

STATE OF RHODE ISLAND

KENT, SC.

SUPERIOR COURT

(FILED: December 6, 2024)

GREENWICH BUSINESS CAPITAL, :
LLC, formerly known as PONTE :
INVESTMENTS, LLC :

v. :

C.A. No.: KC-2023-1056

DANIELLE M. DESROSIERS; :
BARBARA FERRA; VERICHECK, :
LLC, doing business as ACHWORKS; :
USIO, INC.; BFG 104, LLC; BANANA :
FUNDING GROUP, INC.; BANC OF :
CALIFORNIA, N.A.; TRANSPECOS :
BANKS, SSB; CHARLAND, :
MARCIANO & COMPANY, CPAS, :
LLP; BANANA FUNDING GROUP, :
LLC; COMMERCIAL BANK OF :
CALIFORNIA; ABC COMPANY :
DEFENDANTS 1-100; and JOHN :
DOE DEFENDANTS 1-100 :

DECISION

LICHT, J. Pursuant to G.L. 1956 § 9-4-6 and Rule 12(b)(3) of the Superior Court Rules of Civil Procedure, Defendants USIO, Inc. (USIO) and TransPecos Banks, SSB (TPB),¹ (collectively, Defendants) have moved to dismiss the Second Amended Complaint filed by Plaintiff Greenwich Business Capital, LLC, formerly known as Ponte Investments, LLC (Plaintiff or GBC) for improper venue. Defendants assert that a contractually mandated venue clause contained in an agreement between USIO and GBC compels the

¹ On July 9, 2024, Plaintiff dismissed with prejudice Defendants Danielle M. Desrosiers, Barbara Ferra, and Charland, Marciano & Company, CPAs, LLP. On September 11, 2024, Plaintiff dismissed with prejudice VeriCheck, Inc. d/b/a ACHWorks, alias VeriCheck, LLC, as well as Commercial Bank of California.

granting of their motion. Plaintiff contends that since both general and specific personal jurisdiction for this case exists, the motion should be denied. Furthermore, Plaintiff asks this Court to invalidate the contractually mandated venue clause with USIO as unreasonable under the circumstances. Alternatively, if this Court enforces the forum selection clause, Plaintiff requests that the claims against USIO be transferred to the Texas State District Court for Bexar County or the United States District Court for the Western District of Texas. For the reasons stated herein, this Court grants the Defendants' Motion to Dismiss.

I

Facts and Travel

GBC is a Rhode Island limited liability company in the business of providing merchant cash advance (MCA) funding to commercial businesses, an alternative form of financing whereby a lender purchases a merchant's future receipts or receivables at a discount. Pl's. Second Am. Compl. ¶¶ 1, 14-15. Banana Funding Group, Inc. (Banana) and its affiliates, including BFG 104, LLC (BFG), provide financing to MCA providers, like GBC, in exchange for purchasing some portion of those MCA providers' merchants' Rights to Receive (RTR) payments. *See id.* ¶¶ 17-18. In doing so, Banana and its affiliates assume a share of the risk of nonperformance by merchants in exchange for the potential of obtaining a proportionate share of the possible profits. *Id.* ¶ 18.

GBC and Banana, by and through Banana's subsidiary BFG, entered into a series of agreements drafted by Banana, including a 2020 Master Funding Agreement (the 2020 MFA), a 2022 Master Funding Agreement (the 2022 MFA), and sixty-one individual purchase and sale agreements (PSAs) (collectively, the Banana Agreements). *Id.* ¶¶ 19-

20. Under the Banana Agreements, Banana, through BFG,² was to provide an advance amount to GBC, paid over twelve consecutive months, for a portion of the total RTR that GBC was purchasing from its merchants. *Id.* ¶ 21. In return, BFG would acquire the right to a partial amount of the RTR being purchased. *Id.* This process involved GBC collecting RTR from its merchants through automated clearing house (ACH) transactions, with the funds being deposited into a segregated GBC bank account from which BFG would electronically debit its payments, leaving the remaining balance available to GBC. *See id.* ¶ 27. The ACH payment collections were made pursuant to an ACH authorization from each of GBC’s merchants, specifically permitting GBC to process ACH debit transactions. *Id.* ¶ 33.

On or about August 17, 2021,³ GBC entered an Automated Clearing House and Remotely Created Check Services Agreement (the Agreement) with USIO, pursuant to which USIO acted as GBC’s ACH payment processor for payment collections from GBC merchants. *See* Defs.’ Mot. to Dismiss (Defs.’ Mot.) Ex. A. TPB, a Texas state chartered financial institution,⁴ processed USIO’s ACH payment collections, and, once cleared,

² While the Banana Agreements were entered into between GBC and BFG, GBC contends that Banana was also a party due to Banana’s direct funding of PSAs to GBC, with BFG merely serving as an alter ego of Banana. *See* Pl.’s Second Am. Compl. ¶¶ 22-23.

³ GBC and USIO entered into the first Automated Clearing House and Remotely Created Check Services Agreement on September 25, 2019. *See* Pl.’s Second Am. Compl. ¶ 28. Subsequently, GBC and USIO entered into the second Automated Clearing House and Remotely Created Check Services Agreement on August 17, 2021, which is the subject of this dispute. *See* Defs.’ Mot. Ex. A.

⁴ Notably, the Agreement provides that GBC acknowledges the Originating Depository Financial Institution (ODFI) relationship between USIO and GBC. *See* Defs.’ Mot. Ex. A § 2.1 (“Company [GBC] acknowledges that the Service provided by Processor [USIO] pursuant to this Agreement are by virtue of Processor’s contractual relationship with ODFI [TPB], which is a federally insured financial institution regulated by federal and state banking agencies.”).

settled the payments, and, according to GBC, the funds were deposited into a Banana controlled bank account and not into GBC's segregated bank account. Pl.'s Second Am. Compl. ¶¶ 7, 32.

Notably, the Agreement contains a "Governing Law" clause, which states as follows:

"This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the internal laws of the United States and the State of Texas." Defs.' Mot. Ex. A § 12.8.

Additionally, the Agreement contains a "Jurisdiction and Venue" clause, which states as follows:

"In the event that either party commences legal action seeking monetary, declaratory, or injunctive relief with respect to enforcement, interpretation, or violation of this Agreement or any other agreement between [USIO] and [GBC], the parties (i) agree that any such action may be commenced only in a court of competent subject-matter jurisdiction in Bexar County, Texas, (ii) consent to venue and personal jurisdiction in such a court, and (iii) waive any defense of lack of venue or personal jurisdiction in any such suit, action, or proceeding." Defs.' Mot. Ex. A § 12.9.

GBC filed its Complaint on November 13, 2023. *See* Docket. On February 23, 2024, GBC filed an Amended Complaint. *See id.* On March 4, 2024, USIO and TPB filed their first Motion to Dismiss for Improper Venue pursuant to § 9-4-6 and Rule 12(b)(3) of the Superior Court Rules of Civil Procedure. *See id.* GBC filed its respective objection on May 9, 2024. *See id.* At the hearing before this Court on May 20, 2024, GBC advised the Court that it would be filing an additional Amended Complaint. In anticipation of the Second Amended Complaint, the Court forewent rendering a decision on the now-moot motion to dismiss. Subsequently, GBC filed its Second Amended

Complaint on June 25, 2024, asserting twenty-three counts⁵ against the various defendants. *See* Docket. On July 9, 2024, Plaintiff dismissed with prejudice Defendants Danielle M. Desrosiers, Barbara Ferra, and Charland, Marciano & Company, CPAs, LLP. On September 11, 2024, Plaintiff dismissed with prejudice VeriCheck, Inc. d/b/a ACHWorks, alias VeriCheck, LLC, as well as Commercial Bank of California. USIO and TPB filed this Motion to Dismiss the Second Amended Complaint for Improper Venue on July 10, 2024. *See* Docket. GBC filed its objection on September 18, 2024. *See id.* Thereafter, the parties waived oral argument and agreed to rely on their respective arguments made on May 20, 2024.

II

Standard of Review

Rule 12(b)(3) – Improper Venue

“Rule 12(b)(3) allows a defendant to move to dismiss for improper venue.” *Rodriguez Aragonés v. Pompeo*, No. 19-055 WES, 2019 WL 6133957, at *1 (D.R.I. Nov. 19, 2019). “When ruling on such a motion, the Court must treat all facts pled in the Complaint as true and draw all reasonable inferences in the plaintiff’s favor, unless contradicted by the defendant’s affidavits.” *Id.* (citing *Stars for Art Production FZ, LLC v. Dandana, LLC*, 806 F. Supp. 2d 437, 447 (D. Mass. 2011) (“A district court may examine facts outside the complaint to determine whether venue is proper.”)). “[T]he plaintiff has the burden of proving that its chosen venue is proper.” *Id.* (quoting *Johnson v. General Dynamics Information Technology, Inc.*, 675 F. Supp. 2d 236, 239 (D.N.H. 2009)).

