

**SCK Team Work Corp. v 39 Prince Realty, LLC**

2017 NY Slip Op 33410(U)

September 8, 2017

Supreme Court, Queens County

Docket Number: Index No. 704894/2017

Judge: Denis J. Butler

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

SCK TEAM WORK CORP., Plaintiff(s), Index Number: 704894/2017

-against-

39 PRINCE REALTY, LLC, RONG RESTAURANT CORP., CHATIME USA, LLC PLATTE RIVER INSURANCE COMPANY, and "JOHNDOE 1" through "JOHN DOE 10," the true name of said defendants being unknown to plaintiff, the parties intended to be any entity that obtained or stands to obtain a beneficial interest in the subject matter described in the Complaint, Motion Date: July 6, 2017 Motion Seq. No.: 1

Defendant(s).

FILED SEP 15 2017 COUNTY CLERK QUEENS COUNTY

The following papers were read on this motion by defendant, Chatime USA, LLC and Platte River Company (the "Chatime Defendants") to dismiss plaintiff's Complaint pursuant to CPLR §3211(a)(8) and to compel arbitration and stay the action pending an arbitration award pursuant to CPLR §7503(a).

Table with 2 columns: Papers, Numbered. Rows include Notice of Motion, Affirmation, Exhibits (E14-19), Affirmation In Opposition, Exhibit (E23-24), Reply Affirmation (E25).

Upon the foregoing papers it is ordered that the motion is determined as follows:

The branch of the Chatime Defendants' motion seeking dismissal pursuant to CPLR 3211(a)(8) based upon improper service of process is DENIED. Although it is undisputed that Defendant Chatime USA LLC had not been properly served with the summons and complaint at

[\*1]

the time the instant motion was filed, Plaintiff submits proof that it properly served Chatime USA, LLC by service upon the Secretary of State on June 13, 2017. Defendants cite no authority for their proposition that otherwise valid service of process is rendered invalid merely because it is effectuated after a motion to dismiss for improper service has been filed.

The branch of the Chatime Defendants' motion seeking to compel arbitration pursuant to CPLR § 7503 is GRANTED solely with respect to the claims asserted against Chatime USA, LLC. The agreement between Chatime USA, LLC and SCK Teamwork expressly provides: "Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof."

Plaintiff's right to file and enforce a lien under New York Lien Law "does not vitiate the parties' agreement to arbitrate contractual disputes." (*David B. Lee & Co., Inc. v Ryan*, 266 AD2d 811, 812 [4th Dept 1999]; see also *Tradesource, Inc. v Ancor, Inc.*, 281 AD2d 538 [2d Dept 2001]).

However, Plaintiff is correct in its contention that Chatime USA, LLC's co-defendants, who are not party to the agreement between Chatime USA, LLC and SCK Teamwork, are not subject to the arbitration clause.

Defendants' motion to compel arbitration and to stay the action pending the completion of arbitration is therefore GRANTED solely with respect to Plaintiff's claims against Chatime USA, LLC, and those parties are directed to proceed in arbitration.

This constitutes the Decision and Order of the Court.

Dated: September 8, 2017

  
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Denis J. Butler, J.S.C.

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COUNTY CLERK  
QUEENS COUNTY