

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

Luis Nodal, et al.

v.

Bluegreen Vacations Unlimited, Inc., et al.

Docket No. 218-2025-CV-00535

ORDER ON DEFENDANTS' MOTION TO DISMISS

In this class action complaint, Plaintiffs Luis and Edith Nodal allege a violation of the Military Lending Act (“MLA”), 10 U.S.C. § 987, arising from timeshare contracts offered by Defendants Bluegreen Vacations Unlimited, Inc. and Bluegreen Vacations Corporation. Doc. 1. Defendants now move to dismiss. Doc. 8. Plaintiffs object. Doc. 10. The Court held a hearing on the matter on January 8, 2026. After review, Defendants’ motion to dismiss is **GRANTED**.

Background

Unless otherwise noted, the following facts are derived from Plaintiffs’ complaint, see Doc. 1, and are assumed true for the purposes of this Order. See Clark v. N.H. Dep’t of Emp’t Sec., 171 N.H. 639, 645 (2019). Plaintiffs are active-duty members of the United States Army residing in Florida. Doc. 1 ¶¶ 12–14. Defendants are Florida corporations who engage in sales of timeshare vacation contracts. Id. ¶¶ 21–22. Although Defendants are separate legal entities, they engage in common operations related to the sales of timeshare properties and share a corporate headquarters. Id. ¶ 23. Defendants operate resorts throughout the United States and loan money to borrowers to purchase timeshare interests in those resorts. Id. ¶ 80.

In June 2023, Plaintiffs were offered a gift card and a free stay at a resort in exchange for attending a presentation at Defendants' South Mountain Resort property in Lincoln, New Hampshire. Id. ¶¶ 43–45. After attending the presentation, Plaintiffs entered into a timeshare contract with Defendants on August 12, 2023, to finance and purchase 16,000 timeshare points for \$20,300 and additional maintenance fees. Id. ¶ 48.

Thereafter, in December 2023, Defendants offered Plaintiffs a free stay at a resort property in Orlando, Florida. Id. ¶ 50. Plaintiffs accepted that offer, and while staying at that property Plaintiffs entered into a second timeshare contract to purchase 16,000 additional timeshare points for \$20,300 with additional maintenance fees. Id. ¶ 54. In January 2024, Plaintiffs sought to cancel their contracts, however Defendants told them that they could not cancel. Id. ¶ 55. To date, Plaintiffs have paid over \$10,000 to Defendants under the timeshare contracts. Id. ¶ 56. However, Plaintiffs can no longer afford to make payments and have suffered adverse credit effects from the timeshare contracts. Id. ¶¶ 57–61.

As relevant here, the timeshare contracts include mandatory arbitration provisions, a class action waiver, a jury trial waiver, and a choice of law and forum selection clause. Id. ¶¶ 72–75, see also id. Ex. A (August 2023 timeshare contract); id. Ex. B (December 2023 timeshare contract). Specifically, the choice of law and forum selection clause in each timeshare contract provides:

This Note shall be governed by the laws of the STATE OF FLORIDA, without regard to its conflict of laws principles. Borrower expressly consents and agrees that the exclusive jurisdiction and venue for legal actions or proceedings relating to or arising from this NOTE, whether pertaining to the interpretation or enforceability hereof or otherwise, shall be in the State or federal courts located in Palm Beach County, Florida, except in the event

that applicable law requires such jurisdiction and venue to be in the courts of the State where the Property is located.

Id. Ex. A at 74¹; Id. Ex. B at 120.

Plaintiffs contend that these terms violate the MLA, because that act expressly prohibits loans to active-duty military members that include provisions requiring arbitration and requiring waiver of jury trials and class action lawsuits. Doc. 1 ¶ 35. In addition, Plaintiffs assert that Defendants failed to make required disclosures as required by the MLA, including a statement of the Military Annual Percentage Rate. Id. ¶¶ 36–38. Based on these alleged deficiencies, Plaintiffs assert that their timeshare contracts, and those of other active-duty military members, are void under the MLA. Id. ¶ 42.

Analysis

In ruling on a motion to dismiss, the Court analyzes whether the plaintiff’s factual allegations are “reasonably susceptible of a construction that would permit recovery.” Mentis Scis., Inc. v. Pittsburgh Networks, LLC, 173 N.H. 584, 588 (2020). “The trial court need not accept allegations in the writ that are merely conclusions of law.” Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 711 (2010) (quotations and citation omitted). The relevant inquiry is whether, drawing all reasonable inferences in the plaintiff’s favor, the allegations provide a basis for legal relief. Mentis Scis., 173 N.H. at 588. If not, dismissal is proper. Id. When assessing the sufficiency of the complaint, the Court may consider documents attached to the plaintiffs’ pleadings, documents the authenticity of which is not disputed by the parties, or documents

¹ For clarity, the Court will use the page numbers of the entire document rather than the page numbers listed on the exhibit.

sufficiently referred to in the complaint. Grand Summit Hotel Condo. Unit Owners' Ass'n v. L.B.O. Holding, Inc., 171 N.H. 343, 345 (2018).

In their motion, Defendants argue that the forum selection clauses in each of Plaintiffs' timeshare contracts require this action to be brought in Florida. Doc. 8 at 1. In addition, Defendants argue that even if the forum selection clause is unenforceable, the doctrine of *forum non conveniens* demonstrates that Florida is a more appropriate forum for this action. Id. at 7. Lastly, Defendants assert that Plaintiffs failed to state a claim under the MLA because the attached timeshare contracts include all of the required disclosures, and Defendants have not sought to enforce any arbitration rights or deny class certification. Id. at 11–12.

In response, Plaintiffs argue that the forum selection clause cannot be enforced because the timeshare contracts are void under the MLA. Doc. 10 at 14. In addition, Plaintiffs assert that *forum non conveniens* does not apply here because the MLA preempts the state law doctrine, and the factors weigh in favor of New Hampshire as a proper forum. Id. at 17. Specifically, Plaintiffs argue that the MLA allows Plaintiffs to bring an action in any court of competent jurisdiction, including New Hampshire, and the explicit preemption clause contained in the MLA preempts state common law doctrines. Id. In addition, Plaintiffs assert that New Hampshire is a proper forum because Plaintiffs attended a presentation and entered into one of the timeshare contracts in this state. Id. at 18. Lastly, Plaintiffs contend that they stated a claim under the MLA because the inclusion of prohibited terms in the contracts automatically violates the act, Plaintiffs suffered damages by paying interest in violation of the act, and no exception to the MLA applies. Id. at 22–27.

As an initial matter, the Court must determine whether this is an appropriate forum to hear the action. New Hampshire Courts generally enforce forum selection clauses. Strafford Tech., Inc. v. Camcar Div. of Textron, Inc., 147 N.H. 174, 176 (2001); see also RSA 508-A:3. “Such clauses, however, are subject to rigorous rules of interpretation and will not be enforced if deemed unjust or unreasonable.” Id. “New Hampshire has, by statute, sanctioned the enforcement of forum selection clauses provided that the parties ‘have agreed in writing that an action . . . shall be brought only in another state[.]’” Id. (citing RSA 508–A:3). “Even in these instances, a forum selection clause that confers exclusive jurisdiction may still be unenforceable if enumerated statutory exceptions apply.” Id. The statutory exceptions in RSA 508-A:3 provide that the Court will dismiss the action unless,

- I. The court is required by statute to entertain the action;
- II. The plaintiff cannot secure effective relief in the other state, for reasons other than delay in bringing the action;
- III. The other state would be a substantially less convenient place for the trial of the action than this state;
- IV. The agreement as to the place of the action was obtained by misrepresentation, duress, the abuse of economic power, or other unconscionable means; or
- V. It would for some other reason be unfair or unreasonable to enforce the agreement.

Here, the forum selection clause provides that “the exclusive jurisdiction and venue for legal actions or proceedings relating to or arising from this NOTE, whether pertaining to the interpretation or enforceability hereof or otherwise, shall be in the State or federal courts located in Palm Beach County, Florida[.]” Doc. 1 Ex. A at 74 (emphasis added). This clause unambiguously provides that Florida has exclusive jurisdiction as to all claims arising under the timeshare contracts. See Strafford Tech.

Inc., 147 N.H. at 176 (finding forum selection clause stating actions “shall be determined by” grants exclusive jurisdiction to selected forum).

