

Evar v Ralph Edwards/STU Billet Prods.

2013 NY Slip Op 31602(U)

April 10, 2013

Supreme Court, New York County

Docket Number: 100756/2012

Judge: Lucy Billings

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.

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

PRESENT: LUCY BILLINGS
J.S.C. Justice

PART 46

Index Number : 100756/2012
EVART, CLAUDIA
vs.
EDWARDS, RALPH
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this motion to/for dismiss the action
2

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

PAPERS NUMBERED
<u>2-3</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered ~~that this motion~~ and adjudged that:
The court grants defendants' motion to dismiss this action pursuant to the accompanying decision. C.P.L.R. § 3211(a)(1) and (7).

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

FILED

JUL 19 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/10/13

Lucy Billings
LUCY BILLINGS J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----X

CLAUDIA EVART,

Index No. 100756/2012

Plaintiff

- against -

DECISION AND ORDER

RALPH EDWARDS/STU BILLET PRODUCTIONS
d/b/a "PEOPLE'S COURT" and PHILIP
VANDERVORT,

Defendants

FILED

JUL 19 2013

-----X

LUCY BILLINGS, J.S.C.:

COUNTY CLERK'S OFFICE
NEW YORK

As set forth in the court's prior order denying plaintiff's motion for a preliminary injunction, plaintiff admits she signed three agreements that in sum preclude her claims regarding any statements during or immediately following a videotaped arbitration October 19, 2011, or its results. Nothing in her verified pleadings, affidavits, or testimony on the record demonstrates fraud, duress, unconscionability, or illegality concerning any of these agreements' provisions. E.g., Hallock v. State of New York, 64 N.Y.2d 224, 230 (1984); Kearns v. Johnson, 238 A.D.2d 121, 122 (1st Dep't 1997); Royal York Realty, Inc. v. Ancona, 280 A.D.2d 593 (2d Dep't 2001). She alleges no circumstances that prohibited her from refusing to appear on the videotape of the arbitration until after she had received and studied the agreement that she signed before the videotaping. E.g., Gillman v. Chase Manhattan Bank, 73 N.Y.2d 1, 11 (1988). She never describes how she was forced, physically or otherwise,

to sign any of the agreements she signed, before or after the videotaping, or how she was permitted to sign them and did so voluntarily, but was prohibited from reading them before signing. See Philips S. Beach, LLC v. 2C Specialty Ins. Co., 55 A.D.3d 493 (1st Dep't 2008); Fruchthandler v. Green, 233 A.D.2d 214 (1st Dep't 1996); Dunn v. Nissan Motor Co., 262 A.D.2d 444, 445 (2d Dep't 1999). Absent any evidence of her "lack of meaningful choice" or defendants' "deception or . . . high-pressured tactics," she may not rely on any objectionable provision in any of the agreements that she nonetheless signed before proceeding with the arbitration or after it had occurred. Gillman v. Chase Manhattan Bank, 73 N.Y.2d at 11. See Friedman v. Fife, 262 A.D.2d 167, 168 (1st Dep't 1999); Beattie v. Brown & Wood, 243 A.D.2d 395 (1st Dep't 1997).

Given plaintiff's waivers in these agreements, plaintiff fails to state a claim for vacatur of the arbitration award or for an injunction against the public television broadcast of the videotaped arbitration, as alleged in her complaint. Plaintiff has waived and in any event has failed to allege facts supporting the arbitrator's partiality against plaintiff, C.P.L.R. § 7511(b)(1)(ii), as claimed in the complaint; the arbitrator's action in excess of her powers, C.P.L.R. § 7511(b)(1)(iii), as claimed in an amended complaint dated April 2, 2012; or any other basis for vacatur under C.P.L.R. § 7511(b). New York City Tr. Auth. v. Transport Workers Union of Am., Local 100, 14 N.Y.3d 119, 123-24 (2010); Barnes v. Washington Mut. Bank, FA, 40 A.D.3d

357, 358 (1st Dep't 2007); Artists & Craftsmen Bldrs. v. Shapiro, 232 A.D.2d 265, 266 (1st Dep't 1996); Scaccia v. Martinez, 9 A.D.3d 882, 884 (4th Dep't 2004). See 1616 Second Ave. Rest. v. New York State Lig. Auth., 75 N.Y.2d 156, 161-62 (1990). Nor may plaintiff sustain a claim that defendants violated New York Civil Rights Law §§ 50-51, as further alleged in her amended complaint, since she consented in writing to the videotaping and its public television broadcast through her agreements. Messenger v. Gruner + Jahr Print. & Publ., 94 N.Y.2d 436, 441 (2000); Stephano v. News Group Publs., 64 N.Y.2d 174, 182-83 (1984); Molina v. Phoenix Sound, 297 A.D.2d 595, 597 (1st Dep't 2002).

Consequently, the court grants defendants' motion to dismiss this action, C.P.L.R. § 3211(a)(1) and (7), and plaintiff's separate motion to reargue her motion for a preliminary injunction based on her new claim that the arbitrator acted in excess of her power under C.P.L.R. § 7511(b)(1)(iii). C.P.L.R. §§ 2221(d)(2); Garcia v. Jesuits of Fordham, 6 A.D.3d 163, 165 (1st Dep't 2004); Pryor v. Commonwealth Land Tit. Ins. Co., 17 A.D.3d 434, 435-36 (2d Dep't 2005). Nevertheless, since defendants have moved only to dismiss this action based on plaintiff's failure to state a cognizable claim, C.P.L.R. § 3211(a)(1) and (7), and not for summary judgment, C.P.L.R. § 3212(b), this dismissal is of limited preclusive effect, as it is based not just on the admitted agreements, C.P.L.R. § 3211(a)(1), but also on plaintiff's failure to allege a basis for vacating the agreements. C.P.L.R. § 3211(a)(7); 175 East 74th Corp. v.

Hartford Acc. & Ind. Co., 51 N.Y.2d 585, 586 n.1 (1980); Adelaide Prods., Inc. v. BKN Intl. AG, 15 A.D.3d 316 (1st Dep't 2005); Wilson v. New York City Hous. Auth, 15 A.D.3d 572, 573 (2d Dep't 2005). See Algomod Tech. Corp. v. Price, 65 A.D.3d 974, 975 (1st Dep't 2009); Montefiore v. Soja, 292 A.D.2d 241, 242 (1st Dep't 2001); Fischbein v. Beitzel, 281 A.D.2d 167 (1st Dep't 2001); Lampert v. Ambassador Factors Corp., 266 A.D.2d 124, 125 (1st Dep't 1999).

On the other hand, now that the lack of both a factual and a legal basis for the relief sought by plaintiff has been brought to her attention and then reinforced, should plaintiff persist with another motion or action for similar relief, this history may lead to a finding that she has engaged in vexatious, frivolous litigation. 22 N.Y.C.R.R. § 130-1.1(c). See Komolov v. Segal, 96 A.D.3d 513, 514 (1st Dep't 2012); Pentalpha Enters., Ltd. v. Cooper & Dunham LLP, 91 A.D.3d 451, 452 (1st Dep't 2012). This decision constitutes the court's order and judgment dismissing this action.

DATED: April 10, 2013

FILED

JUL 19 2013

COUNTY CLERK'S OFFICE
NEW YORK

Lucy Billings

LUCY BILLINGS, J.S.C.

**LUCY BILLINGS
J.S.C.**