

HMC Holding Corp. v 539 Gates, LLC

2017 NY Slip Op 32232(U)

October 19, 2017

Supreme Court, New York County

Docket Number: 650499/2014

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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HMC Holding Corp.,

Index No:
650499/2014

Petitioner,

- against -

Decision/Order
Mot. Seq.: 006

539 Gates, LLC, Efraim Alter, and
Rafi Maman,

Respondents.

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HON. EILEEN A. RAKOWER, J.S.C.

On February 14, 2014, Petitioner HMC Holding Corp. (“HMC” or “Petitioner”) filed a Notice of Verified Petition seeking to confirm the award of arbitrator Peter M. Collins (“Mr. Collins”), dated and affirmed on January 9, 2014 (“Arbitration Award”). On April 8, 2014, Respondents moved for an Order dismissing the proceeding because Petitioner lacked capacity to sue. Oral argument was held on July 18, 2014 on the parties’ respective applications. After oral argument, Respondents’ motion to dismiss the petition was denied, and the Petition to confirm the Award was granted. A Judgment was filed on January 16, 2015 (“January 16, 2015 Judgment”), ordering Respondents to return certain funds to an account in the name of 539 Gates LLC (“539 Gates”).

On January 4, 2017, Respondents filed an Order to Show Cause to vacate the Judgment, and dismiss this proceeding. On January 11, 2017, this Court declined to sign the Order to Show Cause. This Court wrote, “Movant ... failed to make a prima facie showing of an excusable default and a meritorious opposition to confirming the arbitration award. Further, there is no absence of willfulness (*see Baldini v. NYCERS*).”

On February 14, 2017, Respondents filed a motion to reargue their prior application by order to show cause. On February 27, 2017, Petitioner filed opposition. On March 3, 2017, Respondents withdrew their motion.

Presently before the Court is a motion filed by Respondents on March 29, 2017, seeking to vacate the January 16, 2015 Judgment pursuant to CPLR §5015(a), and to dismiss the proceeding. In the alternative, Respondents moved

pursuant to CPLR § 2221, to reargue their prior application by order to show cause for an order vacating the Judgment that the Court declined to sign. Petitioner opposes Respondents' motion to vacate.

Background

By way of background, Respondent 539 Gates is a limited liability company that was formed on September 27, 2005, of which Petitioner HMC and respondents Efraim Alter ("Alter") and Rafi Maman ("Maman") are members. Meshulam Hass ("Hass") is the President and Shareholder of the HMC and one of the General Managers of 539 Gates. 539 Gates was formed for purposes of purchasing and developing a vacant land located in Brooklyn, New York.

In June 2012, HMC commenced a proceeding in the Supreme Court of the State of New York, Kings County, seeking injunctive relief concerning an arbitrable controversy that arose between the parties. HMC alleged that Alter and Maman had violated 539 Gates' Operating Agreement. On June 21, 2012, the Honorable Ann T. Pfau signed a consent order wherein Respondents agreed that they would not distribute any funds of 539 Gates pending the final decision of the arbitrator, without the consent of Petitioner. The parties proceeded to arbitration.

In January 2014, an AAA Arbitration was commenced before Peter M. Collins, Esq., as the arbitrator. One of the issues involved payments of \$2,192,787.00 made to Alter and Maman, without Haas' authorization in purported violation of the Operating Agreement. The parties presented testimony before Mr. Collins. On January 9, 2014, Mr. Collins issued the Arbitration Award in favor of Petitioner, and against Respondents. The Arbitration Award ordered that Alter and Maman each pay \$2,192,787.00 plus interest, into an account in the name of 539 Gates, which account could only be accessed by the joint signature of Haas and either Alter or Maman, as required by the operating agreement. Mr. Collins also ordered Alter to return certain funds and for Respondents to reimburse the Petitioner a portion of its fees and expenses for the arbitration. The Arbitration Award was confirmed by this Court on July 18, 2014, and the January 16, 2015 Judgment was entered.

Pending Motion

In support of their pending motion to vacate the January 16, 2015 Judgment, Respondents argue that the Court "misapprehended the basis for Respondents' original application by order to show cause to vacate" the January 16, 2015

Judgment, which it declined to sign because “[t]here is no issue of Respondents’ default in this proceeding, nor is there an issue of Respondents opposing the arbitration award.” Rather, Respondents argue that they seek to vacate the Judgment “pursuant to CPLR 5015(a) and upon the Court’s inherent authority at common law.” Respondents argue that the Judgment should be vacated “on the grounds that the award in an arbitration between parties, which occurred subsequent to the judgment in this proceeding, has resolved all the issues between the parties pertinent to the judgment, that the parties’ exchange of mutual releases and authorizations to release the LLC funds (escrowed pursuant to the judgment in this proceeding) constitute an accord and satisfaction, and that therefore the judgment in this proceeding is rendered moot, fully resolved and satisfied.”

Petitioner opposes. Petitioner states, to date, the monetary provisions of the Judgment remain unsatisfied. Petitioner states, to date, Respondents have failed, *inter alia*, to return the funds that they had been ordered to return to 539 Gates.

Before the January 16, 2015 was entered, Respondents commenced a proceeding against HMC, Haas, and Eyal Kalfa in the Superior Court of New Jersey, Chancery Court, Bergen County (Docket No. C-117-14). The action proceeded before Hon. Robert P. Contillo, Presiding Chancery Judge. The parties proceeded to arbitration before Norman H. Rosen, Esq., as arbitrator, which resulted in an arbitration award, dated March 15, 2016 (“the Second Arbitration Award”). The Second Arbitration Award was confirmed by Judge Contillo on August 11, 2016.

The Second Arbitration Award states in relevant part:

FINDINGS

1. This case involves a dispute over the net profits of the sale of 18 condominium units which were developed and sold by Claimant 539 Gates, LLC (Gates). Respondent HMC Holding, Inc. (HMC) is a member of Gates. Respondent Meshulem Haas (Haas) is the principal of HMC. Claimants Efriam Alter (Alter) and Rafi Maman (Maman) are also members of Gates.

2. Claimants' seek a determination of the rights of the parties, a dissolution of Gates, and the release from escrow of \$254,201.71 from the sale proceeds of the final condominium unit, and which is currently held in the escrow account of William Goldberg, Esq., Claimants' attorney.

6. *The Arbitrator is aware that there was a prior arbitration between the parties (1-1MC Holding Corp., against 539 Gates, LLC, Ephraim Alter and Raft Maman, AAA Case # 13 115 Y 01399 12), and that an award was made therein by Peter M. Collins, Arbitrator. That award, however did not reach the issues being decided herein as to the rights of the parties in the net profits of Gates. (emphasis added)*

AWARD

7. The \$ 207,279 of net profits of Gates shall be paid by Gates, to its members, within 15 business days of the date of this Award, as follows:

1. To HMC Holding Corp. \$82,911.60
2. To Ephraim Alter \$62,183.70
3. To Rafi Maman \$62,083.70.

8. The payment of the said respective amounts of the net profits to the said members of Gates are expressly conditioned upon and made subject to:

1. The exchange of mutual general releases by the parties,
2. The execution and delivery by Respondents to Claimants of all documents appropriate and needed to effect the dissolution of Gates,
3. The execution and delivery by Respondents to Claimants of all documents appropriate and needed to assist Claimants in obtaining the release from escrow of the funds being held by William Goldberg.
4. The foregoing shall be done prior to or simultaneously with the disbursement of the said net profits to the members of Gates.

10. This Award is in full settlement of all claims and counterclaims submitted to this arbitration.

The Releases signed after the Second Arbitration Award expressly states, *“The issue of the funds ordered to be put back into the 539 Gates account via the first arbitration award is not included in this Release.”* (emphasis added).

Discussion

Under CPLR 5015(a), a court is empowered to vacate a default judgment based upon several grounds, including excusable neglect; newly-discovered evidence; fraud, misrepresentation or other misconduct by an adverse party; lack of jurisdiction; or upon the reversal, modification or vacatur of a prior order. "In addition to the grounds set forth in section 5015(a), a court may vacate its own judgment for sufficient reason and in the interests of substantial justice." (*Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62 [2003]). Respondents argue that in light of the parties' subsequent Second Arbitration Award, "the interests of justice warrant that the Court is well within its discretionary authority at common law to vacate its judgment in the proceeding."

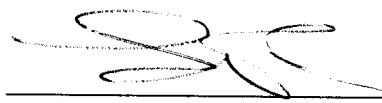
The parties engaged in arbitration in January 2014, and an arbitration award was entered on July 18, 2014. This court confirmed the July 18, 2014 Arbitration Award on July 18, 2014 and Judgment was entered on January 16, 2015. It is undisputed that Respondents, to date, have not satisfied their obligations under the January 16, 2015 Judgment. The fact that the parties subsequently engaged in another arbitration in March 2016 and a Second Arbitration Award was rendered "does not warrant the invocation of a court's inherent power to vacate its order[s] and [the January 16, 2015] Judgment in the interest of substantial justice." (*Katz v. Marra*, 74 A.D.3d 888, 891, 905 N.Y.S.2d 204, 206 [2d Dept. 2010]). The October 2016 releases signed by the parties after the Second Arbitration Award was rendered expressly states, "The issue of the funds ordered to be put back into the 539 Gates account via the first arbitration award is not included in this Release."

Wherefore, it is hereby

ORDERED that Respondents' motion to vacate the January 16, 2015 Judgment pursuant to CPLR §5015(a) is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: October 17, 2017



Eileen A. Rakower, J.S.C.