STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PRIMARY INSURANCE AGENCY GROUP,

Plaintiff,

vs. Case No. 2015-1741-CB

CONTINENTAL CASUALTY COMPANY,

Defendant.

_____/

OPINION AND ORDER

Defendant has filed a motion for summary disposition pursuant to MCR 2.116(C)(7). Plaintiff has filed a response and requests that the motion be denied.

I. Factual and Procedural History

Plaintiff is an insurance agency located in Michigan. Defendant is an insurance company based in Illinois that is admitted to write property and casualty insurance in all 50 states. On or about July 15, 2009, the parties entered into an "Agency Agreement" ("First Agreement"). The parties operated under the First Agreement until on or about December 29, 2014, when the parties executed a "Producer Agreement" ("Second Agreement")(First Agreement and Second Agreement collectively as, "Agreements"). On or about March 19, 2015, Plaintiff received a letter from Defendant terminating the Second Agreement effective March 23, 2015.

On May 21, 2015, Plaintiff filed its complaint in this matter against Defendant. Plaintiff's complaint contains claims for: Count I- Breach of Contract, Count II- Bad Faith, Count III- Intentional Misrepresentation, Count IV- Declaratory Judgment, and

Count V- Injunctive Relief. On July 1, 2015, Defendant filed its instant motion for summary disposition pursuant to MCR 2.116(C)(7) based on the mandatory mediation and arbitration provisions contained within the Agreements. Plaintiff has filed a response and requests that the motion be denied. On August 3, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id*

III. Arguments and Analysis

In its motion, Defendant contend the Agreements contain mandatory mediation and arbitration clauses which require the parties to first submit any claims arising out of the Agreements to mediation, and if mediation is unsuccessful, binding arbitration in

Illinois. (*See* Exhibit A to Complaint, at p.5; Exhibit B to Complaint, at p.7.) In addition, the Agreements also provide that they will be governed by Illinois law. (*See* Exhibit A to Complaint, at p.6; Exhibit B to Complaint, at p.8.) While its appears undisputed that all of Plaintiff's claims arise out of, or relate to, the Agreements, and that the Agreements unambiguously provided that such claims must be submitted to mediation and, if necessary, binding arbitration, Plaintiff contends that the above-referenced provisions, as well as the choice of law provision, are unenforceable on public policy grounds.

A. Choice of Law

Defendant contends that Illinois law must be followed because the Agreements state that they are governed by Illinois law. The Michigan Supreme Court has ruled that a court is required to balance the expectations of the parties with the interests of the States when determining what state's law to apply. *Chrysler Corp v Skyline Industrial Services, Inc.*, 448 Mich 113, 125; 528 NW2d 698 (1995). In *Chrysler Corp*, the Michigan Supreme Court held that the parties' choice of law should be applied if the issue is one the parties could have resolved by an express contractual provision unless: (1) the chosen state has no substantial relationship to the parties or the transaction, or (2) there is no reasonable basis for choosing that state's law. *Id.* In addition, a choice of law provision should not be enforced where doing so "would be contrary to the fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue, and which... would be the state of the applicable law in the absence of an effective choice of law by the parties." *Id.* at 126.

In this case, Illinois has a "substantial relationship" to Defendant as Defendant is located in Illinois. *Id.*; *Smith v ComputerTraining.com Inc.*, 772 F Supp 2d 850, 856 (SD

MI, 2011). Moreover, the Court is satisfied that choosing Illinois law is reasonable in light of the fact that both parties had an opportunity to review the Agreements, and chose to execute the Agreements knowing full well that they were agreeing to have the Agreement interpreted under Illinois law. Further, Defendant, as a company operating in all 50 states has a strong interest in having its contracts interpreted in a consistent manner, which interest is best served by having each of its contracts interpreted using one state's laws. While Plaintiff cites to various provision of Michigan law in support of its contention that the State of Michigan has a strong interest in having its law govern the insurance contracts, none of those provisions uniquely address the straightforward contract interpretation issues presented by this case. Plaintiff's claims are based on its allegations that Defendant breached the Agreements by terminating the parties' relationship in the manner it did, and that Defendant made certain statements in bad faith. The Court is not persuaded that such allegations form a type of controversy in which this state has a unique interest. For all of these reasons, the Court is convinced that Illinois law should govern the parties' disputes.

B. Removal to Arbitration and Mediation

In its motion, Defendants contends that this matter should be dismissed based on the Agreements' mediation and arbitration requirements. Specifically, the Agreements contain the following mediation/arbitration clause:

> P. In the event that any dispute arising out of or relating to this agreement cannot be resolved by negotiation, the parties shall endeavor to settle the dispute by non-binding mediation. Such mediation shall take place in Chicago, Illinois and the parties shall select a mediator from the JAMS Chicago Panel of Neutrals, unless otherwise agreed upon.
>
> Any dispute which has not been resolved by mediation within 60 days of the demand for such procedure shall be resolved by final and binding

> arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators which shall be selected in accordance with American Arbitration Association Rules R-13. The arbitrators shall have no power or authority to award consequential, punitive or exemplary damage. Any award made may be confirmed in a court having jurisdiction. All arbitration shall take place in Chicago, Illinois unless otherwise agreed upon.

(*See* Exhibit A to Complaint, at p.5; Exhibit B to Complaint, at p.7.)

Arbitration is a matter of contract, *Miller v Miller,* 474 Mich 27, 32; 707 NW2d 341 (2005), and a valid agreement must exist for arbitration to be binding, *Arrow Overall Supply Co v Peloquin Enterprises,* 414 Mich 95, 99; 323 NW2d 1 (1982). In order to ascertain the meaning of a contract, the Court gives the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument. *Rory v Continental Ins Co,* 473 Mich 457, 464; 703 NW2d 23 (2005). All rules of contract interpretation are subordinate to the cardinal rule that the Court must ascertain the parties' intent. *City of Grosse Pointe Park v Michigan Municipal Liability and Property Pool,* 473 Mich 188, 198; 702 NW2d 106 (2005). To comply with this cardinal rule, and to effectuate the principle of freedom of contract, the Court construes clear and unambiguous contractual language according to its plain sense and meaning. *Id.* The language of the parties' contract is the best way to determine what the parties intended. *Klapp v United Ins Group Agency, Inc,* 468 Mich 459, 476; 663 NW2d 447 (2003). A contract must be construed so as to give effect to every word, clause, and phrase, and a construction should be avoided that would render any part of the contract nugatory. *Id.,* at 467.

The Agreements require "[a]ny dispute which has not been resolved by mediation within 60 days of the demand for such procedure shall be resolved by final and binding

arbitration under the Commercial Arbitration Rules of the American Arbitration Association." (*See* Exhibit A to Complaint, at p.5; Exhibit B to Complaint, at p.7.) In its response, Plaintiff contends that it declaratory, injunctive and fraud claim cannot be submitted to arbitration. However, Illinois courts have consistently interpreted language similar to that presented in the Agreement as broadly requiring any disputes arising under the contract at issue to be submitted to arbitration, include tort claims. See *Bass v SMG, Inc.*, 328 Ill. App 3d 492, 498; 765 NE2d 1079 (Ill App Ct 2002); *Nage v Nadelhoffer, Nagle, Kuhn, Mitchell, Moss and Saloga, P.C.*, 244 Ill App 3d 920, 925; 613 NE 2d 331 (1993); *J & K Cement Const, Inc. v Montalbano Builders, Inc.*, 119 Ill App 3d 663, 670; 456 NE2d 889 (Ill App Ct 1983). Based on the above-referenced Illinois law, the Court is convinced that Plaintiff's claims, including those requiring the interpretation of the Agreements, are subject to the Agreements' mediation and arbitration provisions. Consequently, Plaintiff's position is without merit.

IV. Conclusion

Based upon the reasons set forth above, Defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) is GRANTED. Plaintiff's claims are DISMISSED. In compliance with MCR 2.602(A)(3), the Court states this *Opinion and Order* resolves the last claim and closes the case.

IT IS SO ORDERED.

Date: _____

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge