IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

QUALITY OFFICE FURNISHINGS, INC., Plaintiff, vs. ALLSTEEL, INC., and DOES 1-50, Defendants.	**No. 3:17-cv-00041–JEG** **O R D E R**

This matter comes before the Court on a Motion for Leave to File an Amended Complaint, ECF No. 62, filed by Plaintiff Quality Office Furnishings, Inc. (QOF), which Defendant Allsteel, Inc. (Allsteel), resists. Also before the Court is a Motion for Partial Dismissal, ECF No. 12, filed by Allsteel, which QOF resists. Neither party has requested a hearing on the Motions, nor does the Court find a hearing is necessary. The matters are fully submitted and ready for disposition.

I. BACKGROUND[1]

QOF, an office furniture dealer, is a California corporation with its principal place of business in California. Allsteel, a manufacturer of office furniture, is an Illinois corporation with its principal place of business in Muscatine, Iowa. Allsteel sells its products through dealers, such as QOF, but also employs its own sales representatives and operates its own showrooms. Allsteel has fourteen sales representatives and two showrooms in California.

QOF was a small operation that derived 60-70% of its revenue from one client, Allsteel. For 37 years, QOF served as an Allsteel products dealer in California. Allsteel was QOF's

[1] On consideration of the Partial Motion to Dismiss, the Court assumes the facts alleged in the Complaint to be true and draws all inferences in favor of the nonmoving party. See Cockram v. Genesco, Inc., 680 F.3d 1046, 1056 (8th Cir. 2012).

"anchor product line." Compl. ¶ 23, ECF No. 1-1. A series of annual authorized dealer agreements governed Allsteel and QOF's relationship.

At some point between 2010 and 2013, Allsteel advised QOF that in order to continue as an Allsteel dealership, QOF needed to diversify and expand its customer base, acquire a larger and redesigned showroom, become involved in the architect and designer (A&D) industry, and host A&D events. In response, QOF hired a marketing professional and invested in a new, more expensive facility and showroom to better feature Allsteel's products. QOF moved into the new facility in 2013. As a result of these changes, QOF incurred long-term costs and declined to pursue other business opportunities in order to continue its relationship with Allsteel.

The final dealer agreement between Allsteel and QOF was for the year 2016 (2016 Dealer Agreement). The 2016 Dealer Agreement was signed by QOF's President and Chief Executive Officer Candice Baird (Baird), on January 18, 2016. The 2016 Dealer Agreement, which defined QOF as "Dealer," provided that the agreement expired on December 31, 2016, and "d[id] not automatically renew." Nelson 1st Decl., Ex. A – 2016 Dealer Agt. 1, 3; ECF No. 13-1. The 2016 Dealer Agreement also contained choice of law and forum selection provisions, which read as follows:

> This Agreement shall be governed by and construed in accordance with the internal laws of the State of Iowa. In the event of any litigation arising directly or indirectly from this Agreement or otherwise relating in any way to the relationship between Dealer and Allsteel, Dealer agrees that the exclusive venue for such litigation will be in any court of general jurisdiction located within Muscatine or Scott Counties in the State of Iowa and the applicable appellate courts. Dealer consents that these courts shall have personal jurisdiction over Dealer for purposes of such proceedings and waives any objection to venue in these courts.

Id. at 5. The agreement also contains a merger or "entire agreement" clause, which provided as follows:

> This Agreement supersedes any and all other agreements, whether written or oral, previously entered into by the parties with respect to the purchase and resale of the Products. This Agreement is the final and entire agreement between the parties with respect to such matters. Dealer acknowledges and agrees that he/she has read and understands this Agreement. Dealer acknowledges and agrees that no oral representations of any kind have been made by or on behalf of Allsteel which Dealer is relying upon in entering into this Agreement, except those representations of Allsteel expressly set forth in this Agreement. This Agreement shall not be modified except by written agreement signed by both Dealer and Allsteel.

Id. at 6. QOF did not request nor receive a fully executed copy of the 2016 Dealer Agreement.

The parties' relationship continued under the 2016 Dealer Agreement from January to December 2016; however, in December 2016, Allsteel informed QOF that it would not offer QOF another dealer agreement for 2017.

On March 20, 2017, QOF filed suit against Allsteel in California state court asserting six causes of action: breach of contract, breach of implied covenant of good faith and fair dealing, fraud via inducement, intentional misrepresentation, unfair and fraudulent business practice pursuant to California Business and Professions Code § 17200 et seq. (QOF's § 17200 claim), and unjust enrichment. On April 20, 2017, Allsteel timely removed the case to the United States District Court for the Central District of California on the basis of diversity jurisdiction. Allsteel then filed a Motion to Dismiss QOF's fifth cause of action – the § 17200 claim for violation of California's unfair and fraudulent business practice law – and to transfer the case to the U.S. District Court for the Southern District of Iowa pursuant to the forum selection and choice of law provisions contained in the 2016 Dealer Agreement. On June 23, 2017, the U.S. District Court for the Central District of California granted the motion to transfer but deferred to this Court on the Motion to Dismiss QOF's Fifth Cause of Action. On July 31, 2017, the parties filed a proposed scheduling order and discovery plan. The Court adopted the proposed scheduling order, setting, *inter alia*, October 3, 2017, as the deadline for filing motions to amend pleadings.

On September 26, 2017, this Court ordered supplemental briefing on the Motion to Dismiss, which the parties filed on October 11, 2017. On April 18, 2018, QOF filed a document captioned "Plaintiff's Second Sur-reply in Opposition to Defendant's Motion to Dismiss in Part and Notice of Plaintiff's Intent to Amend the Complaint." ECF No. 60. In Response, Allsteel filed a Motion to Strike QOF's Second Sur-reply, ECF No. 61, arguing, *inter alia*, the surreply was procedurally improper. On May 5, 2018, QOF filed a Motion for Leave to Amend Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2) and LR 15. ECF No. 62.

II. DISCUSSION

A. QOF's Motion for Leave to Amend Complaint

In its Motion for Leave to Amend Complaint, QOF asserts good cause exists to allow the amendment because it recently discovered new information that provides the basis to assert an alternative cause of action for promissory estoppel and to add additional facts and allegations in support of its existing claims.

1. Choice of Law on Motion for Leave to Amend

As a preliminary matter, QOF argues that because the 2016 Dealer Agreement is unenforceable, including the forum selection and choice of law provisions therein, the Court should apply California law. QOF asserts a conflict of law exists because QOF has no cause of action under the unfair business practices statute in Iowa, and therefore California law must apply. Allsteel argues the 2016 Dealer Agreement is enforceable and Iowa law should apply under the terms of that agreement. Allsteel further argues that Iowa law applies, nonetheless, under the forum choice of law rule.

Regarding the motion for leave to amend the complaint, although QOF argues California law should apply, it concedes that "[b]oth Iowa law and California law permits [sic] leave to amend." Reply Br. Mot. Am. 3, ECF No. 65. Leave to amend is, however, a procedural matter governed by federal rules of procedure in a case sitting in federal court based on diversity. See In re Baycol Prod. Litig., 616 F.3d 778, 785 (8th Cir. 2010) ("It is, of course, well-settled that in a suit based on diversity of citizenship jurisdiction the federal courts apply federal law as to matters of procedure but the substantive law of the relevant state." (quoting Hiatt v. Mazda Motor Corp., 75 F.3d 1252, 1255 (8th Cir. 1996) (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938)))); Knievel v. ESPN, 393 F.3d 1068, 1073 (9th Cir. 2005) ("Under the doctrine of Erie R.R. v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), federal courts sitting in diversity must apply the Federal Rules of Civil Procedure." (citing Hanna v. Plumer, 380 U.S. 460, 470-71 (1965))).

2. Standard for the Motion for Leave to Amend Complaint

QOF filed this motion for leave to amend pursuant to Rule 15, which governs amended and supplemental pleadings. Pursuant to Rule 15, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). While amendments are to be allowed liberally, courts may deny motions for leave to amend "based upon a finding of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies in previous amendments, undue prejudice to the non-moving party, or futility." Baptist Health v. Smith, 477 F.3d 540, 544 (8th Cir. 2007). "Delay alone is not enough to deny a motion to amend; prejudice to the nonmovant must also be shown." Doe v. Cassel, 403 F.3d 986, 991 (8th Cir. 2005) (per curiam); Bediako v. Stein Mart, Inc., 354 F.3d 835, 840-41 (8th Cir. 2004).

Allsteel argues that Federal Rule of Civil Procedure 16, and not Rule 15, applies to QOF's Motion. Rule 16 governs amended and supplemental pleadings to the extent that a scheduling order limits the time for parties to amend their pleadings. Fed. R. Civ. P. 16(b). Under Rule 16, a scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s good-cause standard governs when a party seeks leave to amend a pleading outside of the time period established by a scheduling order, not the more liberal standard of Rule 15(a)." Sherman v. Winco Fireworks, Inc., 532 F.3d 709, 716 (8th Cir. 2008). Under Eighth Circuit precedent, "[i]f a party files for leave to amend outside of the court's scheduling order, the party *must* show cause to modify the schedule." Hartis v. Chi. Title Ins. Co., 694 F.3d 935, 948 (8th Cir. 2012) (alterations in original) (quoting Sherman, 532 F.3d at 716).

