

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

CASE NO. 20-61913-CIV-CANNON

ASSET RECOVERY MANAGEMENT, INC.,

*Plaintiff,*

v.

UNITED YACHT TRANSPORT LLC.,

*Defendant.*

---

**ORDER DISMISSING PLAINTIFF'S COMPLAINT  
UNDER THE DOCTRINE OF *FORUM NON CONVENIENS* AND  
DENYING DEFENDANT'S REQUEST FOR ATTORNEYS' FEES**

**THIS CAUSE** came before the Court upon the Defendant's Motion to Dismiss the Plaintiff's Complaint [ECF No. 11] (the "Motion"), filed on November 5, 2020. The Court has reviewed the Motion, all supporting and opposing filings, and the record in this case, and is otherwise fully advised in the premises. For the reasons set forth below, the Court **GRANTS** Defendant's Motion to Dismiss to the extent it seeks dismissal of Plaintiff's Complaint under the doctrine of *forum non conveniens*.<sup>1</sup>

**I. FACTUAL & PROCEDURAL BACKGROUND**

Asset Recovery Management, Inc., ("Plaintiff" or "Asset Recovery") filed its Complaint [ECF No. 1] on September 18, 2020. Asset Recovery claims that it entered an agreement (the "Contract") with United Yacht Transport, LLC, ("Defendant" or "United Yacht") to have Defendant transport Plaintiff's yacht from Greece to Fort Lauderdale [ECF No. 1, ¶¶11-12].

---

<sup>1</sup> The Defendant's Motion couches its request for dismissal in "jurisdictional" terms, but a dismissal under the common-law doctrine of *forum non conveniens* is not the equivalent of a dismissal for lack of subject matter or personal jurisdiction. *See generally Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432 (2007).

According to the Complaint, the Contract required United Yacht to begin transporting Plaintiff's yacht from Greece to Fort Lauderdale sometime between March 20th and March 30th, 2020 [ECF No. 1, ¶12]. On February 28, 2020, as consideration for performing this service, Asset Recovery electronically transferred a deposit of \$30,000 to United Yacht [ECF No. 1, ¶ 12]. Asset Recovery claims that, following its deposit payment, United Yacht failed to meet the required delivery deadline, thereby forcing Plaintiff to arrange an alternative transportation method for its yacht and causing pecuniary harm [ECF No. 1, ¶¶14, 25]. Plaintiff also asserts that, despite repeated reimbursement requests, United Yacht intentionally failed to return the \$30,000 deposit to which Plaintiff is purportedly entitled [ECF No. 1, ¶¶ 23-24]. Based on these allegations, the Complaint asserts a breach of contract and civil theft claim against United Yacht.

On November 5, 2020, United Yacht filed its Motion to Dismiss Asset Recovery's Complaint [ECF No. 11]. United Yacht asks the Court to dismiss the Complaint on the ground that Plaintiff improperly initiated these proceedings in federal district court, in violation of a valid and mandatory forum-selection clause in the parties' Contract [ECF No. 11, ¶¶5-6]. Alternatively, United Yacht moves to dismiss the Plaintiff's civil theft count for failure to adequately plead its claim [ECF No. 11, ¶3]. In support of its position on the forum-selection clause, United Yacht relies on Clause 17 of the parties' Contract, entitled "Dispute Resolution, Venue," which provides, in pertinent part, as follows:

In the event of a dispute between the parties, the parties agree that the sole venue for resolution shall be in the Circuit Court in and for Broward County Florida. The parties waive the jurisdiction of any Federal Court otherwise having concurrent Jurisdiction.

[ECF No. 11, ¶ 6; *see* ECF No. 1-1 (contract)]. United Yacht also argues that, because state and federal courts share concurrent jurisdiction over *in personam* admiralty disputes, such as the controversy between the parties in this case, the mandatory forum-selection clause in the Contract

requires Plaintiff to file this suit in the Circuit Court in and for Broward County Florida [ECF No. 11, ¶ 15].

