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OF THE COMMITTEE ON OPINIONS

L'OREAL USA, INC,

Plaintiff,

v.

WORMSER CORPORATION and PROCESS
TECHNOLOGIES LLC,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – BERGEN COUNTY**

DOCKET NO. **BER-L-6069-19**

Civil Action

OPINION

Argued: March 27, 2020

Decided: May 13, 2020

HONORABLE ROBERT C. WILSON, J.S.C.

Charles F. Rysavy Esq. appearing on behalf of plaintiff L'OREAL USA, INC (from K&L Gates)

Joshua C. Gillette Esq., Stuart Kagen Esq. and Russell Bogart Esq. appearing on behalf of the defendant Wormser Corporation (from Kagen & Caspersen PLLC)

PROCEDURAL HISTORY

THIS MATTER was initiated in the first instant when L'Oreal ("Plaintiff") filed suit against Wormser and Process Technologies and Packaging, LLC ("Defendants") in federal court On July 19, 2019. L'Oreal voluntarily withdrew the federal complaint on August 22, 2019. L'Oreal then filed the instant complaint in Bergen County on August 22, 2019. Defendant Wormser Corporation then filed a motion to dismiss the complaint on October 25, 2019. On December 5, 2019, L'Oreal filed a motion to transfer venue from Bergen County to Union County. This motion was denied. After multiple adjournments, this motion is now in front of the Court. Plaintiff opposes this motion.

FACTUAL BACKGROUND

THIS MATTER arises out of allegations of fraud surrounding certain products and service provided by Defendants to Plaintiff. Plaintiff L'Oreal is a French company incorporated in Delaware with its principal place of business in New York. L'Oreal is registered to do

business in New Jersey. Defendant Wormser is a privately held company incorporated in New Jersey with its principal place of business in Englewood, New Jersey. Wormser conceptualizes and develops cosmetics, skincare products, and related commodities. Defendant Process Tech is a limited liability corporation with its principal place of business in Olyphant, Pennsylvania. It is owned 51% by Seokoh, Inc., and 49% by Wormser. Process Tech focuses on cosmetics research and development. Process Tech and Wormser have been parties to a contract since October 13, 2016, in which Wormser subcontracts exclusively to Process Tech the work for developing cosmetics. Process Tech provides formulation, development, testing, manufacturing, and packaging services exclusively to Wormser.

In or around late 2014, IT Cosmetics approached Wormser about a cosmetics line eventually called Confidence in a Foundation (“CIAF”). Wormser and Process Tech (“Defendants”) had produced several lines of cosmetics for IT Cosmetics before, but CIAF was the first liquid product. Wormser then subcontracted with Process Tech to develop the formula for CIAF. IT Cosmetics made it clear that the CIAF was supposed to be a line of long wear, full coverage foundations. By the Spring of 2015, Process Tech had developed the initial formula for CIAF. L’Oreal then shelved the project in 2016. In 2017, L’Oreal again decided that it was interested in launching Process Tech’s formula. Wormser tested the formula and L’Oreal advised Defendants that they would be moving forward with the project using Process Tech’s original formula.

At various times prior to CIAF being brought to market, L’Oreal requested minor changes to Process Tech’s base formula for CIAF. These changes comprised less than 1% of the formula by volume. In May 2018, L’Oreal sent Wormser the final design for the CIAF bottle. L’Oreal revised the front label of the bottle to say “Longwear, weightless, full coverage, velvet-matte finish.” On November 13, 2018, Wormser and L’Oreal agreed upon a pricing structure for

delivery of finished and packaged products to the L'Oreal warehouse in New Jersey. The per-unit prices varied based on volume per purchase order per shade and the shipping method. L'Oreal then began issuing purchase orders to Wormser.

All of the purchase orders issued by L'Oreal and executed by Wormser were governed by L'Oreal's standard Agreement on the Supply of Goods and Services ("Supply Agreement") which L'Oreal sent to Wormser on March 19, 2018 and again on March 20, 2019. In November of 2018, L'Oreal personnel were on site at Process Tech to review the color matching for the initial production batches of CIAF. The L'Oreal personnel alerted Process Tech to streaks of undisbursed red pigment in some batches. Process Tech increased the mixing time by thirty minutes to attempt to remedy the problem. On February 4, 2019, Wormser requested approval from L'Oreal to ship 42 skids of products to L'Oreal's Distribution Center. On February 25, 2019, Defendants notified L'Oreal that they had observed formula separation during production. Defendants then shut down production. On February 26, 2019, Defendants reported to L'Oreal that they had concluded it was necessary to make changes to the manufacturing process. On March 4, 2019, Wormser informed L'Oreal that the manufacturing changes had solved the problem.

Beginning on March 12, 2019, L'Oreal received a significant number of negative reviews about the product from customers. Throughout April 2019, Defendants attempted to identify the cause of the defects. By April 5, 2019, retailers were threatening to pull CIAF off the shelves based on negative reviews and the high volume of returns. On April 8, 2019, Sephora asked L'Oreal to pull the CIAF line from the shelves and find a replacement. L'Oreal informed Wormser that it was suspending all shipments of CIAF on April 8, 2019. L'Oreal identified several issues with the mixing process and resulting products. L'Oreal also identified several issues with the testing and manufacturing of CIAF. On May 10, 2019, L'Oreal terminated their

contract with Defendants and informed them that L'Oreal would be pulling the CIAF line from the market.

