

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

FLAGSTAR BANK, FSB,

Plaintiff,

v

Case No. 14-140051-CK
Hon. Wendy Potts

INTEGRA LENDING GROUP, LLC,

Defendant.

OPINION AND ORDER RE: DEFENDANT'S MOTION FOR SUMMARY
DISPOSITION OR DISMISSAL

At a session of Court
Held in Pontiac, Michigan

On
AUG 20 2014

The matter is before the Court on Defendant Integra Lending Group, LLC's motion for summary disposition under MCR 2.116(C)(1) contesting the Court's jurisdiction over it. Plaintiff Flagstar Bank, FSB has the burden of establishing a prima facie showing of jurisdiction. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). Whether a court has personal jurisdiction over a party is a question of law. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

Integra does not dispute that it entered into an agreement with Flagstar that has a forum-selection clause in which Integra consented to personal jurisdiction in the state courts of Oakland County, Michigan. However, it asserts that forum selection clause is unenforceable because there was no specific consideration for the forum-selection clause and the agreement was nonnegotiable. Michigan's public policy favors enforcement of a valid forum selection clause.

Turcheck v Amerifund Financial, Inc, 272 Mich App 341, 345; 725 NW2d 684 (2006). Integra bears a heavy burden of showing that the clause is unenforceable. *Turcheck, supra* at 348. Although Integra's argument is less than clear, it appears to be claiming that the agreement is unconscionable. The forum-selection clause would be unconscionable only if Integra had no realistic alternative to acceptance of the term and is it substantively unreasonable. *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 143-144; 706 NW2d 471 (2005). A contract provision is not substantively unconscionable "simply because it is foolish for one party and very advantageous to the other." *Clark, supra* at 144. Based on the evidence presented, Integra fails to show that this agreement is unconscionable.

Integra also asserts that the Court should not enforce the forum selection clause because Michigan is not a convenient forum. Integra's consent to jurisdiction is generally sufficient to allow the Court to exercise general personal jurisdiction. MCL 600.711(2). However, consent is subject to the factors of MCL 600.745(2). Where the parties agree in writing that an action may be brought in Michigan, the Court must exercise jurisdiction if: (a) it has power under the law of this state to entertain the action; (b) Michigan is a reasonably convenient place for the trial of the action; (c) the agreement was not obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means; and (d) Integra is served with process as provided by court rules. The only factor at issue here is (b): whether Michigan is a reasonably convenient place for the trial of the action.

To determine whether Michigan is a reasonably convenient forum, the Court applies the forum non conveniens factors listed in *Cray v General Motors*, 389 Mich 382; 207 NW2d 393 (1973). See *Lease Acceptance Corp v Adams*, 272 Mich App 209, 227-228; 724 NW2d 724 (2006). Those factors are:

1. The private interest of the litigant.
 - a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
 - b. Ease of access to sources of proof;
 - c. Distance from the situs of the accident or incident which gave rise to the litigation;
 - d. Enforcibility [sic] of any judgment obtained;
 - e. Possible harassment of either party;
 - f. Other practical problems which contribute to the ease, expense and expedition of the trial;
 - g. Possibility of viewing the premises.
2. Matters of public interest.
 - a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
 - b. Consideration of the state law which must govern the case;
 - c. People who are concerned by the proceeding.

See *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 605-606; 719 NW2d 40 (2006).

Integra asserts that Michigan is not a convenient forum because its witnesses and evidence are located in Louisiana and Florida. However, Flagstar's witnesses and documentary evidence are located here. To the extent that there are out-of-state witnesses, the parties can use de bene esse depositions or video conferencing to eliminate the need for live, in-person testimony. Further, the fact that the mortgaged properties at issue are located in Louisiana is irrelevant because Flagstar's claim is not premised on any fact or issue that would require this case to be litigated near the mortgaged properties. Integra also claims that it may be able to assert a third-party claim against the borrowers, and it cannot do so in Michigan because the borrowers are not located in this state. However, Integra has not explained why it would need to assert its claims against the borrowers as a third-party claim in this case and could not bring those claims as separate actions. Integra also asserts that if Flagstar obtains a judgment against it here, the judgment cannot be enforced here. However, it fails to explain how Flagstar's inability to enforce a judgment here would render the forum inconvenient. Integra also argues that jurisdiction in Louisiana would be more convenient because it is a small company doing business

only in Louisiana and Flagstar is a large company that does business in several states including Louisiana. However, the question is not whether Louisiana is a more convenient forum or Michigan would be less convenient. Rather, it is sufficient that Michigan is a reasonably convenient forum. MCL 600.745(2)(b); *Lease Acceptance, supra*. Although Michigan may not be the most convenient place to try this action, it is a reasonably convenient forum. Because Integra agreed to jurisdiction in Michigan and the factors of MCL 600.745(2) are met, the Court will not dismiss the action for lack of personal jurisdiction.

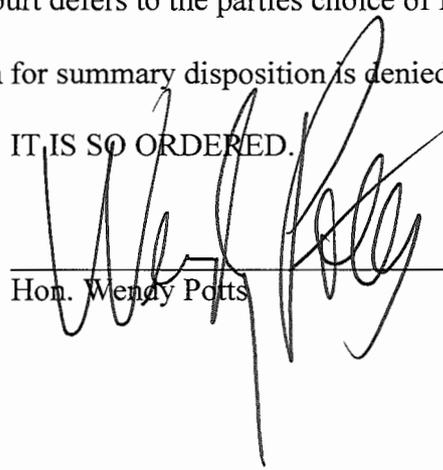
Integra also argues that the Court should decline to exercise personal jurisdiction under the doctrine of forum non conveniens. However, as noted above, the factors for deciding a forum non conveniens argument are the same factors the Court considers in deciding whether Michigan is a reasonably convenient forum. *Radeljak, supra*. Further, the standard for a forum non conveniens analysis is nearly the same in that the choice of forum is accorded deference, *id* at 602, and the Court considers what forum would best serve the convenience of the parties and the ends of justice. *Id* at 605. Because Integra fails to demonstrate that trying this action in Michigan is less convenient than trying it in Louisiana, the Court defers to the parties choice of forum.

For all of these reasons, Defendant's motion for summary disposition is denied.

IT IS SO ORDERED.

Dated:

AUG 20 2014



Hon. Wendy Polts