

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

HECNY SHIPPING, LTD.,

Plaintiff,

v.

Case No. 2:25-cv-02499-BCL-atc

HYC LOGISTICS, INC.,

Defendant.

ORDER GRANTING MOTION TO DISMISS COUNTERCLAIMS

Before the Court is the Motion to Dismiss Counterclaims filed on July 3, 2025, by Plaintiff HECNY Shipping, Ltd. Doc. 36. The judge originally assigned to this case when it was transferred to this District in 2025, Judge Mark Norris, transferred it to the undersigned in March 2026. Docs. 23, 58. For the reasons that follow, the Motion to Dismiss Counterclaims (Doc. 36) is **GRANTED**, **subject to the conditions identified in the Conclusion.**

BACKGROUND

Plaintiff HECNY is a foreign corporation whose principal place of business is in Kwun Tong, Kowloon, Hong Kong. Doc. 1 at 1. Plaintiff HECNY is “a non-vessel operating common carrier (‘NVOCC’) of goods by water for hire registered with the United States Maritime Commission.” *Id.* at 2.

Defendant HYC Logistics, Inc., is a Tennessee corporation whose principal place of business is in Memphis, Tennessee. *Id.* Under a Non-Exclusive Agency Agreement, Defendant HYC “was to act as an agent for [HECNY] in connection with the latter’s work as an NVOCC.” *Id.* at 3. Clause 1.1 of the Agreement provides that Defendant HYC would “promote [HECNY]’s

NVOCC/freight forwarding services, arrange customs clearance, trucking and distribution and other related services in all of [HYC's] locations.” *Id.*

Plaintiff HECNY filed this lawsuit on September 19, 2024. Doc. 1. The gist of the claims is that Defendant HYC turned over goods without requiring the recipient to turn over Plaintiff HECNY's bills of lading, which has either cost Plaintiff HECNY money or exposed Plaintiff HECNY to liability. Plaintiff HECNY's complaint alleges three causes of action:

- (1) Defendant HYC breached the Non-Exclusive Agency Agreement by releasing the cargoes from three sets of shipments for delivery to Louise Paris Ltd., without obtaining the relevant bills of lading;
- (2) Defendant HYC breached their implied covenant of good faith and faith dealing by entering into an indemnity agreement with Louise Paris and releasing cargo without receiving the bills of lading;
- (3) A claim for declaratory judgment that Defendant HYC breached the Agreement, that Plaintiff HECNY is entitled to recover all costs from enforcing its rights under contract and from lawsuits arising from Defendant HYC's failure to obtain the bills of lading at issue, and that Defendant HYC is obligated to indemnify and hold Plaintiff harmless against the third-parties whose cargoes Defendant HYC released without obtaining the bills of lading.

Id. at 7–10.

On June 1, 2025, Defendant HYC filed its Answer with Affirmative Defenses and Counterclaim. Doc. 25. In addition to denying liability, Defendant HYC asserted counterclaims. According to Defendant HYC's counterclaims—the claims at issue here—Defendant HYC “provides logistics and freight-forwarding services to its customers,” including Louise Paris Ltd. (“LP”), which is in the business of ordering textiles and garments from overseas and reselling them in the United States. Doc. 25 at 9–10. According to the Answer, LP retained Defendant HYC “to provide LP with logistics and freight-forwarding services,” and in turn Defendant HYC retained Plaintiff HECNY as “a China-side logistics service provider, to retrieve the goods from the supplier and onto a container ship bound for the U.S.,” at which point Defendant HYC would

“retrieve[] them from the port and deliver them to the LP warehouse and/or headquarters.” *Id.* at 10. According to Defendant HYC, when one of LP’s suppliers sued Plaintiff HECNY in China to recover for the value of goods, Plaintiff HECNY “held in port and/or suspended delivery of goods in transit for [Defendant] HYC’s *other* clients coming from China [i.e., not LP]—crippling [Defendant] HYC,” all “[i]n an effort to leverage [Defendant] HYC to payoff LP’s balance” to a supplier. *Id.* at 11. Plaintiff HECNY’s actions forced Defendant HYC to take out a loan to pay off LP’s debts in an effort to salvage its business. *Id.* at 12. Based on those allegations, Defendant HYC asserts five counterclaims:

- (1) breach of contract for “holding goods and/or suspending delivery of goods in transit for *other* customers of HYC”;
- (2) breach of the implied covenant of good faith and dealing for this material misconduct;
- (3) misappropriation/conversion for exercising “unauthorized control over the goods in the shipping containers and depriv[ing] HYC of its access to the containers and goods, thus depriving HYC’s customers to their rightful use and benefit of said goods”;
- (4) breach of fiduciary duty, and
- (5) tortious interference with contract or business advantage when HECNY “held in port and/or froze the shipments of HYC’s *other* customers.”

Doc. 25 at 13–16. Plaintiff HECNY soon thereafter filed the Motion to Dismiss Counterclaims that is currently before the Court. Doc. 36.

ANALYSIS

The Court faces a question of venue: whether the Court should dismiss the Counterclaims so that they may proceed in Hong Kong under a forum selection clause contained in the Agreement governing the Parties' relationship.¹

Plaintiff HECNY makes this argument “pursuant to the doctrine of *forum non conveniens* and Fed. R. Civ. P. 12(b)(6).” Doc. 37. The United States Court of Appeals for the Sixth Circuit has explained that “[t]hese different motions follow different rules.” *VCST Int’l B.V. v. BorgWarner Noblesville, LLC*, 142 F.4th 393, 399 (6th Cir. 2025). If a party seeks to “enforce a forum-selection clause under Rule 12(b)(6) on the ground that the plaintiff has failed to ‘state a claim upon which relief can be granted’ *in the chosen forum*,” that motion “triggers Rule 12(b)(6)’s usual framework.” *Id.* The court may grant the motion “only if ‘the complaint’s allegations (or any other documents that [a court] may consider at this state) show as a matter of law that the defense applies.’” *Id.* at 400–01. But if the court decides the motion based on the doctrine of *forum non conveniens*, it may venture outside the four corners of the complaint to consider other evidence, at least in some circumstances. *Id.* That distinction does not matter here: This forum-related dispute does not turn on conflicting evidence (or whether evidence should be considered) but instead on whether the forum selection clause should be disregarded based on arguments presented in the briefs.

Where, as here, there exists a forum selection clause, the *forum non conveniens* analysis has two steps: (1) “a court must first—before balancing the *forum non-conveniens* factors—determine whether a forum-selection clause is applicable, mandatory, valid, and enforceable.”

¹ The Agreement is attached to both the Complaint (Doc. 1-1) and the Answer and Counterclaim (Doc. 25-1), and the Court may therefore consider it in ruling on this motion to dismiss. *See* Fed. R. Civ. P. 10(c); *Moyer v. Gov’t Emps. Ins. Co.*, 114 F.4th 563, 567–68 (6th Cir. 2024).

Lakeside Surfaces, Inc. v. Cambria Co., LLC, 16 F.4th 209, 215 (6th Cir. 2021). The Court then proceeds to balance the public- and private-interest factors. *Id.*

1. Keeping with the Sixth Circuit’s commands, the Court first considers whether the forum selection clause is applicable, mandatory, valid, and enforceable.² *Id.* The Parties agree—or, at least, Defendant HYC does not dispute—that the forum selection clause at issue here is valid, applicable,³ and mandatory.⁴ But Defendant HYC does argue that the forum selection clause is unenforceable for two separate reasons.

First, Defendant HYC argues that forcing it to litigate the Counterclaims in Hong Kong “would be so seriously inconvenient” such that it “would be unjust.” Doc. 45 at 3. Defendant HYC’s entire argument on this point boils down to a claim that its Counterclaims are compulsory counterclaims that “arise out of the same transaction and/or occurrence as” Plaintiff HECNY’s claims—presumably meaning that it would be inefficient to litigate them apart from Plaintiff

² The parties do not spend much time on the actual text of the Clause which, with the most relevant language italicized, provides as follows:

10. Legal Disputes

In the event of any disputes, which may arise out of or relating to this Agreement during its tenure, the parties shall endeavour to reach an amicable settlement and if they fail to reach a settlement it may be referred to the Court of Law or to arbitration. *In the event [HECNY] is the defendant in any action or request for arbitration instituted by [HYC], venue shall be in Hong Kong under the rules then in effect in the court of law or in the Hong Kong arbitrate institute.* If [HYC] is the defendant in any action or request for arbitration brought by [HECNY], venue shall be in the country where [HYC] is based under rules then effective in the capital city of the appropriate court of law or in a recognized arbitration institute.

