Chakraborty v Following Knowledgent Partners
2016 NY Slip Op 31773(U)
September 23, 2016
Supreme Court, New York County
Docket Number: 162325/2015
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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NAMITA CHAKRABORTY,

Plaintiff,

-against-

Index No. 162325/2015

DECISION AND ORDER

FOLLOWING KNOWLEDGENT PARTNERS/ EMPLOYEES BOB CAGGIANO, CINDY MAK, SHAIL JAIN, JOE THEODORE, JOHN D'URSO, DAVID CROFT, ANDY HEJNAS, KERRY ANN MCISSAC,

Defendants.

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CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

Pro se Plaintiff Namita Chakraborty ("Plaintiff") brings this action against her former employer Knowledgent Group Inc. ("Knowledgent")[1] and several managerial, supervisory, or other employees[2] for Defendants' breach of promises and/or contractual provisions relating to Plaintiff's employment and termination.

Knowledgent moves for an order: (1) pursuant to CPLR 2201 and 7503, staying the action and compelling arbitration of Plaintiff's claims; and (2) awarding attorneys' fees and costs to Knowledgent. In her opposition to Knowledgent's motion and in multiple letters, (*NYSCEF 15, 27, 28*), Plaintiff asks the Court to reconsider its February 9, 2016 Order denying Plaintiff's request to seal Knowledgent's Exhibit 2 (*see e.g. NYSCEF 5*), which contains Plaintiff's home address, signature, and salary

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[1] Incorrectly identified as "Following Knowledgent."

[2] None of the individual defendants appear to have answered or otherwise moved (see e.g. *NYSCEF 21* [Knowledgent Affirmation of Service upon individual Defendants]).

information.

For the reasons and to the extent set forth below, both motions are granted in part. The action is stayed pending arbitration, and any current (*NYSCEF 5*) or future mention of Plaintiff's home address shall be redacted.

BACKGROUND FACTS

It is alleged that on September 26, 2014, Knowledgent Coordinator and Defendant Olga Perez and Plaintiff exchanged and countersigned an offer letter for employment. Attached as Appendix A was an Employment Agreement containing an arbitration clause (*Exh 2* at ¶ 9 and p. 5; the "Agreement"; the "Arbitration Clause"). Knowledgent revised the offer letter on September 29, 2014 with Appendix B, an additional non-disclosure agreement (*Exh 2* at p. 6).[3] Plaintiff was subsequently terminated on January 9, 2015, shortly after which Plaintiff exchanged emails with various Defendants to discuss the terms of her severance. The failure to reach any such settlement led to this action.

In support of its motion, Knowledgent argues that the Court need only determine whether an agreement to arbitrate was made and, to that end, that the Arbitration Clause was agreed to by both parties as a material inducement to the parties' execution of the Agreement. Knowledgent argues that the Arbitration Clause should be interpreted and enforced pursuant to the Federal Arbitration Act's policy favoring arbitration and, to the extent Plaintiff treats Defendants as a unified entity, the entire action should be stayed as against all Defendants.

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[3] The parties' affirmations and affidavits frequently change the years associated with relevant dates (see e.g. *Knowledgent Reply,* ¶ 9 [". . . received a revised offer letter by e-mail on September 29, 2016], ¶ 11 [same], ¶ 13 [. . . September 26, 2015]). The timeline discussed here is drawn from the documents themselves [*Exh 2* at pp. 5-6].

In opposition,[4] Plaintiff attaches a screenshot of the September 29, 2014 email of the revised offer from Knowledgent, arguing that the Agreement (and therefore Arbitration Clause) was not actually "attached." Plaintiff "does not recall" signing the Agreement on September 26, 2014, arguing that she did not receive a copy of the Agreement until February 6, 2015, nearly a month after her termination. Plaintiff also contends that Knowledgent's attempt to compel arbitration improperly attempts to shift the focus away from the Complaint's substantive arguments, upon which Plaintiff requests judgment in the amount of $250,000.

In reply, Knowledgent reiterates that Plaintiff signed the Agreement on September 26, 2014, and thereby bound herself to arbitration, and rejects Plaintiff's implication to the contrary. As proof, Knowledgent submits the affidavit of Knowledgent general counsel Greg Banacki, Jr., attached to which are two emails from Plaintiff dated February 9 and May 27, 2015 (*NYSCEF 23, 24*) that reference "Employment Agreements signed on Sep 2014."

