

**Euro-Amemcan Lodging Corporation v Iderval
Holding Ltd.**

2005 NY Slip Op 30183(U)

July 26, 2005

Supreme Court, New York County

Docket Number:

Judge: Edward H. Lehner

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LEHNER EDWARD H / LEHNER PART 19
Justice

WORLD BUSINESS CENTER, INC.

INDEX NO. 605045/01

- v -

EURO-AMERICAN LODGING CORP.

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

motion is decided in accordance

with accompanying memorandum decision

FILED
AUG 02 2005
NEW YORK
COUNTY CLERK'S OFFICE

Dated: JUL 26 2005

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 19

-----X
EURO-AMERICAN LODGING CORPORATION,
MACSON EXPRESS USA INC., and
OSPIN INTERNATIONAL, INC.,

Petitioners,

INDEX NO.
103584/05

- against -

IDERVAL HOLDING LTD., SUMERSUN
INTERNATIONAL ESTABLISHMENT, and
INTERNATIONAL GROUPOTEL INVESTMENT,
INC., (formerly known as INTERNATIONAL
WINDER INVESTMENT INC.), BLUE
OCEAN FINANCE LIMITED, and WORLD
BUSINESS CENTER, INC.,

Respondents..

-----X
WORLD BUSINESS CENTER, INC.,

Plaintiff,

INDEX NO.
605045/01

-against-

EURO-AMERICAN LODGING, CORP.,

Defendant.
-----X

FILED
AUG 02 2005
NEW YORK
COUNTY CLERK'S OFFICE

EDWARD H. LEHNER, J.:

Before the court is a motion by Euro-American Lodging Corp. ("Euro-American") to dismiss the complaint of World Business Center, Inc. ("World") and a motion by Euro-American, Macson Express USA Inc. ("Macson") and

Ospin International Inc. (“Ospin”) to vacate an arbitration award. The cross-motion for sanctions was withdrawn at oral argument (Tr. page 41).

The complaint sets forth one cause of action for breach of lease and seeks a judgment of possession for the 2nd through the 7th floor (plus access to the ground floor) of the building (the “Premises”) located at 135 West 52nd Street, New York (the “Building”), and damages in the amount of \$4,662,000. World entered into a lease dated June 1, 1998 (the “Lease”) with Euro-American to rent the Premises for a term of thirty years, permitting World to make alterations to the Premises, to assign the Lease and to purchase the Building under certain circumstances.

Euro-American and World entered into an Amendment to the Lease (the “Amendment”) on February 14, 2000 which provided that the purchase option was deleted; that Euro-American owed \$5,632,062 due on October 15, 2001; that “the parties agree to a definitive waiver of all rents, additional rent and royalties due from the date of the lease ... to October 15, 2001”; and that World would not sub-lease or assign the Lease prior to October 15, 2001. Macson had a franchise agreement with Euro to operate the Flatotel Hotel in the Building. Ospin entered into a transaction with Iderval Holding Ltd., Summersun International Establishment, International Groupotel Investment, Inc. and Blue

Ocean Finance (collectively the “Sellers”) resulting in the purchase of all of the stock of Euro and Macson on February 14, 2000. The agreed price was \$40,000,000 reduced by outstanding liabilities of Euro and Macson of \$1,367,938 and also reduced by additional tax and supplier liabilities which then existed (the “Additional Liabilities”). At the closing, Ospin paid \$33,000,000 and the remaining \$5,632,062 (the “Withheld Amount”) was deposited in a trust account pending a determination of the amount of the Additional Liabilities (Tr. page 19). Ospin contends these Additional Liabilities amount to \$10,304,497.78 (Petition, ¶22). Euro-American contends that the guarantee was not delivered by October 15, 2001 and that World therefore breached its contractual obligations. World asserts that Euro-American breached its contractual obligation to pay \$5,682,062 and to allow it possession of the Premises (complaint ¶¶14, 18, 19).

In the order of June 19, 2002, this court held that “(t)he numerous documents executed on the Closing Date, read together constitute a valid agreement to arbitrate the issues which are the subject of this litigation” and granted Euro-American’s motion to dismiss the complaint, and directed the parties to proceed to arbitration. The Appellate Division, 309 AD2d 166, reversed and reinstated the complaint stating at page 172 that World’s “present

claim for specific performance of the lease amendment is not so interrelated as to mandate arbitration of such issue.”

In the arbitration directed by the Appellate Division, Euro-American, Macson and Ospin sought a determination that the Additional Liabilities were \$10,304,491.04. World did not participate in the arbitration. The arbitrator’s final award determined the amount of Additional Liabilities to be \$4,710,300 and found that since \$5,632,062 had been withheld, World was entitled to \$921,762 (Exhibit W). Petitioners seek to set aside this award, contending it was irrational, exceeded the arbitrator’s authority and manifestly disregarded the law.

“An arbitrator’s award will not be vacated unless it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” [Board of Education of the Arlington Central School District v. Arlington Teachers Association, 78 NY2d 33, 37 (1991)]. See also, Matter of Rockland County Board of Cooperative Educational Services v. BOCES Staff Association, 308 AD2d 452, 453 (2nd Dept. 2003); Matter of Board of Education of the Dover Union Free School District v. Dover-Wingdale Teachers Association, 61 NY2d 913 (1984). Moreover, “(u)se of the ‘manifest disregard’ doctrine ‘is limited only to those

exceedingly rare instances where some egregious impropriety of the arbitrator is apparent” [Roffler v. Speer, Leeds & Kellogg, 13 AD3d 308, 310 (1st Dept. 2004)]. In this matter (in which no transcript of the arbitration proceeding has been provided), the arbitrator determined not to credit some of the liabilities that petitioners asserted. This does not constitute irrationality or meet the standard required to set aside an arbitration award. Therefore the petition to set aside the award is denied and the special proceeding is dismissed.

Euro-American seeks dismissal of the complaint pursuant to CPLR 3211(a) 1 and 7. However, in order to have World’s claim to possession under the Lease dismissed, Euro-American would be required to pay the \$921,762 difference between the Withheld Amount and the amount of Additional Liabilities which the arbitrator found proper, but it has declined to pay said amount as apparently an action is now pending in France to rescind the sale (Tr. page 37).

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction ... the facts as alleged in the complaint (are accepted) as true, (the Court must) accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (Moreover)(u)nder CPLR 3211(a)(1), dismissal

is warranted only if the documentary evidence conclusively establishes a defense to the asserted claims as a matter of law” [Leon v. Martinez, 84 NY2d 83, 87-88 (1994)]. See also, 511 West 23rd Owners Corp. v. Jennifer Realty Co., 98 NY2d 144 (2002). Applying these principles to this case, Euro-American has not conclusively established a defense since the arbitrator found that the Additional Liabilities amounted to \$921,762 less than the Withheld Amount, and therefore World has set forth a cognizable claim. Accordingly, Euro-American’s motion to dismiss the complaint is denied.

This decision constitutes the order of this court in the plenary action and the judgment in the special proceeding.

Dated: July 26, 2005



 J.S.C.

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