

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 09-268 JVS (RNBx). Date May 20, 2009
 Title Blume Engineering L.L.C. v. Ourplane Corp. et al

Present: The James V. Selna
 Honorable

Karla J. Tunis
 Deputy Clerk

Not Present
 Court Reporter

Attorneys Present for Plaintiffs:
 Not Present

Attorneys Present for Defendants:
 Not Present

Proceedings: (In Chambers) Order Granting Defendant Ourplane Corp.’s Motion to Dismiss for Improper Venue (fld 4-22-09)

Defendant OurPLANE Corp. (“OurPlane”) moves to dismiss the First Amended Complaint (“FAC”) for improper venue based on the applicability of a forum selection clause. Plaintiff Blume Engineering L.L.C. (“Blume”) opposes. The motion is GRANTED.

I. Background

This action arises from OurPlane’s alleged breach of the parties’ Equity Use License Agreement (the “Agreement”) by failing to deliver an airplane, for which Blume had paid the \$182,435.40 deposit. The Agreement contained the following forum selection clause:

The parties agree . . . that all actions or proceedings brought with regard to the interpretation or enforcement of this agreement, or any provision hereof, or any disputes arising under this Agreement, shall be brought in the Michigan Circuit Court, Kent County, Michigan, or the United States District Court for the Western District of Michigan.

(FAC, Ex. A ¶ 45.) OurPlane selected Michigan as its chosen forum because its general counsel has a Michigan office with strong aviation expertise, and because it is close to OurPlane’s corporate parents’ Canadian headquarters. (Casson Decl. ¶ 5.)

The FAC alleges four claims: (1) breach of contract, (2) rescission, (3) money had and received, and (4) declaratory relief. (FAC ¶¶ 16-33.)

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II. Legal Standard

Federal law governs the enforceability of forum selection clauses in diversity actions. Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509, 513 (9th Cir. 1988). “A motion to dismiss based on enforcement of a forum selection clause is treated as a motion for improper venue under Rule 12(b)(3).” Argueta v. Banco Mexicano, S.A., 87 F.3d 320, 324 (9th Cir. 1996). The pleadings need not be accepted as true and the Court may consider facts outside of the pleadings. Murphy v. Schneider Nat’l, Inc., 362 F.3d 1133, 1137 (9th Cir. 2004). Forum selection clauses are prima facie valid and should not be set aside unless the party challenging their enforcement can show that they are unreasonable under the circumstances. M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10 (1972); Hendricks v. Bank of Am., N.A., 408 F.3d 1127, 1137 (9th Cir. 2005).

III. Discussion

OurPlane moves to dismiss for improper venue on the ground that each of Blume’s claims comprise part of an “action[] or proceeding[] brought with regard to the interpretation or enforcement of [the Agreement],” and encompass “disputes arising under this Agreement.” (Mot. at 5, citing FAC, Ex. A ¶ 45.) Blume does not dispute the applicability of the forum selection clause, but contends that the clause is unreasonable and, therefore, should not be enforced.

“A forum selection clause is unreasonable if (1) its incorporation into the contract was the result of fraud, undue influence, or overweening bargaining power; (2) the selected forum is so gravely difficult and inconvenient that the complaining party will for all practical purposes be deprived of its day in court; or (3) enforcement of the clause would contravene a strong public policy of the forum in which the suit is brought.” Argueta, 87 F.3d at 325 (internal quotations and citations omitted).

Blume makes a number of arguments under the rubric of a § 1404(a) transfer,¹ none of which show that the forum selection clause is unreasonable under Argueta.

¹ While a district court has discretion to transfer a case under 28 U.S.C. § 1404, a forum selection clause presents a different issue governed by its own legal standard. See supra Part II.

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Hence, it is of little consequence that the Agreement was executed in California, the plane hangared there, or that the plane was manufactured in New Mexico if Blume cannot show unreasonableness. (Blume Decl. ¶¶ 7, 15.) And it is to no avail that the convenience of counsel is not a relevant factor in venue determinations. (Oppo. at 8, citing In re Volkswagen AG, 371 F.3d 201, 206 (5th Cir. 2004); Reply at 1 (“This is not a forum non conveniens case, and that is the wrong standard.”); see also Reply at 8.)