Doc. 1-1 at 6.

³ Defendant HYC’s failure to dispute this issue is surprising, as the clause speaks to “any action . . . instituted by [HYC]” in which HECNY “is the Defendant.” Doc. 1-1 at 6. While there do exist scattered cases concluding otherwise without much discussion, a counterclaim is not generally considered its own “action,” as that term generally refers to an entire lawsuit. But Defendant HYC has forfeited the argument by failing to present and develop it, and so the Court does not address it further. *See, e.g., Cockrun v. Berrien Cnty., Michigan*, 101 F.4th 416, 419 (6th Cir. 2024).

⁴ In making this argument, Defendant HYC suggests the contract is governed by maritime law. Doc. 37 at 6-7. The Court accepts that the contract is valid and enforceable based on the Parties’ apparent agreement or lack of dispute concerning that issue. In doing so, the Court need not and does not conclude that the Agreement is governed by maritime law for all or even any purposes.

HECNY’s claims. Doc. 45 at 13; *see Lakeside Surfaces*, 16 F.4th at 216. But Defendant HYC offers no explanation concerning (much less authority supporting) the proposition that “serious inconvenience” for venue or forum non conveniens purposes—which most naturally calls to mind concerns of a distant or remote forum disconnected from the dispute or evidence—includes within it technical questions concerning whether claims do or do not qualify as compulsory counterclaims or, more generally, relate in some way to claims that already are pending elsewhere. Defendant therefore has failed to carry its burden of showing the Clause should not be enforced, *see Abu v. Dickson*, 107 F.4th 508, 520 (6th Cir. 2024) (arguments raised in a “skeletal way” are forfeited)—a point underscored by the Sixth Circuit’s insistence that “mere inconvenience” will not justify nonenforcement on this basis, which requires “evidence that” the party seeking to avoid the clause “was exploited or unfairly treated.” *Wong v. PartyGaming, Ltd.*, 589 F.3d 821, 829–30 (6th Cir. 2009) (explaining that the burden is on party seeking to avoid enforcement); *see also Preferred Cap., Inc. v. Assocs. in Urology*, 453 F.3d 718, 722 (6th Cir. 2006) (“Under this step of the analysis, courts are to determine whether the chosen forum is so inconvenient as to, in effect, afford no remedy at all, thus ‘depriving litigants of their day in court.’”). Defendant HYC has produced no such evidence here, and its efforts to avoid enforcement based on inconvenience therefore fail. *See Calix-Chacon v. Glob. Int’l Marine, Inc.*, 493 F.3d 507, 515 (5th Cir. 2007) (“[W]ith modern conveniences of electronic filing and videoconferencing, [a] plaintiff may have his ‘day in court’ without ever setting foot in a courtroom.” (quoting *Effron v. Sun Line Cruises, Inc.*, 67 F.3d 7, 11 (2d Cir. 1995))).

Second, Defendant HYC argues that enforcing the forum selection clause—i.e., dismissing the Counterclaims so that they may proceed in Hong Kong—would offend public policy. The governing case law does provide for nonenforcement of an otherwise valid forum selection clause

if “enforcing the forum selection clause would contravene a strong public policy of the forum state.” *Lakeside Surfaces*, 16 F.4th at 219–20. Defendant HYC points not to any State’s policy, but rather to a claimed federal policy, purportedly derived from the federal transfer of venue statute (28 U.S.C. § 1404) and the Federal Rules of Civil Procedure (Rules 13 and 21)—in favor of “keep[ing] claims related to the same transaction or occurrence together.” Doc. 45 at 14 (emphasis omitted).

