STATE OF MICHIGAN
IN THE 44TH CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

SPENCER & SONS CONSTRUCTIONS, INC.,

Plaintiff,

v

Case No. 2022-031611-CB
Hon. Michael P. Hatty

WELLBORN FOREST PRODUCTS, INC.
A/K/A WF CABINETRY,

Defendant.

OPINION AND ORDER RE: DEFENDANT WELLBORN FOREST PRODUCTS INC.'S MOTION FOR SUMMARY DISPOSITION

At a session of court held in the courthouse
in the City of Howell, County of Livingston,
State of Michigan, on the **3rd day of April 2023.**

PRESENT: HONORABLE MICHAEL P. HATTY
CHIEF CIRCUIT COURT JUDGE

THIS MATTER HAVING COME BEFORE THE COURT Defendant Wellborn Forest Products Inc.'s *Motion for Summary Disposition*, and the parties having come before this Court on January 26, 2023 for oral argument, and this Court having taken this matter under advisement so as to prepare and issue a written opinion ruling on the motion for summary disposition, and the Court directing the parties to each submit to the Court their proposed findings and fact and conclusions of law on the motion, and the Court having reviewed the filings by the parties, and all relevant portions of the record now issues this Opinion and Order granting Defendant Wellborn Forest Products Inc.'s *Motion for Summary Disposition* for the reasons set forth below.

I. BACKGROUND

Plaintiff, a residential contractor, entered into a written agreement on July 25, 2019, with Defendant, a manufacturer of semi-custom wood kitchen and bathroom cabinetry, for Defendant to provide Plaintiff with some cabinetry to be installed in a residential home Plaintiff was constructing. The parties' written agreement contains a provision in the paragraph entitled "Terms of Sale" that the buyer, here Plaintiff, "waive[s] all rights relating to venue and agree that any and all legal actions shall be brought in the county of Tallapoosa, state of Alabama."

Defendant provided the cabinetry to Plaintiff, but Plaintiff identified numerous defects in the products, complaining that the color was incorrect, and the workmanship was shoddy or otherwise not in conformity with what was ordered. Plaintiff refused to pay for the cabinetry. Defendant

refused to replace the cabinetry. The business relationship broke down, and Plaintiff commenced this action on September 15, 2022, asserting the cabinets purchased from Defendant for the sum of $17,211.59 were inferior and that Defendant refused or was unable to cure. Plaintiff's Complaint contained the following six counts: Breach of Contract, Promissory Estoppel, Unjust Enrichment, Fraudulent Misrepresentation, Innocent Misrepresentation, and Tortious Interference with a Business Relationship. Plaintiff requests that the remaining balance owed ($14,040.55) be forgiven, the amount paid be refunded, and the amount Plaintiff spent to repair and alter ($6,694.21) be awarded as damages.

In lieu of filing an answer, Defendant filed the instant motion for summary disposition, asserting that the parties entered into an agreement, and said agreement contains a valid and enforceable forum selection clause that requires suit to be brought only in Alabama. Ergo, Defendant argues, suit in this Michigan Court is precluded and the case must be dismissed. In addition, Defendant argues that Plaintiff's unjust enrichment and promissory estoppel claims must be dismissed because this dispute arises from a written contract between the same parties for the same subject matter as the quasi-contract claims.

Plaintiff responds that this forum selection clause was part of the application Plaintiff was required to fill out and submit as part of the parties' business relationship. It was represented to Plaintiff that said application would be used solely for completing a credit history report. On this basis, Plaintiff argues that the application does not constitute a contract. Plaintiff contends that the forum selection clause was hidden within another paragraph, making it unreasonable and unconscionable to enforce. Finally, Plaintiff claims that all the evidence is here in Michigan, and it would cause such extreme inconvenience to Plaintiff to litigate in Alabama that the forum selection clause effectively shuts the courthouse doors on Plaintiff.

II. APPLICABLE STANDARD

Defendant brings this motion for summary disposition pursuant to MCR 2.116(C)(7) and MCR 2.116 (C)(8).

