

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

UNIVERSAL CREDIT SERVICES, : CIVIL ACTION
INC., *et al* :
 :
 :
 v. : NO. 17-799
 :
 :
STEPHEN HAWKINS, *et al* :

ORDER-MEMORANDUM

AND NOW, this 17th day of March 2017, upon consideration of Defendant Credit Reporting Services, LLC's Motion to dismiss for lack of personal jurisdiction and improper venue (ECF Doc. No. 4), Plaintiffs' Opposition (ECF Doc. No. 7), and Defendant's Reply (ECF Doc. No. 13), and finding Credit Reporting Services is bound by the forum selection clause in the contract between Universal Credit Services, Inc. and Stephen Hawkins because Credit Reporting Services is closely related to this contractual relationship, it is **ORDERED** Defendant's Motion (ECF Doc. No. 4) is **DENIED**. Defendant Credit Reporting Services shall file an Answer no later than **March 31, 2017**.

Analysis

Universal Credit Services, Inc. and Mr. Hawkins signed a contract where Mr. Hawkins agreed to not compete against Universal or solicit Universal's customers for a period of two years.¹ Universal and Mr. Hawkins also agreed "all disputes rising [sic] out of the Agreement" would be resolved by the Delaware County Court of Common Pleas or the United States District Court for the Eastern District of Pennsylvania.² Mr. Hawkins swears during his employment relationship

¹ ECF Doc. No. 7-1, ¶ 5, 8, 9.

² ECF Doc. No. 7-3, at p. 14, § 4.O.

with Universal he registered Credit Reporting Services (“Credit”) to operate as a credit reporting management company—with Mr. Hawkins as the owner and CEO—and he swears he did so to facilitate a contract between himself and Universal.³ According to Mr. Hawkins, the purpose of creating Credit “was for [Mr. Hawkins and Credit] to provide [Universal] with this growing portfolio of customers, in addition to customer and technical support and billing and collection reporting.”⁴

Universal sued Mr. Hawkins and Credit for intentional interference with contractual relations and unjust enrichment. Universal also has claims against Mr. Hawkins for breach of contract and promissory estoppel. Credit moves to dismiss for lack of personal jurisdiction and improper venue.

Universal’s sole argument as to jurisdiction and venue is Credit is bound by the forum selection clause because Credit is closely related to Mr. Hawkins and his breach of the agreement.⁵ Credit responds it is not bound by the forum selection clause because the claims against it—unjust enrichment and tortious interference—are not claims “rising out of” the agreement and do not fall within the scope of the forum selection clause.⁶

Pennsylvania’s long-arm statute allows a court to exercise jurisdiction over a nonresident defendant “to the fullest extent allowed under the Constitution of the United States and may be

³ ECF Doc. No. 7-21, at p. 3, ¶ 4.

⁴ *Id.*

⁵ ECF Doc. No. 7, at p. 2.

⁶ ECF Doc. No. 7-3, at p. 14, § 4.O.

based upon the most minimum contact with this Commonwealth allowed under the Constitution of the United States.”⁷ Personal jurisdiction may be based on consent of the defendant.⁸ “[A] defendant may consent to personal jurisdiction and venue through a valid forum selection clause.”⁹ A defendant’s consent to personal jurisdiction by virtue of a forum selection clause is valid and consistent with due process so long as the parties “freely negotiated” the agreement and the agreement is not “unreasonable and unjust.”¹⁰

“It 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.”¹¹ Non-signatories are bound by a forum selection clause when the totality of the circumstances demonstrate it is fair and reasonable to do so.¹² The issue is whether the nonsignatory should have reasonably foreseen it would become involved in the contract dispute.¹³ For example, in *First Financial Management Group, Inc. v. University Painters*

⁷ 42 Pa. C.S.A. § 5322(b).

⁸ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486 n.14 (1985).

⁹ *DePuy Synthes Sales, Inc. v. Edwards*, 23 F. Supp. 3d 472, 480 (E.D. Pa. 2014) (quoting *SKF USA Inc. v. Okkerse*, 992 F.Supp.2d 432, 2014 WL 185221 (E.D. Pa. Jan. 15, 2014)).

¹⁰ *Id.* (quoting *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972)).

¹¹ *Synthes, Inc. v. Emerge Med., Inc.*, 887 F. Supp. 2d 598, 607 (E.D. Pa. 2012) (quoting *First Fin. Mgmt. Grp., Inc. v. Univ. Painters of Balt., Inc.*, No. 11-5821, 2012 WL 1150131, at *3 (E.D. Pa. Apr. 5, 2012)).

¹² *Id.* (quoting *Regions Bank v. Wyndham Hotel Mgmt., Inc.*, No. 9-1054, 2010 WL 908753, at *6 (M.D. Tenn. Mar. 12, 2010)).

¹³ *Id.* (quoting *Regions Bank*, 2010 WL 908753, at *6).

of *Baltimore, Inc.*, Judge Baylson found the nonsignatory company bound because the signatory defendant—who had a licensing agreement with the plaintiff—was the owner and operator of the nonsignatory company involved in the licensing dispute.¹⁴ Judge Baylson found the nonsignatory company “sufficiently related” to the signatory defendant and the underlying contract “[b]ecause [the nonsignatory company] is run by the same individuals, doing the same work as [the signatory defendant] received a license to do under the contract with [the plaintiff].”¹⁵

The foreseeability analysis is necessarily limited to claims falling within the scope of the forum selection clause. In other words, we must determine whether Credit could have foreseen litigating claims governed by the forum selection clause, which captures “all disputes rising out of the Agreement.”¹⁶

Our Court of Appeals has not addressed the circumstances in which a claim “arises out of” a contract. Other courts addressing this language “have found that ‘[a] claim arises from a contract where it can be said ‘to originate from’ the contract.’”¹⁷ The Court of Appeals for the Second Circuit interprets this language as requiring the claim have a causal connection with the contract.¹⁸ The Court of Appeals for the Ninth Circuit similarly states the use of language such

¹⁴ *First Financial Management Group, Inc. v. University Painters of Baltimore, Inc.*, No. 11-5821, 2012 WL 1150131, at *4 (E.D. Pa. Apr. 5, 2012).

¹⁵ *Id.*

¹⁶ ECF Doc. No. 7-3, at p. 14, § 4.O.

¹⁷ *Harley v. Bank of N.Y. Mellon*, No. 15-1384, 2015 WL 6956564, at *3 (M.D. Pa. Nov. 10, 2015) (quoting *Spy Phone Labs LLC v. Google, Inc.*, No. 14-6565, 2015 WL 4773159, at *3 (D.N.J. Aug. 13, 2015)).

¹⁸ *Health Robotics, LLC v. Bennett*, No. 9-627, 2009 WL 1708067, at *3 (E.D. Pa. June 16, 2009) (quoting *Coregis Ins. Co. v. Am. Health Found., Inc.*, 241 F.3d 123 (2d Cir. 2001)).

as “‘arising hereunder,’ ‘arising under,’ and ‘arising out of’ +” is intended only to cover disputes “relating to the interpretation and performance of the contract itself.”¹⁹

For example, in *Spy Phone Labs LLC v. Google*, the plaintiff had a contract with Google allowing it to offer its application to customers for download on Google Play.²⁰ The contract had a forum selection clause requiring claims “arising from” the contract be litigated in California.²¹ The plaintiff sued Google in New Jersey, claiming it tortiously interfered with its prospective customer relations by terminating and suspending the plaintiff’s developer accounts without justification.²² The district court held the plaintiff’s claim arose from the agreement because an element of his claim—a “reasonable expectation of economic benefit”—originated directly from the agreement.²³

It is fair and reasonable for Credit to be bound by the forum selection clause. Mr. Hawkins is the owner and CEO of Credit having established it during his business relationship with Universal to facilitate business with Universal. Credit, which is owned and operated by Mr. Hawkins for the benefit of Universal, should have reasonably foreseen it would be bound by claims arising out of the forum selection clause.

We also find the claims against Credit for unjust enrichment and tortious interference arise

¹⁹ *Cape Flattery Ltd. v. Titan Mar., LLC*, 647 F.3d 914, 922 (9th Cir. 2011).

²⁰ *Spy Phone Labs LLC v. Google, Inc.*, No. 14-6565, 2015 WL 4773159, at *3 (D.N.J. Aug. 13, 2015).

²¹ *Id.*

²² *Id.*

²³ *Id.* at *4.

under the forum selection clause. Universal's unjust enrichment claim is based on Credit retaining Universal's customers, which Mr. Hawkins allegedly diverted to Credit in violation of the agreement.²⁴ Universal's tortious interference claim is based on Credit doing business with Mr. Hawkins, who solicited Universal's customers to Credit's benefit in violation of the agreement.²⁵ These claims implicate the agreement's nonsolicitation provision. If Mr. Hawkins is bound by the nonsolicitation provision, Credit's retention of Universal's customers arguably could be unjust. Similarly, for the purposes of the tortious interference claim, Universal's expectation of economic advantage arises from its agreement with Mr. Hawkins. We accordingly reject Credit's objections to personal jurisdiction and venue.



KEARNEY, J.

²⁴ ECF Doc. No. 1, p. 60, ¶ 96.

²⁵ *Id.* at p. 62, ¶¶ 107–08.