In surreply, Plaintiff argues that Knowledgent's reply misinterprets her February 9 and May 27 emails.[5] Specifically, Plaintiff argues that she could not have agreed to the Agreement's Arbitration Clause because Knowledgent had not actually sent it in September of 2014. Plaintiff states that she

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[4] Plaintiff's opposition and surreply take multiple forms, many of which are intertwined with her request for the sealing/redaction of her personal information and subsequent request for reconsideration: *NYSCEF 10* and *11*, unsworn affidavits in opposition which are substantively identical save for the incorrect date on the former; *NYSCEF 27*, a notarized letter labeled as a "response to false allegations in [Knowledgent's Reply]"; and *NYSCEF 31*, a sworn affidavit which supplements Plaintiff's earlier opposition.

[5] To the extent that Knowledgent also argues that several documents submitted by Plaintiff are unsworn and therefore inadmissible, Knowledgent's arguments are mooted by Plaintiff's subsequent submissions of notarized versions of those documents (*e.g., compare NYSCEF 30 with NYSCEF 16, and NYSCEF 29 with NYSCEF 19*).

"do[es] not recall" signing the Agreement, and that the Agreement was not provided to her until after her termination. Finally, Plaintiff again requests judgment on the Complaint's substantive claims.

In her opposition, surreply, and other filings, Plaintiff also requests that the Court seal confidential personal information in Knowledgent's Exhibit 2 "to prevent any damages," and demands reimbursement for "damage already caused" by the availability of Plaintiff's personal information.[6] Plaintiff also requests that the Court enter judgment in the amount of $250,000 against Defendants, plus interest and costs.

DISCUSSION

Existence of Arbitration Agreement/Clause

CPLR 7503[a] and 2201 empower the Court to compel arbitration of an action, and stay the action in Supreme Court pending that arbitration's outcome, "where there is no substantial question whether a valid agreement was made or complied with. If the court is satisfied that there is no substantial issue as to either, it will order arbitration or deny the application" (*id.; see also* Prof. Vincent C. Alexander, *Practice Commentaries*, CPLR 7503:4 ["CPLR 7503(a) requires a trial *if a question of fact arises* in connection with the court's determination of a threshold issue relating to the agreement to arbitrate (emphasis added)]).

Before applying the Arbitration Clause, the threshold issue is whether Plaintiff agreed to it. The Court finds, without the necessity for a further hearing or trial on the issue, in the affirmative. First, Plaintiff never explicitly denies signing the Agreement on September 26, 2014, stating only that she

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[6] Plaintiff has also filed a notice of appeal from the Court's earlier denial.

does not recall signing it on that day (*NYSCEF 31*, ¶ 3).

Second, Plaintiff's characterization of the emails is also undermined by her February 9, 2015 and May 27, 2015 emails to Knowledgent – the authenticity of which Plaintiff does not deny – which reference Plaintiff's compliance with "Knowledgent Employment Agreements signed on Sep 2014 [sic]" (*Knowledgent Reply Exhs A, B*). Indeed, in the latter e-mail, immediately after reference to the Agreements, Plaintiff asks, "What is the usefulness of *signing the papers that I have already signed*?" (emphasis added).

Finally, Plaintiff implicitly acknowledges that the signature on the Agreement is hers by asking for its redaction as "sensitive personal information." Were it not her signature, her request for redaction as "personal information" would be unnecessary.

Accordingly, that Plaintiff "does not recall" signing the Agreement on September 26, 2014, and claims that she did not receive a copy of it on September 26, 2014 and received it only after her termination is inconsequential. The screenshot depicting an email from Perez on September 29, 2014 attaching a "revised offer letter adding the discretionary bonus language" does not raise an issue of fact as to whether she signed the agreement on September 26, 2014.

Having found that an agreement to arbitrate was made, the Court next turns to the agreement's scope.

Effect of Arbitration Agreement/Clause

As an initial matter, Knowledgent relies upon Section 14 of the Agreement to conclude that the Federal Arbitration Act should govern the Agreement's arbitrability. Section 14 provides that the

Agreement "shall be construed, interpreted and governed in accordance with the laws of the State of New York, without reference to rules relating to conflicts of law, except for the provisions of Section 9, which shall be construed, interpreted and governed in accordance with the Federal Arbitration Act."

"The Federal Arbitration Act creates a body of federal substantive law of arbitrability, applicable to any arbitration agreement within the coverage of the Act" (*Hartford Acc. and Indem. Co. v Swiss Reins. Am. Corp.*, 246 F3d 219, 226 [2d Cir 2001]). "Whether a dispute is arbitrable comprises two questions: (1) whether there exists a valid agreement to arbitrate at all under the contract in question and if so, (2) whether the particular dispute sought to be arbitrated falls within the scope of the arbitration agreement" (*id.*). Because of the strong federal policy favoring arbitration as an alternative means of dispute resolution, doubts should be resolved in favor of arbitrability (*id.*).

The Agreement's Arbitration Clause, as relevant here, reads as follows:

> "With the exception of any dispute relating to Sections 4, 5, 6 and 7 of this Agreement, *any other controversy, dispute or claim arising out of or relating to this Agreement, its interpretation including any aspect of Employee's employment . . . shall,* unless resolved by agreement of the parties, *be resolved through final and binding arbitration in New York, New York in accordance with the then-existing rules of the American Arbitration Association for employment disputes.* EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY. * * * (¶ 9 [italicized emphasis added])."

The Arbitration Clause is unambiguous about the types of disagreements within its scope: with the exception Sections 4 through 7 of the Agreement, all disputes related to the Agreement are subject to arbitration. As Knowledgent notes, Sections 4 through 7 govern non-disclosure, intellectual property rights, non-solicitation, and non-interference, respectively. However, to the extent that a distinct and

valid cause of action can be gleaned from the Complaint and Plaintiff's subsequent submissions, Plaintiff's alleged harm is limited to Knowledgent's misrepresentations regarding and/or breach of an employment contract's terms: specifically, length (Complaint, ¶¶ 1, 5), compensation (*id.* at ¶¶ 8,11), travel reimbursement (*id.* at ¶ 14), and severance (*id.* at ¶ 18).

Accordingly, to the extent that the Complaint and Plaintiff's opposition do not implicate Sections 4 through 7 of the Agreement, Plaintiff's requests for relief fall squarely – and entirely – within the Arbitration Clause. If the entire controversy is arbitrable, a stay is appropriate while arbitration proceeds (*Silverman v Benmor Coats, Inc.*, 61 NY2d 299, 302, 309, 473 NYS2d 774, 461 NE2d 1261 [1984]).

Once the Court finds claims to be subject to arbitration, it has "no business weighing the merits" of Plaintiff's grievances (*JLM Indus., Inc. v Stolt-Nielsen SA*, 387 F3d 163, 172 [2d Cir 2004] ("the agreement is to submit *all* grievances to arbitration, not merely those which the court will deem meritorious"); *see also Nationwide Gen. Ins. Co. v Inv'rs Ins. Co. of Am.*, 37 NY2d 91, 96 [1975] ("Once it appears that there is, or is not, a reasonable relationship between the subject matter of the dispute and the general subject matter of the underlying contract, the court's inquiry is ended")).

Accordingly, Plaintiff's request for accelerated judgment rather than arbitration is premature. Plaintiff's reasoning – that she "cannot possibly afford more time and . . . further monetary loss" – merely strengthens the argument for arbitration; that is, efficiency and cost are considerations underpinning public policy favoring arbitration (*AT&T Mobility LLC v Concepcion*, 563 US 333, 348, 131 S Ct 1740, 1751, 179 L Ed 2d 742 [2011] ("In bilateral arbitration, parties forgo the

procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes")).

Plaintiff's Request for Reconsideration of Redaction/Sealing Denial

CPLR 2221 provides that a motion for leave to reargue:

> 1. shall be identified specifically as such;
> 2. *shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion*, but shall not include any matters of fact not offered on the prior motion; and
> 3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. * * * (emphasis added).

Plaintiff's numerous requests for the Court to reconsider denial of Plaintiff's requests to redact her signature, home address and salary information do not indicate how that denial misapprehended the law or facts. Nevertheless, 22 NYCRR 202.5 [e] [2] empowers the Court to grant sealing or redaction *sua sponte* and, more importantly, directs the Court to consider the *pro se* status of a party :

> "The court *sua sponte* or on motion by any person may order a party to remove CPI from papers or to resubmit a paper with such information redacted; order the clerk to seal the papers or a portion thereof containing CPI in accordance with the requirement of section 216.1 of this Title that any sealing be no broader than necessary to protect the CPI; for good cause permit the inclusion of CPI in papers; order a party to file an unredacted copy under seal for in camera review; or determine that information in a particular action is not confidential. *The court shall consider the pro se status of any party in granting relief pursuant to this provision"* (emphasis added).

