

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS-12318

VALUE HEALTH SOLUTIONS
INC. and NEIL RAJA,

Plaintiffs,

v.

PHARMACEUTICAL
RESEARCH ASSOCIATES, INC.
and PRA HEALTH SCIENCES,
INC.,

Defendants.

**ORDER ON DEFENDANTS' MOTION
TO APPLY DELAWARE LAW
PURSUANT TO THE ASSET
PURCHASE AGREEMENT AND TO
ENFORCE CONTRACTUAL JURY
TRIAL WAIVER**

1. **THIS MATTER** is before the Court on Defendants Pharmaceutical Research Associates, Inc. ("PRA") and PRA Health Sciences, Inc.'s (collectively, "Defendants") Motion to Apply Delaware Law Pursuant to the Asset Purchase Agreement and to Enforce Contractual Jury Trial Waiver ("Motion," ECF No. 183).

2. The Court, having considered the Motion, the briefs and submissions of the parties, the arguments of counsel, the applicable law, and all appropriate matters of record, concludes that the Motion should be denied.

INTRODUCTION

3. In this Motion, the Court must decide whether a provision in a contract between the parties in this case waiving the right to a jury trial is enforceable. Defendants say yes and Plaintiffs say no.

4. Although our General Assembly has declared that such contractual jury trial waivers violate North Carolina public policy, Defendants argue that this

statutory prohibition does not apply here because the contract provides that the law of Delaware (which, unlike North Carolina, permits contractual jury trial waivers) shall apply to disputes between the parties. For the reasons set out below, the Court concludes that the waiver provision at issue is unenforceable.

FACTUAL AND PROCEDURAL BACKGROUND

5. This lawsuit involves a dispute between the parties in connection with PRA's acquisition of Value Health Solutions ("VHS") and its proprietary software (the "Software"). The Plaintiffs in this action are VHS and its founder, Neil Raja. *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 2021 NCBC LEXIS 37, at *2–4 (N.C. Super. Ct. Apr. 5, 2021).

6. Plaintiffs filed their original Complaint on 5 October 2018. (ECF No. 5.) Since then, this case has followed a lengthy and procedurally complicated path, the bulk of which is irrelevant to the present Motion and is not repeated herein. A more thorough summary of the factual and procedural history of this case can be found in prior opinions of this Court and the North Carolina Supreme Court. *See, e.g., Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 385 N.C. 250 (2023); *Value Health Sols., Inc. v. Pharm. Rsch. Assocs.*, 2020 NCBC LEXIS 65 (N.C. Super. Ct. May 22, 2020); *Value Health Sols.*, 2021 NCBC LEXIS 37.

7. On 22 May 2020 and 5 April 2021, the Court entered Orders dismissing certain claims asserted by Plaintiffs and ultimately granting summary judgment as to all of Plaintiffs' remaining claims. *See Value Health Sols.*, 2020 NCBC LEXIS 65, at *37–39; *Value Health Sols.*, 2021 NCBC LEXIS 37, at *83–84.

8. On 22 October 2021, Plaintiffs appealed this Court’s rulings to the North Carolina Supreme Court. (ECF No. 153.)

9. On 1 September 2023, the Supreme Court affirmed all but one of this Court’s rulings. Specifically, the Supreme Court reversed this Court’s entry of summary judgment against Plaintiffs on the issue of PRA’s alleged breaches of Sections 2.6(a)(iv)–(vii) and 2.6(b) of the parties’ Asset Purchase Agreement (“APA,” ECF No. 201.1) (the “Remanded Claim”) and remanded that claim for trial. *See Value Health Sols.*, 385 N.C. at 282–83.

10. The APA memorialized the terms of VHS’s sale of its Software to PRA and is the key document governing the Remanded Claim.

11. The two sections of the APA that are relevant to the present Motion are Sections 8.7 and 8.10.

12. Section 8.7 of the APA states:

Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware without giving effect to the principles of conflicts of law thereof. Each of the parties to this Agreement consents to the exclusive jurisdiction and venue of the courts of the state and federal courts of the state of Delaware as to any disputes or claims under this Agreement.

(APA § 8.7.)¹

13. Section 8.10, in turn, provides as follows:

Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED

¹ Although, as quoted above, Section 8.7 also contains a forum selection clause stating that any lawsuits arising out of the APA would be filed in the courts of Delaware, the parties have waived that provision by agreeing to litigate this case in North Carolina.

HEREBY AND AGREES TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO EFFECT SUCH WAIVER.

(APA § 8.10.)

