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

FILED
DES MOINES, IOWA
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF

MIDWEST OIL SEEDS, INC.,	*	
	*	4-00-CV-90695
Plaintiff,	*	
	*	
v.	*	
	*	
LIMAGRAIN GENETICS CORPORATION, f/k/a CALLAHAN ENTERPRISES, INC.,	*	MEMORANDUM OPINION AND ORDER
Defendant.	*	

This matter is before the Court on Midwest Oil Seeds, Inc.'s ("Midwest") Motion to Remand. On November 29, 2000, Midwest filed a claim against Limagrain Genetics Corporation ("Limagrain") in the Dallas County District Court, Dallas County, State of Iowa for breach of contract and breach of a warranty and purchase agreement provision contained in a contract between the parties. Limagrain removed the action to this Court on December 20, 2000. And on January 4, 2001, Midwest filed this Motion to Remand. Midwest contends that there is a forum selection clause in its contract with Limagrain that precludes Limagrain from removing this action to federal court. Limagrain, on the other hand, contends that the forum selection clause does not preclude removal because the clause merely permits Midwest to maintain an action against it in Dallas County rather than mandates that Dallas County is the only place Midwest can maintain an action against it. The Court agrees with Limagrain and denies Midwest's motion.

The sole issue then is whether the forum selection clause in the contract between Midwest and Limagrain precludes Limagrain from removing Midwest's lawsuit to this Court.

Notes to Counsel FEB 15 2001

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The language of the forum selection clause must be mandatory in order to preclude Limagrain from removing the claim to this Court. *See Docksider, Ltd. v. Sea Tech., Ltd.*, 875 F.2d 762, 764 (9th Cir. 1989); *Seward v. Devine*, 888 F.2d 957, 962 (2d Cir. 1989); *Sterling Forest Assoc., Ltd. v. Barnett-Range Corp.*, 840 F.2d 249, 251-52 (4th Cir. 1988); *Utah Pizza Serv., Inc. v. Heigel*, 784 F.Supp. 835, 837-38 (D. Utah 1992). For a forum selection clause to be mandatory, the clause must contain language that clearly designates one forum that is to be the exclusive forum. *Northern Cal. Dist. Council of Laborers, v. Pittsburgh-Des Moines Steel Co.,* 69 F.3d 1034 (9th Cir. 1995); *see also SBKC Serv. Corp. v. 1111 Prospect Partners, L.P.,* 105 F.3d 578, 582 (10th Cir. 1997) (stating that a forum selection clause should be applied only to agreements which clearly confine litigation to specific tribunals to the exclusion of all others); *John Boutari & Son, Wines & Spirits, S.A., v. Attiki Importers and Distrib. Inc.*, 22 F.3d 51, 52 (2d Cir. 1994) (stating that the district court is not precluded from exercising jurisdiction because the forum selection clause allowing jurisdiction in Greek courts did not specifically exclude jurisdiction in other courts); *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75, 77 (9th Cir. 1987) (stating that the forum selection clause that says nothing about courts having exclusive jurisdiction was permissive rather than mandatory); *Utah*, 784 F.Supp. at 837 (finding the forum selection clause to be permissive because nothing in the clause indicated an intent to prohibit litigation elsewhere); *Thompson v. Founders Group Int'l, Inc.*, 886 P.2d 904, 905 (Kan. Ct. App. 1994) (stating that forum selection clauses which give a court jurisdiction without clearly making it exclusive are permissive rather than mandatory).

The forum selection clause in Midwest and Limagrain's contract is not mandatory. The forum selection clause reads, "Purchaser agrees that supplier may bring an action in Dallas

County, Iowa to recover damages as a result of the breach of this Agreement . . . ."[1] Nothing in this language connotes that Dallas County was intended to be the exclusive forum. For example, in *Hunt*, the forum selection clause provided, "The courts of California, County of Orange, shall have jurisdiction over the parties in any action at law relating to the subject matter or the interpretation of this contract." 817 F.2d at 76. The Ninth Circuit held that the word "shall" mandated nothing more than that the named court has jurisdiction; not that the same subject matter could not be litigated in any other court. *Id.* at 76-77. In other words, the forum selection clause was permissive rather than mandatory, therefore, the parties were not forced to litigate only in the forum identified in the clause. And in *SBKC*, the Tenth Circuit dealt with a clause that stated, "[A]n action may be maintained in the State of Kansas and the County of Wyandotte for the purposes of collecting . . . a deficiency." 105 F.3d at 582. Parsing the clause, the court stated that "may" is a word universally recognized as connoting permissiveness and is not a word of exclusion. *Id.* at 581-82. The court held that the clause was permissive and granted the right to removal. Like the language dealt with in *Hunt* and *SBKC*, the language at issue here is permissive. The plain meaning is that the Dallas County court *may* have jurisdiction over actions–the language says nothing to the effect that the Dallas County court is the only court with jurisdiction. (Emphasis added). Since the language in the forum selection clause is permissive, it does not preclude Limagrain from removing Midwest's lawsuit to this Court. Midwest's Motion to Remand (Clerk's No. 5) is denied.

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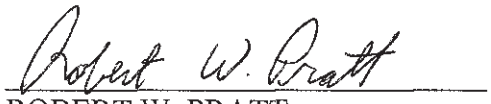
[1]Contract between Midwest Oilseed, Inc. and Limagrain Genetics Corp. at 6.

IT IS SO ORDERED.

Dated this 14th day of February, 2001.



ROBERT W. PRATT
U.S. DISTRICT JUDGE