

All Metro Health Care Servs., Inc. v Edwards

2009 NY Slip Op 31177(U)

May 7, 2009

Supreme Court, Nassau County

Docket Number: 17183/07

Judge: William R. LaMarca

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 15

Present: HON. WILLIAM R. LaMARCA
Justice

ALL METRO HEALTH CARE SERVICES, INC.,
ALL METRO HOME CARE SERVICES, INC.,
ALL METRO HOME CARE SERVICES OF NEW
YORK, INC., ALL METRO HOME CARE
SERVICES OF NEW JERSEY, INC.,
ALL METRO HOME CARE SERVICES OF
FLORIDA, INC., ALL METRO HOME CARE
SERVICES OF MISSOURI, INC., ALL METRO
EMERGENCY RESPONSE SYSTEMS, INC.,
CAREGIVERS ON CALL, INC., ALL METRO
MEDICAL STAFFING, INC., ALL METRO
MANAGEMENT AND PAYROLL SERVICES
CORPORATION, ALL METRO FIELD SERVICE
WORKERS PAYROLL SERVICES CORPORATIONS,
and THE 1818 MEZZANINE FUND II, L.P.,

Motion Sequence #2
Submitted February 26, 2009

Petitioners,

-against-

INDEX NO: 17183/07

GLENN EDWARDS,

Respondent.

The follow papers were read on this petition:

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Counsel for respondent, GLENN EDWARDS (referred to herein as “EDWARDS”), moves for an order, pursuant to CPLR §§7502(a)(iii) and 7503(a), vacating the temporary stay of arbitration proceedings previously ordered by this Court and compelling petitioners ALL METRO HEALTH CARE SERVICES, INC., ALL METRO HOME CARE SERVICES, INC., ALL METRO HOME CARE SERVICES OF NEW YORK, INC., ALL METRO HOME CARE SERVICES OF NEW JERSEY, INC., ALL METRO HOME CARE SERVICES OF FLORIDA, INC., ALL METRO HOME CARE SERVICES OF MISSOURI, INC., ALL METRO EMERGENCY RESPONSE SYSTEMS, INC., CAREGIVERS ON CALL, INC., ALL METRO MEDICAL STAFFING, INC., ALL METRO MANAGEMENT AND PAYROLL SERVICES CORPORATION, ALL METRO FIELD SERVICE WORKERS PAYROLL SERVICES CORPORATIONS, and THE 1818 MEZZANINE FUND II, L.P. (collectively referred to hereinafter as “ALL METRO”) to arbitrate their dispute with the respondent. Petitioners oppose the motion, which is determined as follows:

This matter arises from the purchase of All Metro Aids, Inc. and its subsidiaries (collectively referred to herein as “AMA”) by petitioners ALL METRO from respondent EDWARDS, who was the former owner of AMA's capital stock. As part of the acquisition, ALL METRO incurred certain monetary obligations to EDWARDS in a Stock Purchase Agreement dated October 9, 2003 (“SPA”), as modified, and arranged for those obligations to be paid over time. To close the transaction and purchase EDWARDS' stock, ALL METRO secured financing from two institutional lenders, Health Care Business Credit

Corporation d/b/a CIT Healthcare, LLC ("CIT") and The 1818 Mezzanine Fund II, LLP (the "1818 Fund") (together CIT and 1818 Fund are the "Senior Lenders"), and entered into certain senior loan agreements. The Senior Lenders required that their debts have priority over ALL METRO's obligations to EDWARDS under the SPA. Thus, the parties, including, EDWARDS signed a Subordination Agreement in favor of the Senior Lenders.

On August 8, 2007, EDWARDS commenced an arbitration proceeding with the American Arbitration Association ("AAA"), claiming that ALL METRO was in default of certain alleged payment obligations under the SPA, as modified. In his Statement of Claim, respondent argued that the payments allegedly owed by ALL METRO do not constitute "Subordinated Debt" under the Subordination Agreement and are immediately due and owing. ALL METRO disagreed and contended that Respondent was precluded from not only receiving those payments but also from commencing the Arbitration, in accordance with the specific terms of the Subordination Agreement, until the Senior Lenders were paid in full. Therefore, petitioners asserted that EDWARDS' arbitration was premature. These contentions were disputed by respondent, EDWARDS. Accordingly, on September 21, 2007, petitioners filed an action in the Superior Court of New Jersey for, among other things, a judicial declaration that ALL METRO's debts to the Senior Lenders have priority over the obligations that are the subject of Respondent's Arbitration and that the claims asserted by Respondent in the Arbitration were not subject to Arbitration until the debts owed by ALL METRO to the Senior Lenders were paid in full, as clearly provided in the Subordination Agreement.

In this Court, petitioners noted the pendency of their declaratory judgment action in New Jersey and prayed for a stay of the Arbitration "pending a final determination of the

New Jersey Action.” By Decision and Judgment dated February 19, 2008, this Court granted the petition and temporarily stayed the Arbitration “while the parties litigate[d] the underlying issues in the Superior Court of New Jersey.” The stay halted the Arbitration pending the outcome of the parties’ dispute in New Jersey.

The parties thereupon proceeded to litigate in New Jersey and upon the completion of discovery, both sides moved for summary judgment. On January 6, 2009, the New Jersey Superior Court denied petitioners’ motion and granted EDWARDS’ motion for summary judgment thereby dismissing all of petitioners’ claims with prejudice (referred to herein as the “January 6th Orders”). In its 21-page Opinion, the New Jersey Superior Court closely analyzed the evidence, applied New Jersey law and held that: (1) the sums at issue in the Arbitration “do not constitute Subordinated Debt as defined by the Subordination Agreement;” and, (2) “[EDWARDS] is free to pursue claims to those monies pursuant to the arbitration provisions in the parties’ agreement.”

In support of his instant motion, counsel for respondent contends that as a result of the New Jersey Court’s ruling, this Court’s temporary stay should now be vacated. Counsel argues that it is undisputed EDWARDS’ claims which are for payment of sums due to him under the SPA, fall squarely within the broad arbitration clause contained in Section 47 of that contract, and that ALL METRO’s only basis for resisting arbitration was its contention that those sums were Subordinated Debt, and therefore that Arbitration should be deferred until ALL METRO’s Senior Debt was fully discharged. Counsel argues that the stay was intended to be temporary and in light of the New Jersey Court’s ruling that the sums EDWARDS seeks in arbitration do not constitute Subordinated Debt and that he should be permitted pursue those claims in arbitration, the stay should be vacated.

Petitioners' oppose the motion and counsel for petitioners argues that the motion should be denied as premature because there has been no final determination as to whether the condition precedent to arbitration applies and has been satisfied. The crux of petitioners' claims is that if the payment obligations that respondent seeks to enforce in the Arbitration constitute "Subordinated Debt" then respondent is precluded from prosecuting the Arbitration until ALL METRO repays its loans to the Senior Lenders. Counsel for petitioners maintains that while the New Jersey Court's January 6th Orders effectively held that the disputed payment obligations do not constitute "Subordinated Debt" and, therefore, respondent may proceed with the Arbitration without waiting for ALL METRO to repay its loans to the Senior Lenders, these Orders do not constitute a "final determination;" rather they are merely interlocutory orders. Petitioners' counsel maintains that the underlying issues that this Court referred to litigation in New Jersey are still being litigated in New Jersey and are therefore not "final." This Court disagrees.

It is noted at the outset that on March 27, 2009, the New Jersey Superior Court denied EDWARDS' application for counsel fees and costs. There are no further or other motions, applications or other matters pending before the New Jersey Superior Court. The judgment in the New Jersey Action is thus final. In addition, it is noted that on April 23, 2009, petitioners filed a Notice of Appeal from the judgment of the New Jersey Superior Court.

Under New Jersey law, the judgment of the New Jersey Superior Court is final (*Gregory Marketing Corp. v Wakefern Food Corp.*, 207 NJ Super 607, 624, 504 A2d 828, 837 [1985]; *Matter of Jersey Medical Center*, 817 F.2d 1055, 1059 n.6 [3rd Cir. 1987]). Petitioners' pending appeal is not grounds for continuing the stay in this Court (*Gunn v*

Palmieri, 158 AD2d 671, 552 NYS2d 129 [2nd Dept. 1990]). The litigation of the underlying issues is now complete. Further, it remains undisputed by the parties that EDWARDS' claims against ALL METRO are arbitrable. The only ground for the temporary stay of arbitration by petitioners in their prior application (Sequence 001) was that the sums sought by EDWARDS were allegedly Subordinated Debt and thus arbitration could not proceed until ALL METRO paid off its Senior Debt. On this basis, the temporary stay was issued. Furthermore, in light of the fact that petitioners have failed to present this Court with any authority for an extension of the stay, respondents' motion to vacate the stay is granted.

