Caridad Intl. Rest. Inc. v Oviedo
2011 NY Slip Op 33859(U)
June 7, 2011
Sup Ct, Bronx County
Docket Number: 308986/10
Judge: Mary Ann Brigantti-Hughes

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX TRIAL TERM - PART 15

Present: Hon. Mary Ann Brigantti-Hughes

X

CARIDAD INTERNATIONAL RESTAURANT INC., d/b/a PARILLA LATINA STEAKHOUSE,

Plaintiff,

-against-

LEDWIN OVIEDO, LEDWIN OVIEDO INVESTMENT GROUP LLC, GEORGE V. CORNELL d/b/a THE LAW OFFICE OF GEORGE V. CORNELL and THE CORNELL GROUP, P..L.L.C.,

Defendants.

X

DECISION/ORDER

Index No.: 308986/10

The following papers numbered 1 to read on the below motions noticed on January 6, 2011 and duly submitted on the Part IA15 Motion calendar of _____, 2011:

Papers Submitted	Numbered
Def.'s Affirmation in Support of Motion, with Exhibits	1,2
Pl.'s Affirmation in Support of Cross-Motion, with Exhibits	3,4
Def.'s Affirmation in Reply	5

In an action for damages arising from a breach of contract claim, defendants George V. Cornell d/b/a The Law Office of George V. Cornell and The Cornell Group, P.L.L.C. (collectively referred to as the "Cornell Defendants") move to dismiss the complaint of the plaintiff, Caridad International Restaurant Inc. d/b/a Parilla Latina Steakhouse (hereinafter the "Plaintiff") for failure to comply with the mandatory arbitration clause in the parties' agreement, or, for failure to state a claim pursuant to *CPLR* 3211(a)(7), for failure to plead fraud with particularity, *CPLR* 3016(b), or for failure to join necessary party pursuant to *CPLR* 3211(a)(10). Plaintiff cross-moves for leave to file an amended complaint.

I. Factual History

Plaintiff's claims arise from a purported loan between Plaintiff and defendants Ledwin Oviedo and Ledwin Oviedo Investment Group LLC (hereinafter referred to as the "Oviedo

Defendants") that was allegedly never consummated. Plaintiff bases its claims against the Oviedo Defendants on a document entitled "Escrow Agreement", to which the Cornell Defendants was the escrow agent. This agreement was purported to correlate to a business loan from the Oviedo Defendants to Plaintiff. The agreement stated that $100,000 would be deposited by Plaintiff into the Cornell Defendants' attorney-trust account, to be held until the parties' closing took place. The loan, however, never took place and Plaintiff alleges that the Cornell-Defendants illegally disbursed the $100,000 in funds to an unknown party. After a threat of legal action, Plaintiff has recovered $25,000 of the original sum.

The Cornell Defendants now move to dismiss under various theories. Plaintiff cross-moves for leave to amend the complaint. The Oviedo Defendants have never made a formal appearance in this action.

II. Analysis

Initially, Defendants argue that this matter should be dismissed and referred to arbitration, pursuant to the mandatory arbitration clause found in the parties' escrow agreement. Plaintiff opposes and argues it cannot be required to arbitrate its claims against Defendants as escrow agent since the escrow agent is not a signatory and could not itself be forced to arbitrate.

New York statutory procedure is applicable to compel parties to arbitrate under the Federal Arbiration Act. *GAF Corp. v. Werner*, 66 N.Y.2d 97 (1985). Under *CPLR* 7501, a written agreement to submit any controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it. In determining whether to compel arbitration, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. *Id.* Where there is no substantial question whether a valid agreement to arbitrate was made or complied with, and the claim is not time-barred, the court shall direct the parties to arbitrate. *CPLR* 7503(a). A motion to dismiss a complaint may be treated by the court as an application to permanently stay proceedings and to compel arbitration. *Marshall Ray Corp. v. C. Haedke & Co.*, 16 N.Y.2d 967 (1965).

It is true that a party may be required to arbitrate only those disputes he has agreed to arbitrate. *See Banque de Paris et Des Pays-Bas v. Amoco Oil Co.*, 573 F.Supp 1464 (S.D.N.Y. 1983). An Agreement to arbitrate requires a clear and unequivocable manifestation of an intention to arbitrate because it involves the "surrender [of] the right to resort to the courts." *Mionis v. Bank Julius Baer & Co., Ltd.*, 301 A.D.2d 104 (1st Dept. 2002), citing *Matter of Waldron*, 61 N.Y.2d 181 (1984). In construing an arbitration agreement, courts are obliged to give meaning to all of the contract's terms. *Id.*, citing *Corhill Corp. v. S.D. Plants, Inc.*, 9 N.Y.2d 595 (1961). Since a contract is a voluntary undertaking, it should be interpreted to give effect to the parties' reasonable expectations. *Id.*, citing *Sutton v. East Riv. Sav. Bank*, 55 N.Y.2d 550 (1982).

An agreement to arbitrate need not be signed by all parties to be enforceable; non-signatories to an arbitration clause may be deemed parties thereto under ordinary contract and agency principles. *McCallister Bros v. A&S Transp. Co.*, 621 F.2d 519 (2nd Cir. 1980). The Southern District has found a non-signatory may be bound where (1) there is a close relationship between the parties and controversies involved and (2) the signatory's claims against the non-signatory are "intimately founded in an intertwined with the underlying agreement containing the arbitration clause." *Birmingham Assoc. Ltd. v. Abbott Laboratories*, 547 F.Supp.2d 295 (S.D.N.Y. 2008), citing *JLM Indus. v. Stolt-Nielsen SA*, 387 F.3d 163 (2d Cir. 2004). Further, the Southern District has specifically enforced an arbitration clause against a signatory-Plaintiff attempting to bring suit against an escrow agent for alleged breach of an escrow agreement. *Drulcrest Pty. Limited v. Jamar Productions, Inc., et als.*, 1986 WL 4547 (S.D.N.Y. April 11, 1986). Finally, in light of the federal policy favoring arbitration, such clauses should be liberally construed and "doubts about arbitability should be resolved in favor of arbitration." *Id.*, citing *Prudential Lines, Inc. v. Exxon Corp.*, 704 F.2d 59 (2d Cir. 1983).

The escrow agreement in this matter contained an arbitration clause, which stated that the parties agreed to "submit any dispute, claim or controversy to arbitration under the Rules of the American Arbitration Asso iation." It further states that "[b]oth parties agree to have any dispute decided by neutral arbitration as provided by state law. Both parties agree to give up any rights they might possess to have the dispute litigated in a court or jury trial..." "Parties" are recognized

under the agreement as the lenders, the Oviedo Defendants, and borrower, Plaintiff. Although the Cornell Defendants are not signatories to the agreement, they are listed as the "Escrow Agent" and an attorney "associated with the Lender". It is therefore undisputable that the Cornell Defendants had a close relationship with the parties and controversies involved. Moreover, Plaintiff's action is explicitly based on the Cornell Defendants' alleged duties as an escrow agent pursuant to the escrow agreement, so it is likewise undisputable that the Plaintiff-signatory's claims against this non-signatory defendant are intimately intertwined with the underlying agreement containing the arbitration clause. Finally, the clause itself is broad, as the parties to submit "any" claim or dispute to arbitration. Accordingly, Plaintiff's claims must be permanently stayed and the matter referred to arbitration pursuant to *CPLR* 7503(a). This Order shall also cover Plaintiff's claims as to defendants Ledwin Oviedo and Ledwin Oviedo Investment Group, LLC., who are likewise bound by the arbitration clause as signatories to the escrow agreement. Plaintiff's cross-motion is denied as moot, as the matter is referred to arbitration.

III. Conclusion

Accordingly, it is hereby

ORDERED, that defendant George V. Cornell d/b/a The Law Office of George V. Cornell and The Cornell Group, P.L.L.C.'s motion is hereby GRANTED, and it is further,

ORDERED, that plaintiff Caridad International Restaurant Inc., d/b/a Parilla Latina Steakhouse's complaint is hereby permanently stayed and its claims against all defendants herein are hereby referred to arbitration, and it is further,

ORDERED, that plaintiff Caridad International Restaurant, Inc., d/b/a Parilla Latina Steakhouse's cross-motion is hereby DENIED as moot.

The above constitutes the Decision and Order of this Court.

Dated: June 7, 2011

Hon. Mary Ann Brigantti-Hughes, J.S.C.