

Scarselli v Moas

2017 NY Slip Op 32109(U)

October 4, 2017

Supreme Court, New York County

Docket Number: 653100/2017

Judge: Saliann Scarpulla

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

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BRUNO SCARSELLI, N.B.S. DIAMONDS, INC.,
Petitioners,

INDEX NO. 653100/2017

MOTION DATE 6/7/2017

MOTION SEQ. NO. 001

- v -

MATTHEW MOAS, CHAIM MOAS, AC INTERCONTINENTAL
VENTURES, LLC, AC INTERCONTINENTAL GEM DIAMONDS,
LLC, AC INTERCONTINENTAL LLC

DECISION AND ORDER

Respondents.

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The following e-filed documents, listed by NYSCEF document number 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this application to/for Confirm/Disapprove Award/Report

HON. SALIANN SCARPULLA:

This is a petition to confirm an arbitration award of the Arbitration Tribunal of the Diamond Dealers Club, dated June 23, 2016. In the award, the arbitrators, among other things, awarded petitioners, jointly and severally, monetary relief against respondents, jointly and severally, and issued an injunction requiring respondents to return to petitioners one of the two diamonds at issue in the arbitration proceeding.

The respondents oppose confirmation of the arbitration award on the ground that they were denied the right to an attorney at the arbitration hearing. This argument relates to the arbitrators' refusal to adjourn the first arbitration hearing date. Pursuant to CPLR 7506 (b), whether to grant an adjournment is in the discretion of the arbitrator, and the arbitrator's exercise

of that discretion is subject to the abuse of discretion review. *See MVIAC v. NYC East-West Acupuncture, P.C.*, 77 AD3d 412, 425 (1st Dep't 2010).

The documents submitted here shows that: the parties executed an ADR and Arbitration Agreement in May 2016, in which respondents agreed to meet for a pre-arbitration settlement conference and specifically waived “any right to apply to any court for a stay of arbitration” after the settlement conference; after respondents declined to appear for the pre-arbitration settlement conference, petitioners immediately filed the demand for arbitration; on May 23, 2016 the arbitrators notified the parties of the arbitration date, June 16, 2016; respondents retained new counsel late in the evening on June 15, 2016; new counsel then sought an adjournment on the day of the arbitration, which late request was denied. Respondents’ new counsel, while not present during the first arbitration session, appeared and represented respondents at the subsequent arbitration session. After review of these documents, I find that respondents have failed to show that the arbitrators abused their discretion in denying an adjournment of the first arbitration session.

Respondents also object to petitioners’ request for a judgment for attorney’s fees, because in the award the arbitrators initially stated that “Scarselli’s claims for legal and other fees are denied.” While it is true that the arbitrators initially declined to award petitioners their attorney’s fees, the arbitrators also stated, later in the award, that, in the event that the party against whom the award was made failed to comply with the award, thus requiring the prevailing party to commence an action to confirm the arbitration award, “the party who confirms such award shall also be entitled to a judgment against the other party or parties against whom the award was rendered for legal expenses in a sum equal to 15% of the award confirmed, or \$1,500.00 which ever sum is greater.”

Here, respondents do not deny that they have failed to comply with the arbitration award, thus requiring petitioners to commence this Article 75 proceeding to confirm the arbitration award. Pursuant to the arbitration award, by failing to comply with its provisions, respondents have triggered the attorney's fees award to petitioners.

Additionally, in the May 2016 ADR and Arbitration Agreement executed by respondents, they separately and specifically agreed to an attorney's fees award if petitioners were required to enforce an arbitration award by converting it into a judgment in an Article 75 proceeding. I therefor find that the petitioners' request for a judgment for attorney's fees is fully supported by the arbitration award and confirmed by the parties' separate ADR and Arbitration Agreement.

Finally, respondents contend that petitioners have been paid the amount awarded in the arbitration award by their insurance carrier, and that petitioners have assigned their claims against respondents to the insurance carrier. The insurance carrier has, in turn, sued respondents in this Court.

Respondents attach to their opposition papers a complaint filed by petitioners' insurance carrier. This complaint is brought by Certain Underwriters At Interest At Lloyd's of London ("Lloyds of London") on behalf of petitioners and non-party Joseph Gad, Inc. In the complaint, Lloyds alleges that it paid petitioners and Joseph Gad, Inc. for their losses on one of the two diamonds at issue in the arbitration proceeding. Lloyds of London seeks a declaration that the arbitration award at issue in this proceeding is "a binding judgment" against respondents, money damages from respondents for conversion of the diamond, return of the diamond, and punitive damages.

Pursuant to CPLR 7510, a court is required to confirm an arbitration award unless the award is vacated or modified on a ground specified in CPLR 7511. Respondents did not seek to

vacate or modify the arbitration award pursuant to CPLR 7511, and partial payment of the arbitration award amount is not a ground set forth in CPLR 7511 for vacatur or modification of the arbitration award. Therefore, the fact that petitioners' insurance carrier may have paid petitioners for part of the monetary damages set forth in the arbitration award is not a ground upon which I may refuse to confirm the arbitration award. *See Bernstein Family Ltd. Partnership v. Sovereign Partners, L.P.*, 66 A.D.3d 1 (1st Dep't 2009); *see also Pine Street Associates L.P. v. Southridge Partners, L.P.*, 107 A.D.3d 95, 102 (1st Dep't 2013). Respondents may allege partial payment in any subsequent proceeding to enforce the judgment on the arbitration award.

In accordance with the foregoing, it is

ORDERED and ADJUDGED that the petition to confirm the arbitration award of the Arbitration Tribunal of the Diamond Dealers Club, dated June 23, 2016, is granted. Submit proposed judgment on notice.

10/4/2017
DATE


SALIANN SCARPULLA, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: