

Hichez v United Jewish Council of the E. Side Home Attendant Serv. Corp.
2019 NY Slip Op 31884(U)
June 24, 2019
Supreme Court, New York County
Docket Number: 653250/2017
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. 653250/2017

PIFANIA HICHEZ, CARMEN CARRASCO, and SEFERINA ACOSTA,

Plaintiffs,

MOTION SEQ. NO. 002 and 003

- v -

UNITED JEWISH COUNCIL OF THE EAST SIDE HOME ATTENDANT SERVICE CORP.,

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 88, 93, 94, 95, 96, 98, 99, 100, 106, 107, 108

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 92, 97, 101, 102, 103, 104

were read on this motion to/for STAY

In this action by plaintiffs Pifania Hichez, Carmen Carrasco, and Seferina Acosta against defendant United Jewish Council of the East Side Home Attendant Service Corp. seeking to recover, inter alia, unpaid wages, defendant moves (motion sequence 002), pursuant to CPLR 2221, for an order granting reargument of its motion (“the underlying motion”) seeking to compel arbitration and to stay this action, which motion (motion sequence 001) was denied by order dated September 17, 2018 and entered October 12, 2018. Plaintiffs oppose the motion. Defendant also moves (motion sequence 003), pursuant to CPLR 2201, to stay this action pending the determination of its appeal from the order determining the underlying motion. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motions are decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

The facts of this case are set forth in detail in the order of this Court dated September 17, 2018 and entered October 12, 2018 (“the 10/12/18 order”) and are incorporated by reference herein. Doc. 79. Any additional relevant facts are set forth below.

On October 12, 2018, defendant filed a notice of appeal from the 10/12/18 order. Doc. 74. This Court has been advised by the Clerk of the Appellate Division, First Department that the appeal has been perfected and is scheduled to be heard during the September, 2019 term.

CONTENTIONS OF THE PARTIES:**Motion Sequence 002**

In motion sequence 002, defendant argues that this Court erred in concluding that it, and not the arbitrator, was required to decide whether plaintiffs’ claims were subject to arbitration. Specifically, defendant contends that the parties are bound by the 2012 collective bargaining agreement (“the 2012 CBA”), which contains a provision requiring an arbitrator to decide disputes pursuant to the rules of the American Arbitration Association (“the AAA”). Those rules, urges defendant, delegate the threshold issue of arbitrability to the arbitrator.

In opposition to the motion, plaintiffs claim that, by waiting until oral argument to raise the issue that the arbitrator was required to determine the question of arbitrability, defendant waived this contention. Plaintiffs further argue that the arbitration provision in the 2012 CBA applies only to claims “involving the proper application, interpretation, or compliance with the specific written provisions of the [agreement]” and that they are not asserting such claims, but rather claims arising from the New York Labor Law. Plaintiffs maintain that, since their claims

are independent of the CBA, the 2012 provision does not apply to them, and this Court must thus decide the issue of arbitrability.

In reply, defendant argues that plaintiffs concede that the 2012 CBA's incorporation of the AAA rules is an enforceable delegation of authority to the arbitrator to determine whether plaintiffs' claims are arbitrable.

Motion Sequence 003

In motion sequence 003, defendant argues that this case must be stayed pending the determination of its appeal from the 10/12/18 order since such a stay is in the best interests of judicial economy, will avoid unnecessary discovery and motion practice, and will prevent possible inconsistent findings by this Court and the arbitrator.

Plaintiffs oppose the motion for a stay, arguing that such a stay is not warranted because the appeal has no merit. They further assert that defendant seeks a stay merely to delay this action. Further, they claim they will be prejudiced by a stay since they are low income individuals who have an interest in recovering money from defendant as soon as possible.

In reply, defendant argues, inter alia, that plaintiffs would not be prejudiced by a stay of this action pending appeal.

LEGAL CONCLUSIONS:

Motion Sequence 002

The purpose of a motion for leave for reargument pursuant to CPLR 2221(d) is to afford a party an opportunity to demonstrate that, in issuing a prior order, the court overlooked relevant facts or that it misapplied a controlling principle of law. *See Foley v Roche*, 68 AD2d 558, 567

(1st Dept 1979). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted.” *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992) (citations omitted). Thus, the motion is not to be used as a vehicle for rehashing what was already argued or for raising new questions. *See Simpson v Loehmann*, 21 NY2d 990, 990 (1968).

This Court denies defendant’s motion for reargument, finding that it did not overlook or misapply an issue of law or fact in deciding the underlying motion.

Initially, this Court rejects plaintiffs’ argument that defendant waived its right to assert that, pursuant to the CBA, the issue of arbitrability was delegated to the arbitrator. As plaintiff admits, this argument was made by defendant at oral argument, and this Court allowed each party to submit letters regarding their respective positions on this issue. Thus, no such waiver occurred.

