Matter of Learningspring Sch. v Delta Dallas Alpha Corp.
2014 NY Slip Op 34050(U)
July 31, 2014
Supreme Court, New York County
Docket Number: Index No. 650084/2014
Judge: Michael D. Stallman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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In the Matter of the Arbitration Between
LEARNINGSPRING SCHOOL,

Petitioner,

Index No. 650084/2014

- against -

DELTA DALLAS ALPHA CORP. d/b/a "BRIDGEWATERS", and THE GLAZIER GROUP, INC.,

Decision and Judgment

Respodents.

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HON. MICHAEL D. STALLMAN, J.:

Petitioner LearningSpring School seeks to confirm an arbitration award dated December 20, 2013. Respondent Delta Dallas Alpha Corp. d/b/a "Bridgewaters" does not oppose the petition. Respondent The Glazier Group, Inc. opposes the petition on the ground that it was not a signatory to the agreement between petitioner and Delta Dallas Alpha Corp., and therefore concludes it was not subject to arbitration.

BACKGROUND

On November 8, 2012, petitioner entered into an agreement with Delta Dallas Alpha Corp., doing business as Bridgewaters, to hold petitioner's

annual gala at Bridgewaters's catering facility on March 12, 2013. (Verified Petition ¶ 4; Verified Petition, Ex A.) The agreement states, in relevant part:

> "4. CANCELLATION AND FORCE MAJEURE: If for any reasons beyond its control, but not limited to, fire strikes, labor disputes, acts of war or acts of God, Bridgewaters is unable to perform its obligations under this Agreement, Bridgewaters may terminate this Agreement and will return the Deposit and the Security Deposit (provided you are not in default under this Agreement). IN NO EVENT SHALL Bridgewaters BE LIABLE FOR CONSEQUENTIAL DAMAGES.
>
> * * *
>
> 9. ARBITRATION. All disputes hereunder shall be arbitrated in the City of New York in accordance with the rules of the American Arbitration Association by a single arbitrator acceptable to both parties."

(Verified Petition, Ex A.)

In accordance with the agreement, petitioner placed a deposit of $16,401. (Verified Petition, Ex B.) However, petitioner was allegedly advised that, due to damage from Hurricane Sandy, Bridgewaters remained closed and would be unable to host petitioner's event. (Verified Petition ¶ 8.) Petitioner allegedly requested Bridgewaters to return the deposit. (*Id.*) Petitioner asserts that, "following discussions, the parties agreed that Bridgewaters would refund LearningSpring's security deposit in five equal installments of $3,280.00, to be paid out over five consecutive weeks." (*Id.* ¶ ¶9.) Petitioner claims that the deposit was not returned, and it thereafter

demanded arbitration before the American Arbitration Association. (*Id.* ¶¶ 10-11.)

In an arbitration claim dated July 2, 2013, petitioner named the respondent to the arbitration as "DELTA DALLAS ALPHA CORP. dba BRIDGEWATERS AND THE GLAZIER GROUP, INC." (Glazier Opp. Aff., Ex E.) According to petitioner, respondents neither answered the arbitration claim nor participated in a preliminary telephonic conference on November 14, 2013. (Verified Petition ¶ 11.)

The arbitrator issued an award dated December 20, 2013. (Verified Petition, Ex D.) Like the arbitration claim, the award named the respondent to the arbitration as "Delta Dallas Alpha Corp. dba Bridgewaters and The Glazier Group, Inc." The award directed this respondent not only to pay petitioner the total amount of the deposit plus $3822.17, representing legal fees and disbursements that petitioner expended, but also to reimburse petitioner $1,925.00, which represented "that portion of said fees [administrative fees] and expenses in excess of the apportioned costs previously incurred by [petitioner]." (*Id.*)

DISCUSSION

The award is confirmed as against respondent Delta Dallas Alpha Corp. d/b/a "Bridgewaters", which does not oppose the petition. Petitioner is

entitled to interest from the date of the award until the date of entry of the judgment confirming that award. (*Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston and Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]; *Matter of Curtis Lumber Co., Inc. [American Energy Care, Inc.]*, 81 AD3d 1225 [3d Dept 2011].)