A motion for summary disposition pursuant to MCR 2.116(C)(7) may be brought based on the grounds that entry of judgment, dismissal of the action, or other relief is appropriate because of an agreement to arbitrate or to litigate in a different forum. A party is not required to submit any material in support of a motion under MCR 2.116(C)(7); the motion can be evaluated on the pleadings alone. *Maiden v Rozwood,* 461 Mich 109, 119 (1999). "The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Id.* "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence." *Id.* "In reviewing the motion, a court must review all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them." *Yono v Dep't of Transp,* 495 Mich 982, 982-983 (2014); *see also* MCR 2.116(G)(5). "If the movant properly supports his or her motion by presenting facts that, if left unrebutted, would show that there is no genuine issue of material fact that the movant [is entitled to summary disposition], the burden shifts to the nonmvoing party to present evidence that establishes a question of fact." *Kincaid v Cardwell,* 300 Mich App 513, 537 (2013). "If the trial court determines that there is a question of fact as to

whether the movant [is entitled to summary disposition], the court must deny the motion." *Dextrom v Wexford Co*, 287 Mich App 406, 431 (2010).

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the plaintiff's claim and results in a determination whether the plaintiff's allegations are sufficient to establish a prima facie case. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). The motion should be granted if the claim is so clearly unenforceable that no factual development could justify the plaintiff's claim for relief. *Maiden,* 461 Mich at 119. A motion brought under MCR 2.116(C)(8) is decided on the pleadings alone; no other evidence may be considered. MCR 2.116(G)(5). However, in an action based on a contract, the court may examine the contract. *Woody v Tamer*, 158 Mich App 764, 770 (1987). When deciding a motion under MCR 2.116(C)(8), the court must accept as true all factual allegations contained in the complaint as well as any reasonable inferences that may be drawn from those allegations. *Singerman v Municipal Serv Bureau*, 455 Mich 135, 139 (1997). The court may not consider the merits of the plaintiff's factual allegations, *Mieras v DeBona*, 452 Mich 278, 291 (1996), and it must construe those allegations in the plaintiff's favor. *Wortelboer v Benzie Cty*, 212 Mich App 208, 217 (1995). Mere conclusory statements, however, without supporting allegations of fact are insufficient to state a cause of action.

III. ANALYSIS

Michigan courts generally favor enforcing forum-selection clauses contained in contracts. *See generally Turcheck v Amerifund Fin, Inc*, 272 Mich App 341 (2006); *see also Offerdahl v Silverstein*, 224 Mich App 417, 419 (1997). In *Turcheck, supra at* 346 (2006), the Michigan Court of Appeals observed "assuming that certain exceptions do not apply, Michigan courts will enforce an express forum-selection clause as written." *Id*.

This Court must apply Michigan law in making the initial threshold determination about the validity and effect of a forum-selection clause. *Barshaw v Allegheny Performance Plastics, LLC*, 334 Mich App 741 (2020). In *Barshaw, supra* at 755-57, the Court of Appeals held that the validity and enforceability of a forum selection clause was a "nonmerits issue that the Michigan court in which the action has been filed may address first before considering other threshold issues."

MCL 600.745(3) is the Michigan statute that governs whether a Michigan Court should entertain an action or dismiss an action when the parties have entered into a contract that contains a forum selection clause. That section reads as follows:

> If the parties agreed in writing that an action on a controversy shall be brought only in another state and it is brought in a court of this state, the court shall dismiss or stay the action, as appropriate, unless any of the following occur:
>
> (a) The court is required by statute to entertain the action.
>
> (b) The plaintiff cannot secure effective relief in the other state for reasons other than delay in bringing the action.
>
> (c) The other state would be a substantially less convenient place for the trial of the action than this state.
>
> (d) The agreement as to the place of the action is obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means.

(e) It would for some other reason be unfair or unreasonable to enforce the agreement.

A party seeking to avoid a contractual forum-selection clause bears a heavy burden of showing that the clause should not be enforced; accordingly, the party seeking to avoid the forum-selection clause bears the burden of proving that one of the statutory exceptions to enforceability applies. *See e.g., Robert A. Hansen Family Trust v FGH Industries, LLC,* 279 Mich App 468 (2008).

Exception 3(a) plainly does not apply in this action, as all of Plaintiff's counts in the Complaint – breach of contract, unjust enrichment, promissory estoppel, fraudulent misrepresentation, innocent misrepresentation, and tortious interference – are creatures of the common law and are not created by statute.