The Court entered a scheduling order on August 8, 2017, adopting dates jointly proposed by the parties, and setting, *inter alia*, October 3, 2017, as the deadline to amend pleadings. Although QOF moved for extensions of time on other deadlines, it did not request an extension of time beyond the deadline to amend pleadings. On May 11, 2018, more than seven months after the deadline to amend pleadings passed, QOF filed its Motion for Leave to Amend Complaint. Because QOF filed this Motion well beyond the date set forth in the scheduling order, Rule 16's good cause standard applies to QOF's Motion for Leave to Amend Complaint.

3. Good Cause Analysis

"The primary measure of good cause is the movant's diligence in attempting to meet the order's requirements." Sherman, 532 F.3d at 716 (quoting Rahn v. Hawkins, 464 F.3d 813, 822 (8th Cir. 2006), abrogated on other grounds by Rivera v. Illinois, 556 U.S. 148 (2009)). Generally, a court need not take into account the degree of prejudice to the nonmovant "if the

movant has not been diligent in meeting the scheduling order's deadlines." Id. at 717. In applying Rule 16(b), the Court "focus[es] in the first instance (and usually solely) on the diligence of the party who sought modification of the order." Id. at 717.

a. QOF's Diligence

QOF argues good cause exists because newly discovered evidence revealed during the April 3, 2018 deposition testimony of Allsteel's Vice President of Dealer Development, David Nelson (Nelson), "shows that the dealer agreement between the parties is unenforceable and evidences further unfair business practices by Allsteel." Mot. Am. Compl. 1, ECF No. 62. QOF identifies the new evidence as Nelson's admission that he did not always sign the annual dealer agreements that he received from the dealerships, but would do so if the dealership asked for a signed copy of the agreement. QOF argues that based upon the terms of the 2016 Dealer Agreement, it was not effective and enforceable until executed by Allsteel. Accordingly, QOF argues based on this new information it should be afforded the opportunity to amend its complaint to include the alternative cause of action for promissory estoppel, as well as to add new allegations in support of its existing claims.

Nelson's statements regarding execution of the 2016 Dealer Agreement do not constitute "new evidence." In its original complaint, QOF stated that "Quality and Defendant entered into annual 'Authorized Dealer Agreements.' The most recent agreement was for 2016 (the Dealer Agreement), though Defendant *never provided Quality with a fully executed copy of the Dealer Agreement*." Compl. ¶ 12, ECF No. 1-1 (emphasis added). Clearly, at the time it filed the original complaint, QOF knew it never received a fully executed copy of the agreement, having stated so in its complaint.

Nothing was revealed during Nelson's deposition to support a promissory estoppel claim not already within the prior knowledge of QOF. Before filing its lawsuit, QOF sent Allsteel a letter relaying its position regarding the non-renewal of the Dealer Agreement, and advising Allsteel the courses of action QOF might take: "[P]romissory or equitable estoppel supersedes written provisions of a Dealer Agreement, where Allsteel, by its conduct, caused Quality to believe the terms of the agreement are modified, including the duration of the dealer/manufacturer relationship and the termination or renewal terms," and "Quality reserves its right to contest the termination of the dealer relationship, as well as all legal and contractual remedies available to it as a result of the purported termination." QOF Dec. 22, 2016 Ltr. – Def.'s Resist. Ex. 3, ECF No. 64-4. The December 22, 2016 letter from QOF to Allsteel demonstrates QOF had the necessary information, and in fact advised Allsteel of its intention, to bring a claim for promissory or equitable estoppel.

On May 11, 2018, more than seven months after the deadline to amend pleadings had passed, QOF filed a motion for leave to amend its complaint to add claims, the bases of which QOF knew before filing its complaint more than one year earlier on March 20, 2017. The Court finds QOF lacked diligence in meeting the Court's scheduling order deadlines. See Sherman, 532 F.3d at 716.

b. Prejudice to Allsteel

In requesting leave to amend its complaint, QOF does not merely look to add a cause of action for promissory estoppel, it attempts to change the entire legal basis for the lawsuit. QOF filed this suit alleging QOF and Allsteel entered into a valid and enforceable written contract, i.e. the 2016 Dealer Agreement and that QOF performed all its obligations and duties required by the 2016 Dealer Agreement, but that Allsteel breached its obligations under the 2016 Dealer

Agreement. The complaint goes on to allege that Allsteel breached the agreement by (1) failing to confirm and honor all outstanding orders placed before the termination of the 2016 Dealer Agreement, (2) failing to perform its end of the bargain by not presenting QOF with promised business opportunities despite QOF meeting Allsteel demands to invest and expand QOF's business, and (3) diverting business to other dealers and compelling QOF to forego business opportunities to limit competition and secure business for its larger dealers.

QOF's proposed amended complaint alleges (1) although QOF's president Kandee Baird signed the 2016 Dealer Agreement, it was not executed because Allsteel did not sign it, and therefore it was never valid and enforceable; (2) the forum selection and choice of law provisions contained in the 2016 Dealer Agreement are likewise unenforceable, and therefore QOF reserves the right to challenge the transfer order issued by the U.S. District Court for the Central District of California; (3) the relationship between QOF and Allsteel was loosely controlled by annual dealer agreements required by Allsteel but their broader relationship was defined by trust, growth, and future investment; (4) the unexecuted 2016 Dealer Agreement resulted in the termination of the relationship between Allsteel and QOF, and transformed their relationship into one governed by custom and practice and an oral agreement that Allsteel would maintain QOF as a dealer so long as QOF made the requested investments and clientele expansion; and (5) Allsteel imposed investment demands, including to secure a larger showroom, on QOF but was unwilling to showcase its partnership with QOF in the ways Allsteel did for Allsteel's larger dealers. In addition to looking to add a promissory estoppel claim, QOF seeks to restyle its breach of written contract claim into a breach of an oral contract claim. In doing so, the allegations in the proposed amended complaint have been transfigured, now denying that the 2016 Dealer Agreement was valid and enforceable and instead alleging that in 2016, Allsteel

purported to terminate the parties' 37-year relationship, which had been based on annual, non-automatically renewable, written dealer agreements, and converted their relationship to one governed by custom and practice and an oral agreement that Allsteel would maintain QOF as a dealer as long as QOF expanded its clientele and made various investments.

The operative legal principles governing QOF's original claim for breach of the written 2016 Dealer Agreement are diametrically opposed to the operative equitable principles governing its proposed breach of oral contract claim. In addition to attempting to shift the legal premise of its lawsuit, QOF also proposes to leave open the option of relitigating the issue of venue. Allowing QOF to completely depart from its original arguments would require Allsteel to similarly adjust its defenses, undoubtedly requiring additional discovery and delay. The Court having already concluded QOF lacked diligence in attempting to meet the scheduling order's deadlines, it is unnecessary for the Court to consider whether the amendment would prejudice Allsteel. See Sherman, 532 F.3d at 717. Nonetheless, prejudice is a relevant factor in the good cause inquiry, see id., and therefore, considering that factor, the Court finds that to allow QOF's proposed amendment, which goes well beyond simply adding claims or facts, but instead changes the basic factual and legal premise of the lawsuit QOF filed seventeen months ago, would result in undue prejudice to Allsteel. See Friedman v. Farmer, 788 F.3d 862, 869 (8th Cir. 2015) (affirming the denial of a motion to amend under the more lenient Rule 15 standard, reasoning the new facts alleged were not relevant to the entity that was the subject of the original complaint, but were instead related to a separate entity not mentioned in the original complaint).

c. Futility

The Court notes that had QOF's motion for leave to amend been considered under the more lenient standard of Rule 15, the amendment would fail based on futility. See Geier v. Mo. Ethics

Comm'n, 715 F.3d 674, 678 (8th Cir. 2013) ("[W]hile Rule 15 is broadly construed to allow amendments, district courts need not 'indulge in futile gestures.'"). The sole basis of QOF's proposed amendment is premised on the theory that because Allsteel did not execute the 2016 Dealer Agreement, it was unenforceable. In making this argument, QOF points to the following provision immediately below the signature lines in the 2016 Dealer Agreement: "*THIS AGREEMENT IS NOT AN OFFER AND* ***WILL NOT BECOME BINDING UPON ALLSTEEL*** *UNLESS AND UNTIL IT IS FULLY EXECUTED BY DEALER AND ALLSTEEL'S VICE PRESIDENT OF SALES BY SIGNING THIS AGREEMENT BELOW.*" 2016 Dealer Agt. 11, Nelson Decl. - Ex. A, ECF No. 13-1 (bold emphasis added).

Under Iowa law,

> [i]n the absence of a statute requiring a signature, such as the statute of frauds, or an agreement that the contract shall not be binding until it is signed[,] signatures of both parties are not essential for establishment of a binding contract if manifestation of mutual expressions of assent is otherwise shown. Even when neither party has signed a contract it still may be binding if there has been mutual assent.

