

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

SPEEDWELL CONSTRUCTION, INC.	:	JUNE TERM, 2022
	:	
Plaintiff,	:	NO. 02219
	:	
v.	:	COMMERCE PROGRAM
	:	
PENNSYLVANIA NATIONAL MUTUAL	:	CONTROL NOS.: 22080093; 22085162
CASUALTY INSURANCE COMPANY,	:	
ET AL.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 7th day of February, 2023, upon consideration of Defendants’

Preliminary Objections to the Complaint and the response thereto, it is **ORDERED** as follows:

1. The Preliminary Objections of Defendant Pennsylvania National Mutual Casualty Insurance Company and Defendant Mason Dixon Contractors, LLC are **SUSTAINED**. Venue is hereby **TRANSFERRED** to the Court of Common Pleas of Lancaster County Pennsylvania; and
2. The Philadelphia County Office of Judicial Resources shall transmit this case in its entirety to the Court of Common Pleas of Lancaster County. Any Preliminary Objections raised on grounds other than venue shall be decided by the Court of Common Pleas of Lancaster County. Plaintiff shall pay for the cost of transfer.

BY THE COURT:

Nina Wright Padilla
**Supervising Judge
Commerce Program**

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ET AL.	:	
Defendants.	:	

OPINION

Plaintiff, Speedwell Construction, Inc., commenced this action against Defendants on July 12, 2022. Plaintiff, under Count I – Declaratory Judgment, seeks a judicial declaration that Defendant Pennsylvania National Mutual Casualty Insurance Company (“Penn National”), is obligated to defend Plaintiff in an underlying tort action¹ and that Penn National is obligated to indemnify Plaintiff under both a general policy and an umbrella policy. Plaintiff also brings Count II – Contractual Indemnification and Count III – Breach of Contract, against Defendant Mason Dixon Construction, Inc. (“Mason Dixon”). Count II is contingent on a finding of Plaintiff’s liability in the underlying tort action and Count III is asserted in the alternative if there is no declaratory judgment. Presently pending before the court are the preliminary objections of Defendants Mason Dixon and Penn National. For the reasons discussed below, the preliminary objections of Defendants are sustained.

¹ *Farryn Dickinson v. Speedwell Construction, Inc.*, Case # 190902581. The tort plaintiff, Farryn Dickinson, is an additional Defendant in the instant matter. The underlying tort action is a negligence action against Plaintiff. The underlying action stems from the injury of an employee of Defendant Mason Dixon, Defendant Farryn Dickinson, while cutting street corners at an Aldi grocery store.

PARTIES

Plaintiff, Speedwell Construction, Inc. (“Speedwell”), is the contractor in this case and deals in construction. Plaintiff’s principal place of business is in Lancaster County, Pennsylvania.

Defendant Mason Dixon is a subcontractor at the Aldi Supermarket Construction central to the underlying tort matter. Defendant Mason Dixon’s principal place of business is in Lancaster County, Pennsylvania. Plaintiff and Defendant Mason Dixon are the signatories to the subcontract at issue in the instant matter.

Defendant Penn National is an insurance company that Defendant Mason Dixon, pursuant to the subcontract, took out two policies with: a general policy and an umbrella policy. The general policy has a per occurrence limit of \$1 million and the umbrella policy has a per occurrence limit of \$5 million. Defendant Penn National is currently defending Plaintiff in the underlying tort matter pursuant to the general policy.

PROCEDURAL HISTORY

On July 12, 2022, Plaintiff commenced this action by filing a Complaint seeking a declaratory judgment against Penn National. Plaintiff also alleged contractual indemnification and breach of contract against Mason Dixon. On July 29, 2022, Mason Dixon filed preliminary objections to the complaint. Plaintiff filed an answer to the preliminary objections on August 18, 2022, followed by a reply from Mason Dixon on August 23, 2022. Penn National filed

preliminary objections to the complaint on August 26, 2022, which Plaintiff filed an answer to on September 15, 2022. The preliminary objections are currently before the court.

DISCUSSION

I. PRELIMINARY OBJECTIONS OF PENN NATIONAL

a. Penn National is Subject to the Subcontract's Forum Selection Clause and Count I, Declaratory Judgment, Must be Transferred.

A court in which venue is proper and which has jurisdiction should decline to proceed with cause when parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at time of litigation. *Cent. Contracting Co. v. C. E. Youngdahl & Co.*, 209 A.2d 810, 816 (Pa. 1965). A court must first look to the writing itself, for if the terms of the agreement are clear and precise, performance must be required in accordance with the intent as expressed in the agreement without resort to rules of construction or extrinsic evidence. *Circle K, Inc. v. Webster Tr. of Webster Irrevocable Grantor Tr.*, 256 A.3d 461, 464 (Pa. Super. 2021). Where a court finds that venue is improper, that court is constrained to transfer the case to a proper venue and will not proceed any further in the case. *Zappala v. Brandolini Prop. Mgmt., Inc.*, 909 A.2d 1272, 1284 (Pa. 2006); *Wilson v. Levine*, 963 A.2d 479, 484 (Pa. Super. 2008); *Lovelace ex rel. Lovelace v. Pennsylvania Prop. & Cas. Ins. Guar. Ass'n*, 874 A.2d 661, 666 (Pa. Super. 2005).

Here, by the plain language of the subcontract, Defendant Pennsylvania National Mutual Casualty Insurance Company ("Penn National") is subject to the forum selection clause. *Exhibit B- Subcontract Agreement at 8* ("Any and all claims, disputes or other matter arising out of or

related to this Contract, or the breach thereof, not resolved by the parties...”). Plaintiff asserts Counts II and III of the complaint in the alternative of a declaratory judgment of Count I in a joint action against Defendants Mason Dixon Contractors, LLC and Penn National. As a result, declaratory judgment of Count I is sufficiently related for venue to be improper as to all Defendants and require transfer of this case. As a result of improper venue due to the forum selection clause, this court does not reach the remaining issue of Penn National’s standing raised in Preliminary Objections.

II. PRELIMINARY OBJECTIONS OF MASON DIXON

a. The Subcontract’s Forum Selection Clause is Valid and Enforceable, Requiring Count II, Contractual Indemnification, and Count III, Breach of Contract, to be Transferred.

A forum selection clause is unreasonable where its enforcement would, under all circumstances existing at time of litigation, seriously impair plaintiff's ability to pursue a cause of action. *Id*; *Midwest Fin. Acceptance Corp. v. Lopez*, 78 A.3d 614, 628 (Pa. Super. 2013). Where a forum selection clause is valid, the party challenging the clause bears the burden of proving why it should not be bound by the contract. *Cent. Contracting Co.*, *supra*, at 816 (1965). “A forum selection clause in a commercial contract between business entities is presumptively valid and will be deemed unenforceable only when: 1) the clause itself was induced by fraud or overreaching; 2) the forum selected in the clause is so unfair or inconvenient that a party, for all practical purposes, will be deprived of an opportunity to be heard; or 3) the clause is found to violate public policy.” *Midwest Fin. Acceptance Corp.*, *supra*, at 629.

Here, the subcontract’s forum selection clause is valid because nothing about proceeding in Lancaster County seriously impairs Plaintiff’s ability to pursue the causes of action in the complaint. Plaintiff does not dispute the presumed validity of the forum selection clause. *See* Answer to Mason Dixon’s Preliminary Objections at ¶ 25. By its plain language in context, the subcontract’s forum selection clause gives Plaintiff sole discretion over two choices: (1) whether to pursue arbitration or litigation for claims not resolved by mediation and (2) to choose venue between the Lancaster County Court of Common Pleas and the United States District Court for the Eastern District of Pennsylvania if Plaintiff opts to pursue litigation. *Exhibit B- Subcontract Agreement at 9* (“Claims not resolved by mediation shall then be decided by litigation or arbitration at the sole discretion and choice of Contractor... If Contractor chooses to resolve any unresolved claim by litigation, suit shall be initiated in the Lancaster County Court of Common Pleas in Lancaster, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania, at the sole discretion of Contractor.”) As a result of improper venue due to the forum selection clause, this court does not reach the remaining issues of demurrer to Counts II and III raised in Preliminary Objections.

CONCLUSION

For the foregoing reasons, Defendants’ preliminary objections are sustained. The instant matter is transferred to the Lancaster County Court of Common Pleas in Lancaster, Pennsylvania.

BY THE COURT,

Nina Wright Padilla
Supervising Judge
Commerce Program