Additionally, this Court correctly determined that the issue of arbitrability herein is one for it to decide. In asserting that it is the duty of the arbitrator, and not this Court, to determine the arbitrability of the issues between the parties, defendant relies, inter alia, on *Henry Schein, Inc. v Archer & White Sales, Inc.*, ___ US ___ ; 139 S Ct 524; 202 L Ed 2d 480 (2019) and *Rent-A-Center, West, Inc. v Jackson*, 561 US 63; 130 S Ct 2772, 177 L Ed 403 (2010). In the more recent case, *Schein*, the Supreme Court stated that “[w]hen the parties’ contract delegates the arbitrability question to an arbitrator, the courts must respect the parties’ decision as embodied in [their] contract.” *Schein*, 139 S Ct at 528. The Supreme Court further stated that courts “should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so.” *Id.* at 531 (*citation omitted*).

Here, Article XXVI of the CBA, entitled “Grievance and Arbitration Procedure”, provides a four-step procedure for resolving grievances. Doc. 65 at 28. It is only if a grievance is not resolved during the first three steps of this procedure that the union or the employer “may . . . request that the matter be submitted for final and binding arbitration under the Labor Arbitration Rules of the [AAA].” Doc. 65 at 28-29 (*emphasis added*). Since a grievance may be resolved before the parties even need to consider the arbitration provision set forth in the fourth step of the procedure, it is clear that the parties herein did not have the unmistakable intent to delegate to the arbitrator the issue of arbitrability. Thus, defendant’s contention that “[n]either party disputes that [p]laintiffs are all bound by the 2012 CBA and that [the 2012 CBA] contains an enforceable delegation of authority to an arbitrator under *Rent-A-Center* and *Henry Schein, Inc.*” (Doc. 100 at 6) is clearly without merit.

Further, despite defendant’s strong reliance on *Schein*, the Supreme Court explicitly stated in its decision that it “express[ed] no view about whether the contract at issue in [that] case in fact delegated the arbitrability question to an arbitrator.” *Schein*, 139 S Ct at 531.

The decision of the Appellate Division, First Department in *Life Receivables Trust v Goshawk Syndicate 102 at Lloyd’s*, 66 AD3d 495 (1st Dept 2009), *aff’d* 14 NY3d 850 (2010) supports this conclusion as well. In that case, the arbitration agreement at issue required that “[a]ll disputes and differences arising under or in connection with this [contract] . . . be referred to arbitration under the [AAA] Rules.” 66 AD3d at 495. In affirming the denial of plaintiff’s motion to stay arbitration, the Appellate Division reasoned that the arbitration agreement incorporated the AAA rules, which allow an arbitrator to rule on arbitrability, as well as the fact that the parties’ agreement required “all disputes” between the parties to be arbitrated. 66 AD3d at 496. However, since there was no requirement in the 2012 CBA that all disputes be arbitrated,

Life Receivables Trust does not constrain this Court to conclude that the issue of arbitrability was for the arbitrator to decide.

Therefore, this Court denies defendant's motion for reargument.

Motion Sequence 003

As noted previously, this Court's 10/12/18 order denied defendant's motion seeking to compel arbitration and to stay the action. Although this Court denies reargument of the underlying motion, it hereby grants defendant's motion for a stay pending the determination of its appeal from the 10/12/18 order. It is well settled that "a court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources." *Chaplin v Natl. Grid*, 171 AD3d 691, 692 (2d Dept 2019) (*citation omitted*). Since defendant has perfected its appeal, the Appellate Division may determine that this matter must be arbitrated. If it does, and this case progresses towards trial, inconsistent adjudications may result. Additionally, significant judicial resources could be wasted litigating this matter while the appeal is pending. Therefore, this Court, in its discretion, determines that a stay is warranted under the circumstances herein.

Although plaintiffs argue that they will be prejudiced by a stay because they are low earning individuals, this conclusory claim is unsupported by any documentation or by affidavits of any of the plaintiffs.

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

ORDERED that defendant's motion for reargument (motion sequence 002) is denied; and it is further

ORDERED that defendant's motion for a stay (motion sequence 003) is granted, and this action is stayed pending the determination of defendant's appeal from the order of this Court entered October 12, 2018; and it is further

ORDERED that the preliminary conference previously scheduled in this matter for October 1, 2019 is hereby adjourned until December 11, 2019 at 80 Centre Street, New York, New York, Room 280 at 2:15 p.m.; and it is further

ORDERED that if defendant's appeal is still pending as of December 4, 2019, the parties are to contact this Court to obtain a new preliminary conference date; and it is further

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

6/24/2019
DATE


CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE


KATHRYN A. FREED, J.S.G. CLERK
JUSTICE OF SUPREME COURT