9STATE OF NORTH CAROLINA MECKLENBURG COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 23CVS004887-590
MARTY L. KARRIKER, Plaintiff, v. HARPOON HOLDINGS, L.P., Defendant.	**ORDER AND OPINION ON DEFENDANT'S MOTION TO DISMISS**

1. Marty Karriker is a limited partner of Harpoon Holdings, L.P. In early 2023, Harpoon notified Karriker that it intended to repurchase his partnership units for less than fair market value. He then brought this suit, claiming that he deserves a higher price. Pending is Harpoon's motion to dismiss in which it contends that Karriker is contractually bound to litigate this dispute in Delaware, not North Carolina. (ECF No. 61.) For the reasons discussed below, the Court **GRANTS** the motion.

Raynor Law Firm, PLLC, by Kenneth R. Raynor, for Plaintiff Marty L. Karriker.

McGuireWoods LLP, by Zachary L. McCamey, Heidi E. Siegmund, Chris Michalik, and Elisabeth P. Briand, for Defendant Harpoon Holdings, L.P.

Conrad, Judge.

I. BACKGROUND

2. The following background treats the allegations in the amended complaint as if they are true.

3. Several years ago, Karriker sold his insurance business to The Hilb Group of North Carolina, LLC in return for employment there and membership units in a related entity. Then, in 2019, a private equity firm acquired the Hilb Group family of companies and invited Karriker to convert his membership units into several hundred partnership units in Harpoon. He took that deal and became one of Harpoon's limited partners. He also became a party to its Limited Partnership Agreement, a lengthy document that includes, among other things, a provision that allows Harpoon to repurchase Karriker's partnership units should the Hilb Group terminate his employment. (*See* Am. Compl. ¶¶ 6–8, 14–16, ECF Nos. 50, 53; Am. Compl. Ex. A § 4.9 ["P'ship Agrmt."], ECF Nos. 50.1, 53.1.)

4. Karriker later added about seven more partnership units. These he bought via a Subscription Agreement, which contains a provision allowing Harpoon "to repurchase" the units "at a price and on terms acceptable to the Company" if his employment "is terminated for any reason." This relatively small purchase increased his stake in Harpoon to 371 (to be exact, 371.101) partnership units. (*See* Am. Compl. ¶ 17; Def.'s Mot. Ex. A § 7.2 ["Sub. Agrmt."], ECF No. 63.1.)

5. In October 2022, the Hilb Group fired Karriker without explanation. At first, Harpoon told Karriker that the termination of his employment gave it the option to buy back his partnership units at fair market value. But after the new year, Harpoon changed course. It asserted that Karriker had been fired for cause and that it therefore had the right to buy his units at cost under section 4.9(b)(i) of the Limited Partnership Agreement. (*See* Am. Compl. ¶¶ 18, 20, 22.)

6. This lawsuit followed. Karriker maintains that the Hilb Group fired him without cause (and, indeed, had no cause to fire him) and that Harpoon's contrary assertion is a ploy to nab his partnership units at a discount. In his original complaint, Karriker sought a declaration that Harpoon could not compel a sale of his units for less than fair market value because the Limited Partnership Agreement didn't truly exist[1] or didn't apply to him. (*See* Compl., ECF No. 3.)

7. Harpoon moved to dismiss the complaint for improper venue, (*see* ECF No. 10), based on a forum-selection clause in the Subscription Agreement, which states that each party "submits to the exclusive jurisdiction of the state and federal courts of the State of Delaware over any suit, action or proceeding arising out of or relating to" that agreement. (Sub. Agrmt. § 8.11.) The complaint related to the Subscription Agreement, in Harpoon's view, because its right to repurchase Karriker's partnership units derives from both the Limited Partnership Agreement and the Subscription Agreement. (*See* P'ship Agrmt. § 4.9(b)(i); Sub. Agrmt. § 7.2.) Karriker opposed Harpoon's motion on the ground that his claims related to the Limited Partnership Agreement alone.

8. After a hearing but before a ruling, Karriker amended his complaint as of right. This not only mooted Harpoon's motion but also changed the stakes. Karriker no longer seeks declaratory relief. He now demands payment of fair market value for all his units, claiming that Harpoon breached the Limited Partnership Agreement

[1] Karriker questioned the existence of the Limited Partnership Agreement in the original complaint because he didn't have a copy and Harpoon had supposedly refused to give him anything other than a draft version. Harpoon has since produced the agreement in final form in response to Karriker's discovery requests.

and the implied covenant of good faith and fair dealing. (*See* Am. Compl. ¶¶ 34, 38, 39, 49, 52, 53.)

9. Following the amendment, Harpoon once again moved to dismiss for improper venue under Rule 12(b)(3) of the North Carolina Rules of Civil Procedure. (*See* ECF No. 61.) The motion is fully briefed, and the parties' arguments largely retrace those made in connection with the earlier motion to dismiss. The Court therefore elects to decide the matter without a second hearing. *See* BCR 7.4.

II.
ANALYSIS

10. For the most part, contracting parties are free to choose which law will govern disputes arising out of their contract and where they will litigate those disputes, just as they are free to choose the other terms of their bargain. Of course, the courts of this State have the power to set aside any forum-selection clause that is fraudulent or against public policy.[2] But so long as a forum-selection clause is not contrary to law, our courts will enforce it. *See, e.g.*, *Lendingtree, LLC v. Anderson*, 228 N.C. App. 403, 408 (2013) ("[O]ur courts generally enforce mandatory forum selection clauses."); *see also Tanglewood Land Co. v. Byrd*, 299 N.C. 260, 262 (1980) (explaining, similarly, that choice-of-law clauses "will be given effect").

11. Harpoon asks the Court to enforce the Subscription Agreement's forum-selection clause, which designates Delaware as the "exclusive jurisdiction" for

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[2] By statute, "any provision in a contract *entered into in North Carolina* that requires the prosecution of any action . . . of any dispute that arises from the contract to be instituted or heard in another state is against public policy." N.C.G.S. § 22B-3 (emphasis added). Karriker concedes that this statute does not apply to the Subscription Agreement because it was entered into outside North Carolina.

"any suit, action or proceeding arising out of or relating to" the agreement. (Sub. Agrmt. § 8.11.) There's no dispute that this clause is valid: Karriker does not argue that it "was the product of fraud or unequal bargaining power or that enforcement of the clause would be unfair or unreasonable." *Parson v. Oasis Legal Fin., LLC*, 214 N.C. App. 125, 135 (2011). Likewise, there's no dispute that the clause is mandatory, meaning that the parties designated Delaware as the exclusive forum, not just a preferred or permitted forum, for actions relating to the Subscription Agreement.

12. So the issue is this: is Karriker's lawsuit one "arising out of or relating to" the Subscription Agreement? If it is, then it belongs in Delaware; if not, then it may proceed in North Carolina.

13. To answer this question, the Court looks to Delaware law. This is because the Subscription Agreement has a Delaware choice-of-law clause in addition to the Delaware forum-selection clause. (*See* Sub. Agrmt. § 8.9.) Karriker and Harpoon agree that Delaware law governs the interpretation and application of the entire agreement, including its forum-selection clause.

14. Delaware courts, like North Carolina courts, "defer to forum selection clauses and routinely give effect to the terms of private agreements to resolve disputes in a designated judicial forum out of respect for the parties' contractual designation." *PPF Safeguard, LLC v. BCR Safeguard Holding, LLC*, 2010 Del. Ch. LEXIS 162, at *18 (Del. Ch. July 29, 2010) (citation and quotation marks omitted). The scope of the clause depends on its phrasing. Some clauses use narrow language so that they "only cover claims dealing directly with rights embodied in the relevant

contract." *ASDC Holdings, LLC v. Richard J. Malouf 2008 All Smiles Grantor Retained Annuity Trust*, 2011 Del. Ch. LEXIS 129, at *15 (Del. Ch. Sept. 14, 2011). Other clauses use broad language that encompasses "claims dealing directly with the terms of the contract itself" as well as "any issues that touch on contract rights or contract performance." *Id.* at *15–16 (citation and quotation marks omitted).

15. The Subscription Agreement's forum-selection clause is undeniably broad, applying to any action "arising out of or relating to" the contract. Indeed, the phrase "relating to" is "paradigmatically broad." *Strategy v. Festival Retail Fund BH, L.P.*, 2023 Del. Ch. LEXIS 204, at *24 (Del. Ch. July 17, 2023) (citation and quotation marks omitted). It "encompasses any issues that *touch on* contract rights or contract performance" and "expands the scope" of the clause "*beyond* the universe of claims based on the rights and obligations created by the underlying agreement." *Fla. Chem. Co. v. Flotek Indus., Inc.*, 262 A.3d 1066, 1083 (Del. Ch. 2021) (cleaned up); *see also Aveta Inc. v. Cavallieri*, 23 A.3d 157, 166 (Del. Ch. 2010) ("The Purchase Agreement contains a broad forum selection clause mandating that any action 'arising out of or relating to' the Purchase Agreement be brought exclusively in a Delaware court.").

16. Although Karriker couches his claims in terms of rights granted in the Limited Partnership Agreement, they also touch on rights granted in the Subscription Agreement. What Karriker seeks is an order compelling Harpoon to pay fair market value for all his partnership units. This includes the seven units that he bought via the Subscription Agreement, which contains a provision allowing Harpoon "to repurchase" those units "at a price and on terms acceptable to the Company" if

Karriker's employment "is terminated for any reason." (Sub. Agrmt. § 7.2.) Resolving whether Karriker is entitled to fair market value for all his units will require consideration of both agreements and how they relate to one another. That is so even though he has no claim for breach of the Subscription Agreement itself. It follows that he must bring his claims in Delaware. *See Ashall Homes Ltd. v. ROK Ent. Grp. Inc.*, 992 A.2d 1239, 1252 (Del. Ch. 2010) ("Courts in Delaware and other jurisdictions have found that a forum selection clause should not be defeated by artful pleading of claims not based on the contract containing the clause if those claims grow out of the contractual relationship." (cleaned up)).

17. Karriker's arguments do not persuade otherwise. He contends, for example, that it is unnecessary to consider the Subscription Agreement because Harpoon gave up any rights that it had under that agreement when it made its prelitigation demand to repurchase his units under section 4.9 of the Limited Partnership Agreement. But that begs the question. Whether Harpoon waived any rights granted in the Subscription Agreement is a contested issue that, by definition, "arises out of or relates to" the agreement. And the parties agreed to litigate that issue in Delaware and Delaware alone. *See, e.g.*, *Ashall Homes*, 992 A.2d at 1253 ("Resolution of these claims will require an analysis of the Subscription Agreements and the Share Sale Agreements."); *PPL Corp. v. Riverstone Holdings LLC*, 2019 Del. Ch. LEXIS 1326, at *21 (Del. Ch. Oct. 23, 2019) ("[A]ll litigation roads these parties might travel, both in Delaware and Montana, invariably will lead back to the Separation Agreement.").

18. Next, assuming both agreements apply, Karriker perceives a conflict between the two because the Limited Partnership Agreement has its own forum-selection clause that allows, but does not require, the parties to sue in Delaware. (*See* P'ship Agrmt. § 15.3.) Enforcing the Subscription Agreement's mandatory clause, he contends, would negate the Limited Partnership Agreement's permissive clause. The opposite is true. Allowing Karriker to assert claims relating to the Subscription Agreement outside Delaware would render its exclusive forum-selection clause a nullity. Requiring Karriker to bring his claims in Delaware, on the other hand, would give effect to that clause and would also be consistent with the parties' designation of Delaware as a suitable forum in the Limited Partnership Agreement. The Court's task is to harmonize the two clauses and, if possible, to give effect to both; hence, "the permissive language" of the Limited Partnership Agreement must yield to "the mandatory language" of the Subscription Agreement. *McWane, Inc. v. Lanier*, 2015 Del. Ch. LEXIS 24, at *14 (Del. Ch. Jan. 30, 2015).

19. Last, Karriker points to the Limited Partnership Agreement's integration clause to show that it supersedes the Subscription Agreement. Arguably, a Delaware court should decide what effect, if any, the integration clause has on the Subscription Agreement. *See, e.g.*, *Ashall Homes*, 992 A.2d at 1253–54. Regardless, Karriker is wrong: the integration clause states that it "supersedes all *prior* Contracts or agreements with respect to the Partnership," (P'ship Agrmt. § 15.3 (emphasis added)), not later agreements such as the Subscription Agreement. *See Green Isle Partners, Ltd. v. Ritz-Carlton Hotel Co. L.L.C.*, 2000 Del. Ch. LEXIS 160, at *11 (Del.

Ch. Nov. 29, 2000) (holding that integration clause in first agreement did not cover second agreement executed later).

20. In short, Karriker has asserted claims that arise out of or relate to the Subscription Agreement. He and Harpoon agreed to litigate those claims exclusively in Delaware. As a result, North Carolina is not a proper venue. *See, e.g.*, *Clapper v. Press Ganey Assocs., LLC*, 894 S.E.2d 778, 783–84 (N.C. Ct. App. 2023) (enforcing Delaware forum-selection clause and reversing denial of motion to dismiss).[3]

III.
CONCLUSION

21. For all these reasons, the Court **GRANTS** the motion to dismiss for improper venue. The amended complaint is **DISMISSED** without prejudice to Karriker's right to refile his claims in an appropriate venue.

SO ORDERED, this the 12th day of February, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases

[3] Karriker urges a partial dismissal—one that excises the seven units covered by the Subscription Agreement while allowing his claims to proceed as to the rest of his units. Perhaps Karriker could have drafted his claims to isolate issues relating to the Subscription Agreement from issues relating to the Limited Partnership Agreement. But he did not. The Court therefore takes the claims as they are—unitary claims that relate to both agreements—and declines the invitation to rewrite them.