It is undisputed that respondent The Glazier Group, Inc. (TGG) was not a signatory to the agreement that petitioner made with Delta Dallas Alpha Corp. (DDA) TGG therefore argues that it had no agreement to arbitrate with petitioner. In addition, TGG argues that the award was only rendered against DDA because the award named only one respondent.

Petitioner contends that TGG may not raise the lack of a valid agreement to arbitrate as a ground to vacate the award because it was served with a notice of intention to arbitrate. Petitioner also argues that TGG should be estopped from asserting the lack of an arbitration agreement, and that TGG is the alter ego of DDA. According to petitioner's counsel, DDA and TGG share the same principal offices, and officers and employees of DDA and TGG overlap. (Adler Reply Affirm. ¶ 14.) Petitioner claims that it was led to believe that TGG "was a party to the transaction" because emails about Bridgewater's permanent closure and about the return of the deposit were

sent to Alexis Fine DeAngelis, identified as "Director of Catering" at afine@theglaziergroup.com, i.e., the emails were sent to a domain name which appears to belong to TGG.

Petitioner submits an affidavit from Peter Glazier, CEO of TGG, which was purportedly submitted in support of TGG's Chapter 11 bankruptcy filing in November 2010.[1] (Adler Reply Affirm., Ex A.) In the affidavit, Glazier states that DDA is an affiliate of TGG, among others, and that

> "The Debtor [TGG] and the Affiliates operate as a single economic enterprise. . . . [TGG], through various management agreements, operates and manages the following restaurants owned by the Affiliates in New York: Bridgewater's. . . .
>
> [TGG] provides management and support services including but not limited to accounting, human resources, purchasing, public relations, maintenance, culinary and executive management to the Restaurants. Receipts from the Restaurants operations, both credit cards and cash, are either directly deposited, or swept into a central [TGG] bank account upon receipt. The monies are then utilized to pay the expenses of the individual restaurants such as payroll."

(*Id.* ¶¶ 5-6.)

As a threshold matter, petitioner's argument that TGG was not permitted to raise lack of an agreement to arbitrate as a ground to vacate the award is unpersuasive. CPLR 7511 (b) (2) provides that a party "who neither

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[1] Neither petitioner nor TGG stated in their papers that TGG's bankruptcy proceeding was still pending at the time this proceeding was commenced. The Court therefore concludes that there is no automatic bankruptcy stay in effect.

participated in the arbitration nor was served with a notice of intention to arbitrate" may raise that a valid agreement to arbitrate was not made as a ground to vacate the award. Although TGG was apparently served with a demand for arbitration (*see* Glazier Opp. Affirm., Ex D), the notice of intention to arbitrate must comply with the requirements set forth in CPLR 7503 (c). (*See Matter of Albert Bialek Assoc. [Northwest-Atlantic Partners]*, 251 AD2d 145 [1st Dept 1998].)

CPLR 7503 (c) requires that the notice of intention to arbitrate be served in the same manner as a summons or by registered or certified mail, return receipt requested. The notice must also state that "unless the party served applies to stay the arbitration within twenty days after such service he shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time." (CPLR 7503 [c].) Here, petitioner did not indicate the manner in which the demand for arbitration was served upon TGG, and the demand for arbitration does not appear to contain the requisite language. (*See* Glazier Opp. Affirm., Ex D.)

Therefore, TGG may raise lack of an agreement to arbitrate as a ground to vacate the award.

> "While CPLR 7501 requires that an agreement to arbitrate be in writing, this Court has recognized in certain limited

> circumstances the need to impute the intent to arbitrate to a nonsignatory.
>
> Other courts have created an 'alter ego' exception, compelling the 'alter egos' of a signatory to arbitrate. Akin to piercing the corporate veil to 'prevent fraud or to achieve equity', this exception applies as well in determining whether a nonsignatory to an arbitration agreement should be bound by it. Those seeking to pierce a corporate veil of course bear a heavy burden of showing that the corporation was dominated as to the transaction attacked and that such domination was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences. Evidence of domination alone does not suffice without an additional showing that it led to inequity, fraud or malfeasance."

(*TNS Holdings, Inc. v MKI Securities Corp.*, 92 NY2d 335, 339 [1998] [internal citations omitted].) "Accordingly, cases following *TNS Holdings* have dismissed complaints seeking to hold a parent liable for the contractual obligations of its subsidiary or affiliate 'unaccompanied by allegations of consequent wrongs.'" (*Cobalt Partners, L.P. v GSC Capital Corp.*, 97 AD3d 35, 40 [1st Dept 2012] [collecting cases].)

Applying the "alter ego" test here, petitioner's showing here is not sufficient to prove that TGG is an alter ego of DDA. Assuming, for the sake of argument that the practices set forth Glazier's affidavit are currently the practices of TGG, the affidavit appears to indicate that TGG and DDA commingled funds. However, petitioner did not establish that TGG "misused the corporate form for its personal ends so as to commit a fraud or

wrongdoing or avoid any of its obligations." (*TNS Holdings, Inc.*, 92 NY2d at 340.) To the extent that TGG's role in managing Bridgewaters was attributable to management agreements referenced in Glazier's affidavit, "interrelatedness, standing alone, is not enough to subject a nonsignatory to arbitration." (*Id.*) The Court therefore cannot conclude that TGG was an "alter ego" of DDA, and consequently, cannot impute to TGG an agreement to arbitrate based on petitioner's agreement with DDA.

> "Under the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory 'knowingly exploits' the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement.
>
> Where the benefits are merely 'indirect,' a nonsignatory cannot be compelled to arbitrate a claim. A benefit is indirect where the nonsignatory exploits the contractual relation of the parties, but not the agreement itself."

(*Matter of Belzberg v Verus Investments Holdings Inc.*, 21 NY3d 626, 631 [2013] [internal citations omitted].)

Here, the benefits of the petitioner's agreement with DDA did not flow directly to TGG. The check for the deposit due under the agreement was made payable to DDA, not TGG. (Petition, Ex B.) Accepting the statements in Glazier's affidavit that profits from affiliates such as DDA are still being deposited into a central TGG bank account, TGG's use of such monies does

not flow directly from petitioner's agreement with DDA. (*See Matter of Belzberg*, 21 NY3d at 635.)

Therefore, petitioner's argument of estoppel is without merit. Given all the above, the award cannot be confirmed as to TGG, and that portion of the award is vacated on the ground of the lack of an agreement to arbitrate.

CONCLUSION

Accordingly, it is hereby

ADJUDGED that the petition is granted in part, and the award dated December 20, 2013 is confirmed only to the extent that so much of the award that was rendered in favor of petitioner LearningSpring School and against respondent Delta Dallas Alpha Corp. dba Bridgewaters is confirmed; and it is further

ADJUDGED that petitioner LearningSpring School, having an address at 247 East 20th St, New York, NY 10003, do recover from respondent Delta Dallas Alpha Corp., having an address at 535 Fifth Avenue, 16th Floor, New York, NY 10017, the amount of $ 22,148.17, plus interest at the rate of 9% per annum from the date of December 20, 2013, as computed by the Clerk in the amount of $ 1396.07, together with costs and disbursements in the amount of $ 505.00 as taxed by the Clerk, for the total

amount of $ 24,051.24, and that the petitioner have execution therefor; and it is further

ADJUDGED that the remainder of the petition is denied, and that portion of the award dated December 20, 2013 that was rendered in favor of petitioner LearningSpring School and against respondent The Glazier Group, Inc. is vacated.

Dated: ~~August~~ July 31, **2014**
New York, New York

ENTER:

J.S.C.

HON. MICHAEL D. STALLMAN

Norman Goldman
Clerk

FILED
SEP - 2 2014
COUNTY CLERK'S OFFICE
NEW YORK