14. On 15 July 2024, Defendants filed the present Motion, which seeks a determination from the Court as to whether Plaintiffs' demand for a jury trial in this lawsuit is invalid based on Section 8.10 of the APA.

15. A hearing on the Motion was held on 30 September 2024 via Webex at which all parties were represented by counsel. The Motion has been fully briefed and is now ripe for resolution.

ANALYSIS

16. As an initial matter, the parties agree that Delaware law governs any *substantive* issues arising under the APA pursuant to Section 8.7. Accordingly, the only issue currently before the Court concerns the enforceability of the waiver of jury trial provision in Section 8.10 of the APA.

17. Under North Carolina law, such provisions are clearly unenforceable. N.C.G.S. § 22B-10 states as follows:

Any provision in a contract requiring a party to the contract to waive his right to a jury trial is unconscionable as a matter of law and the provision shall be unenforceable. This section does not prohibit parties from entering into agreements to arbitrate or engage in other forms of alternative dispute resolution.

N.C.G.S. § 22B-10.

18. In a nutshell, Defendants' Motion employs the following reasoning: (1) Section 8.7 of the APA provides that the APA shall be governed by Delaware law (not North Carolina law); (2) contractual jury trial waivers are enforceable under

Delaware law; and (3) therefore, Plaintiffs should be precluded from exercising any otherwise existing right to a jury trial that may exist as to the Remanded Claim based on Section 8.10.

19. Plaintiffs, conversely, argue that North Carolina's Constitution, statutes, and case law all protect a party's right to a jury trial "in the strongest of terms[,] and that the right to a jury trial is a "fundamental, procedural right governed solely by forum law in North Carolina courts." (Pls.' Br. Op. Defs.' Mot. "Apply Del. L." Preclude Right Jury Trial ("Pls.' Resp. Br."), ECF No. 193, at 1.) Furthermore, Plaintiffs argue that contractual jury trial waivers offend North Carolina's "settled public policy[," which deems them "unconscionable" and "unenforceable." (Pls.' Resp. Br., at 2, 8 (quoting N.C.G.S. § 22B-10).) Alternatively, Plaintiffs contend that Defendants have waived their right to enforce Section 8.10 of the APA because Defendants also demanded a jury trial in several of their past pleadings in this litigation. (Pls.' Resp. Br., at 9–12.)

20. Having carefully considered the parties' respective arguments, the Court concludes that Plaintiffs are entitled to a jury trial in this action.

21. First, despite the terms of Section 8.7 of the APA, the Court finds that a party's right to a jury trial is a *procedural* right (as opposed to a *substantive* right) and—accordingly—is governed by North Carolina law.

22. In reaching this conclusion, the Court is guided by the principles articulated by our Supreme Court in *Boudreau v. Baughman*, 322 N.C. 331 (1988). In *Boudreau*, the plaintiff sued a North Carolina-based company in North Carolina

state court after sustaining injuries from the company's product in Florida. *Boudreau*, 322 N.C. at 333. On appeal, our Supreme Court addressed the question of whether North Carolina's choice of law rules mandated the application of North Carolina's statute of repose (under which the plaintiff's products liability claims would have been time-barred) or Florida's statute of repose (under which said claims would have been timely). *Id.* at 333–34.

23. In deciding this issue, the Supreme Court applied North Carolina's general conflicts of laws rule that “matters affecting the substantial rights of the parties are determined by *lex loci*, the law of the situs of the claim, and remedial or procedural rights are determined by *lex fori*, the law of the forum.” *Id.* at 335.²

24. Accordingly, based on the above-quoted rule, the Court must determine whether the right to a jury trial is properly classified as procedural or substantive.

25. Although North Carolina's appellate courts have not had occasion to expressly address this issue, numerous courts across the country have held that this right is procedural in nature. *See, e.g., JTH Tax LLC v. CMB Tax Serv., LLC*, No. 4:21-cv-00022-M, 2022 U.S. Dist. LEXIS 39815, at *40 (E.D.N.C. Mar. 4, 2022) (“Federal courts have held that the right to a jury trial is procedural[.]”); *see also United States v. Lemaster*, 403 F.3d 216, 220 (4th Cir. 2005) (“[J]ust as criminal defendants may waive constitutional procedural rights, *such as the right to a jury trial*, so, too, they may waive statutory procedural rights[.]” (emphasis added)); *Cnty.*

² After determining that the substantive elements of the plaintiff's claims were governed by Florida law, the Supreme Court ultimately concluded that statutes of repose should be treated as substantive in nature. *Boudreau*, 322 N.C. at 339, 341.

