

**Matter of White Orchid Estate Corp. v Cavan Corp. of  
NY**

2014 NY Slip Op 34072(U)

March 26, 2014

Supreme Court, New York County

Docket Number: Index No. 650366/14

Judge: Geoffrey D. Wright

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 47

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In The Matter Of The Application Of  
WHITE ORCHID ESTATE CORP., On Behalf  
Of Itself And Michael Lisman,  
Plaintiff-Petitioner(s),

-against-

CAVAN CORPORATION OF NY,

Defendant-Respondent(s),

For A Judgment Pursuant To CPLR 7503 Permanently  
Staying An Arbitration Pending Before The  
American Arbitration Association And Pursuant To  
Lien Law #3 and 19(6) Vacating A Certain Notice  
of Mechanic's Lien Filed By Respondent.

Index #650366/14

Motion Cal. #

Motion Seq. #

DECISION/ORDER

Pursuant To Present:

Hon. Geoffrey Wright

Judge, Supreme Court

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of  
this Motion to: stay arbitration

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PAPERS	NUMBERED
Notice of Petition/Motion, Affidavits & Exhibits Annexed	1
Order to Show Cause, Affidavits & Exhibits	
Answering Affidavits & Exhibits Annex	2,3,4
Replying Affidavits & Exhibits Annexed	
Other (Cross-motion) & Exhibits Annexed	
Supplemental Affidavit	

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Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Petitioner is the record owner of a condominium apartment. The Petitioner was hired to perform certain renovations. A dispute has now arisen between the parties, with unpaid contractual obligations as the subject. In order to resolve the dispute, the Respondent has attempted to exercise the arbitration clause in the agreement between the parties. This proceeding was commenced to avoid arbitration.

The ground for the petition is the argument that the contract for improvement of an apartment that is the intended home for Michael Lisman, and thus pursuant to Administrative Code sections 20-385 and 20-286 as well as the Lien Law, the Respondents may not proceed with any action or proceeding to recover any alleged money due for the work on the apartment in question.

The contract engaging the services of Cavan is between Cavan and White Orchid. The contract is signed, on behalf of White Orchid in an illegible hand, with the clear designation the person who signed the agreement on behalf of White Orchid was its Assistant Secretary


There are references throughout the e-mails attached to the moving papers to someone named Lisman. There are also contextual references to the Lisman apartment. However, as evidenced by the e-mails, the Lisman in question appears to be Jan Lisman, whose concerns seem to be about another apartment that he owns or uses. I quote an e-mail of August 26, 2011, "JFL wishes to keep it all for his other apartment." None of the documents specifically names Michael Lisman as having any interest in the subject apartment. There is no mention of intended use by anyone.

"It is well settled that section 20-387 is only intended to apply to home improvement agreements between a contractor and a homeowner or tenant who uses the premises as his or her residence. [*11 EAST 69TH STREET REDEVELOPMENT REDEVELOPMENT ASSOCIATES LLC v. SMI CONST. MANAGEMENT*, 2007 WL 6496895, App. Withdrawn (48 A.D.3d 301, 850 N.Y.S.2d 899, 2008 N.Y. Slip Op. 01437 (Trial Order), citing *Routier v. Waldeck*, 184 Misc2d 487, 490 (Dist Ct Nassau Co 2000). See also *Matter of Kuchar v. Baker*, 261 AD2d 402, 403 (2<sup>nd</sup> Dept 1999); *Ayres v. Dunhill Interiors*, 138 AD2d 303, 305(1<sup>st</sup> Dept 1988); *Corcoran Marble Co. v. Clark Constr. Corp.*, 155 Misc2d 49, 51 (App T 1<sup>st</sup> Dept 1993)]; further from the same decision, "In this respect, the plaintiff is neither a homeowner nor a residential tenant but, rather, a limited liability company... Although plaintiff thus suggests that Mr. Levinson is the real party in interest, it is the LLC which owns title to the property, which entered into the home improvement contract with defendant and which brought this action. The plaintiff has not cited any cases, and the court has found none, where section 20-387 was applied to protect a company which owns the property being improved. Since the plaintiff is not an individual and cannot therefore use the premises as a residential home, section 20-387 is inapplicable to the transaction which is the subject of this action."

In sum, then, the Petitioner has not demonstrated its right to a stay of arbitration. As an additional consideration, the Petitioner has previously, in settlement of an earlier law suit, executed a stipulation that specifically provided for its participation in mediation, and then arbitration, if needed. That agreement was signed off on by Hon. Saliann Scarpulla, and there is no application seeking to set aside that agreement. This agreement, between the same parties, and involving the same agreement in dispute, is thus *res judicata*, and binding on us all.

The petition to permanently stay arbitration is therefore denied, and the petition is dismissed. This constitutes the decision and order of the court.

Dated: March 26, 2014

  
GEOFFREY D. WRIGHT  
AJSC