Guzman v First Chinese Presbyt. Community Affairs Home Attendant Corp.
2019 NY Slip Op 30895(U)
March 29, 2019
Supreme Court, New York County
Docket Number: 157401/2016
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHRYN E. FREED** **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 157401/2016

ALVARO RAMIREZ GUZMAN, ELIDA AGUSTINA MEJIA HERRERA, and LETICIA PANAMA RIVAS, individually and on behalf of all other persons similarly situated,

MOTION SEQ. NO. 002

Plaintiffs,

- v -

THE FIRST CHINESE PRESBYTERIAN COMMUNITY AFFAIRS HOME ATTENDANT CORPORATION, or any other related entities,

Defendants.

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DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 28, 30, 31, 33, 34, 38, 39, 43, 44, 45

were read on this motion to/for COMPEL ARBITRATION.

Upon the foregoing documents, it is hereby ordered that the motion is denied.

Defendant The First Chinese Presbyterian Community Affairs Home Attendant Corporation ("First Chinese") moves, pursuant to the Federal Arbitration Act (9 USC § 3), as well as CPLR 2201 and 7503(a), to compel arbitration and to stay this action. Plaintiffs Alvaro Ramirez Guzman ("Guzman"), Elida Agustina Mejia Herrera ("Herrera"), and Leticia Panama Rivas ("Rivas") oppose the motion. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion is denied.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiffs Guzman, Herrera, and Rivas allege that they were employed as home health care aides by First Chinese, a not-for-profit corporation that provides home health care services to elderly and disabled residents in New York City, and that their employment was governed by a collective bargaining agreement ("the CBA") entered into between their employer and their union, 1199 SEIU United Healthcare Workers East ("the union"), in 2001. The CBA was modified and extended by several memoranda of agreement ("MOA"). Effective March 1, 2014, First Chinese and 1199 agreed to the following MOA provision:

> **ALTERNATIVE DISPUTE RESOLUTION**
>
> 24) The Parties agree that given changes in federal and state law imposing new obligations on the Employer and exposing Employers to a significantly increased level of litigation, it is in the interest of the Union, Employees, and the Employer to develop an expeditious and effective alternative dispute resolution procedure for the resolution of claims arising under such laws. Accordingly, between the execution of this Agreement and December 1, 2014, or as otherwise agreed to by the parties, the parties shall meet in good faith to negotiate such an alternative dispute resolution procedure. If the parties are unable to agree to such procedure in the allotted time, [First Chinese] may submit the dispute to Martin F. Scheinman for final and binding arbitration.

Doc. 16, Ex. C, at par. 24.

The most recent amendment to the CBA, which occurred as the result of a MOA effective December 1, 2015, and which was to remain in effect until March 31, 2017 ("the 2015 MOA"), provided, in relevant part, as follows:

1. The parties agree a goal of this Agreement is to ensure compliance with all federal, state, and local wage hour law[s] and wage parity statutes. Accordingly, to ensure the uniform administration and interpretation of this Agreement in connection with federal, state, and local wage-hour and wage parity statutes, all claims arising in whole or in part prior to or during the term of this Agreement, brought by either the Union or Employees, asserting violations of or arising under the Fair Labor Standards Act ("FLSA"), New York Home Care Worker Wage Parity Law, or New York Labor Law (collectively, the "Covered Statutes"), in any manner, shall be subject exclusively, to the grievance and arbitration procedures described in this Article. The statute of limitations to file a grievance concerning the Covered Statutes shall be consistent with the applicable statutory statute of limitations. All such claims if not resolved in the grievance procedure, including class grievances filed by the Union, or mediation as described below shall be submitted to final and binding arbitration before Martin F. Scheinman, Esq.

2. Whenever the parties are unable to resolve a grievance alleging a violation of any of the Covered Statutes, before the matter is submitted to arbitration, the dispute shall be submitted to mandatory mediation. The parties hereby designate Martin F. Scheinman, Esq. as Mediator for such disputes.

Ex. A to Doc. 17.

On September 2, 2016, plaintiffs filed the captioned action alleging that First Chinese failed to pay them and the class they represent: 1) the statutory minimum wage, in violation of Labor Law § 652 and 12 NYCRR § 142-2.1 (first cause of action); 2) overtime pay, in violation of Labor Law § 650, *et seq.* and 12 NYCRR § 142-2.2 (second cause of action); 3) "spread of hours" pay pursuant to 12 NYCRR §142-2.4 (third cause of action); 4) failure to pay wages pursuant to Labor Law § 193 (fourth cause of action); 5) breach of contract based on the New York Health Care Worker Wage Parity Act[1] (fifth cause of action); 6) New York City Service Contracts (sixth cause of action); and 7) New York City's Fair Wages for Workers Act (seventh cause of action). In the

[1] As defendant notes, plaintiff appears to have been referring to the New York Home Care Worker Wage Parity Act.

complaint, Guzman alleged that he was employed by First Chinese from March, 2008 until 2012;[2] Rivas alleged that she was employed by First Chinese from December 17, 2007 until June 8, 2015; and Herrera alleged that she was employed by defendant from June 23, 2000 until September 30, 2015. Doc. 1.

On September 29, 2016, First Chinese informed plaintiffs' attorney that plaintiffs' action was subject to dismissal based on the mandatory alternative dispute resolution ("ADR") provision of the 2015 MOA. Ex. E to Doc. 17. Plaintiffs refused to withdraw their claims, asserting, in correspondence dated September 30, 2016, and based on the case of *Chu v Chinese-American Planning Council Home Attendant Program, Inc.*, 194 F Supp 3d 221, 228 (SDNY, 2016), that the 2015 MOA was inapplicable to them because they were not employees of First Chinese at the time First Chinese and the union agreed to the 2015 MOA. Ex. F to Doc. 17.

On October 31, 2016, counsel for First Chinese again sent the union a letter advising that the complaint was improperly filed in Supreme Court, New York County since plaintiffs' claims were subject to mandatory arbitration pursuant to the 2015 MOA. Ex. H to Doc. 17. On November 7, 2016, the union's attorney sent First Chinese a letter objecting to the submission of plaintiff's claims to Arbitrator Scheinman. Ex. I to Doc. 17. On November 18, 2016, counsel for First Chinese wrote to Arbitrator Scheinman to request that he resolve plaintiffs' claims pursuant to the mandatory arbitration provision in the 2015 MOA. Ex. J to Doc. 17.

First Chinese now moves, pursuant to the Federal Arbitration Act (9 USC § 3), as well as CPLR 2201 and 7503(a), to compel arbitration and to stay this action, arguing that plaintiffs are

[2] Although the complaint alleges that Guzman was employed by First Chinese until 2012, the parties agree that she worked there until August 4, 2014.

bound by the provisions of the 2015 MOA. In support of the motion, First Chinese asserts that the 2015 MOA contains no temporal limitation and does not restrict its applicability to current employees. Additionally, First Chinese asserts that the CBA requires an arbitrator, and not this Court, to determine whether the 2015 MOA applies to plaintiffs' claims. First Chinese also maintains that this action must be stayed pending the arbitration of plaintiffs' claims. Further, First Chinese contends that *Chu* must be disregarded as mere dicta because the federal court in that matter remanded the action to state court for lack of subject matter jurisdiction and that, in any event, this Court is not bound by the decision of a federal court.

In opposition to the motion, plaintiffs primarily rely on *Chu*, in which the court stated that plaintiffs, former home health care workers who were no longer employed by the defendant home care agency, could not be required to arbitrate a claim pursuant to an ADR provision adopted after they left the agency's employ because they "may not be bound by subsequently adopted amendments to a collective bargaining agreement to which they were not parties." *Chu*, 194 F Supp 3d at 228. The court in *Chu* further noted that, "[b]ecause the obligation to arbitrate is created by contract, a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Id.* (internal quotation marks and citation omitted).

In reply, First Chinese essentially reiterates its contention that plaintiffs are required to resolve their claims by arbitration in accordance with the 2015 MOA.

LEGAL CONSIDERATIONS:

Although the crux of the parties' dispute emanates from the *Chu* decision, this Court recognized in *Hichez v United Jewish Council of the East Side*, 2018 NY Slip Op 32327(U) (Sup Ct NY County 2018), a case involving very similar facts, that since *Chu* was decided:

> the question of whether plaintiffs can be compelled to arbitrate pursuant to an agreement entered into between the union and an employer who has ceased employment has been addressed by the Supreme Court, New York County. In a carefully reasoned decision citing both *Chu* (194 F Supp 3d 221) and *Safonova v Home Care Servs. For Independent Living, Inc.*, 2017 N.Y. Misc. LEXIS 5457 (Sup Ct, NY County, January 17, 2017, Rakower, J., Index No. 150642/2016), this Court (Hagler, J.) held in *Konstantynovska v Caring Professionals, Inc.* (2018 NY Slip Op 31475 [U] [Sup Ct, NY County 2018]) that "to the extent that they were not employed with defendant at the time the MOA was ratified, [plaintiffs] are not bound by it." 2018 NY Slip Op 31475 [U] at *7. As in *Konstantynovska*, here "[t]here is no language in the [*6] MOA binding former employees or former union members who left prior to its creation." 2018 NY Slip Op 31475 [U] at *9.
>
> While recognizing the "strong federal policy favoring arbitration as an alternative means of dispute resolution" (*Ragone v Atlantic Video at Manhattan Ctr.*, 595 F3d 115, 121 [2d Cir 2010] [internal quotation marks and citation omitted]), this Court agrees with the rationale in *Konstantynovska*, and concludes that plaintiffs, who were no longer employed by [defendant] when the MOA was signed, are not bound by its alternate dispute provisions. Moreover, "'whether the parties have entered into a valid [**6] arbitration agreement and, if so, whether the issue sought to be submitted to arbitration falls within the scope of that agreement'" (*Konstantynovska*, 2018 NY Slip Op 31475 [U] at *5, quoting *Edgewater Growth Capital Partners, L.P. v Greenstar N. Am. Holdings, Inc.*, 69 A.D.3d 439, 439 [1st Dept 2010]), is an issue for the court to decide, and is not one to be resolved by the arbitrator, as [defendant] contends.

Hichez, 2018 NY Slip Op 32327(U), at **5 - **6.

As noted previously, Guzman worked for First Chinese from March, 2008 until 2012, Rivas worked for First Chinese from December 17, 2007 until June 8, 2015, and Herrera worked

for First Chinese from June 23, 2000 until September 30, 2015. Doc. 1. Since each of the plaintiffs left the employ of First Chinese prior to December 1, 2015, the effective date of the 2015 MOA, the mandatory ADR provision of the 2015 MOA was inapplicable to them. Therefore, that branch of First Chinese's motion seeking to compel arbitration must be denied. Given this finding, it follows that there is no need to stay this action pending arbitration. Thus, that branch of the motion seeking to stay the captioned action is denied as well.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion by defendant The First Chinese Presbyterian Community Affairs Home Attendant Corporation seeking to compel arbitration and stay the action is denied; and it is further

ORDERED that the parties are to appear for a preliminary conference at 80 Centre Street, Room 280, on June 18, 2019 at 2:15 p.m.; and it is further

ORDERED that this constitutes the decision and order of the court.

3/29/2019
DATE

KATHRYN E. FREED, 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