For the reasons set forth below, Defendants, Wormser Corporation and Process Technologies and Packaging LLC., Motion to Dismiss is hereby **GRANTED**.

MOTION TO DISMISS STANDARD UNDER RULE 4:6-2(e)

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations “to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . .” Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See, NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts.” Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULES OF LAW AND DECISION

I. L'OREAL'S COMPLAINT MUST BE DISMISSED PURSUANT TO THE FORUM SELECTION CLAUSE CONTAINED IN THE CONTRACT

The relationship between Plaintiff and Defendants is governed by a Supply Agreement (“Supply Agreement”). Plaintiff initially filed suit in the District Court of New Jersey and subsequently withdrew that suit due to lack of federal diversity jurisdiction. In August of 2019, Plaintiff filed a complaint in Bergen County. On October 25, 2019, Wormser moved to have the complaint dismissed on multiple grounds. In response, Plaintiff filed an amended complaint. Plaintiff contends that Bergen County is the appropriate venue as it is Wormser’s principal place of business.

Paragraph 1 of L’Oreal’s Supply Agreement states:

1. Purpose and acceptance. This agreement governs the Purchase Orders sent by L’Oreal USA, Inc. (“L’OREAL”), following the negotiations with the SUPPLIER (the “Agreement”). The Agreement summarizes the provisions applicable to the supply of (i) Goods...described in the Purchase Orders (the “Order”). SUPPLIER’s execution of an Order constitutes acceptance by SUPPLIER of each and all of the terms and conditions provided herein regardless of whether SUPPLIER signs this Agreement. This Agreement constitutes the entire agreement between L’Oreal and Supplier, and no modification thereof shall be effective unless in writing signed by both parties.

The Supply Agreement is a standard agreement that L’Oreal mandates for each of its suppliers. The boilerplate language of the Supply Agreement states that the Agreement was not negotiated individually and that L’Oreal unilaterally dictated the terms of the Agreement.

A. The Supply Agreement Requires L’Oreal to File Suit in New York

Paragraph 16 of L’Oreal’s own Supply Agreement is a binding forum selection clause and choice-of-law provision. Paragraph 16 states:

16. Jurisdiction and applicable law. The Parties shall attempt to settle disputes amicably. If no amicable agreement is found, any dispute shall be brought before the Courts of the city where L'OREAL's registered address is located and the laws of the state of such registered address shall apply.

The language of the Agreement clearly indicates that there is only one place where suit can be filed. L'Oreal's "registered address" is located at 10 Hudson Yards, New York, New York 10001. The language "shall be brought" specifies that the only place the parties to the Agreement can file suit is New York. The word "the" preceding "Courts of the city" "clearly manifests an intent to render venue both compulsory and exclusive". Sun Co. v. Zoning Bd. of Adjustment of Avalon, 286 N.J. Super. 440, 447 (App. Div.), *certif. denied*, 144 N.J. 376 (1996). The language of the "Jurisdiction and applicable law" clause written unilaterally by the Plaintiff clearly indicates that New York is the only appropriate venue.

L'Oreal has consistently used its New York address to conduct business. The plain and ordinary meaning of the term "registered address" is the address of L'Oreal's USA headquarters. L'Oreal has used this address when it was required to register an address such as in its state of incorporation, with the United States Trademark Office, and the Federal Trade Commission. Under the binding forum selection clause, the only place where suit can be brought by either party is the registered address, which is L'Oreal's New York headquarters.

"A court cannot hear a case as to which it lacks subject matter jurisdiction." Peper v. Princeton University Board of Trustees, 77 N.J. 55, 65, 389 A.2d 465 (1978). Therefore, "a court lacks subject matter jurisdiction over a case if its brought in an ineligible forum" Id. "Forum selection clauses are *prima facie* valid and enforceable in New Jersey." Caspi v. The Microsoft Network L.L.C., 323 N.J. Super. 118, 122 (App. Div. 1999). A forum selection clause is enforceable unless it is the result of "fraud, undue influence, or overweening bargaining power is unreasonable or violates a strong public policy". Paradise Enters., Ltd. v. Sapir, 356 N.J. Super.

96, 103 (App. Div. 2002). L'Oreal cannot claim that its own forum selection clause is a result of fraud, undue influence, or is unreasonable or violates public policy.

B. L'Oreal's Registered Address Is Not in New Jersey

L'Oreal has tried to claim that the phrase "registered address" refers to a New Jersey office address. L'Oreal cannot claim that its registered address is somehow now an ancillary office in Union County, New Jersey because every filing that has required a registered address contains its New York headquarters address. L'Oreal's principal place of business is also located in New York. L'Oreal claims it filed suit in Bergen County because Bergen County is the principal place of business for Defendant, but the forum selection clause mandates that suit be brought in the Court of Plaintiff's registered address, not Defendants principal place of business.

Simply because L'Oreal has a back office in Union County, New Jersey does not mean that Union County becomes an appropriate venue. The plain and ordinary meaning of the Supply Agreement clearly indicates that the "registered address" for the purposes of filing suit is in New York. If L'Oreal intended to include New Jersey as an appropriate venue, it would have made that clear in the Supply Agreement.

CONCLUSION

For the aforementioned reasons, Defendants, Wormser Corporation and Process Technologies and Packaging LLC, Motion to Dismiss is **GRANTED**.