

Matter of F.C.I.C., LLC v Hatzlucha Houses, LLC
2016 NY Slip Op 32864(U)
January 4, 2016
Supreme Court, Rockland County
Docket Number: 032059/2015
Judge: Margaret Garvey
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of the Application of

F.C.I.C., LLC and SOLOMON KNOPF,

Petitioner,

For the Judicial Dissolution of

AKW HOLDING, LLC,

Pursuant to § 702 of the
New York Limited Liability Company Law,

-against-

HATZLUCHA HOUSES, LLC, GAVRIEL ALEXANDER a/k/a
GABE ALEXANDER, JACK WERCBERGER a/k/a JACOB
WERCBERGER, ABRAHAM WERCBERGER a/k/a ABE
WERCBERGER, IZON BUSINESS PRODUCTS, INC.,
DEFINED CONTRIBUTION PLAN, and IZON BUSINESS
PRODUCTS,

Respondents.
-----X

Margaret Garvey, J.

The following papers, numbered 1 to 4, were considered in connection with the Notice of Petition filed by Petitioners seeking judicial dissolution of AKW HOLDING LLC, and related relief; and were also considered in connection with the Notice of Motion filed by Respondents seeking an Order dismissing the action, or alternatively, staying the instant proceeding pending arbitration of the parties dispute:

PAPERS

NUMBERED

MOTION # 1

NOTICE OF PETITION/VERIFIED PETITION/EXHIBITS (A-G)

1

MOTION # 2

NOTICE OF MOTION/AFFIRMATION OF GAVRIEL ALEXANDER DATED
JULY 12, 2015/EXHIBITS (A-K)/MEMORANDUM OF LAW IN SUPPORT
OF RESPONDENTS' MOTION TO DISMISS

2

AFFIRMATION OF SOLOMON KNOPF DATED OCTOBER 21, 2015 IN
OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND IN FURTHER

SUPPORT OF PETITION FOR JUDICIAL DISSOLUTION/MEMORANDUM OF
LAW IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND IN
FURTHER SUPPORT OF PETITION FOR JUDICIAL DISSOLUTION 3

RESPONDENTS' REPLY MEMORANDUM OF LAW IN FURTHER
SUPPORT OF RESPONDENTS' MOTION TO DISMISS 4

Upon a careful and detailed review of the foregoing papers, the Court now rules
as follows:

Petitioners' commenced this action seeking judicial dissolution and appointment
of a Receiver (with related relief) with the filing of the Verified Petition and supporting papers
through the NYSCEF system on May 7, 2015.

On July 13, 2015, Respondents filed the motion seeking dismissal, or
alternatively, an Order staying the action until the arbitration pending between the parties is
completed.

By way of history, Petitioners had filed an earlier action in 2010 seeking the
identical relief sought in this action (except for the request for judicial dissolution). That matter
(Index No. 28543/10) was dismissed by the Hon. Linda S. Jamieson, JSC, in an Order of
Dismissal after Petitioners (Plaintiffs in that action) failed to appear during an October 24, 2012
calendar call. Further, the parties in that action signed an "Agreement to Submit to Arbitration
dated May 28, 2013, agreeing that "the undersigned hereby agree to submit to binding
arbitration all the controversies [claims and counterclaims] between the undersigned parties
including but not limited to the following controversies: ALL MATTERS MENTIONED AT S.C. NEW
YORK STATE COUNTY OF ROCKLAND INDEX 28543/10 AND ALL OTHER RELATED MATTERS,
AND ALL CONTROVERSIES BETWEEN THE UNDERSIGNED." [emphasis in original].

It is not disputed that the parties signed a valid and enforceable arbitration
agreement, but Petitioners argue that the application for judicial dissolution of AKW HOLDINGS,
LLC was not included in the arbitration agreement. Petitioners further argue that Respondents
have intentionally stalled the arbitration.

Respondents counter that the reason for the delay of the arbitration is Petitioners inability to schedule sessions with the arbitrators.

The role of the Court in deciding whether or not parties have agreed to settle a particular dispute through the favored method of arbitration is a threshold one and does not require the Court to pass upon the merits. [*Ehrlich v. Stein*, 143 A.D.2d 908 (2d Dept. 1988)]. Further, where the parties have broadly agreed to settle any dispute arising of the a contract between them by arbitration, if there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the underlying contract, the Court's inquiry with respect to the arbitrability of the dispute is ended. [*Ehrlich v. Stein*, 143 A.D.2d 908 (2d Dept. 1988) (petitioner's contention that the arbitration clause does not specify corporate dissolution is without merit, and parties must arbitrate dispute where broad arbitration clause used); *see also*, *Matter of Levy*, 79 A.D.2d 684 (2d Dept. 1980) (language was broad enough to encompass the nature of the dispute underlying the petition for dissolution)].

On the record before the Court, it is clear that the parties agreed to arbitrate all disputes related to the prior action filed by Petitioners in 2010. It cannot be argued that adding a request for judicial dissolution arising from the exact same allegations of breach of fiduciary duty, breach of contract, and negligence that were included in the 2010 action, Petitioners can now avoid the clear intent of the parties to arbitrate the underlying dispute. Accordingly, Respondents' motion for an Order staying the action pending the arbitration between the parties is granted.

The Court does not have the authority to dismiss the complaint merely because of an arbitration agreement between the parties. [*Nachman v. Jenelo Corp.*, 25 A.D.3d 593 (2d Dept. 2006)]. Rather, once a proper and timely motion by Respondents was made pursuant to *Civil Practice Law and Rules* § 7503(c), the Court must stay the action and direct the parties to arbitrate the dispute. [*Nachman v. Jenelo Corp.*, 25 A.D.3d 593 (2d Dept. 2006)].

The Court is scheduling this matter for a status update and counsel for

Respondents is directed to notify the Court in writing of the status of the arbitration between the parties prior to that date by filing a letter through the NYSCEF system. Further, all parties are directed to cooperate fully with the arbitration. If any of the parties fail to cooperate fully with the arbitration, the Court will entertain an application for sanctions once the matter is no longer stayed.

Accordingly, it is hereby

ORDERED that the Notice of Motion filed by Respondents (Motion # 2) is granted and the parties are directed to participate in an arbitration pursuant to the terms of the arbitration agreement between the parties; and it is further


ORDERED that the matter is stayed pending the arbitration between the parties; and it is further

ORDERED that this matter is adjourned to **FRIDAY, JUNE 24, 2016 at 9:15 a.m.** for a status update on the arbitration between the parties - counsel for Respondents is directed to notify the Court in writing prior to that date of the status of the arbitration (through NYSCEF); and it is further

ORDERED that the Notice of Petition for judicial dissolution and related relief filed by Petitioners (Motion # 1) is adjourned to Friday, June 24, 2016.

The foregoing constitutes the Decision and Order of this Court on Motion # 2 and an Order adjourning Motion # 1.

Dated: New City, New York
January 4, 2016


HON. MARGARET GARVEY
Justice of the Supreme Court

To:

by e-filing -

TENENBAUM BERGER & SHIVERS LLP (Attorneys for Petitioners)

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