

IN THE GEORGIA STATE-WIDE BUSINESS COURT

DAREN HOEFFNER,

Plaintiff,

v.

ED SHIELDS, PETER BROOKNER,
and CONTROLLED ACCESS, INC.,

Defendants.

Case No. 21-GSBC-0029

ORDER ON DEFENDANTS' PETITION TO TRANSFER

The above-styled action is before the Court on Defendants' Petition to Transfer to the Georgia State-wide Business Court ("Petition to Transfer" or "Petition"), filed on August 11, 2021, whereby Defendants seek to transfer this action from the Superior Court of Fulton County to this Court.¹ Plaintiff has objected to the Petition to Transfer pursuant to O.C.G.A. § 15-5A-4(a)(3)(A) ("Objection"). Pl.'s Obj. to Jurisdiction.

Transfer petitions and objections thereto are governed by O.C.G.A. § 15-5A-4(a)(3) (the "Enabling Legislation"), which provides in relevant part:

Except as provided in subsection (b) of this Code section, all claims provided for under Code Section 15-5A-3 may *only* come before the Georgia State-wide Business Court by . . . (3) Any party to a civil

¹ See *Hoeffner v. Shields*, No. 2021CV352262, Fulton Super. Ct.

action already filed in superior court or state court filing with the Georgia State-wide Business Court a petition to transfer such action to the Georgia State-wide Business Court; provided, however, that: (A) Such a petition to transfer is filed within 60 days after receipt by all defendants, through service of process as provided in Code Section 9-11-4, of a copy of the initial pleading setting forth the claim for relief upon which such action is based. The judge of the Georgia State-wide Business Court, ***after considering the petition to transfer and all timely responses*** from the other party or parties in the case, shall thereafter determine whether the case is within the jurisdiction of the Georgia State-wide Business Court, ***and with a presumption that the civil action remains in the court of filing***, the judge may enter an order compelling the transfer of the case to the Georgia State-wide Business Court ***unless a party objects within 30 days of the filing of the petition to transfer***

O.C.G.A. § 15-5A-4(a)(3)(A) (emphasis added).

Plaintiff has timely objected to the requested transfer by filing its Objection within 30 days of the Petition to Transfer. *See* Pl.’s Obj. to Jurisdiction. In response, Defendants cite to a forum selection clause in the Stock Purchase Agreement (“Agreement”) that forms the basis of this lawsuit, which provides that any action arising from the Agreement “may be instituted in the federal courts of the United States of America or ***in this order***: (1) the Business Court of the State of Georgia (2) the Fulton County Business Court Case Division, or the Superior or State Court of Fulton County.” Defs.’ Resp. to Pl.’s Obj. to Jurisdiction 1–2 (emphasis added) (quoting Defs.’ Ex. A ¶ 10.8).

This Court has previously held that, with respect to objections made pursuant to the Court’s Enabling Legislation, “the General Assembly’s use of the term

‘unless’ indicates that if one party objects within 30 days . . . the Court does not have authority to compel the transfer and must instead deny the petition.” *Sheffield v. Deloitte & Touche, LLP*, No. 20-GSBC-0005, at 10 (Ga. Bus. Ct. Nov. 9, 2020) (“Thus, where, as here, a party timely objects to a petition to transfer, the Court is constrained to deny the petition even though jurisdiction is satisfied and the Court otherwise finds a transfer would be appropriate and would advance the interests of all parties.”); *see also Overlook Gardens Props., LLC v. ORIX USA, L.P.*, No. 20-GSBC-0002, at 33 (Ga. Bus. Ct. Oct. 27, 2020) (holding that “insofar as Respondents timely objected to the Petition to Transfer, the Court lacks authority to compel . . . transfer of th[e] case” under the Enabling Legislation), *vacated on other grounds* (Ga. Bus. Ct. Mar. 25, 2021).

Here, however, the Agreement’s forum selection clause specifically designates this Court as the proper venue, in this instance, to resolve disputes arising out of the Agreement. Defs.’ Ex. A ¶ 10.8. Georgia courts have consistently held that forum selection clauses are “prima facie valid” and will be enforced unless the opposing party shows that enforcement would be unreasonable under the circumstances. *See, e.g., Row Equip., Inc. v. Norfolk S. Ry. Co.*, 355 Ga. App. 397, 398 (2020), *cert. denied* (Dec. 21, 2020); *Houseboat Store v. Chris-Craft Corp.*, 302 Ga. App. 795, 797 (2010). Indeed, a “freely negotiated agreement should be upheld absent a compelling reason such as fraud, undue influence, or overweening

bargaining power.” *SR Bus. Servs., Inc. v. Bryant*, 267 Ga. App. 591, 592 (2004) (quoting *Iero v. Mohawk Finishing Prods., Inc.*, 243 Ga. App. 670, 671 (2000)).

Plaintiff acknowledges the enforceability of the forum selection clause but nevertheless contends that this Court is just one of five appropriate fora to resolve disputes arising out of the Agreement because the clause is permissive rather than mandatory, authorizing Plaintiff to select, from the listed courts, the forum of their choice when he initiating this lawsuit. Pl.’s Obj. to Jurisdiction 7–10. This reading of the forum selection clause notably ignores the express order of priority provided for in the clause. Specifically, the forum selection clause names this Court as the primary venue to resolve disputes arising from the Agreement in the absence of federal jurisdiction. Defs.’ Ex. A ¶ 10.8 (“Any legal . . . dispute arising out of or related to this Agreement . . . may be instituted in the federal courts of the United States of America or *in this order*: (1) the Business Court of the State of Georgia” (emphasis added)). It is undisputed that no federal jurisdiction exists here as the present action does not involve diverse parties or any federal question. *See* Defs.’ Resp. to Pl.’s Obj. to Jurisdiction 2 & n.2. Thus, pursuant to the express and unambiguous terms of the Agreement’s forum selection clause, Plaintiff should have initiated this action in this Court. Instead, Plaintiff filed the case in the Superior Court of Fulton County, bypassing the explicit venue priority provided within the Agreement.

“[I]t is the paramount public policy of this state that courts will not lightly interfere with the freedom of parties to contract.” *Shields v. RDM, LLC*, 355 Ga. App. 409, 413 (2020) (citations omitted). Here, in the absence of federal jurisdiction, Plaintiff has contractually agreed to litigate disputes arising under the Agreement in this Court. It necessarily follows that Plaintiff has waived his right to object to the case being transferred to this Court under the Enabling Legislation. *See 2010-1 SFG Venture LLC v. Lee Bank & Tr. Co.*, 332 Ga. App. 894, 897 (2015) (“A contracting party may waive or renounce that which the law has established in his or her favor, when it does not thereby injure others or affect the public interest”). Waiver of the statutory right to object to a petition seeking transfer to this Court under the Enabling Legislation in no way injures others nor affects the public interest. Given this, and absent any showing that the forum selection clause is unenforceable or that enforcement would otherwise be unreasonable under the circumstances, the Court applies the unambiguous terms of the clause as written and finds Plaintiff has waived the right to object to the case proceeding in this Court.

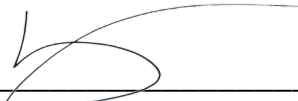
Turning to Defendants’ Petition to Transfer, the Court finds the Petition is timely under the Enabling Legislation as the Petition was filed within 60 days of the underlying action having been filed and served. The Court further finds the case falls squarely within the Court’s subject matter jurisdiction pursuant to O.C.G.A. §§ 15-5A-3(a)(1)(A)(xiv), (xv), (xvii), and 15-5A-3(a)(1)(B). Moreover, given the

complexity of the legal issues presented, the Court finds transfer of the action is appropriate and would serve the interests of all parties.

Having considered the record before it and given all of the above, Defendants' Petition to Transfer is hereby GRANTED. The Clerk of Court is directed to provide a certified copy of this Order to the Clerk of the Superior Court of Fulton County. *See* O.C.G.A. § 15-5A-4(c) ("Notwithstanding any other law, when the superior court or state court where a claim is pending receives a copy of an order issued by the Georgia State-wide Business Court transferring or removing such civil action to the Georgia State-wide Business Court pursuant to paragraph (2) or (3) of subsection (a) of this Code section, such superior court or state court shall certify the transfer or removal from the superior or state court to the Georgia State-wide Business Court.").

The parties are directed to confer regarding the transfer of the record from the Superior Court of Fulton County and take any action necessary to effectuate such transfer within 30 days of the entry of this Order. The parties are further directed to hold a case management meeting within 30 days of the entry of this Order and submit their Case Management Report within 10 days thereafter. *See* BCR 5-1, 5-2; Ga. State-wide Bus. Ct. Standing Order § 4.

IT IS SO ORDERED this 25th day of October, 2021.



JUDGE WALTER W. DAVIS
Georgia State-wide Business Court

Copies to:

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Hoeffner v. Shields, et al. (21-GSBC-0029)
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