⁵ The total count figure accurately reflects the number of causes of action listed in the Second Amended Complaint. However, it should be noted that the Complaint appears to misnumber the overall counts by listing certain counts with numerous causes of action.

III

Analysis

Several issues are before the Court. First, this Court must determine whether to enforce the forum selection clause on behalf of USIO. Secondly, if the Court enforces the forum selection clause, the Court must determine whether to transfer the claim to the contractually agreed upon forum. Finally, this Court must decide if TPB, the Originating Depository Financial Institution (ODFI), is to be afforded the benefit of the forum selection clause by virtue of its relationship to both the Agreement and the parties to the Agreement.

A

USIO: Forum Selection Clause

1

Enforcement of the Forum Selection Clause

“Forum selection clauses have been held *prima facie* valid, *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972), but they are subject to judicial scrutiny for fundamental fairness.” *Tateosian v. Celebrity Cruise Services, LTD.*, 768 A.2d 1248, 1250 (R.I. 2001) (citing *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595-97 (1991)). “A party claiming that the fundamental fairness standard has not been met bears ‘a heavy burden of proof.’” *Tateosian*, 768 A.2d at 1250 (quoting *Carnival Cruise Lines*, 499 U.S. at 592). This Court has identified and adopted nine factors for determining the reasonableness and enforceability of a forum selection clause:

“(1) [i]dentity of the law that governs the contract; (2) [p]lace of execution of the contract; (3) [p]lace where transactions are to be performed; (4) [a]vailability of remedies in the designated forum; (5) [p]ublic policy of the

initial forum state; (6) [l]ocation of the parties, the convenience of the prospective witnesses, and the accessibility of evidence; (7) [r]elative bargaining power of the parties and the circumstances surrounding their dealings; (8) [p]resence or absence of fraud, undue influence or other extenuating . . . circumstances; and (9) [t]he conduct of the parties.” *Employers Mutual Casualty Company v. Michael Weinig, Inc.*, No. P.C. 2003-4115, 2004 WL 1351352, at *4 (R.I. Super. May 14, 2004) (citing *D’Antuono v. CCH Computax Systems, Inc.*, 570 F. Supp. 708, 712 (D.R.I. 1983)).

However, “[w]hile each of these factors has some degree of relevance and some claim to weight, there are no hard and fast rules, no precise formulas.” *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4 (citing *D’Antuono*, 570 F. Supp at 712).

Notwithstanding the factors enumerated above, “[i]t has been held that courts must give effect to such freely-negotiated forum selection clauses agreed to by two businesses of equal bargaining power dealing at arm[']s length.” *Elkind v. Westerly Broadcasting Co.*, No. 79-2573, 1985 WL 663128, at *2 (R.I. Super. June 25, 1985). As a result, “[t]he totality of the circumstances, measured in the interests of justice, will and should ultimately control.” *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4 (internal citation omitted).

The first factor in determining the reasonableness and enforceability of a forum selection clause considers the identity of law that governs the contract. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. The Agreement specifically provides that Texas law applies and governs any disputes that arise out of the Agreement.⁶ As such, this factor weighs in favor of enforcement.

The second factor is the place of execution of the contract. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. The Agreements were signed and

⁶ See Defs.’ Mot. Ex. A §§ 12.8, 12.9.

transmitted electronically, with GBC located in Rhode Island and USIO located in Texas. Pl.'s Obj. to Mot. to Dismiss (Pl.'s Obj.) at 10. As such, this factor neither weighs in favor nor against enforcement of the forum selection clause.

The third factor is the place where the transactions are to be performed. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. The Plaintiff avers that the ultimate performance, the settlement, and the transfer of GBC's collected ACH payments occurred in Rhode Island. Pl.'s Obj. at 10. USIO was contracted to act as GBC's ACH payment processor, charged with overseeing payment collections in Texas, alongside TPB, and ultimately settling those payments in specific GBC-owned accounts located in Rhode Island. Pl.'s Second Am. Compl. ¶¶ 5, 7, 28-32. As the payments were to be ultimately settled into GBC-owned bank accounts located in Rhode Island, this factor weighs against enforcement of the forum selection clause.

The fourth factor reflects on the availability of remedies in the designated forum. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. The Plaintiff contends that the availability of remedies favors finding this Court to be the proper venue, notably regarding the enforcement of the Rhode Island Racketeer Influenced and Corrupt Organizations Act. Pl.'s Obj. at 10-11. However, since the Agreement provides for Texas law to govern,⁷ that statute would not be available to GBC even if the case were tried in Rhode Island. The Plaintiff seeks both monetary and declaratory relief against USIO, which remedies would be available in Rhode Island or Texas. As such, this factor neither weighs in favor nor against enforcement of the forum selection clause.

⁷ Notably, the Agreement contains a "choice of law" clause, which provides that the rights and obligations of the parties shall be governed by, construed, and enforced in accordance with "the internal laws of the United States and the State of Texas." *See* Defs.' Mot. Ex. A ¶ 12.8.

The fifth factor examines the public policy of the initial forum state. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. The Plaintiff contends that enforcement of the forum selection clause would be contrary to the public policy of the State of Rhode Island, as Rhode Island has an interest in both the preservation and protection of its native entities. *See* Pl.’s Obj. at 11. Our Supreme Court has held that a contract, or a term contained therein, “violates public policy only if it is: ‘[1] injurious to the interests of the public, [2] interferes with the public welfare or safety, [3] is unconscionable, or [4] tends to injustice or oppression.’” *Gorman v. St. Raphael Academy*, 853 A.2d 28, 39 (R.I. 2004) (quoting *City of Warwick v. Boeng Corp.*, 472 A.2d 1214, 1218 (R.I. 1984)). Additionally, the Uniform Commercial Code (UCC), as adopted in Rhode Island, permits parties to an agreement to implement choice of law provisions.⁸ Though Rhode Island does preserve an interest in ensuring the preservation and protection of its duly incorporated entities, the Plaintiff has not provided any evidence that the Agreement violates public policy.⁹ “It is a basic tenet of contract law that the contracting parties can make as ‘good a deal or as bad a deal’ as they see fit[.]” *Durfee v. Ocean State Steel Inc.*, 636 A.2d 698, 703 (R.I. 1994). Notwithstanding the Plaintiff’s argument that dismissal of the case would undermine the interests of judicial economy and efficiency, “[t]here are compelling reasons why a freely negotiated private . . . agreement, unaffected by fraud, undue influence, or overweening bargaining power, such as that involved here, should be given full effect . . . [as] [t]he elimination of all such

⁸ *See* G.L. 1956 § 6A-1-301(a) (“[W]hen a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.”).

⁹ *See* Pl.’s Obj. at 11 (“GBC does not contend an inequitable bargaining power between the parties, nor does it assert fraud, undue influence or similar extenuating circumstances.”).

uncertainties by agreeing in advance on a forum acceptable to both parties is an indispensable element in . . . contracting.” *M/S Bremen*, 407 U.S. at 12-14. As such, this factor weighs in favor of enforcing the forum selection clause.

The sixth factor reviews the location of the parties, the convenience of the prospective witnesses, and the accessibility of evidence. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. GBC submits that the prospective witnesses – former GBC employees – and other evidence – GBC ACH Authorizations – are “primarily Rhode Island based or focused.” Pl.’s Obj. at 11. However, USIO could present the same argument with respect to the convenience of its current or former employees who may be called as witnesses, as well as the availability of its business records, which are presumably located in Texas. As a result, this factor neither weighs in favor nor against enforcement of the forum selection clause.

The seventh factor gives thought to the relative bargaining power of the parties and the circumstances surrounding their dealings. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. Since the Plaintiff does not dispute an inequitable bargaining power between the parties,¹⁰ this factor weighs in favor of enforcing the forum selection clause.

The eighth factor considers the presence or absence of fraud, undue influence, or other extenuating circumstances. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. The Plaintiff does not assert fraud, undue influence, or similar extenuating circumstances with respect to the Agreement. *See* Pl.’s Obj. at 11. It follows that this factor weighs in favor of enforcing the forum selection clause.

¹⁰ *See* Pl.’s Obj. at 11.

The ninth and final factor reviews the conduct of the parties. *Employers Mutual Casualty Company*, 2004 WL 1351352, at *4. As previously mentioned, the Plaintiff does not assert an inequitable bargaining power between the parties, nor does it assert fraud, undue influence, or similar extenuating circumstances with respect to the Agreement. Pl.’s Obj. at 11. GBC and USIO entered into the Agreement on two separate occasions, first in 2019 and again in 2021. *See* Pl.’s Second Am. Compl. ¶ 28; Defs.’ Mot. Ex. A. The Agreement expressly specifies that Texas law governs the contract. Defs.’ Mot. Ex. A § 12.8. Furthermore, the Agreement provides for consent to jurisdiction in Bexar County, Texas for any disputes that arise out of the Agreement. *Id.* § 12.9. The Plaintiff was under no obligation to agree to the terms of the Agreement if they found both the choice-of-law and forum selection clauses to be unfavorable to them. The Plaintiff could have simply refused the offered service and the Agreement if it did not wish to be bound by the two provisions or attempted to renegotiate those terms. Both parties to the Agreement were sophisticated entities dealing at arm’s length, and this Court has held that “courts must give effect to such freely-negotiated forum selection clauses agreed to by two businesses of equal bargaining power dealing at arm[’]s length.” *See Elkind*, 1985 WL 663128, at *2. Therefore, this factor weighs in favor of enforcing the forum selection clause.

Ultimately, the Plaintiff has not met its heavy burden of proving that enforcement of the contractually agreed upon forum selection clause would be fundamentally unfair or unreasonable. *See Tateosian*, 768 A.2d at 1250. The Agreement expressly provides for consent to jurisdiction in Texas for any disputes that arise out of the Agreement. The Plaintiff voluntarily entered into this Agreement on two separate occasions and does not

assert an inequitable bargaining power between the parties nor fraud, undue influence, or similar extenuating circumstances. Finally, the public policy of Rhode Island would not be violated through the enforcement of the forum selection clause. Therefore, this Court elects to enforce the forum selection clause contained in the Agreement.

2

Determination as to Dismissal or Transfer of the Case

Having decided to enforce the forum selection clause, this Court now must determine whether to dismiss the action or transfer the case to either the Texas State District Court for Bexar County or the United States District Court for the Western District of Texas. Section 9-4-6 provides for dismissal of actions for improper venue as follows: “Except as otherwise provided herein, all actions and suits brought contrary to the provisions of § 9-4-2 shall be dismissed, and any action contrary to §§ 9-4-3-9-4-5, may be dismissed.” Additionally, § 9-4-6 provides that “[i]n lieu of dismissal, any civil action brought in the wrong county, if brought in the superior court . . . may, in the discretion of the court, be transferred to a proper county[.]”

Neither the language in § 9-4-6 nor in Rule 12(b)(3) of the Superior Court Rules of Civil Procedure provide grounds for this Court to transfer a case to another state. Thus, this Court grants USIO’s Motion to Dismiss for Improper Venue.

B

TPB: Extension of the Forum Selection Clause

Having determined that the forum selection clause is enforceable against the Plaintiff with respect to Defendant USIO, this Court must now determine whether to extend the benefit of the forum selection clause to Defendant TPB.

Pursuant to the Agreement, USIO acted as GBC’s ACH payment processor for payment collections from GBC merchants. *See* Defs.’ Mot. Ex. A. The Agreement provides that GBC acknowledges that the service provided by USIO is by virtue of USIO’s contractual relationship with an ODFI.¹¹ TPB, a state chartered financial institution, was the ODFI and processed USIO’s ACH payment collections. TPB, according to GBC, was to deposit the payments into a specified account owned by GBC. Pl.’s Second Am. Compl. ¶¶ 7, 32. As previously mentioned, GBC alleges that TPB did not deposit the funds in its account but rather TPB deposited it in one of Banana’s accounts.

Though our Supreme Court has not directly addressed this issue, “Federal courts . . . have relied on equitable estoppel when ‘requiring arbitration between a signatory and nonsignatory’ of an arbitration agreement.” *Puerto Rico Fast Ferries LLC v. SeaTran Marine, LLC*, 102 F.4th 538, 549 (1st Cir. 2024) (citing *Thomson-CSF, S.A. v. American Arbitration Association*, 64 F.3d 773, 779 (2d Cir. 1995)). “The same principle of preventing a signatory from enjoying a contract’s benefits while avoiding its burdens applies when the contract includes . . . forum-selection clauses.” *Puerto Rico Fast Ferries LLC*, 102 F.4th at 549. “[T]he sole fact that ‘a party is a non-signatory to an agreement is insufficient, standing alone, to preclude enforcement of a forum selection clause.’” *Id.* (quoting *Fasano v. Li*, 47 F.4th 91, 103 (2d Cir. 2022)). Non-signatories to an agreement have been permitted to “be bound by, and to enforce, forum selection clauses where, under the circumstances, the non-signatories enjoyed a sufficiently close nexus to the

¹¹ “Company acknowledges that the Service provided by Processor pursuant to this Agreement are by virtue of Processor’s contractual relationship with ODFI, which is a federally insured financial institution regulated by federal and state banking agencies.” Defs.’ Mot. Ex. A § 2.1.

dispute or to another signatory such that it was foreseeable that they would be bound.” *Id.* at 549-50 (internal quotations omitted). “In deciding whether claims are intertwined, courts have evaluated ‘the close relationship between the entities involved . . . and the fact that the claims were intimately founded in and intertwined with the underlying contractual obligations.’” *Id.* at 550 (quoting *Thomson-CSF, S.A.*, 64 F.3d at 779).

TPB argues that it should be afforded the benefit of the forum selection clause contained in the Agreement between GBC and USIO. Defs.’ Mot. at 2. Specifically, TPB contends that the Plaintiff’s claims that TPB wrongfully deposited the funds in Banana-owned accounts are “directly related” to the Agreement that it was foreseeable to the Plaintiff that its claims against TPB would fall under the forum selection clause. *Id.* TPB cites GBC’s acknowledgment of the ODFI relationship¹² and maintains that GBC knew that USIO had a separate contractual relationship with TPB. *Id.* at 2-3. As such, TPB holds that its only relationship to this present matter arises out of its relationship with USIO and, but for the execution of the Agreement, GBC has no connection to TPB. The Plaintiff makes no argument against TPB’s position that it should be afforded the protection of the forum selection clause, but instead contends that in the absence of a written agreement, specific and personal jurisdiction exists. *See* Pl.’s Obj. at 2, 4.

The connection between TPB and the Plaintiff is by virtue of TPB’s contractual relationship with USIO. Pursuant to the Agreement, the Plaintiff contractually acknowledged that the “[s]ervice provided by [USIO] pursuant to this Agreement are by virtue of [USIO]’s contractual relationship with ODFI [TPB], which is a federally insured

¹² *See* Defs.’ Mot. Ex. A § 2.1 (“Company acknowledges that the Service provided by Processor pursuant to this Agreement are by virtue of Processor’s contractual relationship with ODFI, which is a federally insured financial institution regulated by federal and state banking agencies.”).

financial institution regulated by federal and state banking agencies.” *See* Defs.’ Mot. Ex. A § 2.1. In other words, the service sought by the Plaintiff, the processing of its ACH payments, was directly enabled by USIO’s relationship with TPB. As such, the Plaintiff would not have any connection with TPB absent TPB’s prior contractual relationship with USIO.

Furthermore, the Plaintiff’s claims against TPB arise solely from the Agreement with USIO. Specifically, Plaintiff alleges as follows: (1) the ACH payment collections collected by USIO, and processed by and through TPB, were made despite the absence of ACH authorizations from GBC’s merchants; (2) neither USIO nor TPB advised any of GBC’s merchants that Banana, and not GBC, was receiving the ACH payments; and (3) TPB and USIO settled the collected amounts into a Banana controlled bank account, rather than the designated GBC account. Pl.’s Second. Am. Compl. ¶¶ 34-35. Plaintiff’s claims against TPB, all revolving around alleged misconduct with respect to ACH payment collections, arise from the underlying contractual obligations contained in the Agreement between GBC and USIO.

Though TPB was a non-signatory to the Agreement between the Plaintiff and Defendant USIO, this Court finds that TPB is extended the benefit of the forum selection clause contained in the Agreement. TPB enjoyed a significantly close relationship with USIO, as the ODFI identified in § 2.1 of the Agreement. Absent its prior contractual relationship with USIO, TPB would have no relation or connection with the Plaintiff. Furthermore, every allegation brought against TPB by the Plaintiff arises from contractual obligations contained in the Agreement with USIO. As such, this Court

determines that it was reasonably foreseeable to the Plaintiff that its claims against TPB would fall under the forum selection clause contained in the Agreement with USIO.

IV

Conclusion

Based on the foregoing, this matter is dismissed without prejudice, enabling the Plaintiff to refile the claims in the proper venue, either the Texas State District Court for Bexar County or the United States District Court for the Western District of Texas.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Greenwich Business Capital, LLC v. Danielle M. Desrosiers, et al.**

CASE NO: **KC-2023-1056**

COURT: **Kent County Superior Court**

DATE DECISION FILED: **December 6, 2024**

JUSTICE/MAGISTRATE: **Licht, J.**

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