

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**BARBARA R. KAPNICK**

PART 39

PRESENT:

Justice

Index Number : 600096/2009

**SPIRITS OF ST. LOUIS BASKETBALL CLUB**

VS.

**DENVER NUGGETS, INC.,**

SEQUENCE NUMBER : # 001

DISMISS COMPLAINT

INDEX NO. 600096-09

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

were read on this motion to/for

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

**FILED**  
Oct 19 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 10/15/09

[Signature]  
**BARBARA R. KAPNICK J.S.C.**  
**J.A.C.**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

9/10/09

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 39

-----X  
SPIRITS OF ST. LOUIS BASKETBALL CLUB,  
L.P.,

Plaintiff,

- against -

DECISION/ORDER

Index No. 600096/09

Motion Seq. No. 001

DENVER NUGGETS, INC., and its successor,  
THE DENVER NUGGETS LIMITED PARTNERSHIP  
d/b/a DENVER NUGGETS; ARENA SPORTS INC.,  
and its successor, PACERS BASKETBALL  
CORPORATION d/b/a INDIANA PACERS; LONG  
ISLAND SPORTS, and its successor, NEW  
JERSEY BASKETBALL, LLC d/b/a NEW JERSEY  
NETS; SAN ANTONIO BASKETBALL, LTD., and  
its successor, SAN ANTONIO SPURS, LLC  
d/b/a SAN ANTONIO SPURS; and NATIONAL  
BASKETBALL ASSOCIATION,

Defendants.

-----X

BARBARA R. KAPNICK, J.:



This action arises out of the alleged breach by the defendant National Basketball Association (the "NBA") and the defendants Denver Nuggets, Inc., and its successor, The Denver Nuggets Limited Partnership d/b/a Denver Nuggets (the "Nuggets"), Arena Sports Inc., and its successor, Pacers Basketball Corporation, d/b/a Indiana Pacers (the "Pacers"), Long Island Sports and its successor, New Jersey Basketball, LLC, d/b/a Jersey Nets (the "Nets"), San Antonio Basketball, Ltd., and its successor, San Antonio Spurs, LLC, d/b/a San Antonio Spurs (the "Spurs") (collectively, the Nuggets, Pacers, Nets and Spurs, referenced as the "Expansion Teams"), of ongoing obligations to account for and pay amounts due each year to the plaintiff Spirits of St. Louis Basketball Club, L.P. (the "Spirits") pursuant to two agreements dated July 26, 1976: (1) an agreement among the Spirits, the

Expansion Teams and the NBA (the "NBA Agreement") and (2) an agreement among the Spirits, the Expansion Teams and the then existing American Basketball Association ("ABA") (the "ABA Agreement" and jointly, the "Agreements").

The Agreements were entered into in 1976 as part of the resolution of two antitrust actions pending in the United States District Court for the Southern District of New York, namely, ABA Players Association et al. v. NBA et al., 75 Civ. 6184 (RLC) and Robertson et al. v. N.B.A., et al., 70 Civ 1526 (RLC). Pursuant to the settlement, the parties entered into the Agreements, and thereafter the ABA Agreement was incorporated into a Consent Judgment issued by Judge Robert L. Carter on July 30, 1976 in the Robertson case.

The Agreements entitle the Spirits to share in the revenues earned from the sale or license of "visual media broadcasts" of NBA games. Such revenues were referred to in the Agreements as "T.V. Revenues", and the Agreements ensured that the Spirits would be paid a proportionate share of all such revenues that would be earned by the NBA.

Plaintiff alleges in its Complaint that as the international popularity of the game of basketball - and consequently the

international viewing audience - continues to expand, the NBA and the Expansion Teams have refused to pay the Spirits its share of revenue earned by the NBA from the international visual media broadcasts. Similarly, according to the Complaint, the NBA has excluded from payments to the Spirits revenues earned by the NBA from the broadcast of NBA games on NBA TV and on cable television signals that broadcast beyond the geographical limit allocated to individual teams for broadcast of their own games - notwithstanding the clear language of the ABA Agreement entitling the Spirits to share in such revenues.

The plaintiff also claims that its ability to enforce its rights and to determine precisely the amount of T.V. Revenues it has been denied has been wrongfully impeded by the NBA's refusal to permit it access to the NBA's records sufficient to permit the Spirits to audit the NBA's visual media broadcast revenues, and that the NBA's refusal is a violation of the NBA Agreement which guarantees such access and audit rights to the Spirits.

Defendants now move for an Order dismissing plaintiff's Complaint pursuant to CPLR § 3211(a)(1) on the ground that the defendants have a defense founded upon documentary evidence, to wit: the relevant Agreements among the parties - and the judicial decrees that incorporate and provide for the enforcement of those Agreements - contain forum selection clauses designating the United States District Court for the Southern District of New York

("SDNY") as the judicial forum for the resolution of disputes regarding the Agreements.<sup>1</sup>

The ABA Agreement specifically provides that "the parties shall request the Court (Judge Carter of the SDNY) to issue an Order decreeing that this Agreement shall have the effect of a Judgment therein pursuant to which the Court shall retain jurisdiction over the parties to enforce the terms of this Agreement and the Judgment," and the Consent Judgment specifically "retains exclusive jurisdiction to enforce the terms of this Judgment and of the July 26, 1976 Stipulation and Settlement Agreement".

