

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACUITY BRANDS LIGHTING, INC.

Plaintiff,

v.

No. 1:21-cv-01586-SB

TIMOTHY SMITRESKI;
DIVERSIFIED NJ, INC.;
12C SYNERGY, INC.

Defendants.

Andrew Lynch Cole, COLE SCHOTZ P.C., Wilmington, Delaware; Ivan R. Novich,
Tyler A. Sims, LITTLER MENDELSON P.C., Newark, New Jersey.

Counsel for Plaintiff.

Margaret M. DiBianca, CLARK HILL PLC, Wilmington, Delaware.

Counsel for Defendant Timothy Smitreski.

David Phillip Primack, MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP,
Wilmington, Delaware; Eric J. Schreiner, Lorena E. Ahumada, KLEINBARD LLC,
Philadelphia, Pennsylvania.

Counsel for Defendants Diversified NJ, Inc. & 12C Synergy, Inc.

MEMORANDUM OPINION

April 28, 2022

BIBAS, *Circuit Judge*, sitting by designation.

Parties are bound by the words of their agreements; they cannot inject new meanings later. Yet Acuity Brands Lighting tries to do just that. It recognizes that defendants must litigate in a court they agreed to in a forum-selection clause. And it asks me to remand to Delaware’s Chancery Court. But the forum-selection clause does not mention the Chancery Court, so I will not remand this case there.

Timothy Smitreski used to work for Acuity. Compl., D.I. 1-1 ¶¶ 1–2. Financed by Acuity, he wined and dined its clients. *Id.* ¶¶ 29–34. Acuity worried that Smitreski could steal those clients if he left. *Id.* ¶ 43. So it made him sign a noncompete agreement. *Id.* ¶ 43. Smitreski promised not to deal with Acuity clients for two years after he left the company. *Id.* ¶ 49.

But Acuity suspects he broke that promise. It accuses Smitreski of poaching its customers as soon as he left to work for its competitor, Diversified NJ, Inc. *Id.* ¶¶ 66–77. So Acuity sued both Smitreski and Diversified in Delaware Chancery Court, seeking an injunction against Smitreski’s overtures and damages to compensate for lost business. *Id.* at 35–37. With Smitreski’s consent, Diversified immediately removed to federal court. D.I. 1; D.I. 1-4.

Now Acuity asks me to remand back to Chancery Court. D.I. 10. It says Smitreski could not have consented to removal because he was bound by a forum-selection clause in his noncompete. D.I. 11, at 6, 10; *see* D.I. 12-1, at 60; 28 U.S.C. §1446(b)(2)(A). The forum-selection clause provides that all disputes would be brought either “in the U.S. District Court for the District of Delaware or the Delaware

Superior Court.” D.I. 12-1, at 60. By signing that noncompete, Acuity says, Smitreski had “agreed to go to, *and stay in*, the forum chosen by [Acuity].” *Foster v. Chesapeake Ins. Co.*, 933 F.2d 1207, 1217 (3d Cir. 1991) (holding that agreeing to litigate in a forum might implicitly waive the right to remove).

There is one problem with Acuity’s argument: Smitreski did *not* agree to litigate in Delaware Chancery Court. The only state court that the forum-selection clause mentioned was “the Delaware Superior Court.” D.I. 12-1, at 60. The “plain and ordinary meaning” of “Superior Court” is “Superior Court,” not “Chancery Court” or “any state court.” *New Jersey v. Merrill Lynch & Co., Inc.*, 640 F.3d 545, 548 (3d Cir. 2011). So the text does not mandate remand to the Chancery Court.

Acuity responds that by “Superior Court” they “intended to ... refer[] to [Delaware courts] more generally.” D.I. 11, at 2 n.1. It says the clause contemplates suits for injunctive relief. And it stresses that those suits must be brought in Chancery Court. *See* Del. Code tit. 10, § 341.

Maybe. Or maybe not. The parties may have expected requests for injunctions to end up in federal court. D.I. 12-1, at 60. Or they may have planned to ask Delaware’s Supreme Court to appoint a Superior Court judge to sit in equity. Del. Const. art. IV, § 13; *see, e.g., AT&T Wireless Servs., Inc. v. Fed. Ins. Co.*, 2005 WL 2155695, at *4 (Del. Sup. Ct. Aug. 18, 2005) (noting that a Superior Court judge can sit as both a Superior and Chancery judge). Thus, there is no need for me to write “Chancery Court” into the clause.

Acuity also points out that I should not determine which state court—Superior or Chancery—would have jurisdiction over this case. D.I. 20, at 6–7. Fair enough. But reading the words of a forum-selection clause hardly requires me to opine on Delaware jurisdictional rules. So I need not worry about running into this trap.

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Because the plain text of the forum-selection clause does not force Smitreski to litigate in Chancery Court, he could consent to removal to this Court. So I will not remand.

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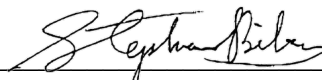
TIMOTHY SMITRESKI;
DIVERSIFIED NJ, INC.;
12C SYNERGY, INC.

Defendants.

ORDER

I **DENY** Plaintiff's Motion to Remand [D.I. 10].

Dated: April 28, 2022



UNITED STATES CIRCUIT JUDGE