UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

WESTSIDE WINERY, INC.,

Plaintiff,

vs.

PALM BAY INTERNATIONAL, INC.; ESPIRIT DU VIN, LLC; DOES 1 through 100, inclusive,

Defendants.

Case No: C 18-2765 SBA

ORDER GRANTING DEFENDANTS' MOTION TO TRANSFER VENUE

Dkt. 13, 4

The instant diversity jurisdiction action arises from a contract dispute between Plaintiff Westside Winery ("Westside") and Defendants Palm Bay International, Inc. and Espirit Du Vin, LLC (collectively "Defendants"). The Complaint alleges that Defendants breached their obligation to purchase a guaranteed amount of wine from Westside pursuant to the parties' Sales and Distribution Agreement ("Agreement"). The parties are presently before the Court on Defendants' Motion to Transfer Action to the Southern District of New York Pursuant to 28 U.S.C. § 1404(a). Dkt. 14. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS the motion for the reasons set forth below. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. BACKGROUND

A. OVERVIEW

Westside operates a vineyard in Sonoma County. Compl. ¶ 7. On January 8, 2016, Westside entered into an indefinite term contract with Pasternak Wine Imports LLC ("Pasternak"), which established the latter as the sole distributor and marketing agent for Westside's wines in the United States and its territories. Id. In that capacity, Pasternak agreed to market and promote the Westside products on a nationwide basis; ensure that distributors' within Pasternak's national distribution network sell those products wine at FOB prices; provide adequate sales force and distribution facilities throughout the country; and purchase a minimum amount of the products on an annual basis. Id. ¶ 21.

The Agreement contains a choice of law clause, which specifies that "[t]his Agreement will be construed and enforced in accordance with the laws of the State of New York…." Agt. § 21(f). In addition, the Agreement contains a "Consent to Jurisdiction" clause, pursuant to which the parties "consent to the jurisdiction of the state and federal courts sitting in the County of New York, State of New York, in any action arising out of or connected in any way with this Agreement." Id. § 21(g). The clause further provides that each party "waives any claim or objection that it may have to such forum based on the principal of *forum non conveniens*, and each of them acknowledges that such forum is and would be a convenient forum." Id.

According to Westside, Pasternak allegedly failed to purchase the requisite amount of wine from Westside during 2016. Id. However, in January 2017, SMT Acquisitions ("SMT"), which does business as Esprit du Vin, purchased substantially all of the commercial assets of Pasternak. Id. ¶ 11. Under the terms of an Assumption and Amendment to Sales and Distribution Agreement, SMT agreed to assume the obligations of Pasternak under the Agreement. Id. Thereafter, SMT fulfilled Pasternak's outstanding purchase obligations for 2016. Id. ¶ 12. However, SMT allegedly failed to purchase the guaranteed amount of wine for 2017 and currently owes $1,545,063.62. Id. ¶ 14. SMT

also is alleged to have failed to discharge its other obligations under the Agreement, as set forth above. Id. ¶ 21, 24.

B. PROCEDURAL SUMMARY

Westside filed the instant action against Defendants in Sonoma County Superior Court on April 6, 2018.[1] The Complaint alleges state law causes of action for: (1) breach of contract; (2) breach of contract—anticipatory repudiation; (3) negligent misrepresentation; (4) breach of the implied covenant of good faith and fair dealing; (5) unfair competition—Business & Professions Code § 17200. As relief, Westside seeks compensatory damages and interest, termination of the pertinent agreements, and recovery of its attorney's fees.

On May 10, 2018, Defendants removed the action based on diversity jurisdiction. After removal, Defendants filed a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and a motion to transfer venue to the Southern District of New York under 28 U.S.C. § 1404(a). Both motions have been fully briefed. For the reasons set forth below, the Court finds that the action should be transferred to the Southern District of New York. The Court does not reach the merits of the motion to dismiss, which may be renewed before the transferee court.

II. LEGAL STANDARD

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a).[2] The threshold question is whether the plaintiff could have originally brought the action in the forum proposed for transfer. See Kasey v. Molybdenum Corp. of Am., 408 F.2d 16, 19 (9th Cir. 1969). Here, there is no dispute between the parties

[1] Westside erroneously named Espirit du Vin LLC as a party-defendant. Espirit du Vin LLC does not exist as an entity; rather, "Esprit du Vin" is the business name under which SMT operates. Not. of Removal ¶ 5. Therefore, SMT is the real party in interest.

[2] "Section 1404(a) ... serves as a statutory substitute for forum non conveniens in federal court when the alternative forum is within the territory of the United States." Ravelo Monegro v. Rosa, 211 F.3d 509, 512-13 (9th Cir. 2000).

that Westside could have brought this action in the Southern District of New York. As such, the question becomes whether the convenience of the parties and witnesses and the interests of justice justify a transfer of venue. See Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986). To that end, the district court must weigh a number of "public" and "private" interest factors. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 (1981). "The Court must also give some weight to the plaintiffs' choice of forum." Atl. Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Texas, 571 U.S. 49, 63 n.6 (2013) (citation omitted).

III. DISCUSSION

A. PRIVATE INTEREST FACTORS

"Factors relating to the parties' private interests include 'relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.'" Atl. Marine Constr. Co., 571 U.S. at 63 n.6 (quoting Piper Aircraft Co., 454 U.S. at 241 n.6).

Westside contends that New York is an inconvenient forum compared to California on the grounds that: the Agreement allegedly was negotiated in California; Defendants' representatives visited the winery in California on a number of occasions for marketing purposes; evidence and witnesses are located in California; and that California is its choice of forum. Opp'n at 11-12. While acknowledging that the Agreement contains a forum selection clause, Westside argues that the clause is permissive in nature—meaning that while New York may be a proper forum, it is not the sole forum for purposes of litigating disputes concerning the agreement.

As a general matter, a motion to transfer venue typically requires the court to "evaluate both the convenience of the parties and various public-interest considerations." Atl. Marine Constr. Co., 571 U.S. at 62. "The calculus changes, however, when the parties' contract contains a valid forum-selection clause, which 'represents the parties' agreement

as to the most proper forum.'" Id. at 63 (quoting Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 31 (1988)).[3] A valid forum selection clause is to be "given controlling weight in all but the most exceptional cases." Id. (internal quotations and citation omitted). When the parties' agreement includes a forum selection clause, the "plaintiff's choice of forum merits no weight" and the district court "must deem the private-interest factors to weigh entirely in favor of the preselected forum." Id. at 62. Rather, the court "may consider arguments about public-interest factors only." Id. at 64. "[B]ecause [public interest] factors will rarely defeat a transfer motion, the practical result is that forum-selection clauses should control except in unusual cases." Id.

Westside does not cite, let alone address Atlantic Marine in its opposition; rather, it simply points out that the forum selection clause is permissive as opposed to mandatory. Opp'n at 5-6.[4] "A permissive clause allows suit to be brought in a particular forum, but does not preclude litigation elsewhere." Tech. Credit Corp. v. N.J. Christian Acad., Inc., 307 F. Supp. 3d 993, 1007 (N.D. Cal. 2018). A mandatory clause, by contrast, "clearly require[s] exclusive jurisdiction." Hunt Wesson Foods, Inc. v. Supreme Oil Co., 817 F.2d 75, 77 (9th Cir. 1987). Some courts have concluded that Atlantic Marine's "modified" forum non conveniens analysis applies only to mandatory forum selection clauses. See Bristlecone, Inc. v. Smith & Nephew, Inc., No. 5:17-CV-00640-HRL, 2017 WL 2666763, at *3 (N.D. Cal. June 20, 2017) (collecting cases). Those cases, however, are inapt in light of the parties' express waiver of objections regarding whether New York would be an inconvenient forum. Specifically, the Agreement provides that "each [party] … hereby *waives* any claim or objection it may have to such forum [i.e., New York] based on the

[3] Forum selection and choice of law clauses are interpreted according to federal law. Doe 1 v. AOL LLC, 552 F.3d 1077, 1081 (9th Cir. 2009). When interpreting a contract under federal law, courts "look for guidance 'to general principles for interpreting contracts.'" Id. (quoting Klamath Water Users Protective Ass'n v. Patterson, 204 F.3d 1206, 1210 (9th Cir. 1999)).

[4] Westside's claim that the forum selection clause is permissive relates to its position that a transfer of venue is not mandatory—not whether private interest factors should be considered in light of Atlantic Marine's modified forum non conveniens test.

principle of forum non conveniens, and *each of them acknowledges that such forum is and would be a convenient forum*." Agt. § 21(g) (emphasis added). In light of the waiver and acknowledgement that New York is a convenient forum, the Court construes all private interest factors to weigh in favor of New York and considers the public interest factors only. See Tech. Credit Corp. v. N.J. Christian Acad., Inc., 307 F. Supp. 3d 993, 1007 (N.D. Cal. 2018) (finding that in light of the "the express waiver [that] precludes objections based on venue or inconvenient forum," the "modified Atlantic Marine analysis applies and thus, private-interest factors are deemed to weigh entirely in favor of the present forum").

B. PUBLIC INTEREST FACTORS

"Public factors include 'the 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.'" Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986) (quoting Piper Aircraft Co., 454 U.S. at 241 n.6).

1. Court Congestion

"The key inquiry in docket congestion is 'whether a trial may be speedier in another court because of its less crowded docket.'" Costco Wholesale Corp. v. Liberty Mut. Ins. Co., 472 F. Supp. 2d 1183, 1196 (S.D. Cal. 2007) (citation omitted). Citing statistics taken from the Federal Court Management Statistics webpage, Westside asserts that the Southern District of New York is more congested because it has more pending civil cases and a greater percentage of three year-old cases compared to this District. See Johnson Decl. Ex. A. But a more meaningful measure of congestion involves a comparison of the two fora's median time from filing to disposition or trial. Mays v. Wal-Mart Stores, Inc., No. 17-CV-07174-LHK, 2018 WL 1400468, at *6 (N.D. Cal. Mar. 19, 2018).[5] In that regard, the

[5] The number of cases per judge is lower in the Southern District of New York compared to this Court. Johnson Decl. Ex. A.

median time from filing to disposition is slightly higher in this Court (7.2 months) compared to the Southern District of New York (7 months). The Court therefore finds that this factor weighs slightly in favor of transfer.

2. Local Interest

The Supreme Court has recognized the principle that "there is a local interest in having localized controversies decided at home." Piper Aircraft, 454 U.S. at 260. However, in contract disputes arising from obligations that are national in scope, the action is generally not considered to be a localized controversy. See Allegiance Healthcare Corp. v. London Int'l Grp., PLC, No. C 97-4619 SC, 1998 WL 328624 at *4 (N.D. Cal. June 17, 1998) (finding that the action was "not a localized controversy" where the "Plaintiff's claims are based on Defendants' national advertising and promotion of their gloves"). Westside offer no relevant argument pertaining to this factor.[6] That aside, it is clear that this case does not involve a controversy that is local in nature; instead, it arises from Defendants' alleged breach of obligations that are nationwide in scope.

The Agreement designates Pasternak (now SMT) as Westside's sole and exclusive national distributor and marketing agent throughout the United States and its territories. Agt. at 2. In that capacity, SMT is obligated to, inter alia, market and promote the wines on a national basis; ensure that distributors within SMT's national distribution network sell the wine at FOB prices; provide adequate sales force and distribution facilities throughout the country; and purchase a minimum amount of wine on an annual basis. Id. at 5-9. Westside alleges that Defendants breached these provisions. Compl. ¶¶ 21, 24. In view of the claims at issue, it is clear that the instant controversy is not limited merely to conduct within California, but involves events extending well beyond this state. The Court concludes that this factor is neutral.

[6] Westside merely asserts that transferring the action to New York "would deprive Plaintiff of its access to relevant evidence and witnesses." Opp'n at 13. However, access to evidence and witnesses is a private interest factor which, as discussed above, is construed in favor of transfer. Westside also complains that transferring the action to New York will deprive of legal claims. Opp'n at 13. That contention, which lacks merit, is germane to the conflict of law factor, which is discussed below.

