

Usha Soha Terrace, LLC v RGS Holdings, LLC

2015 NY Slip Op 30829(U)

May 15, 2015

Supreme Court, New York County

Docket Number: 651699/2014

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 45

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USHA SOHA TERRACE, LLC,

Plaintiff,

-against-

RGS HOLDINGS, LLC, HANS FUTTERMAN SOHA
TERRACE, LLC and 2280 FDB, LLC,

Defendants.
-----X

DECISION AND
ORDER

Index Nos.
651699/2014
Mot. Seq. 001

HON. ANIL C. SINGH, J.:

In this action for, *inter alia*, breach of fiduciary duty, defendants move for (i) an order pursuant to CPLR §7503(a) to compel arbitration, (ii) an order pursuant to CPLR §3211 (a) (7) dismissing the third and fourth causes of action in plaintiff's complaint and/or, (iii) a staying the instant action. Plaintiffs oppose.

The parties entered into an Operating Agreement which outlines a three step process to resolve disputes. The first step entails a good faith negotiation, the second step entails an arbitration procedure and the third and final step states "if the Members are unable to resolve such dispute through the arbitration procedure selected by them, any Member involved in such dispute may bring an action or proceeding in any court having jurisdiction thereof." The parties have engaged, and are in the process of completing, arbitration through the American Arbitration

Association (“AAA”) through Michael A. Renda Esq., as Arbitrator. While this motion was *sub judice* Arbitrator Renda held “[t]he only form of arbitration which is unable to resolve a dispute is non-binding arbitration.”

Plaintiff has argued that defendants have frustrated the arbitration process by failing to produce certain documents within the arbitration. Plaintiff then contends two out of the three members no longer wish to pursue arbitration thus they reason court intervention is now appropriate. On the other hand, defendants argue that plaintiffs never made a motion for the pertinent documents within the arbitration. Moreover, defendants contend, even if arbitration is non-binding it is an essential step of the contractual dispute resolution process which the parties agreed to in the SOSHA Operating Agreement. This Court agrees.

The Court is not convinced that defendants’ failure to produce certain documents is a basis to find the arbitration has resulted in a logjam since plaintiffs have not exhausted their available remedies by making a motion to the Arbitrator to seek said documents. Furthermore, the parties have mutually agreed on the arbitration procedure within the AAA thus their rules regarding the number of arbitrators to preside over their case is controlling upon the parties. Arbitrator Renda’s holding is that the pending arbitration is non-binding. In his Order he does not reach the conclusion that because the arbitration is non-binding it is therefore fruitless.

“[A] “stay of plaintiffs' lawsuit constitutes the more equitable relief and would better effectuate the ADR agreement. Dismissal would prejudice plaintiffs, since the ADR agreement provides for a largely non-binding determination” (Citibank N.A. v Bankers Trust Co., 221 AD2d 222, 223 [1st Dept 1995]). The parties are in the middle of the arbitration process to which they selected and is required under the agreement. Even if the arbitration is non-binding it has the potential of conferring substantial benefits in resolving commercial disputes (see AMF Inc. v Brunswick Corp., 621 F Supp 456, 462 [EDNY 1985])). Defendants' motion to dismiss may be renewed subsequent to the application to lift the stay. Accordingly it is,

ORDERED that defendant's motion to compel arbitration and to stay this action is granted; and it is further

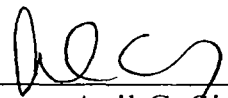
ORDERED that plaintiff Usha SOHA Terrace, LLC shall continue to arbitrate its claims against defendants RGS Holdings, LLC, Hans Futterman, SOHA Terrace, LLC and 2280 FDB, LLC in accordance with the SOHA Operating Agreement; and it is further

ORDERED that plaintiff plaintiff Usha SOHA Terrace, LLC shall make a motion before Arbitrator Renda for their sought after documents from defendant in accordance with the rules of the AAA within 30 days of the date of this Order; and it is further

ORDERED that all proceedings in this action are hereby stayed, 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: May 15, 2015
New York, New York



Anil C. Singh