

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

RECONSTRUCTIVE ORTHOPAEDIC : CIVIL ACTION  
ASSOCIATES II, P.C. :  
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 :  
 v. :  
 :  
 :  
 SPECIALTY CARE NETWORK, INC. : No. 99-5329

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

March 8, 2000

Defendant, a medical management company, has moved to dismiss the complaint of plaintiff, a medical professional corporation, for improper venue, or in the alternative to transfer venue. The agreement between the parties that plaintiff seeks to enforce contains a valid forum selection clause providing that Pennsylvania will be the exclusive forum for any litigation thereunder. Defendant's motion will be denied.

**BACKGROUND**

Reconstructive Orthopaedic Associates ("ROA II") is a professional corporation based in Philadelphia, Pennsylvania whose members practice orthopedic medicine and surgery. Specialty Care Network, Inc. ("SCN") is a corporation based in Colorado that manages medical practices. In November, 1996, SCN and ROA II's predecessor merged; ROA II was a resulting entity, with management services provided by SCN.

In March, 1999, SCN and ROA II entered a "Restructuring Agreement," providing, inter alia, that: 1) SCN and ROA II would

enter into a new management service agreement; and 2) ROA II would repurchase the Philadelphia-based business assets SCN had purchased in 1996.<sup>1</sup> See Restructuring Agreement, 3/8/99, § 2.1, 2.2. The Restructuring Agreement contained a "most favored nations" clause by which SCN promised ROA II substantially similar terms it offered to any other medical practice in a restructuring transaction closed on or before December 31, 1999. See Restructuring Agreement, 3/8/99, § 10.15. ROA II alleges SCN violated the "most favored nations" clause by deliberately postponing certain transactions until after December 31, 1999, and settling certain adversary proceedings with other former affiliated practices on better financial terms than those extended to ROA II. The Restructuring Agreement provides it will be governed by the law of Pennsylvania, and that Pennsylvania will be the exclusive venue for any litigation thereunder. See Restructuring Agreement, 3/8/99, § 10.8.

In June, 1999, SCN and ROA II entered into the contemplated amended "Service Agreement" that "supersede[d] all prior agreements between the Parties with respect to the subject matter [therein]. . . ." See Management Services Agreement, 6/15/99, § 13.2 (emphasis added). The Service Agreement provides it will be

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<sup>1</sup> Plaintiffs allege the restructuring was spurred by financial difficulties at SCN, and that SCN restructured its relationship with 21 of the medical practices it managed. See Trans. 2/24/00.

governed by the law of Colorado, with Colorado the exclusive venue for any litigation thereunder. See Management Services Agreement, 6/15/99, § 13.6.

On October 27, 1999, ROA II filed this action alleging SCN's violation of the "most favored nations" clause of the Restructuring Agreement. On November 8, 1999 SCN filed an action in the United States District Court for the District of Colorado against ROA II for breach of the Service Agreement by non-payment for services rendered, and for wrongful termination of the Service Agreement.

SCN has moved in the District of Colorado to dismiss ROA II's complaint or transfer venue here; SCN argues ROA II's causes of action all arise under the Service Agreement, with exclusive jurisdiction in Colorado. ROA II contends that the Restructuring Agreement and the Service Agreement deal with entirely different rights and obligations, and that ROA II only asserts rights under the Restructuring Agreement.

## DISCUSSION

The Restructuring Agreement concerns the purchase and sale of assets and the dissolution of ROA II and SCN's corporate affiliation. The Service Agreement concerns terms of service provided by SCN and defines the parties' relationship after restructuring. The Service Agreement does not supercede the Restructuring Agreement; the Service Agreement only supercedes prior agreements with respect to the subject matter of the Service Agreement, not with respect to any aspect of the corporate dissolution or buy-back. The Restructuring Agreement is distinct in subject matter and scope from the Service Agreement. ROA II's action here arises under the Restructuring Agreement, not the Service Agreement. The venue selection clause in the Restructuring Agreement is to be enforced if valid.

A forum selection clause is prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances. See Nemo Assoc., Inc. v. Homeowners Marketings Svcs., 942 F. Supp. 1025, 1028 (E.D. Pa. 1996); AES Ntron v. Applied Ecological Sys., No.91-6767, 1993 WL 45969, at \*5 (E.D. Pa. Mar. 19, 1993). A forum selection clause is "unreasonable" where the resisting party can make a strong showing that the forum selected is "so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court" or that the clause was procured through

"fraud or overreaching." AES Nitron, 1993 WL 45969 at \*5  
(quoting Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)).

SCN has not made any showing of grave difficulty, inconvenience, fraud, or overreaching. One contract selects venue in Colorado and the other selects venue in Pennsylvania; if that creates difficulty and inconvenience for the parties, it was contemplated by the parties when they drafted the contracts. ROA II's action is properly before this court and only this court. It follows that venue is also exclusive in Colorado for SCN's action against ROA II, unless a jurisdictional issue precludes the action before the Colorado district court.

ROA II's complaint asserts claims for: I) declaratory relief to interpret section 10.15 of the Restructuring Agreement; II) breach of the Restructuring Agreement; III) damages for bad faith under the Restructuring Agreement; IV) declaratory relief regarding ROA II's right to setoff from its obligations under the Service Agreement for SCN's alleged breach of the Restructuring Agreement; and V) damages for fraudulent and negligent misrepresentation under the Restructuring Agreement. At the February 24 hearing, the court stated it would sever and transfer Count IV to the District Court in Colorado because it involved interpretation of the Service Agreement and was a clear effort to avoid the SCN venue selection clause to which it was contractually obligated. Thereafter, plaintiff voluntarily

dismissed Count IV pursuant to Fed. R. Civ. Proc. 41(a), as is its right; such tactical maneuvering should be seen for what it is.

#### **CONCLUSION**

Venue is appropriate in this court, where plaintiff stated an action under a contract that had a valid and enforceable exclusive forum selection clause choosing Pennsylvania. SCI's motion to dismiss or transfer will be denied, and the parties will proceed to discovery.

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ORDER

AND NOW, this 8th day of March, 2000, after a hearing on at which all parties were heard, in consideration of Defendant's Motion to Dismiss Complaint For Improper Venue, or in the Alternative to Transfer Venue, Plaintiff's Response thereto, Defendant's Reply, Defendant's Motion for a Temporary Stay of Discovery, Plaintiff's Response thereto, Defendant's Motion to Vacate or Strike Plaintiff's Notice of Dismissal as in Violation of this Court's February 24, 2000 Ruling, and the attached memorandum,

it is **ORDERED** that:

1. Defendant's Motion to Dismiss Complaint For Improper Venue, or in the Alternative to Transfer Venue is **DENIED**. Defendant shall file an answer by March 20, 2000.

2. Defendant Specialty Care Network, Inc.'s Motion to Vacate or Strike Plaintiff's Notice of Dismissal as in Violation of this Court's February 24, 2000 Ruling is **DENIED**.

3 Defendant's Motion for a Temporary Stay of Discovery is **DENIED**.

4. The parties may submit a proposed joint confidentiality agreement to apply to pretrial discovery, by March 20, 2000.

5. The parties shall submit a proposed discovery schedule, confined to the preliminary limited issues discussed in court, by March 27, 2000.

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S.J.