While the NBA Agreement did not originally contain a forum selection clause, that Agreement was the subject of a later interpleader action in the SDNY entitled NBA v Spirits of St. Louis Basketball Club, L.P., et al., 84 Civ. 673 (RLC) which also resulted in a settlement agreement, dated November 20, 1985 (the "Interpleader Agreement"), which provides that "any action or proceeding relating to entitlement to future Spirits T.V. Revenues shall be brought in the [SDNY]" (emphasis supplied).

---

<sup>1</sup> The type of jurisdiction retained by the SDNY is "ancillary enforcement jurisdiction" which the United States Supreme Court has held does not "provide the original jurisdiction [required] in order to qualify for removal under [28 U.S.C.] § 1441." *Syngenta Crop Protection, Inc. v Henson*, 537 U.S. 28, 34 (2002). This is why defendants did not remove this action to the SDNY but rather brought this motion to dismiss.

"It is beyond dispute that forum selection clauses are prima facie valid and are not to be set aside except in instances of fraud or overreaching or where the enforcement of the clause would be so unreasonable and unjust as to make a trial in the selected forum 'so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court' (citations omitted)." *Shah v Shah*, 215 AD2d 287, 288 (1st Dep't 1995). See also, *Bremen v Zapata Off-Shore Co.*, 407 US 1, 12-18 (1972).

Here, there is no claim of fraud or overreaching and plaintiff cannot make the claim that litigation in the SDNY would be inconvenient, since the SDNY is a mere 100 feet away from the New York County Supreme Court.

Plaintiff next argues that the ABA and NBA Agreements simply permit federal court jurisdiction, but do not require that disputes be resolved in federal court. However, the Consent Judgment issued pursuant to the ABA Agreement specifically says that the SDNY retains exclusive jurisdiction, and the NBA Interpleader Agreement provides that "any action ... relating to entitlement to future Spirits' T.V. Revenues shall be brought in the SDNY," which is mandatory and not permissive.

Even in a situation where the word "exclusive" was not used in the Agreement, federal courts have found the district court's continuing jurisdiction to resolve disputes under a settlement agreement to be exclusive. For example, the Ninth Circuit Court of Appeals in *Flanagan v Arnaiz*, 143 F3d 540 (1998) rejected plaintiffs' argument that because the district court did not expressly state that its continuing jurisdiction was exclusive, it was not, and the state court had concurrent jurisdiction to enforce the federal court settlement. Specifically, the Ninth Circuit found that "a court order exercises judicial authority, while a forum selection clause in a private contract does not. The context of the retention of jurisdiction, a provision for future enforcement of a settlement order, implies that the retention was meant to be exclusive". *Flanagan v. Arnaiz*, supra at 545.

The Ninth Circuit also made reference to decisions from other Circuit Courts of Appeal, including the Second Circuit in *United States v. American Soc'y of Composers (In re Karmen)*, 32 F3d 727 (1994) where the Court ruled upon similar language that did not include the word "exclusive", and

held that the language amounted to retention of exclusive jurisdiction to enforce a judgment (citations omitted). The reason why exclusivity is inferred is that it would make no sense for the district court to retain jurisdiction to interpret and apply its own judgment to the future conduct contemplated by the judgment, yet have a state court construing what the federal court meant in the judgment. Such an arrangement would potentially

frustrate the federal district court's purpose. [citation omitted] It would also impose an uncomfortable burden on the state judge, to determine what the federal judge meant.

*Flanagan v. Arnaiz, supra* at 545.

This reasoning is even more compelling where, as here, the words "exclusive jurisdiction" are present in the Consent Judgment and the NBA Interpleader Agreement provides that actions relating to T.V. Revenues "shall" be brought in the SDNY.

Plaintiff also argues that the federal court lacks subject matter jurisdiction over this dispute because there is no diversity under 28 U.S.C. § 1332. However, the Second Circuit has specifically held that the source of federal jurisdiction over this dispute is the "district court's 'continuing jurisdiction over the ... Consent Judgment.'" *United States v America Soc'y of Composers (In re Karmen), supra* at 731.

Accordingly, based on the papers submitted and the oral argument held on the record on June 24, 2009, defendants' motion to dismiss this action is granted without prejudice on the ground that this Court finds that the United States District Court for the Southern District of New York has exclusive jurisdiction over this dispute.

The Clerk may enter judgment accordingly.

This constitutes the decision and order of this Court.

Dated: October 15, 2009



---

BARBARA R. KAPNICK  
J.S.C.

**FILED**  
Oct 19 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

**BARBARA R. KAPNICK**  
**J.S.C.**