While Plaintiff initially brought this action for breach of contract, and several quasi-contract and business tort claims in the alternative, Plaintiff now asserts that the document which contains the forum-selection clause is no contract at all. Plaintiff cites no law in support of this claim, instead relying on its bare assertion that a document governing the rights and obligations of the parties in a business relationship "should be in a document entitled 'contract' or 'agreement'…" Best practices perhaps, but the same is hardly required by Michigan jurisprudence. When two or more parties objectively express their intent to conduct a transaction, and the expression of intent contains all the material and essential terms of the transaction, and the transaction is supported by consideration, a contract has formed. *See e.g., Heritage Broadcasting Co. v Wilson Communications Inc.,* 170 Mich App 812 (1988), citing *Socony–Vacuum Oil Co v Waldo,* 289 Mich 316, 323–24 (1939). Michigan Courts have upheld agreements as valid and enforceable regardless of the title of the document defining the agreement. *See e.g., Opdyke Investment Co. v Norris Grain Co.,* 413 Mich 354, 359 (1982) (addressing a letter of intent and holding that agreements to enter into a contract may be enforceable contracts themselves if they contain all the material terms).

Here, Plaintiff has attached as Exhibit 1 a copy of the New Account Application its president and agent signed on July 25, 2019. Defendant has attached the same exhibit as Exhibit A. It is true that the document is entitled something other than "Contract." However, Plaintiff's argument that the New Account Application in its entirety held itself out by its plain terms to be "used for the sole purposes of completing a credit history and report" is inaccurate nearly to the point of violating MRPC 3.3. Plaintiff has taken the language that it quotes throughout its brief out of context. The complete quote in the New Account Application reads "To get started with us, we ask that you complete this new account application. The *financial information contained in this application is completely confidential* and used for the sole purpose of completing a credit history and report, providing use with the necessary information to establish your account." [emphasis added]. The plain language of the New Account Application does not represent that the entire application is for the sole purpose of a credit report; rather the financial information sought by the New Account Application is for the purposes of a credit report. Having reviewed the entire New Account Application that was attached as an Exhibit by both parties, the Court finds that it contains all the material and essential terms of the business dealings between the parties, including but not limited to plainly-worded expression of intent for the parties to enter into an ongoing business

relationship.[1] Plaintiff's president's affidavit (Pl's Ex 2) wherein he states that he was not aware that the New Account Application contained contract terms cannot undo a valid contract. Whether the parties have entered into a contract is determined by objective manifestations of intent to be bound – such as signing the document and submitting the signed copy to the offering party as occurred in this case on July 25, 2019 – and not by the subjective understanding of one party. *See Heritage, supra* at 819; *see also Stanton v Dachille*, 186 Mich App 247 (1990). Based on the well-pled allegations of the Complaint that the parties entered into an agreement, and based on the New Account Application that both parties submitted as an Exhibit in this motion, the Court concludes there is no genuine issue of material fact that the parties entered into an agreement. Because Plaintiff, by and through its president and agent, signed the New Account Application, Plaintiff is a party to the agreement and is accordingly bound by its terms. *See Offerdahl v Silverstein*, 224 Mich App 417 (1997).

Plaintiff next argues that the forum of Alabama would be so inconvenient to litigate this dispute that it would effectively preclude Plaintiff from securing relief in this action. Plaintiff alleges that all the underlying occurrences from which this dispute arose took place in Michigan, the evidence is here in Michigan, and Alabama is very far away, making litigation there too expensive for Plaintiff. The circumstances on which Plaintiff relies to argue that Alabama is a substantially less convenient forum are strikingly similar to the circumstances in *Robert A. Hansen Family Trust v FGH Industries*, LLC, 279 Mich App 468 (2008). In that case, the plaintiff-trust made an investment in a business venture with the defendant LLC, pursuant to an operating agreement that contained a forum-selection clause. The plaintiff-trust sued the defendant LLC and its members in Oakland County Circuit Court for breach of fiduciary duties, breach of the operating agreement, and misappropriation of funds. Both versions of the operating agreement required disputes arising from the operating agreement to be litigated in forums other than Michigan – either Arizona or Delaware. The plaintiff-trust tried to avoid the forum-selection clause on the grounds that the LLC and its members were located in Michigan, that defendants' records and witnesses were located in Michigan, that LLC's operating agreement was governed by Michigan law, and that LLC had no presence in Arizona (or any practical connections to Delaware other than technically being incorporated under Delaware's laws). The Court of Appeals rejected this argument, determining that these factors did not make Delaware or Arizona substantially less convenient than Michigan, and furthermore, the parties agreed to those inconveniences when they signed the operating agreement containing the forum-selection clause. Plaintiff in the case at bar makes nearly the same argument as the plaintiff-trust in *Hansen Family Trust, supra*. *Hansen Family Trust* is highly analogous to this case, and so this Court applies the Court of Appeals precedent, and rejects Plaintiff's argument here too. The forum-selection clause cannot be abrogated by MCL 600.745(3)(c). *See also Turcheck v Amerifund Financial, Inc.*, 272 Mich App 341 (2006) (holding that the plaintiff's allegations that most of her witnesses reside in Michigan, that the pertinent transactions took place in Michigan, that certain factual information concerning the case was located in Michigan was not sufficient to render the forum-selection clause unenforceable).

By contrast, this case is quite unlike *Vanderveen's Importing Co v Keramische Industrie M deWit*, 199 Mich App 359 (1993), in which the agreement of the parties included a forum-selection and

[1] "We are excited that you have chosen to become one of our authorized dealers and we will support your WFP sales efforts to the best of our ability." And "Please allows 2-3 weeks to complete the credit application process upon receipt of this packet and note that orders will not be accepted until credit is approved and your account has been set up."

choice-of-law provision requiring the parties to litigate disputes in the Netherlands under the law of the Netherlands. The Court of Appeals reversed the trial court and remanded for the trial court to consider whether the plaintiff would be able to seek relief on claims of breach of warranty of merchantability, and for claims based upon the Uniform Commercial Code and the FDA regulations in the Netherlands. Since the law of the Netherlands may not recognize those claims, and the agreement between the parties contained a choice-of-law provision that the law of the Netherlands applied to the dispute, those factors bore on whether the forum-selection clause was enforceable. None of those factors are at play in this case, because A) there is no choice-of-law clause in the New Account Application that requires a foreign nation's law to govern the disputes, and B) Alabama's breach of contract law does not vary substantially from Michigan's breach of contract law. *Def's Reply Br. at 2.*

To the extent that Plaintiff argues it will be precluded from obtaining relief in Alabama, that argument also must be rejected. In *Hansen Family Trust, supra*, the Court of Appeals further held that the plaintiff-trust failed to establish that it would be unable to obtain complete relief against the defendants in Delaware or Arizona because the defendants were equally bound by the operating agreement, and owners of another member conceded that they were subject to personal jurisdiction in the designated jurisdiction. The case at bar is similar because Defendant in this action is headquartered in Alabama. *Pl's Complaint at ¶ 2.* Defendant also agreed to litigate disputes in Alabama. Therefore, the County Court for Tallapoosa County, Alabama has jurisdiction over Defendant, and Plaintiff is able to seek relief for breach of the agreement and its quasi-contract and business tort claims arising from the same nucleus of facts in that County.

Next, Plaintiff argues that the forum-selection clause is unenforceable under MCL 600.745(3)(d) for being unconscionable and otherwise obtained through malpresentation. Towards that point, this Court notes that both the parties in this case are sophisticated business entities. When entities of equal bargaining power reach an agreement as to forum in which suits arising under the contract are to be adjudicated, its terms should be enforced under this section governing such situations provided other requirements of the statute are met. *First Nat Monetary Corp v. Chesney*, 514 F Supp 649 (E.D. Mich.) 1980. This Court also notes that the case Plaintiff relies on regarding unconscionability of contract terms – *Strong v Oakwood Hosp Corp*, 118 Mich App 395 (1982) – was vacated by the Michigan Supreme Court in *Strong v Oakwood Hosp Corp*, 419 Mich 872 (1984).

Unconscionability includes both procedural and substantive unconscionability. *See e.g., Northwest Acceptance Corp v Almont Gravel, Inc*., 162 Mich App 294, 302 (1987). *Clark v Daimler Chrysler Corp,* 268 Mich App 138 (2005) explained unconscionability of contract terms as follows:

> Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term. *Allen v Michigan Bell Tel Co*., 18 Mich App 632, 637 (1969). If, under a fair appraisal of the circumstances, the weaker party was free to accept or reject the term, there was no procedural unconscionability. *Id*. Substantive unconscionability exists where the challenged term is not substantively reasonable. *Id.* at 637–638. However, a contract or contract provision is not invariably substantively unconscionable simply because it is foolish for one party and very advantageous to the other. *Gillam v Michigan*

Mortgage–Investment Corp., 224 Mich 405, 409 (1923). Instead, a term is substantively unreasonable where the inequity of the term is so extreme as to shock the conscience. *Id.*

Plaintiff asserts that the forum-selection clause is buried in the middle of another paragraph, in an application that did not clearly purport to be a contract, and the clause contains no outward markers to draw attention to itself. This Court has already debunked the argument, based upon the evidence submitted by Plaintiff, that the New Account Application was anything less than a contract or agreement between the parties. Further, Plaintiff's citation to *M/S Bremen v Zapata Off Shore Co*, 407 US 1, 17 (1972) is unavailing, not only because in that case the U.S. Supreme Court found the forum-selection clause to be valid and enforceable, but also because the selected forum per the New Account Application (Alabama) is not remote and unconnected to the parties in this case.[2] In addition, and more to the point, nothing in the Complaint, nor in the affidavit that Plaintiff attaches as Exhibit 2[3], presents any evidence or allegations this Court must accept as true demonstrating that Plaintiff had no realistic alternative than to accept Defendant's "Terms of Sale." Just as in *Liparoto Constr Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 30-31 (2009), Plaintiff has offered no well-pled facts or evidence that it could not have purchased cabinets from some other supplier. Furthermore, as the U.S. Supreme Court explained in Bremen, supra, forum-selection clauses are more and more prevalent in the business world. Plaintiff has not demonstrated by well-pled facts in the Complaint, or even by evidence in the affidavit attached as Exhibit 2, that the forum-selection clause was so highly unusual or unfairly surprising as to constitute unconscionability. All Plaintiff's Exhibit 2 demonstrates is that Plaintiff's president failed to read the contract before signing it, which is not a legally cognizable defense to enforcement of a contractual obligation. *See e.g., Watts v Polaczyk*, 242 Mich App 600, 604 (2000) (holding that an arbitration agreement was valid and enforceable even though the plaintiff claimed to have not had the provision adequately explained to him before he signed it). Indeed, defendant is a business entity headquartered in Alabama. *See MRE 201(b)*.[4] A forum-selection clause that selects the seller's home state is not unreasonable or unconscionable.

Plaintiff contends that even if the forum-selection clause is not unconscionable, it remains unreasonable or unfair, as in MCL 600.745(3)(e), and it should be rendered unenforceable for that reason. In *Turcheck v Amerifund Financial, Inc*., 272 Mich App 341 (2006), the Court of Appeals determined that an individual employee's unsupported allegations that employment contract was obtained through abuse of economic power, were inadequate to meet her burden of showing that enforcement of forum-selection clause in contract would have been unreasonable, unjust, or unfair to enforce. Here is much the same situation but with an additional factor that weighs against finding

[2] In *Bremen, supra*, the parties were a Houston, Texas corporation (Zapata) and a German corporation (Unterweser), and the agreement was for Unterweser to tow Zapata's oil drilling rig from Louisiana to the Adriatic Sea, and drill wells there. The parties agreed to litigate disputes in London. The U.S. Supreme Court held that the realities of modern American business enterprises were that business dealings crossed State and international lines, and enforcement of the business entities' forum-selection clause reflected that reality. More particularly, the U.S. Supreme Court held that the selection of London Courts, even though it was remote and had no connection to the parties or to the cause of action, reflected a reasonable and unenforceable choice by the business entities to choose a neutral forum for dispute resolution.

[3] Which may only be considered under the C(7) standard, not the C(8) standard.

[4] This Court may take notice of facts not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. The Alabama Secretary of State Business Entity Records database is such a source under b(2) of this rule of evidence.

unfairness or abuse of power: Plaintiff is a business entity, not an individual person. In *Turcheck*, the plaintiff was an employee of the defendant, and defendant was a Washington Corporation. Her employment contract contained a forum-selection and choice-of-law clause that required all disputes to be litigated in Pierce County in the State of Washington. Regardless, the plaintiff sued in Wayne County, Michigan, and asked that the forum-selection clause be invalided on the grounds of MCL 600.745(3)(c)-(e). The Court of Appeals determined that the plaintiff did not support her bare allegation that the agreement was unfair because she was merely an individual and defendant was a large corporation, and she had no meaningful opportunity to bargaining when the contract was signed. The Plaintiff in the case at bar is a business entity seeking to purchase a product from a supplier, which gives it more bargaining power than an individual seeking employment with corporate entity. None of the well-pled allegations in Plaintiff's complaint, nor any of the statements contained in the affidavit Plaintiff submitted as Exhibit 2, support a conclusion that the forum-selection clause was obtained by Defendant through the exercise of unfair bargaining power. Similar to *Turcheck*, it is not unreasonable or unfair for a business entity with its headquarters in a state to seek to limit the forum of litigation of disputes to the county in which the business is headquartered. Defendant Wellborn Forest Products Inc is headquartered in Alabama, just as Amerifund Financial was headquartered in Pierce County. The circumstances in *Turcheck* being analogous to the circumstances in this case, the Court follows the precedent set forth by the Court of Appeals and will enforce the forum-selection clause in the New Account Application.