Accordingly, and because Knowledgent takes no position with respect to Plaintiff's requests for reconsideration, the Court turns to which of Plaintiff's individual requests are justified. There is, of

course, a long-established common law right of public access to judicial documents (*Lugosch v Pyramid Co. of Onondaga*, 435 F3d 110, 119 [2d Cir 2006]). "The public and the press have a qualified First Amendment right to attend judicial proceedings and to access certain judicial documents" (*id.* at 120). Where, however, "testimony or documents play only a negligible role in the performance of Article III duties, the weight of the presumption is low and amounts to little more than a prediction of public access absent a countervailing reason" (*Lugosch*, 435 F3d at 121).

"Confidential personal information" subject to redaction under court filing regulations is limited to several discrete categories, none of which are implicated here: taxpayer identification numbers, dates of birth, the full name of minors, financial account numbers, and documents related to matrimonial actions (22 NYCRR 202.5 [e]). With respect to the redaction of Plaintiff's address, CPLR 2101(d) provides that "each paper served or filed shall be indorsed with the name, address and telephone number of the attorney for the party serving or filing the paper, *or if the party does not appear by attorney, with the name, address and telephone number of the party*" (emphasis added).

If a party is, like Plaintiff, appearing *pro se*, that party's name, address and telephone number must be endorsed in the place usually reserved for the attorney (CPLR 2101 [d]; Gleason, Thomas F., *Supplementary Practice Commentaries*, CPLR 2101 [McKinney's 2015]). To the extent, however, that Plaintiff has provided both a PO Box for service purposes and has submitted to (and engaged in) electronic filing, the continued availability of her home address is unnecessary, and appropriate for redaction. Accordingly, Knowledgent is directed to re-file any documents containing Plaintiff's home address with the address redacted (*see e.g. Knowledgent Exh 2*), and to redact any such future filings.

Conversely, Plaintiff's requests to redact her signature and salary information are denied. For the reasons set forth above, Plaintiff's signature is relevant to determination of a factual issue. Additionally, Plaintiff cites no basis, nor is the Court aware of one, to redact a signature. For similar reasons, no justification exists to redact Plaintiff's salary information; that is, should liability be established, Plaintiff's salary, by her own admission, is relevant for the calculation of damages and is thus an important component of this action that belongs in the public record.

Fees

New York public policy disfavors any award of attorneys' fees to the prevailing party in a litigation (*Horwitz v 1025 Fifth Ave. Inc.*, 34 AD3d 248, 249 [1st Dept 2006], *citing Matter of A.G. Ship Maint. Corp. v. Lezak*, 69 NY2d 1, 5, 511 NYS.2d 216, 503 NE2d 681 [1986] ("the rule is based upon the high priority accorded free access to the courts and a desire to avoid placing barriers in the way of those desiring judicial redress of wrongs")). Even where an agreement between the parties allows the recovery of attorneys' fees, the agreement should be strictly construed (*Horwitz,* 34 AD3d at 249). Here, though both parties nominally request fees, neither cites any basis – contractual, statutory, or otherwise – justifying said fees. Accordingly, both requests are denied.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that the branch of the motion of Defendant Knowledgent Group Inc., incorrectly captioned as Following Knowledgent ("Knowledgent"), to stay this action pursuant to CPLR 2201 and 7503 is granted, and this action is stayed pending arbitration before the American Arbitration

Association; and it is further

ORDERED that the branch of Knowledgent's motion seeking attorneys' fees is denied; and it is further

ORDERED that the branches of Plaintiff Namita Chakraborty's cross-motion seeking final judgment and/or costs and fees are denied; and it is further

ORDERED that the Court's February 10, 2016 Order (*NYSCEF 17*) is amended and superseded to the limited extent that the branch of Plaintiff Namita Chakraborty's cross-motion for reconsideration seeking redaction of her home address is granted, and Knowledgent shall re-file redacted versions of documents containing said home address within 20 days; and it is further

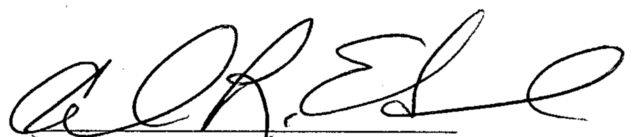
ORDERED that the branch of Plaintiff's cross-motion for reconsideration seeking redaction of her signature and salary information is denied; and it is further

ORDERED that the parties shall appear for a status conference on January 17, 2017, at 11:00 a.m., unless both parties apprise the Court by January 10, 2017 that said conference is unnecessary; and it is further

ORDERED that Knowledgent shall serve a copy of this Decision and Order with notice of entry upon Plaintiff within 20 days.

This constitutes the decision and Order of the Court.

Dated: September 23, 2016



Hon. Carol R. Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.