

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

J.M. SALES & ASSOCIATES, INC.,

Plaintiff,

v

Case No. 16-152827-CB

Hon. Wendy Potts

ERI AMERICA, INC.,

Defendant.

OPINION AND ORDER RE: DEFENDANT ERI AMERICA, INC.'S
MOTION FOR SUMMARY DISPOSITION

At a session of Court
Held in Pontiac, Michigan

OCT 17^{On} 2016

This matter is before the Court on Defendant ERI America, Inc.'s Motion for Summary Disposition pursuant to MCR 2.116(C)(7) and (C)(8). For purposes of background, Plaintiff JM Sales & Associates, Inc. and Defendant ERI America, Inc. were parties to a Representative Agreement dated January 1, 2011. Plaintiff filed the complaint in the instant matter asserting that it is owed commissions under the Agreement. The Agreement contains a forum selection clause and choice of law provision, which states "[t]his Agreement shall be governed and construed in accordance with the law of the State of Illinois, without giving effect to its choice of law provisions. Illinois shall be proper venue for any litigation arising out of this Agreement and the parties agree to submit to the personal jurisdiction of the appropriate courts within Illinois." Defendant now asserts that Plaintiff improperly filed the instant matter in Michigan and that it

should be dismissed because the parties agreed to litigate in a different forum. The Court dispenses with oral argument pursuant to MCR 2.119(E)(3).

A motion for partial summary disposition under MCR 2.116(C)(7) tests whether a claim is barred as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). A motion under (C)(7) is decided on the pleadings, unless the parties submit evidence contradicting the allegations in the pleadings. *Turner v Mercy Hosp & Health Services*, 210 Mich App 345, 349; 533 NW2d 365 (1995).

Plaintiff opposes Defendant's motion and argues that MCL 600.745(3) does not apply because the Agreement does not grant Illinois exclusive jurisdiction over the parties, and does not show intent to forgo jurisdiction in Michigan. Plaintiff further argues that it is entitled to summary disposition under MCR 2.116(C)(10) because there exists no genuine issue of material fact that Defendant cannot contest liability under MCL 600.2961, Michigan's Sales Commission Act.

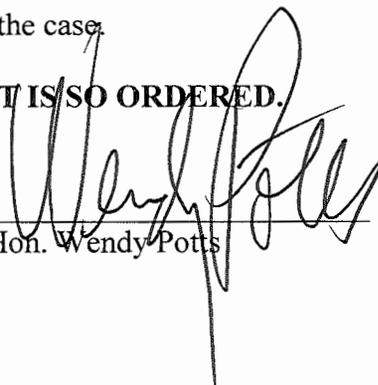
Michigan's public policy favors enforcement of a valid forum selection clause. *Turcheck v Amerifund Financial, Inc*, 272 Mich App 341, 345; 725 NW2d 684 (2006). Plaintiffs bear a heavy burden of showing that the clause is unenforceable. *Id* at 348. When parties have contracted in advance to litigate 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. *Atlantic Marine Constr Co v United States Dist Court*, ___ US ___; 134 S Ct 568, 583; 187 L Ed 2d 487 (2013).

If parties agree in writing, as they did here, that an action will be brought in another state, this Court is obligated by statute to dismiss or stay the action unless certain factors are present. MCL 600.745(3); *Hansen Family Trust v FGH Industries, LLC*, 279 Mich App 468, 476; 760 NW2d 526 (2008). The statutory factors that could preclude dismissal are (a) the Court is required by statute to entertain the action; (b) Plaintiffs cannot secure effective relief in the other state for reasons other than delay in bringing the action; (c) the other state would be a substantially less convenient place for the trial of the action than this state; (d) the agreement as to the place of the action is obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means; or (e) it would for some other reason be unfair or unreasonable to enforce the agreement. MCL 600.745(3). Plaintiff does not argue in favor of any of the statutory factors that could preclude dismissal, thus the Court need not address them.

The Court finds that the parties have an Agreement that contains an enforceable forum selection clause. Accordingly, Defendant's motion for summary disposition is granted and Plaintiff's claims are dismissed in their entirety. The Court need not address Plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) since Plaintiff's claims are dismissed.

This order resolves the last pending claim and closes the case.

IT IS SO ORDERED.



Hon. Wendy Potts

Dated:

OCT 17 2016