In *Gunn v Palmieri*, the defendants sought and obtained a stay of the proceedings in Richmond County Supreme Court, pursuant to CPLR 2201, pending the determination of a motion made by the plaintiffs in the Eastern District of New York to reinstate their parallel federal action there. While plaintiffs' appeal from the stay ruling was pending, the federal court denied the reinstatement motion. The Second Department held that while the original grant of the stay was "a proper exercise of discretion at that time," the Eastern District's denial of the reinstatement motion required that the stay be vacated (*Gunn v Palmieri*, 158 AD2d 671, 672, 552 NYS2d 129, 130 [2nd Dept. 1990]). The Second Department was unimpressed by the fact that the plaintiffs had already filed a notice of appeal from the order denying reinstatement even though there was a risk that the Eastern District would be reversed. The Appellate Division concluded that "the interests of justice would not be served by a further stay of the action pending the appeal" (*Id*). Similarly, in this case, the theoretical possibility that the New Jersey Judgment could be reversed on appeal is an insufficient reason to keep the Arbitration stayed.

Respondent, EDWARDS' motion, pursuant to CPLR §7503(a), for an Order compelling the petitioners to arbitrate their dispute is also granted. In determining whether an application for an order directing a party to proceed to arbitration should be granted, pertinent questions are whether there is in fact a dispute, whether there is a contract to arbitrate, and whether there is a refusal to arbitrate (*McGuinness v Motor Vehicle Acc. Indemnification Corp.*, 32 Misc.2d 949, 225 NYS2d 361 [Sup. Ct. Queens 1962]; see, also, *Crosett v Mount Vernon Housing Authority*, 275 AD 1051, 92 NYS2d 109 [2nd Dept. 1949], *reargument and appeal denied* 276 AD 848, 93 NYS2d 799 [1949]). In this case there is no dispute that EDWARDS claims against ALL METRO fall squarely within the broad arbitration clause contained in section 47 of that contract. ALL METRO's only basis for resisting arbitration was its contention that those sums were Subordinated Debt, and therefore that the Arbitration should be deferred until ALL METRO's Senior Debt was fully discharged. Therefore, as there is "no substantial question whether a valid agreement [to arbitrate] was made or complied with," respondent EDWARDS as the party aggrieved by the failure of ALL METRO to arbitrate is entitled an order compelling arbitration.

Thus, after a careful reading of the submissions herein, it is hereby

ORDERED, that respondent's motion to vacate the temporary stay of arbitration proceedings previously ordered by this Court is granted and the stay is herewith lifted; and it is further,


ORDERED, that petitioners, ALL METRO HEALTH CARE SERVICES, INC., ALL METRO HOME CARE SERVICES, INC., ALL METRO HOME CARE SERVICES OF NEW YORK, INC., ALL METRO HOME CARE SERVICES OF NEW JERSEY, INC., ALL METRO HOME CARE SERVICES OF FLORIDA, INC., ALL METRO HOME CARE

SERVICES OF MISSOURI, INC., ALL METRO EMERGENCY RESPONSE SYSTEMS, INC., CAREGIVERS ON CALL, INC., ALL METRO MEDICAL STAFFING, INC., ALL METRO MANAGEMENT AND PAYROLL SERVICES CORPORATION, ALL METRO FIELD SERVICE WORKERS PAYROLL SERVICES CORPORATIONS, and THE 1818 MEZZANINE FUND II, L.P., are directed to arbitrate their dispute with the respondent, EDWARDS in the Arbitration Proceeding before the AAA initiated on August 8, 2007.

All further requested relief not specifically granted is denied.

This constitutes the decision and judgment of the Court.

Dated: May 7, 2009



WILLIAM R. LaMARCA, J.S.C.

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ENTERED

MAY 14 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**