Serv. Emps. Int'l Local No. 55 v. Cedar Rapids Cmty. Sch. Dist., 222 N.W.2d 403, 407 (Iowa 1974) (citations omitted). Iowa law allows parties to include signature requirements in their agreements. However, a plain language reading of the signature provision in the 2016 Dealer Agreement shows that the signatures of both parties were required for the 2016 Dealer Agreement to be enforceable *as against Allsteel*. See Pillsbury Co. v. Wells Dairy, Inc., 752 N.W.2d 430, 439 (Iowa 2008) ("When interpreting a written contract, the court determines the intent of the parties from the plain language of the instrument itself."). QOF admits Baird signed and submitted the 2016 Dealer Agreement. Despite not having signed the agreement, Allsteel, the party purportedly protected from enforcement absent the signatures of both parties, does not contest that the 2016 Dealer Agreement governed the parties' relationship in 2016. The

signature requirement provision did not require Allsteel to provide QOF with an executed copy of the 2016 Dealer Agreement as a condition precedent to the agreement becoming enforceable, and therefore Allsteel's failure to do so did not render the agreement unenforceable. Indeed, QOF's basic contention in this lawsuit is that the parties had been operating under essentially the same terms for 37 years but that during the term of the 2016 Dealer Agreement, QOF performed its obligations but Allsteel failed to fulfill its side of the agreement. The Court finds that QOF's signature on the 2016 Dealer Agreement and its contention that it performed under the agreement together with Allsteel's admission that it entered into the 2016 Dealer Agreement provides ample evidence of the parties' mutual assent to that agreement. Serv. Emps. Int'l, 222 N.W.2d at 407 ("A contract may be formed even without the parties' signatures, so long as the parties manifest mutual assent.").[2]

QOF's contention that the 2016 Dealer Agreement is not enforceable because Allsteel did not sign it would not survive a motion to dismiss under Federal Rule of Procedure 12(b)(6), and therefore the amendment is futile. See Moody v. Vozel, 771 F.3d 1093, 1095-96 (8th Cir. 2014) ("Denial of a motion for leave to amend on the basis of futility means the district court has reached the legal conclusion that the amended complaint could not withstand a motion to dismiss

[2] The Court notes similar results when California contract interpretation and manifestation of mutual assent principles are applied. See, e.g., Barroso v. Ocwen Loan Servicing, LLC, 146 Cal. Rptr. 3d 90, 99 (Cal. Ct. App. 2012) ("A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (citing Cal. Civ. Code § 1643); Stewart v. Preston Pipeline Inc., 36 Cal. Rptr. 3d 901, 919 (Cal. Ct. App. 2005) ("Mutual assent to contract is based upon objective and outward manifestations of the parties; a party's 'subjective intent, or subjective consent, therefore is irrelevant.'" (quoting Beard v. Goodrich, 2 Cal. Rptr. 3d 160, 167 (Cal. Ct. App. 2003)).

under Rule 12(b)(6)." (internal quotation marks omitted) (quoting Zutz v. Nelson, 601 F.3d 842, 850 (8th Cir. 2010)).

For the reasons provided, QOF's motion to amend is denied.

B. Allsteel's Motion to Dismiss Count V

Allsteel argues the Court must dismiss Count V of QOF's complaint, which alleges Allsteel's unfair and fraudulent business practices violated California Business and Professions Code § 17200. Allsteel contends under the enforceable choice of law provision contained in the 2016 Dealer Agreement, Iowa law applies to claims in this case, and therefore QOF cannot maintain Count V, which is a claim under California law.

1. Standard for Motion to Dismiss

To survive a motion to dismiss pursuant to Federal Rule of Procedure 12(b)(6) for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" United States ex rel. Raynor v. Nat'l Rural Utils. Co-op. Fin., Corp., 690 F.3d 951, 955 (8th Cir. 2012) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

The issue raised in Allsteel's Motion to Dismiss is not whether the complaint alleges facts sufficient to state a claim for relief under California's unfair competition law; rather, the issue is whether QOF can maintain any claim under California law. Allsteel argues that the choice of law provision in the 2016 Dealer Agreement bars QOF from bringing a claim under the law of any state but Iowa. In its supplemental brief, QOF argues that the choice of law provision in the

Dealer Agreement does not apply to QOF's § 17200 claim because that claim is not related to the dealer agreement. In the alternative, QOF argues that Iowa choice of law rules support application of California law to QOF's § 17200 claim.

Because this is an action sitting in federal court based on diversity, the choice-of-law principles of the forum state, Iowa, apply to the question of whether QOF may plead a cause of action based on the facts alleged under California's unfair competition statute. See, e.g., George K. Baum & Co. v. Twin City Fire Ins. Co., 760 F.3d 795, 799 (8th Cir. 2014) ("Which state's law applies is a legal question decided by the law of the forum state . . . ." (citing Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496-97 (1941))).

2. Forum Selection and Choice of Law Provisions

In resisting Allsteel's Motion to Dismiss Count V and to Transfer, QOF asserted the forum selection and choice of law provisions in the Dealer Agreement are different and that the choice of law provision does not apply to claims beyond the contract. Accordingly, QOF argues the choice of law provision does not affect QOF's § 17200 claim because it is a California statutory claim arising from unfair, unlawful or fraudulent business practices that is not based upon the 2016 Dealer Agreement, and therefore it is not covered by the choice of law provision.

Although QOF asserts the forum selection and choice of law provisions apply differently, in resisting the enforcement of the forum selection provision before the U.S. District Court for the Central District of California, QOF similarly argued that the forum selection provision did not apply because QOF's claims did not arise out of the 2016 Dealer Agreement. To the extent QOF is rearguing its challenge to the enforceability of the forum selection provision, that argument is rejected. In the order transferring this case from the Honorable David O. Carter, applying federal law as articulated by the Supreme Court in M/S Bremen v. Zapata Off-Shore

Co., 407 U.S. 1 (1972),[3] found the forum selection provision was enforceable. Transfer Order 5, ECF No. 20. In reaching this conclusion, the court reasoned: (1) QOF's assertion that the clause was part of Allsteel's fraud as a whole was insufficient to meet the fraud exception articulated in Bremen, which requires that the allegation of fraud must go to the choice of forum clause specifically and not simply to the contract generally; (2) QOF's assertion that it was a California corporation and narrowly holding on to its business was insufficient to support its allegation that it would be deprived of its day in court by having to litigate the case in Iowa; and (3) QOF failed to meet the heavy burden of showing enforcement of the forum selection provision would contravene the public policy of California, the forum in which the suit was brought. Id. at 5-8. This Court agrees with Judge Carter's reasoning that the allegations in QOF's complaint go to the contract as a whole and his conclusion that the forum selection provision is valid and enforceable. Judge Carter deferred to this Court on the enforceability of the choice of law provision.

The choice of law provision contained in the 2016 Dealer Agreement states: "This Agreement shall be governed by and construed in accordance with the internal laws of the State of Iowa." 2016 Dealer Agt. 5, Nelson Decl. - Ex. A, ECF No. 13-1. QOF's lawsuit against Allsteel is premised on the allegation that Allsteel "abruptly and without warning improperly terminated the business relationship in December 2016 via a telephone call and refused to offer [QOF] *a*

[3] Applying the law of that forum, Judge Carter reasoned that the court must analyze the enforceability of the forum selection provision under federal law as articulated in Bremen, see Doe I v. AOL LLC, 552 F.3d 1077, 1083 (9th Cir. 2009) (per curiam) (citing Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d 509, 513 (9th Cir. 1988)). Courts in the Eighth Circuit apply the same standard, see In re Union Elec. Co., 787 F.3d 903, 905 (8th Cir. 2015) ("[A] district court sitting in diversity jurisdiction and applying federal law must apply the standard articulated in Bremen to the question of whether to enforce a forum selection clause through dismissal." (quoting Union Elec. Co. v. Energy Ins. Mut. Ltd., 689 F.3d 968, 973 (8th Cir. 2012))).

Dealer Agreement for 2017." Compl. at 2, ECF No. 1-1 (emphasis added). Count V, QOF's § 17200 claim, specifically alleges Allsteel violated that statutory provision by misrepresenting that if QOF invested in a new showroom, additional personnel, and in the A&D industry, Allsteel "would renew *its dealer agreement* in 2017 and on an ongoing basis." Id. at 13 (emphasis added). The claim further alleges, among other things, that Allsteel's termination of the dealer agreement interfered with QOF's existing and prospective business relationships and raises antitrust concerns.

Despite QOF's arguments to the contrary, the allegations in its complaint as a whole, and in Count V specifically, demonstrate that QOF's § 17200 claim is based on the 2016 Dealer Agreement. See, e.g., Burns Philp Inc. v. Cox, Kliewer & Co., P.C., No. 4-99-CV-90033, 2000 WL 33361992, at *3 (S.D. Iowa Nov. 2, 2000) (concluding not only the plaintiff's breach of contract claim, but also its tort claims, were governed by the contract's choice of law provision); Nw. Airlines, Inc. v. Astraea Aviation Servs., Inc., 111 F.3d 1386, 1392 (8th Cir. 1997) (reasoning that although defendant's counterclaims for negligent performance, misrepresentation, deceptive trade practices, and unjust enrichment were styled as torts, those claims stemmed from the plaintiff's alleged failures under the contracts and were "closely related to the interpretation of the contracts and f[e]ll within the ambit of the express agreement that the contracts would be governed by Minnesota law," thus the defendant had "consented to the application of Minnesota law to such claims").

