SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION

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H. ROSKE & ASSOCIATES, LLP,

Plaintiff,

- v -

CHRISTIAN BURGHART, SCHUMANN BURGHART LLP, LUKE GYURE, HEIKO MEYENSCHEIN

Defendants.

INDEX NO. 657328/2017

MOTION DATE 10/30/2018, 10/30/2018

MOTION SEQ. NO. 001 002

DECISION AND ORDER

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HON. SALIANN SCARPULLA:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 24, 25, 26, 27, 32, 36
were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 28
were read on this motion to/for COMPEL ARBITRATION.

In this action for breach of contract, tortious inducement of breach of contract, breach of fiduciary duties, aiding and abetting breach of fiduciary duties and unjust enrichment, defendants Christian Burghart ("Burghart"), Schumann Burghart LLP (the "SB Firm") and Luke Gyure ("Gyure") (mot. seq. 1) and defendant Heiko Meyenschein ("Meyenschein ") (mot. seq. 2) (together' "defendants") move to compel plaintiff H. Roske & Associates LLP ("Roske & Associates") to arbitrate the claims asserted in the complaint.

Roske & Associates is a law firm which primarily services clients from German-speaking countries that do business, or seek to do business, in the United States. Non-

party Moritz Schumann ("Schumann"),[1] Burghart, and Gyure worked at Roske & Associates until they terminated their employment on October 30, 2016.

In October 2016[2] Schumann and Burghart formed the "SB Firm to provide legal services, primarily to clients from German-speaking countries that do business or seek to do business in the United States. Schumann and Burghart are partners of the SB Firm and Gyure is employed by the SB Firm. Defendant Heiko Meyenschein ("Meyenschein"), who never practiced at Roske & Associates, is also affiliated with the SB Firm.

Prior to the termination of his employment, Schumann practiced at Roske & Associates for thirteen years, including three years as a non-owner "name partner." When Schumann was first employed, he and Roske & Associates executed a letter agreement (the "2004 Agreement") dated December 16, 2004, wherein the parties agreed that

> all disputes arising under or in connection with this Employment Agreement or concerning in any way the Employee's employment shall be submitted exclusively to arbitration in New York, New York under the Commercial Arbitration Rules of the American Arbitration Association then in effect, and the decision of the arbitrator shall be final and binding upon the parties. Judgment upon the award rendered may be entered and enforced in any court having jurisdiction.

Burghart and Gyure never signed an employment agreement and/or any arbitration agreement with Roske & Associates.

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[1] Roske & Associates originally sued Schumann but has subsequently amended the complaint to remove Schumann as a defendant.

[2] The initial formation filing date with the New York State Department of State for the SB Firm is October 18, 2016.

After discovering that the individual defendants formed the SB Firm, Roske & Associates commenced this action. In its amended complaint, Roske & Associates alleges that Schumann, Burghart and Gyure began working at the SB Firm while they were still employed at Roske & Associates, and that the defendants have wrongfully misappropriated Roske & Associates' clients and proprietary information.

Defendants now move to compel arbitration of Roske & Associates' claims.[3] Defendants note that Roske & Associates is required, under the 2004 Agreement, to arbitrate its claims against Schumann. They argue that, because Roske & Associates' claims against Schumann are intertwined with its claims against defendants, Roske & Associates should be estopped from denying an obligation to arbitrate its claims against defendants. Defendants also argue that Roske & Associates is required to arbitrate its claims under agency principles.

In opposition, Roske & Associates argues that because it has amended the complaint and has dropped all claims against Schumann, there are no intertwining claims between Schumann and defendants which should be arbitrated. Roske & Associates notes that the claims asserted against the defendants in the amended complaint rest on defendants' own misconduct and not on any obligations in the 2004 Agreement between Roske & Associates and Schumann.

Roske & Associates further argues that there is no basis for imputing Roske & Associates 2004 Agreement obligation to arbitrate with Schumann to Gyure and

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[3] Roske & Associates originally cross-moved in mot. Seq. 1 to amend the complaint *nunc pro tunc*, but the parties subsequently stipulated to the amendment.

Burghart, who did not become employees of Roske & Associates until many years after the 2004 Agreement was executed, or to the SB Firm, which did not even exist until October 2016 and never had any relationship with Roske & Associates.

Discussion

It is a "well-settled proposition that the question of arbitrability is an issue generally for judicial determination in the first instance." *Smith Barney Shear Son Inc. v. Sacharow*, 91 N.Y.2d 39,45 (1997). A party may not be compelled to arbitrate its dispute with another, unless the evidence establishes the parties' clear, explicit and unequivocal agreement to arbitrate. *Matter of Waldron [Goddess],* 61 N.Y.2d 181 (1984). The threshold for clarity of agreement to arbitrate is greater than with respect to other contractual terms. *Id* at 189.

None of the defendants in this action have executed an arbitration agreement with Roske & Associates. Thus, their explicit and unequivocal agreement to arbitrate must be based on other agreements or circumstances. Defendants argue that Roske & Associates should be bound to arbitrate based on non-party Schumann's 2004 Agreement, which contains an arbitration clause.

While there are limited circumstances in which a nonsignatory to an arbitration agreement has been compelled to participate on the arbitration of a claim which is subject to arbitration between some of the parties, "interrelatedness, standing alone, is not enough to subject a nonsignatory to arbitration." *TNS Holdings, Inc. v MKI Sec. Corp.*, 92 N.Y.2d 335, 340 (1998). Further, under the principles of estoppel, a nonsignatory may

be compelled to arbitrate only in those circumstance where he or she "knowingly exploits the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement." *Matter of Belzberg v. Verus Invs. Holdings Inc.*, 21 N.Y.3d 626 (2013).

Applying the foregoing principles here, the fact that Roske & Associates' claims against the defendants maybe intertwined with its claims against nonparty Schumann is not sufficient to require Roske & Associates to arbitrate with defendants. Defendants have failed to submit any facts to show that Roske & Associates intended to extend the 2004 Agreement's arbitration clause to Burghardt and Gyure, who were employed many years later and do not have employment agreements with Roske & Associates. Further, Meyenschein was never employed by Roske & Associates, and the SB Firm has no relationship at all with Roske & Associates.

Also, defendants have not produced any evidence to show that there was an expectation between the parties that the 2004 Agreement would be extended to the defendants. In fact, defendants have not even shown that they knew about the 2004 Agreement's arbitration clause before the commencement of this action.

For these reasons, defendants have failed to show that I should extend Roske & Associates' agreement to arbitrate with non-party Schumann to defendants.

In accordance with the foregoing it is

ORDERED that the motions of defendants Christian Burghart, Schumann Burghart LLP and Luke Gyure (mot. seq. 1), and defendant Heiko Meyenschein (mot.

seq. 2), to compel plaintiff H. Roske & Associates to arbitrate the claims alleged in the complaint is denied; and it is further

ORDERED that the defendants are directed to serve an answer to the verified complaint within twenty (20) days of the date of this order.

This constitutes the decision and order of the court.

2/25/2019
DATE

SALIANN SCARPULLA, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE