UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

SUMMERWIND WEST CONDOMINIUM OWNERS ASSOCIATION, INC.,

Plaintiff,

v. **CASE NO. 3:21cv1040-MCR-EMT**

MT. HAWLEY INSURANCE COMPANY and SYNDICATE 1458 AT LLOYD'S OF LONDON,

Defendants.
_____/

ORDER

Before the Court is Defendants' Motion to Transfer Venue (ECF No. 7). Having reviewed the motion (ECF No. 7), response (ECF No. 9), and reply (ECF No. 14), along with the applicable law, the Court finds Defendants' motion should be granted and that this action should be transferred to the United States District Court for the Southern District of New York.

Background

This is an insurance coverage dispute regarding property located in the State of Florida, insured under a policy of insurance issued by Defendants (Policy). Plaintiff Summerwind West Condominium Owners Association, Inc. (Summerwind) filed suit in the First Judicial Circuit Court in and for Santa Rosa

County, Florida, seeking to recover benefits under the Policy due to damage allegedly sustained during Hurricane Sally. On September 17, 2021, Defendants Mt. Hawley Insurance Company and Syndicate 1458 at Lloyd's of London removed the action to this Court pursuant to 28 U.S.C. §§ 1441 and 1446, invoking the Court's diversity jurisdiction (ECF No. 1). Defendants now seek to have the case transferred to the Southern District of New York, arguing that by filing suit in Florida, Summerwind violated the Policy's mandatory forum-selection clause requiring that any litigation stemming from the Policy be initiated in New York.[1] The Court agrees.

The Policy provides, in pertinent part, as follows:

> LEGAL ACTION CONDITIONS ENDORSEMENT
>
> This endorsement adds the following to LEGAL ACTION AGAINST US elsewhere in the policy:
>
> > All matters arising hereunder including questions relating to the validity, interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York (notwithstanding New York's conflicts of law rules).

[1] A forum-selection clause is either mandatory or permissive. *See Cardoso v. Coelho*, 596 F. App'x 884, 885 (11th Cir. 2015). "A mandatory clause designates a specific forum as the exclusive forum in which to litigate the dispute. A permissive clause merely consents to jurisdiction in the designated forum and does not foreclose litigation in an alternative forum." *Id.* at 885–86.

> It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, any Named Insured, any additional insured, and any beneficiary hereunder shall submit to the jurisdiction of a court of competent jurisdiction in the State of New York, and shall comply with all the requirements necessary to give such court jurisdiction. Any litigation commenced by any Named Insured, any additional insured, or any beneficiary hereunder against the Company shall be initiated in New York. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.

ECF No. 7 at 2. Based on this provision, Defendants seek a transfer to the Southern District of New York pursuant to 28 U.S.C. § 1404(a) and *Atl. Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 62 (2013).

Summerwind opposes transfer, arguing that Defendants are attempting to delay the case and deny it and residents of Santa Rosa County their day in court by transferring the case a thousand miles away to a forum with less interest in the underlying action. According to Plaintiff, the doctrine of *forum non conveniens* dictates that the action should remain in this Court because the insured property is located in the State of Florida. Alternatively, Plaintiff argues that the forum selection clause is permissive and that even if it was not, the factors to be considered in

determining whether a case should be transferred weigh in favor of this Court retaining jurisdiction.[2]

Discussion

Pursuant to 28 U.S.C. § 1404(a), "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." *Id.* In *Atl. Marine*, the Supreme Court explained that § 1404(a) "provides a mechanism for enforcement of forum-selection clauses that point to a particular federal district." 571 U.S. at 59. When determining

[2] Considering the clause states that Plaintiff "*shall* submit to the jurisdiction of a court of competent jurisdiction in the State of New York, and *shall* comply with all the requirements necessary to give such court jurisdiction," and that "[a]ny litigation commenced by any Named Insured . . . against the Company *shall* be initiated in New York," the clause is mandatory, not permissive as Plaintiff contends. ECF No. 7 at 2 (emphases added). *See, e.g., Don't Look Media LLC v. Fly Victor Ltd.*, 999 F.3d 1284, 1297 (11th Cir. 2021) (citing *Slater v. Energy Servs. Grp. Int'l, Inc.*, 634 F.3d 1326, 1330 (11th Cir. 2011), for the proposition that "'[t]he plain meaning of a contract's language governs its interpretation'" and *Glob. Satellite Commc'n Co. v. Starmill U.K. Ltd.*, 378 F.3d 1269, 1272 (11th Cir. 2004), as "relying on the use of the 'imperative' 'shall' to conclude that a forum selection clause was mandatory").

Plaintiff also argues that unequal bargaining power renders the contract one of adhesion, a fact Plaintiff asserts militates against transfer. As Defendants point out in their reply, however, forum-selection clauses are presumptively valid and enforceable unless the plaintiff makes a strong showing that enforcement would be unfair or unreasonable under the circumstances. *See, e.g., Krenkel v. Kerzner Int'l Hotels Ltd.*, 579 F.3d 1279, 1281–82 (11th Cir. 2009). Plaintiff has made no such showing here, or even attempted to do so. And Plaintiff has not otherwise challenged the validity or scope of the forum-selection clause at issue.

whether to enforce a forum selection clause that specifies a state or foreign forum, as in this case, however, the Court is to employ the doctrine of *forum non conveniens*. *Id.* at 60. As the Court observed, "[§]1404(a) is merely a codification of the doctrine of *forum non conveniens* for the subset of cases in which the transferee forum is within the federal court system; in such cases, Congress has replaced the traditional remedy of outright dismissal with transfer." *Id.* "And because both § 1404(a) and the *forum non conveniens* doctrine from which it derives entail the same balancing-of-interests standard, courts should evaluate a forum-selection clause pointing to a nonfederal forum in the same way that they evaluate a forum-selection clause pointing to a federal forum." *Id.* at 61.

Typically, when determining whether to transfer a case that does not involve a valid forum selection clause pursuant to the doctrine of *forums non conveniens*, which is not the case here, courts consider both the convenience of the parties and the public interest. *Id.* at 62–63. "The calculus changes, however, when the parties' contract contains a valid forum-selection clause, which represents the parties' agreement as to the most proper forum," as we have here. *Id.* at 63 (internal marks omitted). "The enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system." *Id.* (internal marks omitted). "For that reason, and because the overarching

consideration under § 1404(a) is whether a transfer would promote the interest of justice, a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases." *Id.* (internal marks omitted).

When a forum-selection clause is at issue, the court must adjust the usual § 1404(a) analysis in three respects. *Id.* First, the plaintiff's choice of forum is not to be given any weight. *Id.* "[W]hen a plaintiff agrees by contract to bring suit only in a specified forum—presumably in exchange for other binding promises by the defendant—the plaintiff has effectively exercised its venue privilege before a dispute arises." *Id.* "Only that initial choice deserves deference, and the plaintiff must bear the burden of showing why the court should not transfer the case to the forum to which the parties agreed." *Id.* at 63–64.

Second, the court need not consider the parties' private interests.[3] *Id.* at 64. "When parties agree to a forum-selection clause, they waive the right to challenge

[3] The Court explained that "[f]actors relating to the parties' private interests include 'relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.'" *Id.* at 62 n.6 (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)). "Public-interest factors may include 'the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; [and] the interest in having the trial of a diversity case in a forum that is at home with the law.'" *Id.* (quoting *Piper*, 454 U.S. at 241 n.6).

the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation." *Id.* "A court accordingly must deem the private-interest factors to weigh entirely in favor of the preselected forum." *Id.* Indeed, "[w]hatever inconvenience [the parties] would suffer by being forced to litigate in the contractual forum as [they] agreed to do was clearly foreseeable at the time of contracting." *Id.* (internal marks and citation omitted). The court thus considers only the public-interest factors, and "[b]ecause those factors will rarely defeat a transfer motion, the practical result is that forum-selection clauses should control except in unusual cases." *Id.* "Although it is conceivable in a particular case that the district court would refuse to transfer a case notwithstanding the counterweight of a forum-selection clause, such cases will not be common." *Id.* (internal marks and citation omitted).

Finally, when a party subject to a forum-selection clause disregards its contractual obligation and files suit in a different forum, the transferee court will not be required to apply the original venue's choice-of-law rules, which may impact public-interest considerations if the court's familiarity with the applicable law is a factor to consider. *Id.* Although a federal court exercising diversity jurisdiction typically must follow the choice-of-law rules of the state in which it sits, "[w]hen parties have contracted in advance to litigate disputes in a particular forum, courts

should not unnecessarily disrupt the parties' settled expectations."[4] *Id.* at 65–66. "A forum-selection clause, after all, may have figured centrally in the parties' negotiations and may have affected how they set monetary and other contractual terms; it may, in fact, have been a critical factor in their agreement to do business together in the first place." *Id.* "In all but the most unusual cases, therefore, 'the interest of justice' is served by holding parties to their bargain." *Id.* Hence, the party seeking to avoid the forum-selection clause must show exceptional circumstances, predicated solely on public-interest considerations, to justify a court disregarding the clause. *Aviation One of Fla., Inc. v. Airborne Ins. Consultants (PTY), Ltd.*, 722 F. App'x 870, 883 (11th Cir. 2018).

Plaintiff has made no such showing here. In fact, Plaintiff devotes the majority of its response to private-interest factors, failing to acknowledge that private-interest factors are not considered when the parties are bound by a forum-selection clause. With regard to public-interest factors, Plaintiff argues that administrative duties flowing from court congestion weigh in favor of this Court retaining jurisdiction, citing the Southern District of New York as one of the most congested district courts in the country. According to Plaintiff, transfer of this case

[4] Here, as set forth above, the parties' contract includes a choice-of-law provision providing that New York law applies to any dispute arising out of the contract.

to the Southern District of New York would cause delay and "burden the judges in the Southern District of New York in having to present a case of non-domiciled corporations arguing over a Florida insurance policy and Florida property." ECF No. 9 at 16. Plaintiff also argues that local interest in having local matters decided at home weighs against transfer. Neither factor Plaintiff cites constitutes an exceptional circumstance unrelated to the convenience of the parties justifying a refusal to transfer this case pursuant to the parties' agreement. At the same time, one of the three public interest factors—familiarity of the forum with the law that will govern the case—weighs in favor of transfer considering the parties' contract provides that New York law will govern any disputes arising under the contract.[5]

Accordingly, Defendants' Motion to Transfer Venue (ECF No. 7) is **GRANTED**. *See, e.g., New Hope Missionary Baptist Church v. Mt. Hawley Ins. Co.*, Case No. 0:21-cv-61335-AHS (S.D. Fla. Sept. 20, 2021) (ECF No. 11) (transferring case involving an insurance coverage dispute regarding property, filed

[5] Contrary to Plaintiff's assertion, the action could have been filed in the Southern District of New York by virtue of the forum-selection clause, pursuant to which Plaintiff submitted to personal jurisdiction in New York. *See, e.g., Alexander Proudfoot Co. World Headquarters v. Thayer*, 877 F.2d 912, 921 (11th Cir. 1989) (noting that "'parties to a contract may agree in advance to submit to the jurisdiction of a given court'" and holding that "[b]ecause the nonresident defendant in the present case contractually agreed to personal jurisdiction in Florida, the usual due process analysis need not be done") (quoting *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704 (1982)). The Court also notes that Plaintiff has not suggested any alternative venue in the State of New York.

in Broward County, Florida, to the Southern District of New York pursuant to a forum-selection clause that is identical in its wording to the clause at issue in this case). The clerk of court is directed to transfer this case to the United States District Court for the Southern District of New York and close the file.

DONE AND ORDERED this 12th day of April 2022.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE