2024 WL 4869148
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United States District Court, C.D. California.

M&N LUXURY AV, LLC, Plaintiff,
v.
BANG & OLUFSEN AMERICA, INC., et al., Defendants.

2:24-cv-2230-DSF-KESx
|
Signed September 9, 2024

**Attorneys and Law Firms**

Heidy A. Nurinda, Jessica Wynette Rosen, Matthew J. Soroky, Thomas McDowell Morrow, Steven L. Feldman, Lewitt Hackman Shapiro Marshall and Harlan, Encino, CA, for Plaintiff.

J. David Bournazian, K and L Gates LLP, Irvine, CA, Christopher S. Finnerty, Pro Hac Vice, K and L Gates LLP, Boston, MA, for Defendants.

Order DENYING Motion to Dismiss or Transfer Venue (Dkt. 29)

Dale S. Fischer, United States District Judge

***1** Defendant Bang & Olufsen America Inc. (B&O) moves to dismiss this case or transfer it to the District of Delaware due to a forum selection clause in the relevant contract between the parties. Plaintiff M&N Luxury AV, LLC argues that the forum selection clause should not be enforced because it and B&O have a franchisor/franchisee relationship and the California Franchise Investment Law (CFIL) prohibits involuntary enforcement of a forum selection clause against a franchisee. Cal. Bus. & Prof. Code § 20040.5; see also Cal. Corp. Code § 31512 (waivers of franchisee protections void).

"A provision in a franchise agreement restricting venue to a forum outside this state is void with respect to any claim arising under or relating to a franchise agreement involving a franchise business operating within this state." Cal. Bus. & Prof. Code § 20040.5. The Ninth Circuit has explicitly held that § 20040.5 expresses a strong public policy of California that franchisees not be compelled to litigate franchise disputes out-of-state. Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000).

California law defines a "franchise" as a:

> contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:
>
> (1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and
>
> (2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and
>
> (3) The franchisee is required to pay, directly or indirectly, a franchise fee.

Cal. Corp. Code § 31005.

  

In its preliminary injunction motion filings, Plaintiff has presented at least some evidence and argument to support its assertion that it is B&O's franchisee. See PI Motion (Dkt. 32) at 8-10; Decl. of David Junk (Dkt. 32-2) ¶¶ 7, 20.

B&O's main response is that Plaintiff has failed to establish a franchise relationship between the parties.[1] However, B&O makes virtually no argument to this effect. Instead, it baldly states only that Plaintiff's evidence isn't good enough without providing an explanation for why the evidence is deficient, either factually or legally. See Reply at 5-6. While Plaintiff has not definitively shown that it is a franchisee, its evidence, unrebutted, suggests that it can satisfy the statutory requirements. In the absence of any other basis for a decision, the Court finds, for the purposes of this motion, that a franchise relationship exists and the CFIL applies.

***2** To the degree that B&O argues that Atlantic Marine[2] abrogated the holding in Jones, that argument has been effectively foreclosed by the Ninth Circuit in a case involving an analogous provision in the California Labor Code. Depuy Synthes Sales, Inc. v. Howmedica Osteonics Corp., 28 F.4th 956, 964 (9th Cir. 2022) ("But nothing in § 1404(a) relates to questions of contract formation ... and nothing in Bremen, Stewart, Atlantic Marine or any other Supreme Court decision creates a federal rule of contract law that preempts a state law ... from addressing the upstream question of whether the contract sought to be enforced includes a viable forum-selection clause.").

The motion to dismiss or transfer is DENIED.

IT IS SO ORDERED.

**All Citations**

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## Footnotes

1 B&O's other arguments range from irrelevant (a side discussion about legislative history) to borderline frivolous (arguing § 20040.5 does not apply because use of the present tense "operating within this state" means § 20040.5 does not apply to termination disputes). Notably, B&O fails to raise an argument for transfer based on the typical § 1404(a) factors and rests on the forum selection clause.

2 Atlantic Marine Const. Co. v. U.S. Dist. Ct., 571 U.S. 49 (2013).