

Wailes v Tel Networks USA, LLC

2014 NY Slip Op 30817(U)

March 27, 2014

Sup Ct, New York County

Docket Number: 654514/12

Judge: Jeffrey K. Oing

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48

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KEVIN WAILES,

Plaintiff,

Index No.: 654514/12

-against-

Mtn. Seq. No. 006

TEL NETWORKS USA, LLC, MICHAEL BRANCA,
ROSEMARIE BRANCA AND JOHN H. SNYDER

DECISION AND ORDER

Defendants.

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JEFFREY K. OING, J.:

Defendants, Tel Networks USA, Michael Branca, Rosemarie Branca, and John Snyder, move, pursuant to CPLR 7510, for an order confirming a final arbitration. Plaintiff, Kevin Wailes, cross-moves, pursuant to CPLR 7511, for an order partially vacating the award.

Facts

The facts are gleaned from the Final Award, dated January 10, 2014 (Snyder 1/10/14 Affirm., Ex. 1). Plaintiff initially worked for defendant Tel Networks as an independent consultant. After completing work on the "Avenues Project," defendant Tel Networks offered him employment as an Executive Vice President of Engineering, which he began on March 1, 2012. His employment was for two years, and his compensation package included a \$150,000 salary, various commissions, a 20% share of Tel Networks after 10 months of continuous employment, and severance of one year's salary if defendant terminated him without just cause.

As for plaintiff's work on the Avenues Project, a \$50,000 balance was due to plaintiff. Defendant Tel Networks and plaintiff agreed to have defendant pay plaintiff \$50,000 pursuant to an installment plan. Before the first installment was due, plaintiff threatened to resign unless he was paid early. Because defendant needed plaintiff for a vital installation job, defendant Tel Networks paid him on October 19, 2012, one week before the installation. On November 30, 2012, plaintiff again demanded payment of the next installment early. After defendant Rosemarie Branca refused to pay him, plaintiff unsuccessfully attempted to contact defendant Michael Branca before plaintiff canceled an installation scheduled for that day. When Michael Branca questioned him, plaintiff purportedly told him that he canceled because he wasn't being paid. Plaintiff, however, claims that the cancellation was due to the fact that he had to pick up his children at school.

The final installment was due on January 15, 2013. On December 13, 2012, plaintiff told defendant Michael Branca that he would resign if he wasn't paid, to which Michael Branca purportedly responded:

Fine. Then I accept your resignation. I want a letter of resignation from you.

(Final Award, p. 8). Plaintiff allegedly responded by saying "I'm not going to give it to you ... I'm not making it that easy for you" (Id.). On December 15, 2012, defendant John Snyder, Tel

Networks' attorney, sent plaintiff a letter confirming his resignation, and demanding the return of certain usernames, passwords, and a company laptop. Ultimately, plaintiff wiped the data from the laptop, Tel Networks hired another company to complete plaintiff's final project, and several Tel Networks employees spent time attempting to recover the usernames and passwords for Tel Networks' Cisco systems (Id. at pp. 10-11).

Procedural Posture

Plaintiff commenced this action on December 24, 2012 by service of a verified complaint. On February 1, 2013, this Court granted plaintiff's motion for a preliminary injunction enjoining enforcement of the non-compete clause in plaintiff's employment agreement, dismissed the complaint against defendants Michael and Rosemarie Brancas, and, pursuant to the employment agreement, directed the parties to arbitration.

Plaintiff submitted his claims to JAMS on April 12, 2013 (Demand for Arbitration, Synder 1/19/14 Reply Affirm., Ex. 4). After the completion of discovery, the Arbitrator held a four day hearing, which included eight witnesses, over fifty exhibits, and almost 1,000 pages of transcript. The Arbitrator rendered a final award on January 10, 2014. The Arbitrator converted this Court's preliminary injunction into a permanent injunction enjoining enforcement of the employment agreement's non-compete clause, and awarded plaintiff the balance of the monies owed for the Avenues Project (\$12,500), unpaid commissions (\$33,864.73),

vacation pay (\$5,769.23), and out-of pocket expenses (\$339.72) (Final Award, p. 28). The Arbitrator did not award interest on these amounts. In that regard, the Arbitrator sanctioned plaintiff for spoliation of the data on his company laptop (Id. at pg. 27). The Arbitrator's award to plaintiff was offset by her award to defendant Tel Networks. In that regard, the Arbitrator awarded defendant \$16,679.25 as recovery for the Promenet invoices and \$1,126.40 in out-of-pocket expenses, plus interest on both amounts for 12 months at 9%.