3. Conflict of Laws Analysis

QOF alternatively argues that applying Iowa conflict of laws principles requires that the Court apply California law and allow QOF's § 17200 claim.

Where a true conflict exists between the laws of states, see Bacon v. Liberty Mut. Ins. Co., 688 F.3d 362, 366 (8th Cir. 2012), the Court applies Iowa choice of law rules in determining the enforceability of choice of law provision, see John T. Jones Const. Co. v. Hoot Gen. Const. Co., 613 F.3d 778, 782 (8th Cir. 2010) ("[The court] appl[ies] the choice-of-law rules of the forum state in a diversity action."). QOF asserts a fundamental conflict exists because Iowa does not have a cause of action for unfair business practices similar to QOF's § 17200 claim.

"Where an agreement contains a choice-of-law provision, Iowa follows Restatement (Second) of Conflict of Laws section 187." Hussemann ex rel. Ritter v. Hussemann, 847 N.W.2d 219, 222 (Iowa 2014). Restatement (Second) of Conflict of Laws § 187(2), states:

> (2) The law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either
>
> (a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or
>
> (b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

"Iowa courts have adopted the 'most significant relationship' test of the Restatement (Second) of Conflict of Laws § 188 for determination of conflict-of-laws questions pertaining to a contract claim." L & L Builders Co. v. Mayer Associated Servs., Inc., 46 F. Supp. 2d 875, 882 (N.D. Iowa 1999) (applying Iowa Conflict of Law rules); see Hussemann, 847 N.W.2d at 225 (same). "'Significant relationship' is determined by reference to the place of contracting, place of performance, location of the contract's subject matter and the domiciles of the parties." First Midwest Corp. v. Corp. Fin. Assocs., 663 N.W.2d 888, 893 (Iowa 2003) (discussing Restatement (Second) of Conflict of Laws § 188 (1971)).

QOF argues Iowa does not have a significant relationship to the parties or the dispute in this case, noting that QOF is incorporated in California and Allsteel is incorporated in Illinois; the dealer agreement was performed in California not Iowa; and only one of Allsteel's facilities is located in Iowa.

The facts borne out of the record show a different characterization of the parties' relationship to Iowa. Allsteel operates a nationwide business and has dealers and showrooms throughout the country. The corporate headquarters of Allsteel's national operation is, and for over 20 years has been, located in Muscatine, Iowa. Allsteel also has manufacturing, distribution, and showroom facilities in Iowa. Allsteel employs approximately 200 personnel at its Iowa headquarters and approximately 1200 personnel at its Iowa manufacturing and distribution facilities. Therefore, for well over one-half of QOF's 37-year relationship with Allsteel, Allsteel has been headquartered in Iowa. The notice provision contained in the 2016 Dealer Agreement directs all QOF's communication regarding that agreement to Allsteel's headquarters in Muscatine, Iowa. QOF acknowledges its connection with Allsteel's headquarters in relation to its dealer agreement, noting that the annual dealer agreements were electronically sent to Allsteel's headquarters, QOF's orders were electronically sent to Allsteel's headquarters, and QOF receives acknowledgment of its orders from Allsteel's headquarters via email.

Indeed, although QOF is located in California, it was but one of several Allsteel dealers located throughout the country. Throughout QOF's 37-year relationship with Allsteel, Allsteel had a national presence, was not a California corporation, and did not have headquarters nor its principal place of business in California. More importantly, for the last 20 years of its relationship with Allsteel, and specifically when QOF entered into the 2016 Dealer Agreement, Allsteel was headquartered in Iowa and had its manufacturing and distribution centers in Iowa. In its

basic function as an Allsteel dealer, QOF regularly reached into the state of Iowa to fulfill customer orders and to communicate with Allsteel's headquarters. When QOF signed the 2016 Dealer Agreement, it agreed that any disputes arising from that agreement would be governed by the laws of Iowa. The Iowa choice of law provision contained in the 2016 Dealer Agreement was part of Allsteel's consideration in extending QOF a dealer agreement. In addition, given Allsteel's national operation with dealers in several states, the selection of Iowa law for consistent application of its dealer agreements is patently practical and not unreasonable.