Finally, Defendant has argued on this summary disposition motion that Plaintiff cannot sustain its quasi-contract claims for promissory estoppel and unjust enrichment because there is a valid binding contract between the parties regarding the same subject matter. Plaintiff responds that Plaintiff is only pleading in the alternative. Both parties have submitted the New Account Application (Pl's Ex 1 and Def's Ex A), and said contract bears the signature of Plaintiff's president and agent. This Court has determined as set forth above that the parties did have a valid and binding contract regarding the production and delivery of semi-custom cabinetry. This Court notes as a general matter of Michigan law that under *Morris Pumps v Centerline Piping Inc*, 273 Mich App 187 (2006) and *Belle Isle Grill Corp v City of Detroit*, 256 Mich App 463, 478 (2003), a quasi-contract claim such as unjust enrichment or quantum meruit cannot be sustained when the same parties have an express contract that covers the same subject matter. However, this Court has just found that this action must be dismissed due to a valid and enforceable forum-selection clause in the parties' contract that named Tallapoosa County, Alabama as the only forum for adjudication of the parties' disputes arising from the business relationship. Accordingly, this Court is without jurisdiction to render a decision on the merits of the case. This Court declines to decide the issues of whether the counts for unjust enrichment and promissory estoppel can be sustained considering the binding contract between the parties. That matter is a matter for the County Court in the County of Tallapoosa, Alabama to decide.

IV. CONCLUSION

In sum, this Court finds as a matter of law that the parties entered into a valid and binding contract, which contained a forum-selection clause that makes litigation of all disputes arising from the contract to be litigated in Alabama. Regardless of the title of the New Account Application, the document, which is signed by Plaintiff's president and agent on July 25, 2019, constitutes a valid

contractual agreement, because it contains all the material and essential terms of the parties' business deal, and the title of the document does not control whether it constitutes a contract. Plaintiff failed to present anything more than the president's failure to read the document and the president's subjective understanding that the New Account Application did not contain binding contractual terms. Neither is a valid defense to enforcement of a contract. The Court further finds that none of the exceptions listed in MCL 600.745(3)(a)-(e) apply in this action to render the forum-selection clause unenforceable. The fact that Plaintiff's witnesses and evidence is located in Michigan, and that Alabama is very far away from Plaintiff's usual place of business does not render Alabama to be a substantially less convenient forum than Michigan. Following the precedent set forth by *Hansen Family Trust, supra*, and *Turcheck, supra*, and considering the fact that Defendant is headquartered in Alabama, and that the parties had the opportunity to consider those inconveniences when entering into the contract, the Court finds as a matter of law that MCL 600.745(3)(c) does not invalid the forum-selection clause. Similarly, the forum-selection clause does not effectively prevent Plaintiff from securing relief in Alabama, because Defendants are headquartered in Alabama, and have agreed to be subject to the Tallapoosa County Court's jurisdiction in all matters arising from this business agreement. The forum-selection clause was not obtained through malpresentation nor is it unconscionable, as nothing in the Complaint or the Exhibits demonstrates any procedural or substantive unconscionability. Plaintiff was free to reject the business deal and seek cabinetry from another supply if it found the forum-selection clause untenable, and a forum-selection clause to litigate disputes in the seller's home state is not unreasonable or unfairly surprising. Finally, the forum-selection clause is not unreasonable or unfair as in MCL 600.745(3)(e), because, as in *Turcheck, supra*, Plaintiff's counsel's statements in the response to the motion for summary disposition that litigation in Alabama is unfair to Plaintiff were completely unsupported by the pleadings or the evidence Plaintiff submitted.

For all the reasons set forth in detail above, this Court finds as a matter of law that Plaintiff has failed to state a claim upon which relief can be granted because the contract upon which the parties' disputes are based requires litigation of such disputes in Alabama, and that Plaintiff's suit in Michigan is barred by an agreement to litigate in a different forum. Accordingly, summary disposition of the case is appropriate under MCR 2.116(C)(7) and/or MCR 2.116(C)(8).

NOW THEREFORE IT IS ORDERED that for the reasons stated above, Defendant's motion for summary disposition is GRANTED, and accordingly the case is DISMISSED.

IT IS SO ORDERED.

This is a final order that resolves all pending claims and closes the case.

/s/ Michael P. Hatty
Honorable Michael P. Hatty (P30990)
Business Court Judge