

**Matter of Continental Group v Carlton Hobbs Real Estate, LLC**

2006 NY Slip Op 30095(U)

April 7, 2006

Supreme Court, New York County

Docket Number: 0060092/2006

Judge: Richard B. Lowe

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SCANNED ON 4/17/2006

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

PRESENT: Lowe  
Justice

PART 56m

Continental Group

INDEX NO. 600925/06

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

- v -

Cartton Hobbs

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

**FILED**  
APR 17 2006

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION

Dated: 4/7/2006

[Signature]  
RICHARD B. LOWE III 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 56

-----X  
In the Matter of Article 75 Proceeding  
CONTINENTAL GROUP,

Index No. 600925/2006

Petitioner,

- against -

CARLTON HOBBS REAL ESTATE, LLC,  
Respondent.

**DECISION  
AND ORDER**

-----X  
**RICHARD B. LOWE, III, J.:**

Petitioner Continental Group, pursuant to CPLR 7503 (b), seeks to partially stay a currently pending arbitration in front of the American Arbitration Association against respondent Carlton Hobbs Real Estate, LLC, namely, to stay any part of the arbitration involving certain counterclaims submitted by the respondent on behalf of Carlton V. Hobbs and Carlton Hobbs LLC.

**BACKGROUND**

Respondent Carlton Hobbs Real Estate LLC, and non-parties Carlton Hobbs LLC and Carlton V. Hobbs, are affiliated entities. Carlton V. Hobbs is a member and officer of Carlton Hobbs Real Estate LLC and Carlton Hobbs LLC. Carlton Hobbs LLC operates an antiques business in London, England. In or about November 2001, Carlton Hobbs LLC decided to relocate its business to New York City. Accordingly, through Carlton Hobbs Real Estate LLC, Carlton V. Hobbs and Carlton Hobbs LLC purchased the building located at 60 East 93<sup>rd</sup> Street, New York, New York to house the antiques operation of Carlton Hobbs LLC. The building is still under construction and renovation.

In or about May 2004, respondent entered into a construction management agreement with the petitioner to provide certain construction management services in connection with the

**FILED**

APR 17 2006

NEW YORK  
COUNTY CLERK'S OFFICE

reconstruction, rehabilitation, and renovation of a building located at 60 East 93<sup>rd</sup> Street, New York, New York. In the fall of 2005, payment disputes developed, where it is alleged that the respondent ceased paying the petitioner for services. In turn, Continental Group notified the respondent of its intention to suspend services for non-payment, which it did in January 2006. It is alleged that Carlton Hobbs Real Estate, LLC has failed to pay the petitioner an amount of \$178,546.50.

Continental Group initiated arbitration proceedings in February 2006 pursuant to the construction management agreement. In turn, the respondent brought counterclaims against Continental Group, as well as claims by non-parties Carlton V. Hobbs and Carlton Hobbs LLC, pursuant to a liquidating agreement signed on March 24, 2006 by Carlton V. Hobbs on behalf of Carlton Hobbs LLC and Carlton Hobbs Real Estate LLC. Continental Group demanded that respondent withdraw all claims on behalf of Carlton Hobbs LLC, arguing that because Carlton Hobbs LLC is not a signatory to the construction management agreement, respondent may not bring those counterclaims in the arbitration against it.

### **DISCUSSION**

Pursuant to CPLR 7503 (b), "a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with... ." Here, the petitioner makes this application to stay part of a pending arbitration proceeding arguing that because the respondent is bringing counterclaims on behalf of parties which are not signatories to the construction management agreement, those counterclaims cannot be brought into that proceeding. The court is constrained to agree.

[\* 4 ]

In determining whether respondent properly brought counterclaims against the petitioner on behalf of Carlton V. Hobbs and Carlton Hobbs LLC, the court reviews the construction management agreement. Signed by Owner Carlton Hobbs Realty, LLC and by Construction Manager Continental Group, the construction management agreement provides the following for the arbitration of disputes:

§ 8.1. *Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to an decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.*

\* \* \*

§ 8.3. *No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Construction Manager, and any other person or entity sought to be joined....*

(See Petition, Ex. A at 9-10 [emphasis added]).

It is generally “for the courts to make the initial determination as to whether the dispute is arbitrable,” that is, “whether the parties have agreed to arbitrate the particular dispute” (*see In the Matter of the Arbitration between The Perkins & Will Partnership and Syska and Hennessy*, 41 NY2d 1045, 1046 [1977], quoting *Nationwide Gen. Ins. Co. v Investors Ins. Co. of Amer.*, 37 NY2d 91, 95 [1975] [internal quotations omitted]). Here, there is also no question that Carlton V. Hobbs and Carlton Hobbs LLC are affiliated with and linked to Carlton Hobbs Real Estate LLC. Indeed, it is unchallenged that individuals at Carlton Hobbs Real Estate LLC are both employees and officers of Carlton Hobbs LLC and are associated with Carlton V. Hobbs. However, it is also undisputed that parties Carlton V. Hobbs and Carlton Hobbs LLC are not signatories to the agreement between

[ 5 ]

Continental Group and Carlton Hobbs Real Estate LLC. Here, that Carlton Hobbs Real Estate LLC is bound by the arbitration clause signed between it and Continental Group does not also allow the respondent to bring claims on behalf of parties which are not themselves signatories to the agreement.

While arbitration is favored as a matter of public policy (*TNS Holdings Inc. v MKI Sec. Corp.*, 92 NY2d 335, 339 [1998]), parties are not required to arbitrate claims not properly the subject of arbitration (*see CPLR 7503 [b]*). Even where the parties are interrelated, that standing alone is not enough to subject parties to arbitration (*TNS Holdings Inc.*, 92 NY2d at 339; *World Bus. Ctr., Inc. v Euro-American Lodging Corp.*, 309 AD2d 166, 171 [1st Dept 2003]). Here, by signing the liquidation agreement, the respondent and non-parties are basically attempting to circumvent the arbitration clause to bring in counterclaims not properly before arbitration. Even while the issues to be determined in the arbitration are “inextricably interwoven with the remaining issues” (*Berg v Dimson*, 151 AD2d 362, 363 [1st Dept 1989], *lv denied* 75 NY2d 703 [1990], *rearg denied* 75 NY2d 947 [1990]), the arbitration agreement specifically provides that *only* the two parties who are signatories to the agreement may enforce such provisions, and *only those signatories* may bring claims and/or counterclaims pursuant to the construction management agreement. Here, because the respondent is seeking to argue counterclaims on behalf of non signatories, such counterclaims cannot be the subject of this arbitration pursuant to the management construction agreement.

[\* 6]

**CONCLUSION**

For the reasons set forth above, it is hereby

ORDERED that the petitioner's motion for a partial stay of the Arbitration is granted and  
ORDERED that only that part of the arbitration involving counterclaims submitted by the respondent  
on behalf of Carlton V. Hobbs and Carlton Hobbs LLC shall be stayed.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

**Dated:** April 7, 2006

**ENTER:**



\_\_\_\_\_  
RICHARD B. LOWE III J.S.C.  
RICHARD B. LOWE III

**FILED**  
APR 17 2006  
NEW YORK  
COUNTY CLERK'S OFFICE