

Charels A. Barragato & Co., LLP v Hei Wong

2015 NY Slip Op 32010(U)

October 26, 2015

Supreme Court, New York County

Docket Number: 156158/2015

Judge: Cynthia S. Kern

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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 55

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CHARELS A. BARRAGATO & CO., LLP,

Plaintiff,

-against

Index No. 156158/2015

DECISION/ORDER

HEI WONG and CWS CPA LLP,

Defendants.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affidavits in Opposition.....	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff Charles A. Barragato & Co., LLP (“CAB”) commenced the instant action against its former employee, defendant Hei Wong (“Wong”), and her new employer, defendant CWS CPA LLP (“CWS”), alleging, among other things, that Wong has solicited and accepted business from CAB’s clients since her separation from CAB in violation of her employment agreement with CAB. Defendant CWS now moves for reargument of that portion of this court’s prior decision which denied its motion to stay these proceedings pending a related arbitration between plaintiff and the principal of CWS. As will be explained more fully below, the motion for reargument is granted, and upon reargument, the court grants the motion of CWS to stay this action pending the determination of the arbitration between plaintiff and the principal of CWS.

The relevant facts as alleged in the complaint are as follows. Defendant Wong is a former employee of plaintiff CAB and a current employee of defendant CWS. Wong was hired by CAB as a tax supervisor on or about January 14, 2013. On that same date, Wong executed a Confidentiality, Work Product and Non-Competition/Solicitation Agreement (the "Agreement"). The Agreement contained, *inter alia*, covenants under which Wong agreed to restrictions on her post-termination ability to solicit CAB's clients and to disclose CAB's confidential information and work product. Wong resigned from CAB on October 28, 2014, and now works for CWS, which is an accounting firm formed on September 2, 2014 by former CAB non-equity partner Michael Chen ("Chen").

Plaintiff now brings this instant action alleging that while still employed by CAB, Wong inappropriately provided confidential information belonging to CAB and its clients to CWS, solicited and serviced CAB clients on behalf of CWS and used confidential information and CAB work product to provide services on behalf of CWS. Specifically, on or about June 18, 2015, CAB filed its complaint asserting claims against Wong for breach of contract, breach of fiduciary duty, breach of duty of loyalty, unfair competition, misappropriation and violations of the Computer Fraud and Abuse Act ("CFAA") and seeking a declaratory judgment. In its complaint, plaintiff also asserts a claim for tortious interference with contract against CWS. On the same date the complaint in this action was filed, plaintiff also filed a demand to commence commercial arbitration proceedings with the American Arbitration Association ("AAA") against Chen, the principal of CWS.

CPLR 2201 provides that "[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as

may be just.” “Where arbitrable and nonarbitrable claims are inextricably interwoven, the proper course is to stay judicial proceedings pending completion of the arbitration, particularly where, as here, the determination of issues in arbitration may well dispose of nonarbitrable matters” *County Glass & Metal Installers, Inc. v. Pavarini MCGovern, LLC*, 65 A.D.3d 940 (1st Dept 2009). See also *Weiss v. Nath*, 97 A.D.3d 661 (2d Dept 2012); *Anderson St. Realty Corp. v. New Rochelle Revitalization, LLC*, 78 A.D.3d 972 (2d Dept 2010); *Matter of Colonial Coop. Ins. Co.*, 46 AD3d 1012 (3d Dept 2007). However, “courts have the power to sever arbitrable causes of action from nonarbitrable causes of action where judicial economy would not be served by their consolidation, and where there is no danger of inconsistent rulings by the arbitrator and the court, or where there is no potential that the determination of the arbitrable causes of action would dispose of or significantly limit the issues involved in the nonarbitrable causes of action.” *Weiss*, 97 A.D.3d at 663.

In the instant case, the court finds that the claims in the arbitration between plaintiff and Chen are inextricably interwoven with the claims between plaintiff and Wong and CWS in the present proceeding. Based on the circumstances of the dispute, the determination of the claims between plaintiff and Chen may very well dispose of or significantly limit the issues involved in the present lawsuit as all of the claims in the arbitration and this lawsuit arise out of the departure of Chen and Wong from plaintiff and the work they are now performing at the new company, CWS. Moreover, both the arbitrator and this court will ultimately have to make a determination whether the actions of Chen and Wong in allegedly soliciting plaintiff’s clients and using confidential information of plaintiff in connection with their work at CWS is wrongful as to

plaintiff. Under these circumstances, it is appropriate to stay the present proceeding until the claims in the arbitration are resolved.

Based on the foregoing, the motion for reargument is granted, and upon reargument, the present action is hereby stayed pending the determination of the arbitration proceeding. The foregoing constitutes the decision and order of the court.

Dated: 10/26/15

Enter: _____ *CK*

J.S.C.

CYNTHIA S. KERN
J.S.C.