

Matter of Leibow v Agrawal
2019 NY Slip Op 31762(U)
June 21, 2019
Supreme Court, New York County
Docket Number: 650655/2019
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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In the matter of the Application of,

Index No.
650655/2019

Chelsea Leibow,
Petitioner,

v.

Decision and
Order

Miki Agrawal,
Respondent.

Motion Seq. 1

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

Petitioner Chelsea Leibow (“Petitioner” or “Leibow”) worked for Thinx, Inc. (“Thinx”), from December 2015 until December 26, 2016. Respondent Miki Agrawal (“Respondent” or “Agrawal”) was Thinx’s Chief Executive Officer during that time. In March 2017, Leibow filed a Complaint with the New York City Commission on Human Rights (“NYCCHR”) against Agrawal individually. In May 2017, Leibow and Agrawal entered into a Settlement Agreement and General Release (“Settlement Agreement”) of the 2017 NYCCHR action.

The Settlement Agreement contained mutual non-disparagement and confidentiality provisions. The Settlement Agreement also contained a provision that required the parties to arbitrate disputes for breach of its terms.

On January 27, 2019, Agrawal filed a Demand for Arbitration. Agrawal alleges that Leibow breached the terms of the Settlement Agreement in an interview that Leibow gave in August 2017 that was subsequently published on a website called Mic.com. Leibow has filed Counterclaims against Agrawal in the arbitration proceeding.

In this proceeding, Leibow seeks a preliminary injunction in aid of arbitration enjoining Agrawal from making statements relating to Leibow or the 2017 NYCCHR in violation of the Settlement Agreement. Specifically, Leibow seeks to enjoin Agrawal from (a) disparaging Leibow in violation of the Settlement Agreement; (b) acting as a source or engaging in dialogue with the press or media about Agrawal or matters related to the Settlement Agreement; (c) making false

statements about Leibow; (d) disclosing confidential agreement terms; and (e) engaging in other conduct that violates the Settlement Agreement. Agrawal opposes the application.¹

Leibow claims that Agrawal violated the Settlement Agreement in statements she made on her personal blog published on Medium.com on March 17, 2019, in a presentation that was subsequently posted on Agrawal's company's business Facebook page in July 2017, in a podcast interview on December 28, 2018, and in statements contained in a January 26, 2019 New York Post article and January 27, 2019 Ms. Magazine online interview.

Legal Standard

Entitlement to a preliminary injunction in aid of arbitration, pursuant to CPLR §7502, requires the petitioner to demonstrate that any award issued by the arbitrator may be rendered ineffectual if the relief is not granted.

In addition, a party seeking an injunction in aid of arbitration must establish the traditional three factors for injunctive relief under CPLR article 63. *Erber v. Catalyst Trading, LLC*, 303 A.D.2d 165, 165 (1st Dept 2003). A party must “demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor.” *Gilliland v. Acquafredda Enters., LLC*, 92 A.D.3d 19, 24 (1st Dep't 2011) citing *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839 (2005). “[T]he criteria for provisional relief set forth in CPLR articles 62 and 63 are not relaxed when such relief is sought in aid of arbitration pursuant to arbitration pursuant to CPLR 7502.” *Erber*, 303 A.D.2d at 165.

Leibow alleges irreparable harm. Leibow is described as a “28-year-old professional in the early years of founding her public relations contracting business.” Leibow contends “[t]he public statements made, and that continue to be

¹ A temporary restraining order was granted on February 4, 2019 and is currently in effect. The application was marked fully submitted on May 21, 2019 upon the receipt of the minutes from the oral argument that took place before the Court.

made, by Respondent are injurious to Petitioner in ways that are impossible to measure in that they target her integrity, credibility, and professional reputation and they create a serious risk of irreparable harm.” Leibow states that her “character and professional reputation are being harmed on a daily basis by Respondent’s retaliatory and unlawful conduct, but because Respondent possesses both public and financial resources that dwarf those of Petitioner, Respondent continues to knowingly and intentionally violate the Agreement.” (Paragraph 9 of Petition). Leibow further states, “Respondent is continuing to engage in a very public smear campaign against Petitioner that is likely to cause her irreparable reputational injury, particularly as most of Respondent’s disparaging, defamatory, and false statements about Petitioner are published by independent media sources and/or published on the Internet, where they will live forever.” (Paragraph 61 of the Petition).

Paragraph 10 of the Settlement Agreements provides for liquidated damages per each material breach found. Each instance of disparagement, each interview, each publication may be found to be a separate material breach. “Damages compensable in money and capable of calculation ... are not irreparable.” *SportsChannel American Associates v. National Hockey League*, 186 A.D.2d 417, 418 (1st Dept 1992). “[T]he presence of a liquidated damages clause in the Employment Agreement, that is addressed precisely to the damages that [the movant] will suffer as a result of a violation of the non-competition and non-solicitation provisions of that contract, indicates that such damages as [the movant] may suffer could be redressed by the payment of a sum of money.” *Prebon Fin. Prods. Inc., v. GFI Group, Inc.*, 2000 WL 35790805 (N.Y.Sup. 2000).

While the Court does not seek to minimize Leibow’s concerns or Agrawal’s obligations under the Settlement Agreement, Leibow has failed to substantiate her allegations that irreparable harm will result absent a preliminary injunction in aid of arbitration. Nor has Leibow demonstrated that any award issued by the arbitrator may be rendered ineffectual if the relief is not granted.

Wherefore, it is hereby

ORDERED that the Order to Show Cause seeking a preliminary injunction is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: JUNE 21, 2019


EILEEN A. RAKOWER, J.S.C.