of Orange v. United States Dist. Court, 784 F.3d 520, 530–31 (9th Cir. 2015) (“[F]ederal procedural law governs the validity of a pre-dispute jury trial waiver in federal court. . . . [This] also fits with our general understanding of the jury trial right as a procedural right that guarantees a particular *mode* of enforcing certain substantive rights.”); *Commonwealth v. McMullen*, 599 Pa. 435, 446, 961 A.2d 842, 848 (Pa. 2008) (“[A] right to a jury trial is a procedural right.”); *State v. Branch Banking & Tr. Co.*, 2015 S.C. C.P. LEXIS 19, at *5–6 (Feb. 9, 2015) (“[T]he general rule seems to be that the right to a jury trial, while a substantial right, is a procedural right.”); *Jones Motor Co. v. Holtkamp, Liese, Beckemeier & Childress, P.C.*, 197 F.3d 1190, 1192–93 (7th Cir. 1999) (finding loss of right to jury trial amounted to loss of “procedural advantage” that “was not essential to the protection of the client’s substantive rights”).

26. The Court finds that these cases are well reasoned and consistent with North Carolina law.

27. Therefore, based upon the conflict of laws principles articulated by our Supreme Court in *Boudreau*, the Court finds that North Carolina law—rather than Delaware law—is controlling on the issue of whether Section 8.10 of the APA serves to prevent Plaintiffs from exercising the right they would otherwise possess to have a jury trial in this matter. Pursuant to N.C.G.S. § 22B-10, the clear answer to that question is that Section 8.10 is unenforceable and thus does not serve as such a bar.

28. Second, even if Section 8.7 of the APA were somehow deemed to be enforceable, the Court finds that Defendants have waived their right to do so.

29. Plaintiffs requested a jury trial in their original Complaint back in 2018. (See ECF No. 5, at 31.) Over the ensuing five years, Defendants have never moved to strike Plaintiffs' jury demand.

30. Furthermore, Defendants *themselves* requested a jury trial in their first two responsive pleadings. Indeed, in Defendants' 21 December 2018 Answer, Affirmative Defenses, and Counterclaims, PRA explicitly demanded "a trial by jury on *all issues* presented [t]herein." ("Answer," ECF No. 8, at 30 (emphasis added).) Likewise, Defendants' 26 March 2019 Amended Answer, Affirmative Defenses, and Counterclaims retained the exact same demand for a "trial by jury on *all issues* presented [t]herein." ("Amended Answer," ECF No. 37, at 36 (emphasis added).)

31. Defendants contend that their requests for a jury trial in these two pleadings should be deemed to have been withdrawn because the amended answers and counterclaims that they subsequently filed did not similarly contain requests for a jury trial and instead contained affirmative defenses referencing Section 8.7. (See ECF No. 76, at 1–2.)

32. However, this argument is inconsistent with Rules 38 and 39 of the North Carolina Rules of Civil Procedure.

33. Rule 39(a) provides, in relevant part, that "[w]hen trial by jury has been demanded and has not been withdrawn as provided in Rule 38, the action shall be designated upon the docket as a jury action." N.C. R. Civ. P. 39(a).

34. Rule 38(d) states that “[a] demand for trial by jury as herein provided may not be withdrawn without the consent of the parties who have pleaded or otherwise appear in the action.” N.C. R. Civ. P. 38(d).

35. In applying these Rules, our Court of Appeals has held that

[w]hen trial by jury has been demanded and has not been withdrawn as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial shall be by jury for all triable issues in which it has been demanded unless the parties, by stipulation, consent to a trial without a jury or the court finds that there is no constitutional or statutory right to a trial by jury.

In this case, each party to the suit demanded a jury trial pursuant to Rule 38(b), and their right was not withdrawn at any point in the action under Rule 38(d). Therefore, the action should have been designated upon the docket as a jury action on these triable issues pursuant to Rule 39(a).

Woody v. Vickrey, 276 N.C. App. 427, 438 (2021) (internal citation omitted).

36. Here, Plaintiffs never consented to any such withdrawal of Defendants’ two original jury trial demands. Moreover, as counsel for Defendants conceded at the 30 September hearing, Defendants have never sought to have Plaintiffs’ demand for a jury trial stricken.

37. Accordingly, for both of these reasons, Defendants’ arguments lack merit.

CONCLUSION

38. For the reasons discussed herein, the Court concludes that Plaintiffs are entitled to a jury trial on the Remanded Claim. Accordingly, Defendants’ Motion is **DENIED**.

SO ORDERED, this the 6th day of November, 2024.

/s/ Mark A. Davis _____

Mark A. Davis

Special Superior Court Judge
for Complex Business Cases