

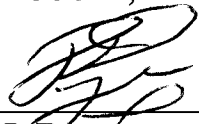
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

LEGOME & ASSOCIATES, LLC	:	February Term, 2016
	:	Case No. 01641
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
SUMMIT PHARMACY, INC.	:	
	:	Control No. 17061122.
<i>Defendant</i>	:	

ORDER

AND NOW, this 27th day of July, 2017, upon consideration of the motion to dismiss plaintiff's action on grounds of lack of personal jurisdiction and/or for *forum non conveniens*, the response of plaintiff in opposition, and the respective *memoranda* of law, it is **ORDERED** that the motion is **DENIED**.

BY THE COURT,



RAMY I. DJERASSI, J.

DOCKETED
JUL 27 2017
R. POSTELL
COMMERCE PROGRAM

Legome & Associates, LI-ORDOP



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MEMORANDUM OPINION

Plaintiff, a “Law Firm,” and defendant, a “Pharmacy,” are both based in New Jersey. On November 14, 2014, the Law Firm agreed to represent the Pharmacy in certain legal matters, pursuant to a “Retainer Agreement.” The Retainer Agreement contains a warrant of attorney provision whose language gave to the Law Firm authority to confess judgment against the Pharmacy.¹ Specifically, the warrant of attorney stated that “[u]pon a default, the ... [Pharmacy] ... empowers any ... attorney **of any court of record** to appear for ... [the Pharmacy] and confess judgment in any and all actions....”² The Retainer Agreement contained also a choice-of-law and forum selection clause which recited in pertinent as follows:

[t]his contract shall be governed and construed according to the substantive laws of the Commonwealth of Pennsylvania.... [Pharmacy] hereby consents to the jurisdiction of the Courts of Common Pleas of Philadelphia County, Pennsylvania, for the purposes in connection with any action or proceeding commenced between the parties hereto, the subject matter which relates to any controversy or claim arising out of ... this contract....”³

On February 10, 2016, the Law Firm entered judgment by confession against the Pharmacy. On March 17, 2016, the Pharmacy filed a petition to strike or open the confessed judgment. The petition to strike asserted that the afore—cited choice of law-and-forum selection clause was invalid because it violated Pa. C.S.A. § 5322 –a statute commonly known as the Pennsylvania Long-Arm Statute.⁴ Specifically, the petition

¹ Retainer Agreement, Exhibit A to the motion of defendant to dismiss plaintiff’s action, ¶ 9.

² *Id.*, (emphasis supplied).

³ *Id.*, ¶ 14 (emphasis added).

⁴ The Pennsylvania Long-Arm Statute allows a Court of this Commonwealth to exercise personal jurisdiction over a defendant “**transacting any business in Pennsylvania.**” PA. 42 C.S.A. § 5322(a) (emphasis supplied).

averred that the services provided by the Law Firm through the Retainer Agreement were exclusively connected with New Jersey, and that the Pharmacy did not transact any business in Pennsylvania. Thus, the Pharmacy's petition concluded that the confessed judgment was void because this Court had no jurisdiction over the case, and could not assert personal jurisdiction over the Pharmacy.⁵ On April 20, 2016, this Court ruled on the Pharmacy's petition to strike or open the confessed judgment. Denying the petition to strike, this Court stated that—

[t]he warrant of attorney appears on its face to be a valid[ly] executed retainer agreement in which ... Pharmacy consented to the jurisdiction of **any court** to enter a judgment by way of confession.⁶

Despite denying the petition to strike, Court granted the Pharmacy's petition to open the judgment on the grounds that the Pharmacy has sustained its burden of producing sufficient evidence in support of a defense.

After the judgment was opened on April 20, 2016, the Case Management Deadlines in this action were extended on three separate occasions. Finally, on June 8, 2017, the Pharmacy filed the instant motion to dismiss the instant action. Specifically, the motion to dismiss asserts that pursuant to the Retainer Agreement, New Jersey law governs all substantive aspects of the parties' dispute," and the choice-of-law, choice of forum and confession of judgment provisions "are void as a matter of New Jersey law."⁷ The Pharmacy thus concludes that "there is no sound basis for an exercise of personal jurisdiction over [the Pharmacy] ... on the part of this Court."⁸ This argument is rejected for two reasons. First, the Court has already explained in its Order of April 20, 2016

⁵ Petition to strike, ¶ 23.

⁶ Order dated April 20, 2016, No. 1.

⁷ Motion to dismiss, ¶¶ 3–4, 6.

⁸ *Id.* at ¶ 6.

that the “Pharmacy [had] consented to the jurisdiction of **any court** to enter judgment by way of confession” pursuant to the terms of a warrant-of-attorney.⁹ Second, the Court additionally rejects the argument based on lack of personal jurisdiction because the record shows that the Pharmacy freely agreed to the choice-of-law and forum selection clauses contained in separate provisions of the Retainer Agreement.

Preliminarily, the Court notes that under Pennsylvania law, the “parties to a contract may agree in advance to submit to the jurisdiction of a given court.”¹⁰

Specifically, Pennsylvania law provides that—

[p]ersonal jurisdiction can be established by consent of the parties; when such consent is established, the famous minimum contacts framework developed by the United States Supreme Court ... is inapplicable....¹¹

Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived.¹²

The principles cited above are in lock-step with the laws of New Jersey. Under New Jersey law—

[p]ersonal jurisdiction is a waivable right, that is, a non-resident defendant may choose to consent to the jurisdiction of a particular court.... Forum-selection clauses, under which a party agrees in advance to submit to a particular jurisdiction in the event a dispute ... are frequently used between commercial parties. They do not offend due process so long as the agreement is freely negotiated and the provision is not unreasonable and unjust.¹³

⁹ Order dated April 20, 2016.

¹⁰ *Cont'l Bank v. Brodsky*, 311 A.2d 676, 677–78 (Pa. Super. 1973).

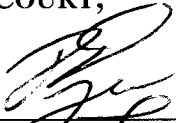
¹¹ *Frontier Leasing Corp. v. Shah*, 931 A.2d 676, 680 (Pa. Super. 2007) (discussing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (U.S. 1945)).

¹² *Id.* (citing *C. ie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982)).

¹³ *YA Glob. Investments, L.P. v. Cliff*, 15 A.3d 857, 862 (N.J. Super. App. Div. 2011) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n. 14 (U.S. 1985)). In its *memorandum of law*, the Pharmacy appears to suggest that the Retainer Agreement was executed as a contract of adhesion “between parties with unequal bargaining power.” *Memorandum of law*, p. 7. This suggestion is rejected because upon a careful reading of the Pharmacy’s petition to strike or open, this Court could not find any averment asserting that the Retainer Agreement had been executed by parties having unequal bargaining powers.

Turning to the substance of the issue at hand, this Court notes that the parties are bound to the terms of a Retainer Agreement. Under the clear and unambiguous terms of the Retainer Agreement, the parties thereof are bound by, and governed under, the laws of Pennsylvania. In addition, the Retainer Agreement clearly shows that the Pharmacy submitted to the jurisdiction of Pennsylvania and to the Court of Common Pleas of Philadelphia County. In short, the Pharmacy waived its right to be governed in the instant case by the laws of its home State; in addition, the Pharmacy consented to the jurisdiction of this Commonwealth and to litigate the dispute in Philadelphia County.¹⁴ For this reason, the Court rejects the afore-discussed arguments, and the motion to dismiss is denied.¹⁵

BY THE COURT,



RAMY I. DJERASSI, J.

¹⁴ In its motion, the Pharmacy asserts other challenges to the instant action. Such challenges are entirely rejected because they are all predicated upon the erroneous premises that the Retainer Agreement is governed by New Jersey law, and that this Commonwealth may not assert personal jurisdiction over the Pharmacy.

¹⁵ The docket shows that on July 17, 2017, the Law Firm filed against the Pharmacy a motion for summary judgment. The proposed Order attached to the motion for summary judgment asks the Court to grant the motion and enter judgment in favor of the Law Firm for an amount in excess of \$2 million. This motion is not yet ripe for a resolution.