**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AAMCO TRANSMISSIONS, INC.,	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 13-5747
v.	:	
	:	
ROBERT V. ROMANO and LINDA ROMANO,	:	
Defendants.	:	

August _21, 2014 **Anita B. Brody, J.**

MEMORANDUM

Plaintiff Aamco Transmissions, Inc. ("AAMCO") brings suit against its former franchisee Defendant Robert Romano and his wife Defendant Linda Romano (collectively, the "Romanos"). AAMCO alleges that the Romanos breached a covenant not-to-compete by operating a new transmission repair business in close proximity to an AAMCO center. AAMCO seeks specific performance of the covenant not-to-compete as well as costs and attorneys' fees. I have subject matter jurisdiction over AAMCO's claims pursuant to 28 U.S.C. § 1332.[1]

[1] The Romanos challenge my subject matter jurisdiction over the case, arguing that AAMCO has failed to set forth facts that establish an amount in controversy in excess of $75,000 as required under 28 U.S.C. § 1332. "The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that . . . the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." *St. Paul Mercury Indemnity Co. v. Red Cab. Co.,* 303 U.S. 283, 288-89 (1938). Where the plaintiff in a diversity action seeks injunctive or declaratory relief, the amount in controversy is determined by "the value of the object of the litigation." *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 347 (1977); *see McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 181 (1936). AAMCO alleges in the Complaint that the amount in controversy exceeds $75,000 and that the Romano's refusal to honor the non-compete interferes with AAMCO's ability to further develop the market. Compl. ¶¶ 4, 21. In its opposition to the motion to dismiss, AAMCO further argues that the Romanos' conduct threatens the viability of every AAMCO franchise and AAMCO's millions of dollars of investment in the AAMCO brand. O'Donnell Decl. ¶¶ 25-26, 28. Given the extent of possible damages, there is no legal certainty that the claim is for less than $75,000. Therefore, I will deny the motion to dismiss on this ground.

The Romanos move to dismiss AAMCO's suit on several grounds; they also move for a transfer of venue to the Southern District of Florida. I will deny their motions for the reasons discussed below.

I. BACKGROUND[2]

AAMCO, a Pennsylvania corporation with its principal place of business in Horsham, Pennsylvania, franchises the AAMCO name and trademark to transmission and general automotive repair centers throughout the United States and Canada. Compl. ¶ 6. On August 18, 1992, Robert Romano, a citizen of Florida, entered into a franchise agreement (the "Franchise Agreement") with AAMCO. The Franchise Agreement permitted Robert Romano to operate an automotive repair center located at 1631 North 60th Avenue, Hollywood, Florida under the AAMCO name and trademark. Compl. ¶ 7. At all times, his wife Linda Romano, also a citizen of Florida, acted as his agent in business. Compl. ¶ 8. In August 1992, just prior to opening his franchise, Robert Romano attended AAMCO's owner training class and was provided with AAMCO's proprietary manuals, customer lists, and software. Compl. ¶ 10. AAMCO also disclosed to Robert Romano its proprietary systems and trade secrets for operating a successful automotive repair business. Compl. ¶ 9. In return, Robert Romano agreed to pay to AAMCO a weekly franchise fee of seven percent of his franchise's gross receipts from the previous week. Compl. Ex. A § 4.2.

The Franchise Agreement also contained the following terms:

- Section 16.1 – "Duration of the Franchise. This Agreement shall begin as of the date set forth above, and shall continue for a term of fifteen (15) years. Unless either party gives written notice of its intention not to renew at least one (1) year prior to the expiration of the fifteen (15) year term, then this franchise shall be renewed for fifteen (15) years."

[2] As required in ruling on a motion to dismiss, all facts are taken from the Complaint.

- Section 19.2(b) – "For a period of two (2) years after the termination of Expiration of this Agreement, Franchisee shall not directly or indirectly engage in the transmission repair business within a radius of ten (10) miles of the former center or any other AAMCO center. The two (2) year period shall not begin to run until Franchisee commences to comply with all obligations stated in this section 19.2(b)."

- Section 19.2(c) – "Franchisee acknowledges that because of the business of AAMCO and the strength of the AAMCO name and trademark, the restrictions contained in this section 19.2 are reasonable and necessary to protect the legitimate interests of AAMCO and that any violation of these restrictions will result in irreparable injury to AAMCO."

- Section 21.1 – "Jurisdiction. This Agreement shall be deemed to have been made within the Commonwealth of Pennsylvania and shall be interpreted according to the laws of Pennsylvania. . . . Franchisee further agrees to the jurisdiction and venue of any proper court of general jurisdiction in either Pennsylvania County, Pennsylvania, Montgomery County, Pennsylvania or in the county in which AAMCO has its principal place of business. Franchisee more particularly agrees to the jurisdiction and venue of the United States District Court for the Eastern District of Pennsylvania with respect to any proceedings which arise out of or are connected in any way with this Agreement or its performance, and Franchisee specifically agrees not to bring suit against AAMCO in any other jurisdiction or venue."

Robert Romano operated his franchise at the Hollywood location until February 20, 2013, at which time Robert Romano and AAMCO mutually accepted and signed a Termination of Franchise Agreement (the "Termination Agreement"). Compl. ¶ 11. Under the Termination Agreement, Robert Romano released all rights he had under the Franchise Agreement and AAMCO released Robert Romano from all obligations he had under the Franchise Agreement with the exception of the obligations set forth in Sections 12.2, 18.1, 19.1, and 19.2 of the Franchise Agreement. Compl. Ex. B. By explicitly extending the obligations owed under Section 19.2, Robert Romano agreed to comply post-termination with the covenant not-to-compete. Compl. ¶ 12. The earliest date on which the covenant not-to-compete could expire is February 19, 2015. Compl. ¶ 14.

The Romanos are currently operating a transmission repair business under the name Treasure Coast Transmissions located at 2801 SE Monroe Street, Stuart, Florida.[3] Compl. Ex. C. The Romanos' new business is roughly 100 miles north of the Romanos' Hollywood franchise, but less than 1.5 miles away from the nearest AAMCO center. Compl. ¶¶ 15-16; Compl. Ex. D.

II. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS FOR IMPROPER VENUE

Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(3), the Romanos move to dismiss the action for lack of personal jurisdiction and improper venue. The Romanos argue that this Court has no personal jurisdiction over them because they have no minimum contacts and no continuous relationship with Pennsylvania. They argue that the Eastern District of Pennsylvania is an improper venue because they do not reside in Pennsylvania and would be financially burdened if forced to defend the case here.

The Romanos also dispute the applicability of any forum selection clause to this action because they believe there has not been a valid franchise agreement between AAMCO and Robert Romano since August 18, 2007. Alternatively, they argue that the February 20, 2013 Termination Agreement ended Robert Romano's obligations under the Franchise Agreement's forum selection clause. They also argue that Linda Romano has never been in any contractual relationship with AAMCO and thus is not subject to any forum selection clause.

A. Legal Standard

Under Federal Rule of Civil Procedure 4(k), a district court exercises personal jurisdiction over a non-resident defendant according to the law of the state where it sits. *See* Fed. R. Civ. P. 4(k)(1)(A); *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 316 (3d Cir.

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[3] AAMCO incorrectly stated in its Complaint that the Romanos' new business was located in Hollywood, Florida, but this mistake was acknowledged and corrected in the AAMCO's Brief in Opposition to Defendants' Motion to Dismiss.

2007). The Pennsylvania long-arm statute provides for jurisdiction "based on the most minimum contact with th[e] Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b); *Mellon Bank v. Farino*, 960 F.2d 1217, 1221 (3d Cir. 2002) (finding that Pennsylvania's long-arm statute is coextensive with the constitutional limits of due process). Accordingly, a court may exercise personal jurisdiction over a nonresident defendant if the defendant has "certain minimum contacts with [Pennsylvania] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *O'Connor*, 496 F.3d at 316 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). A party can also consent, however, to personal jurisdiction in a court through a forum selection clause. *See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703-04 (1982).

In an action based on diversity jurisdiction, venue is proper only in: (1) a judicial district where any defendant resides, if all defendants reside in the same state; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought. 28 U.S.C. § 1391(a). Additionally, venue may be proper, however, if consented to by the parties in a forum selection clause. *See Carnival Cruise Lines v. Shute*, 499 U.S. 585, 591-94 (1991).

B. Discussion

The Franchise Agreement between Robert Romano and AAMCO contains a forum selection clause under which Robert Romano agreed to jurisdiction and venue in the Eastern District of Pennsylvania. Compl. Ex. A § 21.1. The Romanos do not argue that the forum

selection clause is unenforceable; rather they present two reasons why the forum selection clause no longer applies to this dispute.

First, the Romanos argue that AAMCO improperly renewed the Franchise Agreement originally signed on August 18, 1992 such that the Franchise Agreement lapsed and the forum selection clause contained therein is no longer in effect. The Franchise Agreement renewed automatically on August 18, 2007 unless one of the parties gave written notice of its intention not to renew by August 18, 2006. Compl. Ex. A § 16.1. The Romanos allege that during the summer of 2006, AAMCO failed to respond in a timely manner to Robert Romano's requests for information about the terms of the contemporary version of the AAMCO franchise agreement. There is no allegation, however, that either party ultimately gave written notice of its intention not to renew the Franchise Agreement. To the contrary, Robert Romano continued to operate as an AAMCO franchisee until February 20, 2013. This suggests that the Franchise Agreement did renew on August 18, 2007 and was in force at the time AAMCO and Robert Romano executed the Termination Agreement.

Second, the Romanos argue that the forum selection clause did not survive the termination of the Franchise Agreement. Under the Termination Agreement, AAMCO released Robert Romano from all obligations he had under the Franchise Agreement with the exception of the obligations set forth in Sections 12.2, 18.1, 19.1, and 19.2. Compl. Ex. B. The Romanos argue that because the Termination Agreement did not explicitly mention the continuation of Robert Romano's obligations under the forum selection clause in Section 21.1, the forum selection clause no longer applies to this dispute.

Courts that have considered this issue have consistently rejected the Romano's argument. *See TriState HVAC Equipment, LLP v. Big Belly Solar, Inc.*, 752 F.Supp.2d 517, 535 (E.D. Pa.

2010); *Versar, Inc. v. Ball*, No. 01-1302, 2001 WL 818354, at *2 (E.D. Pa. July 12, 2001); *Texas Source Group, Inc. v. CCH, Inc.*, 967 F.Supp. 234, 238 (S.D. Tex. 1997); *Allied Sound, Inc. v. Dukane Corp.*, 934 F.Supp. 272, 275 (M.D. Tenn. 1996); *Young Women's Christian Ass'n of the U.S. v. HMC Entm't, Inc.*, No. 91-7943, 1992 WL 279361, at *4 (S.D.N.Y. Sept. 25, 1992); *Advent Elecs., Inc. v. Samsung Semiconductor, Inc.*, 709 F.Supp. 843, 846 (N.D. Ill. 1989); *see also* 13 *Corbin on Contracts* § 67.2, at 12 (rev. ed. 2003) ("Although termination and cancellation of an agreement extinguish future obligations of both parties to the agreement, neither termination nor cancellation affect those terms that relate to the settlement of disputes or choice of law or forum selection clauses."). "Unless otherwise expressed, a choice of forum clause does not expire upon termination of the contract from which it derives. . . . [T]o read the contract so as to disregard the forum-selection clause for actions brought following termination would be to distort its usual, common sense meaning and applicability." *Versar*, 2001 WL 818354, at *2; *see Texas Source Group*, 967 F.Supp. at 236 ("[T]o rule otherwise, a party could defeat a validly negotiated forum-selection clause by simply alleging that the nonmoving party breached the contract.").

Courts have upheld the applicability of forum selection clauses even where the termination provision of the contract expressly provides for the survival of certain enumerated provisions but not the forum selection clause. *See TriState*, 752 F.Supp.2d at 535; *Versar*, 2001 WL 818354, at *2; *Texas Source Group*, 967 F.Supp. at 238; *Allied Sound*, 934 F.Supp. at 275; *Advent,* 709 F.Supp. at 846. Courts finding that forum selection clauses remained in effect have relied primarily on the broad language of forum selection clauses and the absence of any explicit language indicating the termination of the clause. In particular, I am persuaded by Judge Yohn's

cogent analysis in *TriState* as to why the forum selection clause at issue in that case survived termination of the Franchise Agreement:

> The forum-selection clause applies to "any legal dispute[ ]" (Agreement § 22), and there is nothing to suggest that the parties intended that the clause would not apply to disputes regarding an alleged breach of contract. . . . The fact that the agreement expressly provides for the survival of certain other contractual provisions, but not the forum-selection clause, does not alter the analysis. The exclusion of the forum-selection clause from the "survival" clause—which, as a general matter, is intended to ensure the survival of certain contractual provisions that might otherwise be extinguished upon termination of the agreement—simply does not evidence a clear intent that, upon termination of the agreement, the forum-selection clause would cease to apply to claims arising under the agreement.

Id. at 534-36; *see also Nolde Bros., Inc. v. Bakery & Confectionery Workers Union, Local No. 358,* 430 U.S. 243, 252 (1977) (holding that an obligation to act pursuant to an arbitration clause does not automatically end upon the termination of the agreement).

In this case, the forum selection clause in the Franchise Agreement contains similarly broad language regarding its applicability. The Franchise Agreement states that the Franchisee agrees to jurisdiction and venue in this Court "with respect to any proceedings which arise out of or are connected in any way with this Agreement or its performance." Compl. Ex. A § 21.1. The Termination Agreement makes no reference to the forum selection clause at Section 21.2. Thus, the Termination Agreement does not evidence a clear intent that the forum selection clause would cease to apply to claims arising under the Franchise Agreement upon termination.

Having found a valid forum selection clause applicable to this dispute, the next question is whether the forum selection clause applies to Linda Romano as well as Robert Romano. The Romanos argue that the forum selection clause does not apply to Linda Romano because she was not a signatory to the Franchise Agreement. Nevertheless, "[i]t is widely accepted that non-signatory third-parties who are closely related to [a] contractual relationship are bound by forum

selection clauses contained in the contracts underlying the relevant contractual relationship." *First Fin. Mgmt. Grp., Inc. v. Univ. Painters of Baltimore, Inc.*, No. 11-5821, 2012 WL 1150131, at *3 (E.D. Pa. Apr. 5, 2012) (citing *Manetti–Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 514 n.5 (9th Cir. 1988)); *see Frietsch v. Refco, Inc.*, 56 F.3d 825, 827 (7th Cir. 1995). "In the Third Circuit, a non-signatory party may enforce a forum selection clause in a contract if the party is a third-party beneficiary of the contract or is closely related to the contractual relationship or dispute such that it is foreseeable that the party will be bound." *D'Elia v. Grand Caribbean Co., Ltd.*, No. 09-1707, 2010 WL 1372027, at *3 (D.N.J. Mar. 30, 2010); *see First Fin. Mgmt. Grp.*, 2012 WL 1150131, at *3 (quoting *Donachy v. Intrawest U.S. Holdings, Inc.*, No. 10-4038, 2011 WL 2973543, at *2 (D.N.J. July 21, 2011) ("Third parties that 'should have foreseen governance by the clause' may also be bound by it.")).[4]

Given her spousal relationship with Robert Romano, Linda Romano is so closely related to Robert Romano's dispute with AAMCO that she should have foreseen being bound by the forum selection clause in the Franchisee Agreement. *See Beck v. CIT Group*, No. 94-5513, 1995 WL 394067, at *6 (E.D. Pa. June 29, 1995) (applying a forum selection clause in a security agreement to the wife of a signatory, even though she had not executed it herself). Moreover, the allegations that Robert Romano continues to be involved in the new transmission center that she owns suggests that she is a third-party beneficiary of the knowledge and experience that Robert

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[4] Similarly, the Pennsylvania Supreme Court has "historically . . . held that third party beneficiaries are bound by the same limitations in the contract as the signatories of that contract." *Johnson v. Pennsylvania Nat. Ins. Companies*, 594 A.2d 296, 298 (Pa. 1991). "[T]he rights of an alleged third party beneficiary may arise [sic] no higher than the rights of the parties to the contract and . . . they are vulnerable to the same limitations which may be asserted between the promisor and the promisee." *Jewelcor Jewelers & Distributors, Inc. v. Corr*, 542 A.2d 72, 80 (Pa.Super.Ct. 1988), *appeal denied, sub nom., Granjewel Jewelers & Distributors, Inc. v. Corr*, 569 A.2d 1367 (Pa. 1989) (citation omitted).

Romano gained in the course of his franchisee relationship with AAMCO. Given this status, Linda Romano is also bound by the forum selection clause.

In sum, I find that a valid forum selection clause consenting to jurisdiction and venue in the Eastern District of Pennsylvania applies to both Robert Romano and Linda Romano. Therefore, I will deny the motions to dismiss for lack of personal jurisdiction and improper venue.

III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the Romanos argue that AAMCO has failed to state a claim on which relief can be granted because (1) Robert Romano does not own and is not compensated by Treasure Coast Transmissions; (2) Linda Romano, the owner/operator of Treasure Coast Transmissions, is not subject to the non-competition provision in the Franchise Agreement; and (3) the geographic scope of non-competition provision is unreasonable and unenforceable as a matter of law.

A. Legal Standard

In deciding a motion to dismiss under Rule 12(b)(6), a court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (internal quotation marks omitted).

To survive dismissal, a complaint must allege facts sufficient to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, "a complaint

must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* (internal quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

"As a general matter, a district court ruling on a motion to dismiss may not consider matters extraneous to the pleadings. However, an exception to the general rule is that a document integral to or explicitly relied upon in the complaint may be considered . . . ." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (emphasis omitted) (citations omitted) (internal quotation marks omitted). A court may "consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case." *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994). Thus, in this case, in ruling on the motion to dismiss under Rule 12(b)(6), I will consider the Franchise Agreement, the Termination Agreement, and the other exhibits attached to the Complaint.

B. Discussion[5]

First, the Romanos argue that AAMCO has failed to state a claim against Robert Romano because he does not own and is not compensated by the new transmission center, Treasure Coast Transmissions. Under Section 19.2(b) of the Franchise Agreement, Robert Romano agreed not to engage directly or indirectly in the transmission repair business within a radius of ten miles of his former center or any other AAMCO center for a period of two years. Compl. Ex. A. AAMCO alleges that Treasure Coast Transmissions operates 1.5 miles from an existing AAMCO center and that it opened less than five months after the execution of the Termination Agreement. Compl. ¶¶ 15, 16. It also alleges that Robert Romano is involved in the operation of Treasure Coast Transmissions and holds himself out as its owner. Compl. ¶¶ 15, 16. Robert

[5] As noted above, Pennsylvania law governs the interpretation of the Franchise Agreement. Compl. Ex. A § 21.1.