

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09-CVS-16393

KLATMW, INC. formerly known as Electronic Systems Protection, Inc. and successor in interest to Power Quality Innovations, Inc., KLATMW INTERNATIONAL, formerly known as ESP International, KIM ALFREDS, and TOM WEICKARDT,

Plaintiffs,

v.

ELECTRONIC SYSTEMS PROTECTION,
INC., a Delaware Corporation,

Defendant.

COURT ORDER

THIS MATTER comes before the Court on Plaintiffs' Motion to Amend and Plaintiffs' Motion for Partial Summary Judgment. Having considered the arguments presented by counsel, the Court hereby ORDERS the following:

Plaintiffs' Motion to Amend is GRANTED in part. Plaintiffs may amend their Complaint to assert the following claims against Gridiron Capital, LLC: (1) inducing or aiding and abetting a breach of fiduciary duty and (2) fraud. However, if Plaintiffs decide to assert such claims against Gridiron Capital, LLC, then the Court will require them to join Stephen Cole as a Defendant on those claims. Plaintiffs' Motion to Amend is DENIED with respect to any claims brought against Thomas A. Burger or Geoffrey Spillane.

Plaintiffs' Motion for Partial Summary Judgment is DENIED. North Carolina courts hold, as a general rule, that "where parties to a contract have agreed that a given jurisdiction's substantive law shall govern the interpretation of the contract, such a contractual provision will be given effect." *Tanglewood Land Co. v. Byrd*, 299 N.C. 260, 262, 261 S.E.2d 655, 656 (1980). In this case, the contracting parties specifically negotiated for and agreed upon the choice of law provision that they included in their contract. That provision provided that "the rights of the parties and all Actions . . . will be governed by and construed in accordance with the domestic substantive laws of the State of New York." (Pls.' Mem. at 2.) This Court will honor that

provision, and the unambiguous intent of the parties, and apply New York law to the contract. The parties agreed upon the choice of law before negotiating the terms of the final agreement, thus creating potential prejudice to a party relying on that choice in drafting the final agreement.

This Court recognizes that “under certain circumstances, North Carolina courts will not honor a choice of law provision.” *Cable Tel Servs., Inc. v. Overland Contracting, Inc.*, 154 N.C. App. 639, 642, 574 S.E.2d 31, 33 (2002). For example, a court may decide to ignore a choice of law provision if “the chosen state has no substantial relationship to the parties or the transaction *and* there is no other reasonable basis for the parties’ choice.” *Id.* at 643, 574 S.E.2d at 33–34 (citations omitted) (emphasis added). However, typically “[c]ontracts are entered into for serious purposes and rarely, if ever, will the parties choose a law without good reason for doing so.” Restatement (Second) of Conflict of Laws § 187 cmt. f (1971).

IT IS SO ORDERED, this 11th day of August, 2010.

/s/ Ben F. Tennille
The Honorable Ben F. Tennille
Chief Special Superior Court Judge
for Complex Business Case