(NOTE: The status of this decision is **Unpublished**.)

NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-0

TONERIZE, L.L.C. and

INSTA IMAGING, L.L.C.,

Plaintiffs-Appellants,

v.

PLR IP HOLDINGS, L.L.C.

and SCOTT W. HARDY,

Defendants-Respondents.

February 2, 2015

Submitted November 19, 2014 – Decided

Before Judges Ashrafi and O'Connor.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-1265-13.

Zimmerman, Weisner & Paray, L.L.P., attorneys for appellants (Paul E. Paray, on the brief).

Saiber, L.L.C., and Kevin C. May (Neal, Gerber & Eisenberg, L.L.P.) of the Illinois bar, admitted pro hac vice, attorneys for respondents (Arnold B. Calmann and Mr. May, on the brief).

PER CURIAM

Plaintiffs Tonerize, L.L.C. (Tonerize) and Insta Imaging, L.L.C. (Insta) appeal from an order entered September 13, 2013, granting a motion filed by defendants PLR IP Holdings, L.L.C. (PLR) and Scott Hardy to dismiss their amended complaint, as well as from an order entered October 25, 2013, denying plaintiffs' motion for reconsideration of the September 13, 2013 order. In their amended complaint plaintiffs alleged, among other things, that defendants fraudulently induced Tonerize to enter into a license agreement[1] with PLR. The trial court dismissed the amended complaint with prejudice because a forum selection clause contained in that agreement provided that any dispute related to the agreement be litigated in Minnesota. We affirm.

I

PLR owns and licenses the use of the POLAROID trademark. Defendant Hardy is PLR's president. In 2011, Tonerize, an online distributor of toner and ink cartridges, entered into an agreement with PLR that gave Tonerize the right to use the POLAROID mark in connection with the sale of its products. Hardy signed the agreement on PLR's behalf.

The agreement contains a forum selection clause that requires any dispute related to the agreement or to its breach be litigated in Minnesota. The clause states:

> Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Minnesota applicable to contracts made and to be performed wholly therein, but without regard to the conflict of law provisions thereof. Courts located in the State of Minnesota shall have exclusive jurisdiction of any dispute related to this Agreement or the breach thereof, and the Parties agree to the personal jurisdiction and venue of such courts.
>
> [(Emphasis added).]

On June 10, 2013, plaintiffs filed an amended complaint alleging, among other things, that defendants fraudulently induced Tonerize to execute and, subsequently, Insta to assume the agreement, causing both to sustain damages. On August 15, 2013, defendants filed a motion to dismiss the amended complaint. One of the grounds they asserted was that the forum selection clause in the agreement required that the matter be litigated by a Minnesota court. The trial court agreed and, on September 13, 2013, granted the motion and dismissed the amended complaint with prejudice. On October 25, 2013, the trial court denied plaintiffs' motion for reconsideration.

II

Forum selection clauses are prima facie valid and enforceable in New Jersey, Caspi v. Microsoft Network, 323 N.J. Super. 118, 122 (App. Div.), certif. denied, 162 N.J. 199 (1999), unless the clause "is the result of fraud, undue influence, or overweening bargaining power, is unreasonable, or violates a strong public policy." Paradise Enterprises, Ltd. v. Sapir, 356 N.J. Super. 96, 103 (App. Div. 2002) (quoting M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10-15, 92 S. Ct. 1907, 1913-16, 32 L. Ed.2d 513, 520-23 (1972)) (internal quotations marks omitted). Therefore, a forum selection clause shall be enforced unless "the party objecting thereto demonstrates (1) the clause is a result of fraud or overweening bargaining power, or (2) enforcement in a foreign forum would violate strong public policy of the local forum, or (3) enforcement would be seriously inconvenient for the trial." Wilfred MacDonald Inc. v. Cushman, Inc., 256 N.J. Super. 58, 63-64 (App. Div.) (internal citations omitted), certif. denied, 130 N.J. 17 (1992).

Here, plaintiffs have the burden of "show[ing] that the clause in question fits within one of these exceptions," see Caspi, supra, 323 N.J. Super. at 122, but they failed to show --or even assert -- that any of these exceptions apply. Plaintiffs do argue that because the agreement itself was procured by fraud, then the forum selection clause subsumed within also must be deemed to be the product of fraud; however, plaintiffs cite no authority that supports their premise.

Moreover, in Van Syoc v. Walter, 259 N.J. Super. 337, 339 (App. Div. 1992), certif. denied, 133 N.J. 430 (1993), we enforced a forum selection clause that compelled arbitration in a matter where a party asserted a fraudulent inducement claim. We stated: "It is not whether the contract can be attacked -- but the forum in which the attack is to take place. Unless the arbitration provision itself was a product of fraud, the election should be enforced. Here, clearly there is no allegation the arbitration clause was fraudulently induced." Id. at 339-40; see also MoneyGram Payment Sys. v. Consorcio Oriental S.A., 65 Fed. App'x 844, 847 (3d Cir. 2003)

("[M]ere allegation of fraudulent conduct does not suspend operation of a forum selection clause."); Nat'l Micrographics Sys., Inc. v. Canon U.S.A., Inc., 825 F. Supp. 671, 675 (D.N.J. 1993) (finding that allegations of fraud do not invalidate a forum selection clause absent proof that "the inclusion of that clause in the contract was the product of fraud or coercion" (emphasis omitted) (internal quotation omitted)).

Plaintiffs cite Kubis & Perszyk Assocs. v. Sun Microsystems, 146 N.J. 176 (1996), a case in which our Supreme Court rejected the enforceability of a forum selection clause in a franchise agreement, but Kubis is distinguishable. In that case, the Court held that forum selection clauses in contracts subject to the Franchise Act, N.J.S.A. 56:10-1 to -31, are presumptively invalid because such clauses "conflict with the basic legislative objective of protecting franchisees from the superior bargaining power of franchisors and providing swift and effective judicial relief against franchisors that violate the Act." Id. at 192-93. The holding is limited to forum selection clauses within franchise agreements and thus has no application here. Accordingly, because there is no assertion that the forum selection clause itself was procured by fraud, we have no basis to conclude the clause is unenforceable.

Plaintiffs also argue the forum selection clause pertains only to actions related to breach of contract and that, because their claim for fraudulent inducement is a tort, it falls outside the scope of the clause. We disagree. The terms of the forum selection clause state that Minnesota courts shall have exclusive jurisdiction to hear any dispute related to the agreement or its breach. There is no indication the parties intended to exclude tort claims from the operation of the clause or limit the clause to causes of action related to contract disputes. The clause plainly states that any dispute related to the agreement shall be handled by Minnesota courts. The assertion that plaintiffs were induced to enter into the contract is a dispute that relates to the agreement.

After carefully considering the record and the briefs, we conclude plaintiffs' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

1 The agreement was later assigned to Insta.
