CRC Ins. Servs., Inc. v Kullman
2019 NY Slip Op 35261(U)
November 27, 2019
Supreme Court, Westchester County
Docket Number: Index No. 57257/19
Judge: Linda S. Jamieson
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Disp _x___ Dec ____ Seq. No. _1__ Type _compel_

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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CRC INSURANCE SERVICES, INC.,

Plaintiff,

-against-

ALEXANDER KULLMAN,

Defendant.

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Index No. 57257/19

DECISION AND ORDER

The following papers numbered 1 to 5 were read on this motion:

Paper	Number
Notice of Motion	1
Affirmation and Exhibits	2
Affirmation and Exhibits in Opposition	3
Memorandum of Law in Opposition	4
Reply Affirmation	5

Plaintiff brings its motion seeking to compel the arbitration of defendant's counterclaims in this action arising out of the end of defendant's employment with plaintiff.

The following facts are undisputed. Plaintiff's predecessor and defendant entered into an employment agreement in October 1999 (the "Agreement"). This agreement contained an extensive discussion of discharge for cause. It also contained an arbitration provision, as well as a California choice of law provision. In June 2012, another of plaintiff's predecessor's

and defendant entered into a promissory note (the "Note"). The Note, which does not contain an arbitration provision, provides that as long as defendant is not terminated from his employment prior to June 2019, the principal amount loaned to him would be forgiven, a portion each year in equal allotments. It is governed by Texas law.

Plaintiff terminated defendant, allegedly for cause, "for reasons related to the performance of his job duties" in October 2018. In April 2019, defendant commenced an arbitration with the American Arbitration Association (the "AAA") pursuant to the Agreement, seeking unpaid commissions and severance pay. Plaintiff failed to pay the AAA timely, and the AAA closed the case file. Thereafter, plaintiff made the overdue payment, and the AAA reopened the file. Only a few weeks after defendant commenced the arbitration, plaintiff filed the complaint in this action seeking the remaining funds due under the Note. Defendant then filed counterclaims in this action, seeking the same damages as in the arbitration. Once plaintiff filed this motion, defendant withdrew his arbitration claims.

Plaintiff seeks to have defendant's claims determined in arbitration, but have its claims determined by this Court. It argues vociferously that the two sets of claims arise out of different agreements, concern different issues, and thus should be heard in different fora. In contrast, defendant contends that

of his employment - and that it is illogical for them to be heard separately. He argues that by failing to pay its fees to the AAA, plaintiff waived its right to compel arbitration of his claims, and thus his claims should also be determined by this Court.

The Court disagrees with both parties' positions.[1] A review of the Agreement and the Note shows that although they are different in many ways, it is quite clear that in order for plaintiff to prevail on its claim to be entitled to reimbursement for the remaining payment under the Note, it first must prove that defendant was terminated "For Cause." This phrase has different meanings in each document, as plaintiff sets forth. However, from reading the definition of "For Cause" in the Note, the Court sees that each and every section and subsection of that provision has to do with defendant's performance of his job duties as plaintiff's employee. Not one of those items is entirely unconnected to defendant's work with plaintiff.[2] Although plaintiff argues that the two sets of claims "entail separate and distinct inquiries into whether termination was 'For Cause' under the terms of the respective agreements," the Court finds that in fact, the two sets of claims involve the identical inquiry, simply defined differently. *See Kellman v. Whyte*, 129

[1]The Court notes that although the two agreements are governed by the laws of California and Texas, neither party states whether the laws applicable to the claims here differ materially.

[2]This makes sense, since the forgiveness of the debt is tied expressly to defendant's continued employment.

A.D.3d 418, 418, 10 N.Y.S.3d 232, 233 (1st Dept. 2015) ("In determining whether plaintiff's claims are subject to arbitration, the employment letter and operating agreement should be read together."). The Court finds that it would be a duplication of time and resources to have these intertwined claims tried in two different venues.

The next issue that the Court must tackle is whether the claims should be tried before this Court, or in arbitration. Defendant withdrew his claims in arbitration so that he could argue that the only proper forum was before this Court. But simply because both parties wish to litigate in this Court does not mean that it shall be so.

"Arbitration is favored in New York State as a means of resolving disputes, and courts should interfere as little as possible with agreements to arbitrate." *Shah v. Monpat Const., Inc.*, 65 A.D.3d 541, 543, 884 N.Y.S.2d 116, 119 (2d Dept. 2009). There is no dispute that defendant's claims are subject to arbitration, because they plainly arise out of the Agreement. The fact that plaintiff failed to pay its share of the arbitration fee timely, and that the case was closed, does not serve to waive the obligation to arbitrate, contrary to defendant's argument. The AAA reopened the file once plaintiff paid the outstanding fees, and was fully prepared to proceed with the arbitration (until defendant withdrew his claims, in an attempt to ensure that he would be allowed to litigate them

before this Court). The Court has already determined that the two sets of claims are inextricably intertwined, and only one forum should determine whether defendant was discharged for or without cause. Since "there is a longstanding public policy favoring the arbitration of disputes," and "arbitration must be preferred unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute," *Ibarra v. 101 Park Rest. Corp.*, 140 A.D.3d 700, 702, 34 N.Y.S.3d 93, 95 (2d Dept. 2016), the Court finds that both sides' claims should be resolved by arbitration before the AAA.

The action is dismissed.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
November 27, 2019

HON. LINDA S. JAMIESON
Justice of the Supreme Court

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