Discussion

A court's power to review an arbitration award is extremely limited. When evaluating an award, "the court shall not consider whether the claim ... is tenable, or otherwise pass upon the merits of the dispute" (CPLR 7501). A court may only vacate an award if it "violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Bd. of Educ. of City School Dist. of City of New York, 1 NY3d 72, 79 [2003]). In evaluating the award for any of those grounds, "courts must be able to examine an arbitration agreement or an award on its face, without engaging in extended factfinding or legal analysis" (McIver-Morgan, Inc. v Dal Piaz, 108 AD3d 47, 51 [1st Dept 2013]). A court is bound by the arbitrators factual findings, contract interpretation, and judgment as to remedies, and may not substitute its own judgment even to correct factual

or legal errors (Azrielant v. Azrielant, 301 AD2d 269, 275 [1st Dept 2002]). If any plausible basis exists, a court must confirm the award (Brown & Williamson Tobacco Corp. v. Chesley, 7 AD3d 368, 372 [1st Dept 2004]).

Applying these legal principles to the facts herein, the Final Award should be confirmed. Nonetheless, plaintiff argues that the final award is irrational and violates public policy because the Arbitrator improperly interpreted the contract, failed to apply New York Labor Law, and failed to credit plaintiff's testimony at the hearing. Specifically, he claims that the Arbitrator should have awarded him one year's severance, statutory penalties, interest, and attorney's fees on his unpaid commissions, and 20% share of Tel Networks. In support of these arguments, he offers his own interpretation of the contract and Labor Law § 191-c(3), which provides for double damages and reasonable attorney's fees to the prevailing party in an action for commissions. Plaintiff's arguments are unavailing.

Even if the Arbitrator were to have erred in her fact finding and application of the law, such errors are not sufficient grounds to vacate the award. The principle is well settled, "absent provision in the arbitration clause itself, an arbitrator is not bound by principles of substantive law or by rules of evidence ... [h]e may do justice as he sees it, applying his own sense of law and equity to the facts as he finds them to be" (Silverman v Benmor Coats, Inc., 61 NY2d 299, 308 [1984]).

That an arbitrator may have misapplied the law in the area of the contract, or the contract itself, is not a violation of public policy or irrational (New York City Tr. Auth. v Transp. Workers' Union of Am., Local 100, AFL-CIO, 6 NY3d 332, 336 [2005]).

Plaintiff's counsel explicitly invites this Court to make anew credibility determinations, contract and statutory interpretations, and findings of fact, to vacate a portion of the award (Dweck 1/15/14 Affirm., ¶¶ 6, 7, 10, 11, 17 ["The Arbitrator's conclusion must be vacated, because it is not supported by the words which the Arbitrator claims constituted a 'constructive resignation'"; "The Arbitrator clearly misapplied the contract terms"; "The testimony of Mr. Michael Branca ... was not credible, but the Arbitrator chose to follow it, nevertheless"; "Mr. Branca was also untruthful when questioned on cross-examination"; "The Arbitrator committed a serious error when she ignored Tel-Networks' violation of Section 191[c] of the New York Labor Law"). There is no legal authority for this Court to accept such invitation.

Further, plaintiff's mere dissatisfaction with the Arbitrator's reasoning and ultimate findings is not sufficient to warrant vacatur. In order to hold that an award is irrational or against public policy, a court must be able to examine the award on its face, and determine that it is improper without engaging in its own legal or factual analysis (McIver-Morgan, Inc., 108 AD3d at 51).

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Contrary to plaintiff's assertions, the Final Award is facially rational and supported by the Arbitrator's findings. Indeed, in order to find that the Final Award herein is irrational or violative of public policy, this Court would have to determine whether section 191-c(3) applies, and re-weigh Michael Branca's and plaintiff's testimony and credibility. Nothing in this record compels this Court to undertake such review.

Accordingly, defendants' motion to confirm the Final Award is granted, and it is confirmed in all respects. Plaintiff's cross-motion for a partial vacatur of the Final Award is denied in its entirety. Counsel shall telephone the Clerk of Part 48 at 646-386-3265 to schedule a status conference.

Settle order on notice. E-file proposed order under "notice of settlement" with a hard copy filed in Room 119 for processing.

Dated:

3/27/14


HON. JEFFREY K. OING, J.S.C.