TCR Sports Broadcasting Holding, LLP v WN Partner , LLC
2016 NY Slip Op 31298(U)
July 11, 2016
Supreme Court, New York County
Docket Number: 652044/2014
Judge: Lawrence K. Marks

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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TCR SPORTS BROADCASTING HOLDING, LLP

Petitioner,

- against -

WN PARTNER, LLC; NINE SPORTS HOLDING, LLC; WASHINGTON NATIONALS BASEBALL CLUB, LLC; THE OFFICE OF COMMISSIONER OF BASEBALL; and ALLAN H. "BUD" SELIG, AS COMMISSIONER OF MAJOR LEAGUE BASEBALL,

Index No. 652044/2014

Respondents,

-and-

THE BALTIMORE ORIOLES BASEBALL CLUB and BALTIMORE ORIOLES LIMITED PARTNERSHIP, in its capacity as managing partner of TCR SPORTS BROADCASTING HOLDING, LLP,

Nominal Respondents.

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LAWRENCE K. MARKS, J.

The Revenue Sharing Definitions Committee of Major League Baseball (the "RSDC") issued an arbitration award on June 30, 2014 (the "RSDC Award"). The RSDC Award was vacated by this Court's November 4, 2015 Decision and Order (the "11/4/15 Decision"), familiarity with which is presumed. Currently, there are multiple appeals of the 11/4/15 Decision noticed. To the best of this Court's knowledge, none of those appeals has been perfected.

Respondent Washington Nationals Baseball Club, LLC ("the Nationals") contends

that petitioner TCR Sports Broadcasting Holding, LLP ("MASN") and the Baltimore Orioles Baseball Club and the Baltimore Orioles Limited Partnership (together, "the Orioles respondents") have repeatedly refused the Nationals' requests to return to the RSDC for a new arbitration. Mov Br, at 2.

By this motion, the Nationals have moved to compel a new arbitration before the RSDC. MASN opposes the motion to compel and has cross-moved for a stay of that arbitration, pursuant to CPLR § 2201.

Respondent Office of the Commissioner of Baseball ("MLB") states that it has reconstituted the RSDC, and that the RSDC will convene a new hearing the first week of August 2016. MLB Opp Br, at 7.

Motion to Compel

In their motion to compel, the Nationals claim that further delay in the resolution of this dispute creates severe prejudice, by permitting MASN to continue paying the Nationals below-market telecast rights fees. The Nationals further argue that there are strong public policies that favor arbitration, and that such policies require giving prompt and predictable effect to clear arbitration agreements. Reply/Opp to Cross Br, at 1, 12.

The Nationals are correct that courts have a strong policy that favors arbitration. It is important to note, however, that no party has argued to this Court that the underlying dispute should be decided by anything other than an arbitration.

The Nationals argue that their motion is to enforce or require compliance with the

11/4/15 Decision. Mot Br, at 1, 6. However, the 11/4/15 Decision granted the motion to vacate and denied the motion to confirm the RSDC Award. This Court granted no other relief. The 11/4/15 Decision did not mandate the nature, forum or timing of a future arbitration.

MASN is correct that the Nationals have argued from language in a footnote of the 11/4/15 Decision and sought to frame subjects for the parties' consideration, as if they were requirements of the 11/4/15 Decision. Cross Mot Br at 10. The 11/4/15 Decision, however, did not set timelines for returning to arbitration, nor did it require the parties to return to arbitration under the RSDC.

The Nationals characterize arbitration before the RSDC as a "bargained-for contractual right" and quote the 11/4/15 Decision with regard to this Court not re-writing the parties' arbitration agreement. *See, e.g.*, Mov Br at 2, 5, 11; Reply/Opp to Cross Br, at 8, 13. *See also* MLB Opp Br, at 2. Yet this Court similarly will not re-write the parties' arbitration agreement to require that its process move faster than the plain language requires.[1]

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[1] Questions regarding the appellate process, its timing and what action should be taken, if any, in the interim could have been bargained for. If those issues are addressed in the language requiring arbitration, no party has cited it.

Beyond that, the parties to an arbitration agreement have far more freedom than the court to change or correct the language that controls an arbitration, if they choose. The current dispute is the entirely predictable outcome that this Court sought to avoid when it told the parties that it was likely to send them to mediation. The parties then opted to go to private mediation, but they were unable to reach an agreement on process and timing. Those questions, therefore, are now before the Court.

This Court will not compel compliance with that which it never ordered. As such, the motion to compel arbitration is denied.

Cross-Motion for Stay

In seeking a stay, MASN argues that returning to the RSDC for arbitration now would be premature and inconsistent with the principles of judicial efficiency and orderly procedure. It claims that if its appeal is successful, there may be a determination that the RSDC can no longer function as an appropriate forum for the resolution of the parties' dispute. It further contends that, if the Nationals' and MLB's appeals are successful, a new arbitration would be not be necessary. MASN argues that the Court should exercise its broad discretion under CPLR § 2201, pending the appeals, to avoid wasted time and resources and risk of inconsistent rulings. The Orioles respondents argue that MLB is attempting to railroad MASN, aid the Nationals and thwart appellate review, and that this must be halted. Orioles Cross Reply Br, at 4.

In opposing the stay, the Nationals contend that cross-movants have identified no cases in which a court applied CPLR § 2201 to block arbitral proceedings. Reply/Opp to Cross Br. at 13. In its own opposition papers, MLB joins this argument, and asserts that there is a narrow question as to whether this Court can and should stay a new RSDC proceeding. MLB Opp Br, at 1, 6. MLB contends that CPLR § 2201 is inapplicable and only permits a court to stay its own proceedings, and that CPLR § 7503(b) is the sole provision for staying arbitral proceedings. MLB Opp Br, at 5-6.