At best, QOF's argument shows that the negotiation and enforcement of the 2016 Dealer Agreement occurred equally in both California and Iowa, and therefore the interests of the states are in equipoise. Pursuant to § 187(2)(b), "where neither state has a materially *greater* interest in the controversy than the other, [the] court[] will defer to the parties' choice of law." Baxter Int'l, Inc. v. Morris, 976 F.2d 1189, 1197 (8th Cir. 1992) (emphasis added) (applying the § 187(b)(2) principles to the conflict of laws issue and holding the Illinois choice of law provision in the contract applied because California did not have a materially greater interest in the effect of the contract provision at issue, which the district court failed to consider, and therefore erred in finding California law applied); see Hussemann, 847 N.W.2d at 225 (applying the balancing approach of § 187(2)(b) in determining whether the parties' chosen law, Florida, would apply in the absence of the choice of law provision, the Iowa Supreme Court reasoned that it "need only conclude that Iowa *does not have* a 'materially greater interest' than Florida in the present dispute" (emphasis added) (citing Restatement (Second) of Conflict of Laws § 187, cmt. g)).

Nor does QOF's argument that the application of Iowa law precludes its claim for unfair and fraudulent business practice compel the application of California law. "The forum will not refrain from applying the chosen law merely because this would lead to a different result than

would be obtained under the local law of the state of the otherwise applicable law." Restatement (Second) of Conflict of Laws § 187 (1971); see Hussemann, 847 N.W.2d at 228, 224 (giving effect to the Florida choice of law provision in the parties' post-nuptial agreement reasoning "quantity and quality of Florida contacts result in a situation where Iowa does not have a materially greater interest in the property allocation than Florida," despite the fact that Iowa does not recognize post-nuptial agreements, whereas the application of Florida law resulted in the enforceability of the post-nuptial agreement, containing a spousal election waiver).[4]

Given that "[t]he general rule is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts," McKeage v. TMBC, LLC, 847 F.3d 992, 1002 (8th Cir. 2017) (quoting Twin City Pipe Line Co. v. Harding Glass Co., 283 U.S. 353, 356 (1931)), reh'g denied (Oct. 4, 2017), cert. denied, 138 S. Ct. 2026 (2018), the Court finds the choice of law provision contained in the 2016 Dealer Agreement to be valid and enforceable. The Court further finds that Count V, which alleges violation of California Business & Professional Code § 17200, falls within the 2016

[4] QOF asserts that Iowa courts also recognize the importance of protecting its citizens in transactions occurring in Iowa citing American Express Financial Advisors, Inc. v. Yantis, 358 F. Supp. 2d 818, 827 (N.D. Iowa 2005). QOF argues that in Yantis the court found Iowa public policy prohibited the application of Minnesota law to the claims in that case despite the Minnesota choice of law provision contained in the franchise agreement at issue in the dispute. QOF asserts this Court should similarly respect California's public policy of protecting its citizens and apply California law so QOF can maintain its § 17200 claim.

The Yantis court did not premise the application of Iowa law on a public policy argument; rather, that court reasoned the Iowa Franchise Act, Iowa Code § 523H et seq., which applied to any franchise, including the defendant's, that was physically located in Iowa, voided any choice of law provision in the franchise agreement. Id. at 827; see Iowa Code § 523H.14 ("A condition, stipulation, or provision requiring the application of the law of another state in lieu of this chapter is void."). QOF does not argue, nor does the Court find, that § 17200 operates to void a choice of law provision in parties' business agreements.

Dealer Agreement and is therefore subject to the choice of law provision. Because Iowa law applies to this dispute, Count V cannot be maintained and must be dismissed.

III. CONCLUSION

For the reasons provided, QOF's motion to amend, ECF No. 62, is **denied**. Allsteel's Motion to Strike, ECF No. 61, is **denied as moot**. Allsteel's Motion to Dismiss Count V, ECF No. 12, is **granted**.

IT IS SO ORDERED.

Dated this 11th day of September, 2018.

JAMES E. GRITZNER, Senior Judge
U.S. DISTRICT COURT

Griffin, Terry L.

From: cmecf_iasd@iasd.uscourts.gov
Sent: Tuesday, September 11, 2018 8:22 AM
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U.S. District Court

Southern District of Iowa

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Case Name: Quality Office Furnishings, Inc. v. Allsteel, Inc et al
Case Number: 3:17-cv-00041-JEG-HCA
Filer:
Document Number: 81

Docket Text:
ORDER denying [62] Quality Office Furnishings' motion to amend; denying as moot [61] Allsteel's motion to strike; and granting [12] Allsteel's motion to dismiss Count V. *See order for particulars.* Signed by Senior Judge James E. Gritzner on 9/11/2018. (nlh)

3:17-cv-00041-JEG-HCA Notice has been electronically mailed to:

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