

Citidental of Harlem P.C. v C&G Dental PLLC

2014 NY Slip Op 31925(U)

July 22, 2014

Supreme Court, New York County

Docket Number: 652819/2013

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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CITIDENTAL OF HARLEM P.C. and
DR. MARINA SHRAGA,

Plaintiffs,

DECISION AND
ORDER

-against-

Index No. 652819/2013

C&G DENTAL PLLC, d/b/a EAST HARLEM
COMMUNITY DENTAL, DR. OLEG GONCHAROV
and DR. DWAYNE T. CULOTTA,

Defendants.

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HON. ANIL C. SINGH, J.:

In this action for fraudulent inducement and breach of contract, defendants C&G Dental, PLLC d/b/a/ East Harlem Community Dental, Dr. Oleg Goncharaov (“Defendants”) move for an order pursuant to CPLR 7503 compelling arbitration. Defendant Dr. Dwayne T. Culotta (“defendant Culotta”) moves for an order pursuant to CPLR 3211(a)(7) dismissing plaintiffs Citidental of Harlem P.C. and Dr. Marina Shraga’s (“plaintiffs”) verified complaint on the basis that it fails to state a cause of action. Plaintiffs oppose the motion.

In resolving a motion to dismiss “on the ground that the action is barred by documentary evidence, such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively

establishing a defense as a matter of law”. (Goshen v Mut. Life Ins. Co. of New York, 98 NY2d 314, 326 [2002]).

Defendants argue these claims must be arbitrated under the arbitration clause in the purchase agreement which states, “[t]he parties agree to submit all unresolved disputes pursuant to this agreement to Arbitration through the American Arbitration Association, New York County, New York. This requirement to seek arbitration shall not include the enforcement of the restrictive covenant in the event of a claim of breach by the Seller.” Plaintiffs argue that defendants engaged in a fraudulent scheme when they sold their dental practice to plaintiffs which permeates the entire agreement thus making the agreement, including the arbitration clause, void and litigation proper.

A broad arbitration clause in New York is separable from substantive provisions of an agreement and, even if there is fraud in the inducement of substantive provisions, all issues including claim of fraud, are to be determined by arbitrators. (Weinrott v Carp, 32 NY2d 190, 198 [1973]). Thus as here where plaintiff alleges fraudulent inducement of the purchase agreement, the claim will be reviewed in arbitration.

Courts will invalidate the arbitration clause in a few discrete fact patterns. The arbitration clause will only be set aside where plaintiff was fraudulently

induced to enter into the arbitration clause itself or a fraudulent scheme permeated the entire agreement resulting in an absence of arm's length negotiation.

(Housekeeper v Lourie, 39 AD2d 280, 284 [1st Dept 1972]). Plaintiffs have not alleged any facts of fraud in the execution. The fraud alleged by plaintiff is that defendants acted in violation of Medicare and Medicaid kick back statutes by offering remuneration in exchange for patient referrals.

This fraud is unrelated to the parties bargaining power and to the procurement of the purchase agreement itself. The remuneration fraud defendants are alleged to engage in with third parties does not vitiate the entire purchase agreement. C.f. Moseley v Elec. & Missile Facilities, Inc., 374 US 167, 171 [1963] (finding fraud was against plaintiff thus constituting a fraudulent scheme); Oberlander v Fine Care, Inc., 108 AD2d 798, 799 [2d Dept 1985]. Therefore, the arbitration clause at issue is valid and enforceable.

The final issue of arbitrability is whether the claims at issue fall under the arbitration clause. (CPLR 7503(a)). Here the arbitration clause is so broad to include "all unresolved disputes pursuant to this agreement" thus it encompasses the fraud in the inducement and breach of contract for misrepresentation claims since it relates to the warranties contained in the agreement and the fraud used to enter into the agreement.

Pursuant to the language of the purchase agreement, a claim for breach of the non-compete clause is not subject to arbitration. Defendants argue that this claim should be removed to small claims court because the amount in controversy is only \$2,500. However, “where arbitrable and nonarbitrable claims are inextricably interwoven, the proper course is to stay judicial proceedings pending completion of the arbitration, particularly where the determination of issues in arbitration may well dispose of nonarbitrable matters” (Anderson St. Realty Corp. v New Rochelle Revitalization, LLC, 78 AD3d 972, 975 [2d Dept 2010]). Accordingly, the third cause of action for breach of contract is severed and stayed.

Lastly, defendant Culotta moves to dismiss the claims against him under CPLR 3211(a)(7) on the basis that plaintiffs’ verified complaint fails to state a cause of action. Defendant Cullotta cannot be held liable for breach of contract for a contract to which he is not party. (VisionChina Media Inc. v Shareholder Representative Services, LLC, 109 AD3d 49, 58 [1st Dept 2013]). Plaintiffs have not alleged any acts of defendant Cullotta to which they relied upon or with the sufficient particularity to sustain a fraudulent inducement claim. (Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 [2009]). Furthermore, defendant Culotta cannot be held personally liable through his membership of C&G Dental PLLC under New York’s professional relationship and liabilities statute since plaintiffs’ claim do not arise from defendant Culotta rendering his

professional services. (Limited Liability Company Law § 1205). Accordingly defendant Cullotta's motion to dismiss is granted.

ORDERED that the motion of defendant Cullotta to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room ¹⁴⁸~~158~~), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the remaining defendants' motion to compel arbitration and to stay this action is granted; and it is further

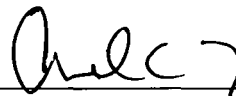
ORDERED that plaintiffs shall arbitrate their first cause of action for fraud in the inducement and their second cause of action for breach of contract for the

seller's warranties against defendants in accordance with the purchase agreement;
and it is further

ORDERED that all proceedings in this action are hereby stayed including
plaintiffs' third cause of action for breach of contract of the non-compete clause,
except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show
cause to vacate or modify this stay upon the final determination of the arbitration.

Date: July 22, 2014
New York, New York


Anil C. Singh

HON. ANIL C. SINGH
SUPREME COURT JUSTICE