To defeat the forum selection clause, Blume must show unreasonableness. Blume has not done so here.

First, Blume has not shown that the forum selection clause was the product of “fraud, undue influence, or overweening bargaining power.” Evidence that the Agreement was not negotiated (Blume Decl. ¶ 7), or was part of a standard license agreement (Casson Decl. ¶ 5), is insufficient to make this high showing.²

Second, Blume has not shown “that trial in the chosen forum would be so difficult and inconvenient that the party would effectively be denied a meaningful day in court.” Argueta, 87 F.3d at 325 (internal quotation and citation omitted). This is a “heavy burden” and Blume has not carried it here. Id. Blume merely contends that the “selection of Michigan was not designed to establish a neutral forum to hear disputes,” but does not show how litigating in Michigan would effectively deprive it of its day in court. (Oppo. at 9.)

Sudduth v. Occidental Peruana, Inc., 70 F. Supp. 2d 691, 695 (E.D. Tex. 1999), cited by Blume, is inapposite. There, the forum selection clause required the parties to litigate in Peru, and the court specifically relied on “cases stat[ing] that the application of the general rule of upholding forum selection clauses would not be followed if the

² Cf. Intershop Commn'cs v. Superior Court, 104 Cal. App. 4th 191, 201-02 (2002) (“A forum selection clause within an adhesion contract will be enforced as long as the clause provided adequate notice to the [party] that he was agreeing to the jurisdiction cited in the contract. . . . Here, . . . the forum selection clause plainly says that Hamburg, Germany is the selected forum.”). A similar point is made in the reply. (Reply at 3-4, citing, inter alia, Upton v. Tribilcock, 91 U.S. 45, 50 (1875), and Manetti-Farrow, 858 F.2d at 514 n.5.)

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contract required two Americans to resolve their dispute in a remote, alien forum.” Id. (citing Bremen, 407 U.S. at 17; Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 591-92 (1991)). No similar international context is presented here.

Blume’s other cited case, Mayeux’s A/C & Heating, Inc. v. Famous Construction Corp., No. CIV. A. 97-0767, 1997 WL 567955 (E.D. La. Sept. 10, 1997), is distinguishable as well. The compelling factor in Mayeux’s was not that the forum selection clause did not select a neutral location, but that “[t]he federal and state statute in question [sought] to implement the policy that the dispute should be litigated in a forum which has some connection to the contract.”³ Id. at *4. Thus, the state statute in Mayeux’s sought to implement the policy that the dispute should be litigated in a forum which has some connection to the contract. Blume cites to no comparable statute here.

In this case, Michigan is the chosen forum for two reasons: (1) OurPlane’s general counsel has its office there, and (2) it is near OurPlane’s corporate parent’s Canadian headquarters. Although this may confer some strategic and cost advantage on OurPlane, it does not necessarily rise to the level of discouraging litigation so as to effectively deny Blume its day in court. Calavo Growers of Cal. v. Generali Belgium, 632 F.2d 963, 969 (2d Cir. 1980) (Newman, J., concurring) (“A forum is not necessarily inconvenient because of its distance from pertinent parties or places if it is readily accessible in a few hours of air travel.”) Notably, had the forum selection clause provided for litigation in New York, where OurPlane was incorporated, or Virginia, where OurPlane maintains its principal place of business, the travel burden would likely have been greater, but still not so great as to make the forum selection

³ Notably, the Mayeux’s court observed:

Both the Louisiana legislature, in enacting LSA-R.S. 9:2779, and Congress, in enacting the Miller Act, 40 U.S.C. § 270b(b), determined that the rights of contractors and subcontractors to collect funds due for furnishing labor and materials in the construction, alteration, or repair of government buildings, to a convenient forum should be protected.