Upon review, the Court concludes that none of the RSA 508-A:3 statutory exceptions apply. Specifically, the Court cannot find, and the parties have not raised, that it is required to hear this action pursuant to any statute. Although Plaintiffs argue that the MLA provides that they may bring an action in “any other court of competent jurisdiction,” 10 U.S.C. §987 (5)(E), and thus New Hampshire is a proper forum notwithstanding the forum selection clause, the Court is unpersuaded. “If . . . [a] statute permits a plaintiff to bring [their] claim in more than one venue, and a forum selection clause requires the plaintiff to bring the suit in one of the many statutorily-permitted venues, the court will enforce the clause.” Fraize v. Fair Isaac Corp., No. 17-CV-231-PB, 2018 WL 294535, at *3 (D.N.H. Jan. 4, 2018). Because the MLA allows for actions in “any other court of competent jurisdiction,” the choice of law provision is not explicitly prohibited by statute and Plaintiffs are required to bring the action in Florida pursuant to the forum selection clause.

In addition, the Court concludes that Plaintiffs can secure effective relief for their claims in Florida courts and Florida would be a more convenient place for the trial of this action. As to the final two exceptions, Plaintiffs argue that the timeshare contracts are void under the MLA and thus it would be unconscionable and unreasonable for the Court to enforce the forum selection clause. The New Hampshire Supreme Court has not addressed whether an argument relating to enforceability of a contract renders a forum selection clause unenforceable, however the First Circuit has addressed a similar argument. In Autoridad de Energia Electrica de Puerto Rico v. Vitol S.A., 859 F.3d 140

(1st Cir. 2017), the First Circuit held that forum selection clauses are enforceable even if a party argues that the contract is void. Specifically, the court noted the “absurdity of the position” explaining:

The logical conclusion of the argument [that a forum selection clause is unenforceable because a contract is void] would be that the federal courts . . . would first have to determine whether the contracts were void before they could decide whether, based on the forum selection clauses, they should be considering the cases at all. An absurdity would arise if the [federal] courts . . . determined the contracts were not void and that therefore, based on valid forum selection clauses, the cases should be sent to [the state court]—for what? A determination as to whether the contracts are void?

Id. at 147 (quoting Muzumdar v. Wellness Int'l Network, Ltd., 438 F.3d 759, 762 (7th Cir. 2006)). The Court agrees with the First Circuit and concludes that the forum selection clause is enforceable notwithstanding Plaintiffs’ argument that the timeshare contracts are void under the MLA. See id. at 147–48 (noting that forum selection clauses are enforceable even if a party argues that a contract is void or voidable); cf. Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 448–449 (2006) (holding that “a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator”).

Even if the Court were to conclude that the forum selection clause was unenforceable, the Court additionally finds that the doctrine of *forum non conveniens* weighs in favor of dismissal of this action. “The principle underlying *forum non conveniens* is that a court, even though it has jurisdiction, will not exercise it if it is a seriously inappropriate forum for the trial of the action so long as an appropriate form is available to the plaintiff.” Leeper v. Leeper, 116 N.H. 116, 117 (1976). In determining whether *forum non conveniens* applies, “[c]ourts are directed to look to the private interest of the litigant, relative ease of access to sources of proof, availability of

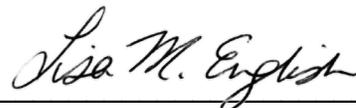
compulsory process, the cost of obtaining attendance of willing witnesses, the possibility of view of premises if appropriate, the question of enforceability of the foreign judgment, and other concerns relating to the public interest.” Id. at 118.

Here, the Court concludes that the factors weigh heavily in favor of Florida as a more convenient forum. As to the Leeper factors, the Court credits the Plaintiffs’ private interests in choosing New Hampshire to litigate their action. However, the Court notes that the Plaintiffs are residents of Florida, and the Defendants are headquartered in Florida. Indeed, the Defendants’ corporate witnesses are likely located in Florida, as well as evidence relating to sales practices and the standard timeshare contracts. Moreover, there is only an attenuated connection to New Hampshire arising from the Plaintiffs’ allegations. Although Plaintiffs assert that they entered into a timeshare contract in New Hampshire, the timeshare contracts at issue here relate to properties located outside of New Hampshire, the contracts are governed by Florida law, and none of the parties reside in New Hampshire. Thus, the Court concludes that the Leeper factors weigh in favor of Florida as the more convenient forum.

As such, Defendants’ motion to dismiss is **GRANTED**. In light of this conclusion, the Court need not address the parties’ arguments regarding the substance of Plaintiffs’ MLA claim. See Canty v. Hopkins, 146 N.H. 151, 156 (2001) (where particular argument is dispositive, Court need not consider remaining or alternative arguments).

Conclusion

For the foregoing reasons, Defendants’ motion to dismiss is **GRANTED**. Doc. 8.



Hon. Lisa M. English
Presiding Justice

Date: January 16, 2026