

Aero, Inc. v Aero Metal Prods., Inc.

2016 NY Slip Op 32768(U)

July 12, 2016

Supreme Court, Erie County

Docket Number: 801148-2013

Judge: Henry J. Nowak

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

AERO, INC.,

Plaintiff,

vs.

**MEMORANDUM DECISION
AND ORDER**

**AERO METAL PRODUCTS, INC.,
SERVOTRONICS, INC.,**

INDEX NO. 801148-2013

Defendants.

**HON. HENRY J. NOWAK, J.S.C.
Justice Presiding**

Plaintiff, Aero, Inc. (Aero), moves to dismiss the affirmative defense and counterclaims of defendants Aero Metal Products, Inc. (AMP) and Servotronics, Inc. (Servotronics). The court considered the October 2, 2015 affirmation of Laurie Styka Bloom, Esq., and attached exhibits, in support of the motion; the January 28, 2016 affirmation of Vincent E. Doyle, III, Esq., and attached exhibits, in opposition to the motion; the March 7, 2016 reply affirmation of Laurie Styka Bloom, Esq., and attached exhibits, in further support of the motion; and oral argument by counsel for the parties.

In this action, Aero claims that AMP breached two November 3, 2009 lease agreements. AMP is a subsidiary of Servotronics, which guaranteed AMP's obligations under the lease agreements. The affirmative defense and counterclaims allege inter alia that Aero fraudulently induced Servotronics (1) to acquire the assets of Aero in July 2009; (2) to form AMP in October 2009; and (3) along with AMP, to enter into the lease agreements. Servotronics claims that its Board of Directors relied upon false and misleading information from Nicholas D. Trbovich, Jr. and his agents or associates regarding Aero's worth and financial stability.

In 2004, Mr. Trbovich founded Aero, at a time when he worked and served on the Board of Directors for Servotronics. Servotronics specializes in designing and manufacturing high-quality components for the aerospace industry and is based in Elma, New York. Aero operated a scissors manufacturing company based in Nashville, Arkansas. On July 1, 2005, Mr. Trbovich entered into an amended employment agreement with Servotronics to serve as Vice President. The agreement provided that any dispute arising out of its terms be subject to arbitration.

Over the next several years, Mr. Trbovich continued to serve on the Board of Directors and ultimately became President of Servotronics. However, he was discharged by Servotronics in 2012 and initiated an arbitration proceeding, claiming he was improperly terminated in violation of his employment agreement. In that proceeding, Servotronics claimed that Trbovich was engaged in self dealing and fraud in his capacity as President and Director of Servotronics. The arbitrator ultimately rejected those arguments, finding in Mr. Trbovich's favor. The arbitration award was confirmed by this court on June 26, 2015.

Aero claims that AMP and Servotronics allege the same claims of fraud here as they alleged in the arbitration. After considering both sets of allegations, the court certainly finds considerable overlap; however, in this action, Servotronics also claims misrepresentations by Russell Kamis and Pamela Trbovich (Mr. Trbovich's wife) regarding Aero's value. In fact, by the time the leases were signed, Mrs. Trbovich was the sole owner and manager of Aero, and she testified that she ultimately controlled what information was given to Mr. Kamis.

Servotronics claims that it can establish its affirmative defense and counterclaims against Aero based on the actions of Mrs. Trbovich and Aero's agents other than Mr. Trbovich. Also, Servotronics notes that in the arbitration, its claims against Mr. Trbovich concerned his actions in his capacity as President and Director of Servotronics; whereas in this action, its claims against

Mr. Trbovich concern statements he made as agent for Aero. Furthermore, AMP is a party in this action and was not a party in the previous arbitration.

The doctrine of res judicata bars all claims between the same parties arising out of the same transaction or series of transactions once a claim is brought to its conclusion (*Ecker v Learner*, 123 AD 661 [1st Dept 1986]). “Collateral estoppel, or issue preclusion, prevents a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party” (*Pinnacle Consultants, Ltd. v Leucadia Natl. Corp.*, 94 NY2d 426, 431-432 [2000]). The court agrees with Aero that the doctrines of res judicata and collateral estoppel apply to arbitration awards (*in re Claim of Ranni*, 58 NY2d 715, 717 [1982]). However, under both doctrines, Aero must prove that the identical issues were decided in the prior action and that the parties to be precluded from relitigating the issues had a full and fair opportunity to contest the prior determination (*Kaufman v Eli Lilly & Co.*, 65 NY2d 449 [1985], *Ryan v New York Tel. Co.*, 62 NY2d 494, 501 [1984?]).

Because AMP was not a party to the arbitration, it cannot be found to have had a full and fair opportunity to contest the issues presented. More importantly, the arbitrator did not decide the issue of whether Aero fraudulently induced Servotronics to acquire Aero’s assets, form AMP and guarantee the 2009 leases. Instead, the arbitrator decided whether Mr. Trbovich committed “willful malfeasance” while working as President of Servotronics. The arbitrator focused on Servotronics’ internal decision to terminate Mr. Trbovich’s employment, and the steps that Servotronics took or failed to take, to determine whether he breached the 2005 employment agreement.

Aero claims that had the defendants demonstrated that Mr. Trbovich made fraudulent representations to Servotronics while acting as agent of Aero, such fraudulent representations

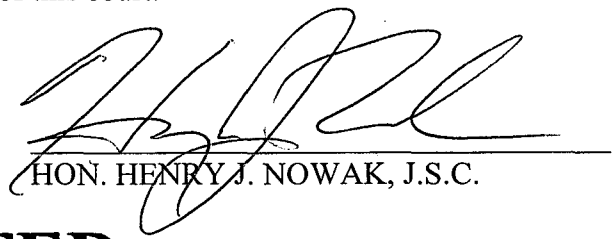
would have risen to the level of willful malfeasance against Servotronics. While that conclusion is possible, it is not conclusive based upon the record before the court. Furthermore, Servotronics and AMP may demonstrate that other agents of Aero made fraudulent representations to them, and thereby prevail on their affirmative defense and counterclaims.

As the Court of Appeals found in *Auqui v Seven Thirty One Ltd. Partnership* (22 NY3d 246, 256 [2013]), “[a]lthough there is some degree of overlap between the issues being determined in the two proceedings, based on the scope and focus of each type of action, it cannot be said that the issues are identical.” Accordingly, this court cannot dismiss the defense and counterclaims based upon res judicata or collateral estoppel.

This court also cannot find that the current dispute concerning the lease agreements should be governed by the arbitration clause in Mr. Trbovich’s employment contract with Servotronics. Neither Aero nor AMP were parties to that agreement, and “the right to compel arbitration does not extend to a party that has not signed the agreement pursuant to which arbitration is sought unless the right of the nonsignatory is expressly provided for in the agreement” (*Greater New York Mut. Ins. Co. v Rankin*, 298 AD2d 263 [1st Dept 2002]). Accordingly, Aero’s motion is denied.

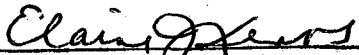
This decision constitutes the order of this court.

ENTER:


HON. HENRY J. NOWAK, J.S.C.

GRANTED

JUL 12 2016

BY 
ELAINE J. XENOS
COURT CLERK