 14-138244-CK
Hon. James M. Alexander**

**CHURCH & DWIGHT CO, INC,
Defendant.**

OPINION AND ORDER RE: SUMMARY DISPOSITION

This matter is before the Court on Defendant’s motion for summary disposition. Plaintiff is a manufacturer’s representative that sold Defendant’s products under the terms of a Representative Agreement. In return for securing sales, Defendant was to pay Plaintiff commissions. In its Complaint, Plaintiff alleges that, despite demands, Defendant has failed to pay commissions owed. As a result, Plaintiff filed the present Complaint on claims of breach of contract, violation of MCL 600.2961, and unjust enrichment.

In its first responsive pleading, Defendant filed the present motion – arguing that Plaintiff’s Complaint should be dismissed based on a Washington state forum-selection clause contained in the Representative Agreement.¹

To that end, Defendant move for summary disposition under MCR 2.116(C)(7), which determines whether a claim is barred, among other grounds, by “an agreement to . . . litigate in a different forum.” When deciding such a motion, the contents of the complaint are accepted as

¹ The Representative Agreement was originally executed by Plaintiff and Northwest Natural Products, Inc, which was subsequently acquired by Defendant.

true unless contradicted by the documentary evidence. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). If no facts are in dispute, and reasonable minds could not differ on the legal effect of those facts, whether the plaintiff's claim is barred is a question for the court as a matter of law. *Guerra v Garratt*, 222 Mich App 285, 289; 564 NW2d 121 (1997).

“It is undisputed that Michigan’s public policy favors the enforcement of contractual forum-selection clauses and choice-of-law provisions.” *Turcheck v Amerifund Fin, Inc*, 272 Mich App 341, 345; 725 NW2d 684 (2006).

The Revised Judicature Act, MCL 600.745(3), provides (in relevant part):

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:

...

(c) The other state would be a substantially less convenient place for the trial of the action than this state.

...

(e) It would for some other reason be unfair or unreasonable to enforce the agreement.

The *Turcheck* Court reasoned:

A party seeking to avoid a contractual forum-selection clause bears a heavy burden of showing that the clause should not be enforced. Accordingly, the party seeking to avoid the forum-selection clause bears the burden of proving that one of the statutory exceptions of MCL 600.745(3) applies. *Turcheck*, 272 Mich App at 348, citing *The Bremen v Zapata Off-Shore Co*, 407 US 1, 17-18; 92 S Ct 1907; 32 L Ed 2d 513 (1972).

The clause relied on by Defendant is found in Section 9.4 of the Representative Agreement and provides:

This Agreement, an all transactions contemplated hereby, will be governed by, interpreted and enforced under the laws of the State of Washington without reference to its choice of law provisions. The parties hereby waive trial by jury

and agree to submit all matters under or with respect to this Agreement to the personal jurisdiction and venue of a court of subject matter jurisdiction located in Clark County, State of Washington.

In its Response, Plaintiff claims that this case should stay in Michigan for two reasons. First, while Northwest Natural Products (NNP) was a Washington company, Defendant (a New Jersey company) subsequently acquired NNP. As a result, Washington is now substantially less convenient. Second, Plaintiff argues that enforcement of the forum-selection clause will cause Plaintiff to lose application of the Michigan law – specifically MCL 600.2961.

With respect to Plaintiff’s argument that Defendant’s acquisition of NNP somehow precludes enforcement of the Washington forum-selection clause, the Court disagrees. And Plaintiff offers no legal authority in support of this argument. Michigan law is clear that, “A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim.” *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Plaintiff’s only argument, that enforcing a Washington judgment in New Jersey is problematic, ignores that, if this case stays in Michigan, it would have to enforce a Michigan judgment in New Jersey. This isn’t a compelling reason to ignore the forum-selection clause.

The Court is also unconvinced with respect to Plaintiff’s argument that enforcement will result in a loss of the application of Michigan law.

As cited by Defendant, the United States Supreme Court recently reaffirmed its support for forum selection clauses in *Atlantic Marine Constr Co v United States Dist Court*, ___ US ___; 134 S Ct 568, 582; 187 L Ed 2d 487 (2013). The *Atlantic Marine* Court reasoned “[w]hen parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the

litigation.” *Id.* at 582. This is so, as the Court reasoned, because “[w]hatever ‘inconvenience’ [the parties] would suffer by being forced to litigate in the contractual forum as [they] agreed to do was clearly foreseeable at the time of contracting.” *Id.*; quoting *The Bremen v Zapata Off-Shore Co*, 407 US 1, 17-18; 92 S Ct 1907; 32 L Ed 2d 513 (1972).

The *Atlantic Marine* Court concluded:

When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties’ settled expectations. A forum-selection clause, after all, may have figured centrally in the parties’ negotiations and may have affected how they set monetary and other contractual terms; it may, in fact, have been a critical factor in their agreement to do business together in the first place. In all but the most unusual cases, therefore, “the interest of justice” is served by holding parties to their bargain. *Id.* at 583

Plaintiff’s argument that they will lose their Michigan SCRA claim if the case is not litigated here misses the mark. Plaintiff never had such a claim to begin with. This is so because Plaintiff contracted for the application of Washington law. If Plaintiff wished to have the protections of Michigan law, it should have so contracted.

To conclude, the Court finds that Plaintiff has failed to carry its “heavy burden” to establish that the contractual Washington forum-selection clause should not be enforced. As a result, Defendant’s Motion for Summary Disposition under (C)(7) is GRANTED, and Plaintiff’s Complaint is DISMISSED.

This Order is a Final Order that resolves the last pending claim and closes the case.

IT IS SO ORDERED.

May 21, 2014
Date

/s/ James M. Alexander
Hon. James M. Alexander, Circuit Court Judge