However, in *Larkin v. Ins. Co. of North Am.*, the trial court found that it "has inherent power to stay further arbitration proceedings pending the decision" of a higher court on a related issue. 109 Misc.2d 944, 948 (Sup Ct Madison County 1981). That court noted that the stay was sought under CPLR § 7503, but that the arbitration process had commenced and the movant was not seeking a permanent stay of arbitration, but merely until there was more certainty for the award to be a final determination on the merits. The court addressed its broad statutory grant of jurisdiction to stay proceedings under, *inter alia*, CPLR § 2201, and stayed the arbitration. *Id.*, at 947-48.

Another court noted that the "argument requesting to stay arbitration on a non-permanent basis is not covered by CPLR § 7503(b). It appears to be covered under the court's general powers to stay proceedings before it under CPLR § 2201." *Monroe County v. Monroe County Law Enf't Ass'n*, 42 Misc.3d 1230(A), 2014 NY Slip Op 50283(U), *5 (Sup Ct Monroe County 2014) (denying stay of, presumably, a first arbitration and compelling the parties to arbitrate), *aff'd* 132 A.D.3d 1373 (4th Dep't 2015). This is consistent with the plain language of § 2201 and § 7503(b).

The Nationals also oppose the stay by arguing that MASN has the burden of establishing the necessity of a stay, and that MASN has not done so. A party seeking a stay of arbitration has the burden to show "sufficient facts to establish justification for the stay." *In re SSL Int'l, PLC*, 44 A.D.3d 429, 430 (1st Dep't 2007) (cited by the Nationals

as a case that denied a stay of arbitration, and compelled arbitration, Reply/Opp to Cross Br, at 11, although the arbitration being compelled in that case appears to have been the original/first arbitration). *See also Robert Stigwood Org., Inc. v. Devon Co.*, 44 N.Y.2d 922, 923 (1978) (noting that trial and appellate courts have wide discretion to avoid financial or other prejudice, but vacating the stay where the record was "completely bare" that a party would be "in any way prejudiced"). The Nationals also aver that the appeals will take a long time to complete, and that conducting a new, private arbitration will not entail any duplication of judicial effort or resources. Reply/Opp to Cross Br, at 11, 14.

This is unavailing. In *Herbert v. City of New York*, the First Department reiterated, in the contexts of stays and appeals, that "[p]roper use of precious court resources is particularly critical." 126 A.D.2d 404, 407 (1st Dep't 1987) (cited by the Nationals, accurately, but for the different position that stays are not granted when appeals lack merit or are for delay. Mov Br, at 4 n.4). Stays may be proper where what is occurring during the stay may dispose of or limit the issues. *SSA Holdings LLC v. Kaplan*, 120 A.D.3d 1111, 1111-12 (1st Dep't 2014) (where the stay was pending the resolution of another action).

The norm is demonstrated by *Fernandez v. NYC Transit Auth.*, 29 N.Y.S.3d 175 (1st Dep't 2016), *Sawtelle v. Waddell & Reed, Inc.*, 304 A.D.2d 103 (1st Dep't 2003), and *Olan v. Allstate Ins. Co.*, 212 A.D.2d 362 (1st Dep't 1995). In each case, following an arbitration award being vacated in whole or in part, the appeal appears to have been

decided *prior* to returning to arbitration. That is logical, and unsurprising. It is inefficient for a court to have motions and appeals regarding confirmation and vacature of different arbitration awards, at the same time, all stemming from the same dispute. This consideration would likely be appropriate in most instances. However, in the instant proceeding, it is certainly true. Here, in addition to the appeals, there have been multiple motions, and even another index number -- all stemming from the first RSDC arbitration and its award.[2]

If a new arbitration award were issued in this matter, the resulting motion and appellate practice could consume extensive resources of the courts. This Court stresses that it in no way intends to discourage any party in this proceeding from asserting its rights, either here in the trial court or in the appellate courts. But the facts and procedural history of the instant proceeding are not irrelevant.

Additionally, the objectives of efficiency and resource allocation are vitally important with regard to the *parties*. The parties themselves would ultimately be most harmed by potentially inconsistent results, as well as the costs and time expended. The conclusion that the parties should not be arbitrating, again, without a final determination on the arbitral process or forum, is clear.

As such, the stay of arbitration is granted, but only in part. No party in this proceeding may compel or conduct an arbitration with regard to the instant dispute, while

[2] This motion and cross-motion are motion sequence #20. The related proceeding was filed on July 25, 2014, and is now discontinued. Index # 157301/2014.

the appeals are pending. However, if an agreement or compromise of any kind is reached on the issue by *all* parties, nothing in this Decision and Order will preclude such an arbitration.

The Court has considered the parties' other arguments, and finds them unavailing.[3]

Accordingly, it is

ORDERED that the motion of the Washington Nationals Baseball Club, LLC is denied in full; and it is further

ORDERED that the cross-motion of TCR Sports Broadcasting Holding, LLC is granted to the extent of staying any party in this proceeding from compelling or conducting another arbitration of this dispute, without the agreement of all the parties to this proceeding, until the final determination of the appeals, and is otherwise denied.

This constitutes the Decision and Order of the Court.

Dated: July 11, 2016

ENTER:

J.S.C.

[3] For example, to the extent any of the parties argue that the instant decision be based, even in part, on which of the appeals are likely or unlikely to succeed, and to what extent (*see, e.g.*, Cross Mot Br, at 17; Reply/Opp to Cross Br, at 17; Orioles Cross Reply Br, at 2), the Court declines to do so. Multiple parties have filed appeals of the 11/4/15 Decision, as is their right. This Court leaves the analysis of the appeals to the Appellate Division.