Even acknowledging the federal policy in trying together claims arising out of the same transaction or occurrence, Defendant HYC’s argument fails for three reasons. One reason is that the policy has no application here: Defendant HYC has identified a policy that promotes efficiency within the federal judicial system by generally keeping together claims related to the same transaction or occurrence, but Defendant HYC offers no authority or even explanation for why that policy should extend to litigation in foreign or other non-federal fora—i.e., where the United States courts will not be burdened by the related litigation and the United States therefore has a reduced interest in preventing it. The second reason is that, even if the policy did apply here, Defendant HYC has offered neither argument nor authority establishing that the policy is sufficiently “strong” to overcome a forum selection clause (especially when one considers the general policy of enforcing parties’ contractually agreed forum selection clauses). *See Lakeside Surfaces*, 16 F.4th at 219–20. Although Defendant HYC does not bother to discuss it, case law is to the contrary. *See B&G Charter Mgmt. Ltd. v. S/V ZAZIE*, No. 3:23-CV-00033, 2024 WL 1513546, at *3–4 (D.V.I. Apr. 8, 2024) (collecting cases enforcing forum selection clauses even where doing so would divide compulsory counterclaims from the underlying claims). And the third independently sufficient reason is that Defendant HYC’s counterclaims do not appear to be compulsory: Plaintiff HECNY’s original claims concern whether Defendant HYC violated the

Agreement (or related law) in turning over goods without obtaining the bills of lading, whereas Defendant HYC's counterclaims concern the distinct issue of Plaintiff HECNY later violating the Agreement (or related law) in seizing goods belonging to Defendant HYC's other customers. While one event was a reaction to the other, the two sets of claims involve different events and distinct factual and legal issues. *See, e.g., Hanover Am. Ins. Co. v. Tattooed Millionaire Ent., LLC*, No. 2:20-cv-02834-MSN-cgc, 2023 WL 2469007, at *6 (W.D. Tenn. Mar. 10, 2023) (McCalla, J.) (claims of conversion relating to personal property taken during fire were not compulsory counterclaims with respect to suit to recover insurance payments resulting from fire).

The forum-selection clause is thus applicable, mandatory, valid and enforceable. The analysis could stop there because Defendant HYC has offered no argument that the forum non conveniens factors counsel against dismissal. Still, in the interest of completeness, the Court will briefly discuss application of the public- and private-interest factors.

2. Usually, “[w]hen courts apply *forum non conveniens*, there are three considerations: (1) whether an adequate alternative forum is available; (2) whether a balance of private and public interests suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court; and (3) the amount of deference to give the plaintiff's choice of forum.” *Jones v. IPX Int’l Equatorial Guinea, S.A.*, 920 F.3d 1085, 1090 (6th Cir. 2019). “But an enforceable forum-selection clause alters the standard *forum-non-conveniens* analysis in two critical ways: (1) it flips the burden from the defendant to the plaintiff (‘[T]he plaintiff's choice of forum merits no weight. Rather, as the party defying the forum-selection clause, the plaintiff bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted.’); and (2) it eliminates any private-interest factors from consideration (‘A court accordingly must deem the private-interest factors to weigh entirely in favor of the preselected

forum.’).” *Firexo, Inc. v. Firexo Grp. Ltd.*, 99 F.4th 304, 311 (6th Cir. 2024) (quoting *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 63 (2013)). “The ‘practical result’ is that, because ‘[p]ublic-interest factors . . . will rarely defeat a transfer motion, . . . forum-selection clauses will almost always control.’” *Id.* (quoting *Boling v. Prospect Funding Holdings, LLC*, 771 Fed. Appx. 562, 567–68 (6th Cir. 2019)).

The public interest factors include:

administrative difficulties flowing from court congestion; the ‘local interest in having localized controversies decided at home’; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.”

Hefferan v. Ethicon Endo-Surgery Inc., 828 F.3d 488, 500 (6th Cir. 2016) (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)).

Defendant HYC, having offered no analysis of the factors, has failed to carry its burden of establishing that dismissal in favor of the preselected forum in Hong Kong is unwarranted. *See Firexo*, 99 F.4th at 311. The Court has neither data nor any other basis to conclude that administrative difficulties arising from court congestion should preclude litigation in Hong Kong. Nor does the localized controversy factor support ignoring the forum selection clause; while Defendant HYC is based in this District, Plaintiff HECNY is based in Hong Kong and the Parties’ relationship involved shipping from China to the United States—meaning the dispute is not truly localized and, to the extent it is, Hong Kong is one of the relevant locales. *See Hefferan*, 828 F.3d at 500 (“The primary local-interest considerations are the parties’ connections to the local forum and the location of the injury.”). The “at home with the law” factor likewise does not support overriding the forum selection clause: The clause selects Hong Kong’s procedural law (Doc. 1-1 at 6) and Defendant HYC has not made any choice of law argument at all, and certainly not an

argument that the case will be governed by substantive law that the presumably sophisticated courts of Hong Kong will be unable to apply. For the same reasons, the “conflict of laws/foreign law” factor likewise does not support overriding the forum selection clause. And, finally, while the Parties have not addressed whether this case would be tried before a jury in Hong Kong, that is irrelevant because Hong Kong—home to Plaintiff HECNY—is not an “unrelated forum.” *Hefferan*, 828 F.3d at 500.

As is so often the case, the public interest factors do not support overriding the forum selection clause based on the arguments made here. *See Firexo*, 99 F.4th at 311. Thus, the Court finds that the case should be dismissed as forum-non-conveniens applies as a matter of law. *See VCST Int’l B.V.*, 142 F.4th at 399–400.

* * *

Having determined that the Counterclaims must be dismissed based on forum non conveniens, one coda is necessary. A party should not be permitted to obtain dismissal based on forum non conveniens and then turn around and argue that the claims may not be heard in the chosen forum in which it sought to defend—here, in Hong Kong. Nor may a party obtain dismissal based on forum non conveniens and then resist payment of any resulting judgment later. Therefore, this dismissal is conditioned on the following:

- Plaintiff HECNY must consent to suit and service of process in Hong Kong in any action filed by Defendant HYC on its Counterclaims, including but not limited to waiver of any defense of lack of jurisdiction;
- Plaintiff HECNY must agree to make available any documents or witnesses within its control that are necessary for fair adjudication of any action brought by Defendant HYC on its Counterclaims;
- Plaintiff HECNY must consent to pay any judgment or judgments which may be rendered against it in Hong Kong in any action brought by Defendant HYC on its Counterclaims, and to consent to any suit in the United States to enforce any such judgment or judgments;

- Plaintiff HECNY must agree to waive any statute of limitations defense, as well as any other defense of untimeliness, that did not exist prior to the filing of Defendant HYC's Counterclaims in this action on June 1, 2025. Doc. 25.

See Watson v. Merrell Dow Pharms., Inc., 769 F.2d 354, 356 (6th Cir. 1985). Plaintiff HECNY **SHALL** file Notice expressly agreeing to each of these conditions within one week of the date of this Order, at which point Defendant HYC's counterclaims will be **DISMISSED**.

CONCLUSION

For the foregoing reasons, HECNY's motion to dismiss the counterclaims (Doc. 36) is **GRANTED**. Plaintiff HECNY **SHALL** file Notice by **June 23, 2026** that it consents to the following conditions:

- Plaintiff HECNY must consent to suit and service of process in Hong Kong in any action filed by Defendant HYC on its Counterclaims, including waiver of any defense of lack of jurisdiction);
- Plaintiff HECNY must agree to make available any documents or witnesses within its control that are necessary for fair adjudication of any action brought by Defendant HYC on its Counterclaims;
- Plaintiff HECNY must consent to pay judgment or judgments which may be rendered against it in Hong Kong in any action brought by Defendant HYC on its Counterclaims;
- Plaintiff HECNY must agree to waive any statute of limitations defense, as well as any other defense of untimeliness, that did not exist prior to the filing of Defendant HYC's Counterclaims in this action on June 1, 2025. Doc. 25.

If it does so, Defendant HYC's counterclaims will be **DISMISSED**.

IT IS SO ORDERED, this 16th day of June, 2026.

s/ Brian C. Lea
BRIAN C. LEA
UNITED STATES DISTRICT JUDGE