On November 25, 2020, Asset Recovery filed its Opposition to United Yacht's Motion to Dismiss [ECF No. 16]. In its response to Defendant's *forum non conveniens* argument, Asset Recovery contends that this Court "clearly has subject matter jurisdiction over a cargo contract to ship a motor yacht under 28 U.S.C. § 1333" [ECF No. 16, p. 4]. However, Plaintiff acknowledges that, prior to initiating this action, it overlooked Clause 17 of the Contract quoted above, relying instead on instead on Clause 21 [ECF No. 16, p. 4]. Clause 21 is entitled "Choice of Law and Forum Selection Clause," but it provides only that United Yacht shall be relieved of liability if a claim arising from the Contract is not initiated within one year after delivery, and it requires the parties to provide notice of any losses or damages to the vessel within a specified time frame.<sup>2</sup>

Asset Recovery does not dispute that Clause 17 of the Contract contains a mandatory forum selection clause selecting the Circuit Court in and for Broward County as the sole venue for resolution of any dispute between the parties. Nor does Asset Recovery cite anything in its

---

<sup>2</sup> The full text of Clause 21 provides:

Clause 21: Choice of Law and Forum Selection Clause and Suit Time for all Lawsuits:

1. The Carrier shall in any event be discharged from all liability whatsoever in respect of the yacht under the booking note unless suit is commenced within one year after actual delivery of the yacht of the date upon which delivery of the yacht was to have originally been effected as designated on the booking note.
2. Written notice of claim of loss or damage to the yacht occurring or presumed to have occurred while in the custody of the carrier must be provided to the carrier at the port of discharge before or at the time of removal of the yacht by one entitled to delivery. If such loss or damage cannot be identified from visual inspection, the carrier must be provided written notice within two calendar days of delivery. If such written notice is not provided, removal shall be prima facie evidence of delivery in good order by carrier.

[ECF No. 1-1 ¶21].

Response to question the contractual validity of the parties' agreement. Rather, according to Asset Recovery, this Court should decline to enforce the forum-selection provision in Clause 17 because "perhaps" there is an ambiguity between Clause 17 and the erroneously titled Clause 21, and any such ambiguity should be construed against United Yacht as the drafter of the Contract [ECF No. 16, pp. 4-5].

## II. DISCUSSION

Generally, "[t]o obtain dismissal for *forum non conveniens*, "[t]he moving party must demonstrate that (1) an adequate alternative forum is available, (2) the public and private factors weigh in favor of dismissal, and (3) the plaintiff can reinstate his suit in the alternative forum without undue inconvenience or prejudice." *GDG Acquisitions, LLC v. Government of Belize*, 749 F.3d 1024, 1028 (11th Cir. 2014) (internal quotation marks and citation omitted). However, the presence of a forum-selection provision that is unaffected by fraud, undue influence or procurement through improper means requires courts to modify their *forum non conveniens* analysis in a motion to dismiss because forum choice clauses almost always carry controlling weight. *See Atlantic Marine Const. Co., Inc. v. U.S. Dist. Court for Western Dist. of Texas*, 571 U.S. 49, 62 (2013). Moreover, although movants usually bear the burden of showing that transfer to another forum is warranted, the existence of a forum-selection clause shifts the burden to the non-moving party to demonstrate that the clause should be disregarded. *See Pappas v. Kerzner Intern. Bahamas Ltd.*, 585 F. App'x 962, 964 (11th Cir. 2014) (referring to *Atlantic Marine*, 571 U.S. at 62-67). And, in evaluating if a plaintiff has met this burden, a Court may weigh only "public interest factors" in determining if a plaintiff has met this burden." *Id.*

The first step in applying the doctrine of *forum non conveniens* based on a forum-selection clause is to determine if the forum-selection clause at issue is contractually valid. *Atl. Marine Const. Co.*, 571 U.S. at 62 n.5 ("Our analysis presupposes a contractually valid forum-selection

clause.”). “Forum-selection clauses are presumptively valid and enforceable unless the plaintiff makes a strong showing that enforcement would be unfair or unreasonable under the circumstances.” *Krenkel v. Kerzner Int’l Hotels Ltd.*, 579 F.3d 1279, 1281 (11th Cir. 2009).

Accordingly, a forum-selection clause may be invalidated when:

(1) its formation was induced by fraud or overreaching; (2) the plaintiff would be deprived of its day in court because of inconvenience or unfairness; (3) the chosen law would deprive the plaintiff of a remedy; or (4) enforcement of the clause would contravene public policy.

*Id.*

In this case, Plaintiff does not in any respect call into question the validity of the parties’ Contract, so the Court proceeds to the next step of the analysis—determining whether the forum-selection clause is permissive or mandatory. *See GDG Acquisitions, LLC*, 749 F.3d at 1029. “A permissive clause authorizes jurisdiction in a designated forum but does not prohibit litigation elsewhere,” whereas a “[a] mandatory clause ... dictates an exclusive forum for litigation under the contract.” *Id.* (internal quotation marks omitted).

The forum-selection clause in Clause 17 of the parties’ Contract is unmistakably mandatory in nature. It dictates in clear terms that the “sole venue” for any dispute between the parties “shall be in the Circuit Court in and for Broward County Florida,” and it further provides that the “parties waive the jurisdiction of any Federal Court otherwise having concurrent Jurisdiction” [ECF No. 1-1, p. 6 (emphases added)]. Although Plaintiff points to a possible ambiguity between the plain terms of Clause 17 and the title of Clause 21 [ECF No. 16, p. 4-5], any arguable ambiguity created by the title of Clause 21 does not trump the plain and explicit terms of the mandatory forum selection language in Clause 17.

Finally, having determined that the subject forum-selection clause is both valid and mandatory, the Court considers whether to enforce the clause under the public-interest factors set forth by the Supreme Court in *Atlantic Marine*. 571 U.S. at 64. Those factors include “the

administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; and the interest in having the trial of a diversity case in a forum that is at home with the law.” *Id.* at 62 n.6 (internal quotation marks and brackets omitted). Asset Recovery makes no argument with regard to these public-interest factors. Nevertheless, the Court has considered them and finds nothing in the record to suggest that this is the “unusual case[]” in which to decline to enforce the parties’ valid and mandatory forum-selection clause. *Id.* at 64. “When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties’ settled expectations.” *Id.* at 66.

### III. CONCLUSION

Because the forum-selection provision in the parties’ Contract is valid and mandatory, and because there are no public-interest factors that weigh against its enforcement, the Court concludes that Plaintiff’s Complaint [ECF No. 1] must be dismissed under the doctrine of *forum non conveniens*.<sup>3</sup> Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant United Yacht Transport LLC.’s, Motion to Dismiss [ECF No. 11] is **GRANTED** to the extent it seeks dismissal of Plaintiff’s Complaint under the doctrine of *forum non conveniens*.
2. Plaintiff Asset Recovery Management, Inc.’s, Complaint [ECF No. 1] is **DISMISSED**.
3. Defendant United Yacht Transport’s incorporated request for attorney’s fees incurred in litigating its Motion to Dismiss is **DENIED**. Clause 17 in the parties’ Contract provides that “the prevailing party in any litigation arising out of resulting from this Agreement shall be entitled to an award of attorney fees and costs at the trial and appeal

---

<sup>3</sup> In light of the dismissal of Plaintiff’s Complaint under the doctrine of *forum non conveniens*, it is unnecessary for the Court to address the parties’ arguments regarding whether Asset Recovery adequately pled its civil theft count.

CASE NO. 20-61913-CIV-CANNON

levels” [ECF No. 1-1 ¶17]. This Court’s non-merits dismissal of Plaintiff’s complaint under the doctrine of *forum non conveniens*, however, does not make the Defendant a “prevailing party” within the meaning of that provision. Nor does Defendant in its papers [ECF Nos. 14 and 18] identify any particularized grounds entitling it to an award of attorney’s fees. *See also* Fed. R. Civ. P. 52(d)(2)(B)(ii) (requiring motion for attorney’s fees to “specify the judgment and the statute, rule or other grounds entitling the movant to the award”).

4. The Clerk is directed to **CLOSE** this case.

**DONE AND ORDERED** in Fort Pierce, Florida, this 3rd day of January 2021.

A handwritten signature in black ink, appearing to read 'Aileen Cannon', written over a horizontal line.

**AILEEN M. CANNON**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record