3. Familiarity with Governing Law

The Court next considers "the interest in having a diversity case tried in a forum familiar with the law that governs the action[.]" Ranza v. Nike, Inc., 793 F.3d 1059, 1078 (9th Cir. 2015). Here, the Agreement contains a choice of law clause that specifies that: "This Agreement will be construed and enforced in accordance with the laws of the State of New York, USA applicable to contracts made and to be performed therein." Agt. § 21(f) (emphasis added). Certainly, a New York federal court will have more familiarity with New York state law than would this Court.

Westside contends that under the terms of the Agreement, California law governs this action because the Agreement was made and performed here. That contention lacks merit. The choice of law clause does not state that New York law will control only if the agreement were made and performed in New York. To the contrary, the clause plainly states that this "Agreement *will* be construed and enforced in accordance with the laws of the State of New York…." Agt. § 21(f). The reference in the latter part of clause upon which Westside relies (i.e., "applicable to contracts made and to be performed therein") simply means that New York law applies to the Agreement to the same extent that New York law would apply to any other contract made and performed in New York.

In sum, the Court concludes that New York law governs the instant dispute. This factor therefore weighs in favor of transfer, since a New York court will be more familiar with the applicable law. See Romano v. Weiss, No. LACV1608615VAPPLAX, 2017 WL 3081694 at *3 (C.D. Cal. Feb. 15, 2017) ("As district courts sitting in New York are generally more familiar with New York law, this factor weighs in favor of transfer.").

4. Conflict of Law

The next factor to consider is "the avoidance of unnecessary problems in conflict of laws…." Piper Aircraft, 454 U.S. at 241 n.6. Westside alleges that there is a conflict between New York and California law, in that the former's legal standards for negligent misrepresentation and breach of the implied covenant of good faith and fair dealing "are

much more restrictive…." Opp'n at 14. Westside fails to support this vague and conclusory assertion with any legal authority or reasoned legal analysis. As such, the Court is not in a position to assess the validity of such argument. See California Pac. Bank v. Fed. Deposit Ins. Corp., 885 F.3d 560, 570 (9th Cir. 2018) ("Inadequately briefed and perfunctory arguments are … waived.").

Equally unpersuasive is Westside's contention that a transfer will deprive it of the right to bring a claim under California Business and Professions Code section 17200 (also known as the California Unfair Competition Law or "UCL") because New York law does not recognize such a claim. Opp'n at 14. Westside again fails to cite any legal authority to support its argument. But even if Westside were correct, it has not demonstrated that it will suffer any prejudice as a result. The UCL only provides for equitable remedies in the form of restitution and injunctive relief. Cal. Bus. & Prof. Code § 17203. Yet, in its UCL claim, Westside seeks damages for injury to its brands and business reputation. Compl. ¶ 44. Damages are not available under section 17203, except by way of restitution. Korea Supply Co. v. Lockheed Martin Corp., 29 Cal.4th 1134, 1144 (2003). Westside's UCL claim does not allege that Defendants have received monies that should be returned to Westside. Because the type of relief sought by Westside under the UCL is not available, a transfer will not result in any unnecessary conflict of law or otherwise prejudice Westside.

5. Burden on Juries

Finally, Westside argues that "New York jurors should not be burdened with determining a California dispute." Opp'n at 15. As discussed above, this case arises from a dispute over a nationwide distribution and marketing contract. A trial in this case will not burden a New York jury any more than a California jury. This factor does not favor either forum and is therefore neutral.

IV. CONCLUSION

The Court finds that the private and public factors, on balance, favor transfer of the action to the Southern District of New York. None of those factors militate in favor of maintaining the action in this District. Accordingly,

IT IS HEREBY ORDERED THAT Defendants' Motion to Transfer Venue to the Southern District of New York is GRANTED. This Order terminates Docket 13 and 14.

IT IS SO ORDERED.

Dated: 8/3/18

SAUNDRA BROWN ARMSTRONG
Senior United States District Judge