

**Matter of Argonaut Ins. Co. v Grove
Lbr. & Bldg. Supply Inc.**

2008 NY Slip Op 32530(U)

September 15, 2008

Supreme Court, New York County

Docket Number: 0116348/2007

Judge: Charles E. Ramos

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ANNEXED ON 9/18/2008
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____

PART _____

Index Number : 116348/2007

ARGONAUT INSURANCE

vs.

GROVE LUMBER & BUILDING SUPPLY

SEQUENCE NUMBER : # 001

COMPEL

stice

INDEX NO.

116348-07

MOTION DATE

MOTION SEQ. NO.

#001

MOTION CAL. NO.

Filed on this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Motion is decided in accordance with
accompanying Memorandum Decision.

FILED

SEP 18 2008

COUNTY CLERK'S OFFICE
NEW YORK

Dated: _____

HON. CHARLES E. RAMOS /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: COMMERCIAL DIVISION
-----X

In the Matter of the Arbitration between
ARGONAUT INSURANCE COMPANY,

Petitioner,

-against-

Index No.
116348/07

GROVE LUMBER & BUILDING SUPPLY INC.,

Respondent.

-----X

Charles Edward Ramos, J.S.C.:

Petitioner Argonaut Insurance Company (Argonaut) moves by way of a verified petition to compel respondent Grove Lumber & Building Supply Inc. (Grove) to proceed with arbitration of certain disputes (9 USC § 1; CPLR § 7503).

Background

Argonaut is an insurance company incorporated in Illinois, with its principal place of business in Texas. Grove is a corporation with its principal place of business located in California. Argonaut issued three insurance policies (Policies) to Grove, and agreed to provide related workers' compensation claims services, effective from May 1, 2003 to May 1, 2006. In May of 2004, Argonaut and Grove entered into an Insurance Program Agreement (Agreement), that describes the terms of the Policies and other aspects of the parties' relationship (Exhibit 1, annexed to the Verified Petition).

In October of 2007, Grove filed an action against Argonaut in the Superior Court of the State of California, asserting various contractual and tortious causes of action, in addition to alleging violation of California's unfair business practices law,

arising out of Argonaut's workers' compensation claims handling.

Thereafter, the action was removed to the United States District Court for the Central District of California (CA Federal Action). Argonaut made a motion to stay or dismiss on the basis that Grove is required to arbitrate the dispute, pursuant to an arbitration provision contained in the Agreement. Recently, on July 7, 2008, Argonaut's motion to stay that action pending this Court's decision on the within petition was granted.

In another action instituted in the Superior Court of California involving Argonaut and a non-related party, Ceradyne, Inc., at issue was workers' compensation policies and an agreement substantially similar to those at issue here. The court in that action determined that the agreement containing the arbitration provision was void and unenforceable under California law, because Argonaut did not submit it to the California Department of Insurance (CDI) for approval, under applicable insurance regulations. That decision, in addition to the decision in the CA Federal Action, are currently on appeal.

On December 5, 2007, Argonaut served Grove with a demand to arbitrate, based upon the arbitration provision contained in the Agreement. Grove rejected Argonaut's demand to arbitrate, resulting in the filing of the instant verified petition to compel arbitration.

Discussion

Argonaut contends that the arbitration provision contained in the Agreement establishes that the parties agreed to submit

all disputes that arise under the Agreement and the Policies to arbitration.

Grove argues that the arbitration clause contained in the Agreement is unenforceable under public policy and the California Code of Regulations section 2218 (a). Grove contends that Argonaut only submitted the Policies to the CDI for approval, and not the Agreement, and consequently, the Agreement, including the arbitration and consent to jurisdiction provisions contained therein, are invalid. In addition, in light of the alleged invalidity of the consent to jurisdiction provision, Grove maintains that this Court lacks personal jurisdiction over it.

Alternatively, Grove argues that even if the Court determines that the arbitration provision is controlling, this Court should defer to the courts of California pending determination of the appeals, to avoid the potential of three different results.

At the outset, this Court must resolve the threshold issue of whether the parties made a valid agreement to arbitrate their disputes.

The Federal Arbitration Act (FAA) applies to this determination, because the Agreement affects interstate commerce (*Gerling Global Reinsurance Corp. v Home Ins. Co.*, 302 AD2d 118, 124 [1st Dept 2002], *lv denied* 302 AD2d 118 [2003]).

There is a strong federal policy encouraging arbitration, and any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration (*Bank Julius Baer & Co. v*

Waxfield Ltd., 424 F3d 278, 281 [2d Cir 2005]).

The plain and expansive language employed in Article VII of the Agreement unequivocally establishes that the parties agreed to arbitrate their disputes, by use of the phrase "you and we agree to arbitrate any dispute ... over ... this Agreement or any other agreement between you and us ... arbitration is the sole remedy for the resolution of disputes between us" (Article VII [A], [B]; see *Louis Dreyfus Negoce S.A. v Blystad Shipping & Trading Inc.*, 252 F3d 218, 226 [2d Cir], cert denied 534 US 1020 [2001] [terms such as "any dispute, "relating to" and "arising under" indicate a broad arbitration clause]).

Having determined the threshold issue, namely, that the parties agreed to arbitrate, the next issue is determining the scope of arbitrable issues (*Hartford Acc. and Indem. Co. v Swiss Reins. Am. Corp.*, 246 F 3d 219, 226 [2d Cir 2001]). The parties' agreement to arbitrate encompasses "any question as to arbitrability," including "the interpretation, application, formation, enforcement or validity of this Agreement or any other agreement between you and us ... with respect to any transaction" (Agreement, Article VII [A]). This broad arbitration provision encompasses Grove's claims asserted in the CA State Action, that allege that Argonaut mishandled claims made under the Policies, in addition to Grove's challenges to the validity of the Agreement as a whole under public policy and California law.

The Supreme Court recently reaffirmed that once a court determines that the parties agreed to arbitrate, under the

severability doctrine, despite contentions that the agreement is void due to illegality, an arbitrator, not the court, should decide the validity of the agreement as a whole (*Buckeye Check Cashing, Inc. v Cardega*, 546 US 440, 445-46 [2006]; accord *Weinrott v Carp*, 32 NY2d 190, 198-99 [1973] [the severability doctrine is recognized in New York]).

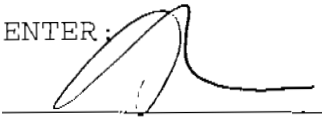
Grove does not contest the validity of the arbitration provision, contained in Article VII of the Agreement. Therefore, under the severability doctrine, this Court is without authority to assess the propriety of Grove's challenges to the validity of the underlying Agreement as a whole, that is to be considered by the arbitrator in the first instance.

Finally, in light of the determination that the parties agreed to arbitrate their disputes, and the strong federal policy in favor of arbitration, this Court discerns no basis upon which to defer this issue pending resolution of the appeals in California.

Accordingly, it is

ORDERED that the petition by Argonaut Insurance Company to compel arbitration is granted.

Dated: *September 15* 2008

ENTER: 
J.S.C.

HON. CHARLES E. RAMOS

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