

Total World Domination, Inc. v In House Group, Inc.
2013 NY Slip Op 32860(U)
November 7, 2013
Sup Ct, New York County
Docket Number: 154742/2013
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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TOTAL WORLD DOMINATION, INC., D/B/A
ENGINE ROOM AUDIO,

Petitioner,

Index No.154742/2013

-against-

DECISION/ORDER

IN HOUSE GROUP, INC.,

Respondent.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u> </u>

Respondent In House Group, Inc. (“In House”) has brought the present motion for summary judgment on its counterclaim for breach of contract against petitioner Total World Domination, Inc. D/b/a Engine Room Audio (“Domination”). Petitioner Domination has brought a cross-motion to compel arbitration. For the reasons stated below, the cross-motion to compel arbitration is granted and the motion for summary judgment is denied.

The relevant facts are as follows. The parties had a dispute about payments due from petitioner to respondent for work done by respondent at petitioner’s premises. To resolve their dispute, the parties entered into a written settlement agreement. Pursuant to the terms of the

written agreement, the parties agreed that there was a final balance due of \$150,000 for the construction work done at the premises by respondent, that the amount due would be paid in monthly payments and that respondent would be entitled to place a mechanic's lien on the premises in the event that petitioner failed to make a payment in any 90 day period. The agreement also unambiguously provided that the parties "agree to settle any disputes in excess of \$5,000 through binding arbitration."

After the parties entered into the agreement, petitioner did not make some of the monthly payments as a result of which respondent placed a mechanic's lien on petitioner's premises. Petitioner then commenced the present special proceeding seeking summary discharge of respondent's mechanic's lien on the ground that it was not authorized by the agreement. By the return date of the special proceeding, respondent had already filed a release of its mechanic's lien and the parties entered into a stipulation so ordered by the court to convert the action into a plenary proceeding and to allow respondent to file an amended answer. Respondent then filed an amended answer on September 9, 2013 in which it asserted a counterclaim for breach of the settlement agreement. Petitioner then filed a reply to the counterclaim in September 2013 in which it asserted various defenses, including a defense that the respondent had agreed to arbitrate its claims in the settlement agreement. Respondent then filed the present motion for summary judgment in October 2013 alleging breach of the settlement agreement by petitioner and petitioner filed its cross-motion to compel arbitration in October 2013.

The issue of whether the dispute before the court is subject to arbitration is a threshold issue which must be addressed first. "If the court concludes that the parties made a valid agreement to arbitrate, that the dispute sought to be arbitrated falls within its scope, and that there

has been compliance with any agreed on conditions precedent to arbitration, judicial inquiry is at an end (absent any issue as to bar by limitation of time) and the parties should be directed to proceed to arbitration.” *Matter of County of Rockland*, 51 N.Y.2d 1, 8 (1980).

In the instant case, the court grants petitioner’s motion to compel arbitration. The settlement agreement clearly contains a valid agreement to arbitrate as it provides that the parties agree to settle any dispute in excess of \$5,000 through binding arbitration. Moreover, the counterclaim by respondent seeking to recover a money judgment in excess of \$5,000 based on petitioner’s failure to make required payments pursuant to the settlement agreement falls within the scope of the arbitration clause as it involves a dispute in excess of \$5,000. Finally, there are no conditions precedent that must be met before the parties can be compelled to arbitrate. Because the court finds that the parties must arbitrate this dispute, the court need not reach the other issues raised by respondent as to the whether it is entitled to summary judgment pursuant to the terms of the settlement agreement.

The argument by respondent that petitioner waived the right to arbitrate the dispute by commencing the special proceeding to vacate the mechanic’s lien or by entering into the stipulation converting this action into a plenary proceeding is without merit. Initially, petitioner could not have commenced an arbitration to resolve the issue of whether the mechanic’s lien filed by respondent should be vacated because that dispute was not within the scope of the arbitration agreement. The agreement to arbitrate only covered disputes in excess of \$5,000, which would not cover a dispute to vacate a mechanic’s lien, even assuming arguendo that an arbitrator would have the authority to vacate a mechanic’s lien. Moreover, petitioner did not waive its right to compel arbitration by stipulating to convert its action into a plenary proceeding

because the counterclaim asserting a dispute in excess of \$5,000 had not yet been brought at the time the stipulation was entered into.

Accordingly, the cross-motion to compel arbitration is granted and the parties are directed to proceed to arbitration. This action and the counterclaim are hereby dismissed. This constitutes the decision and order of the court.

Dated: 11/7/13

Enter: CK
J.S.C.

CYNTHIA S. KERN
J.S.C.