

Xue Wen v American Bus. Inst. Corp.

2020 NY Slip Op 31472(U)

May 20, 2020

Supreme Court, New York County

Docket Number: 156533/2018

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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XUE WEN, CUI LIANG, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED WHO WERE EMPLOYED BY AMERICAN BUSINESS INSTITUTE CORP., ALONG WITH OTHER ENTITIES AFFILIATED OR CONTROLLED BY AMERICAN BUSINESS INSTITUTE CORP.

Plaintiff,

- v -

AMERICAN BUSINESS INSTITUTE CORP. AND/OR ANY OTHER RELATED ENTITIES,

Defendant.

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INDEX NO. 156533/2018
MOTION DATE 2/27/2019
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 28, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for DISMISSAL.

In this putative class action for unpaid wages purportedly owed to personal home health care providers employed by defendant American Business Institute Corp. from June 2012 to the present, defendants move, pre-answer, to dismiss the complaint pursuant to CPLR 3211(a)(1) on the grounds that the two identified class representatives, named plaintiffs Xue Wen and Cui Liang, each signed an arbitration agreement, including a class action waiver. The defendants also move, in the alternative, pursuant to CPLR 7503(a) to compel arbitration and to stay the action pending arbitration. The plaintiffs oppose the motion. As discussed herein, branch of the defendants' motion to dismiss pursuant to CPLR 3211(a)(1) is denied, and the branch of the defendants' motion seeking, in the alternative, to compel arbitration and stay this action pending arbitration is granted.

The plaintiffs do not dispute that they signed an agreement when they were hired by the defendants as health care workers. Instead, they argue that they were unaware of the arbitration and waiver provisions which included a class action waiver when they signed the agreement. In their affidavits, they aver that they do not speak English but only Mandarin and

Cantonese. They further aver that the defendants were fully aware of this as the trainings they attended, all organized and conducted by the defendants, were conducted in Cantonese and Mandarin, and the patients they were assigned to care for only spoke Cantonese and Mandarin. Although the plaintiffs oppose the defendants' motion, they agree with the defendant that should arbitration be compelled; the underlying action should be stayed. They also argue that should the case be dismissed then a notice to all putative class members pursuant to CPLR 908 should be issued.

Dismissal under CPLR 3211(a)(1) is only warranted when the documentary evidence submitted "resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." Fortis Financial Services, LLC v Fimat Futures USA, 290 AD2d 383, 383 (1st Dept. 2002); see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc., 120 AD3d 431 (1st Dept. 2014); Fontanetta v John Doe 1, 73 AD3d 78 (2nd Dept. 2010). In support of its motion to dismiss the defendant submits the two arbitration agreements, each signed by one of the named plaintiffs. The agreement expressly states that any legal controversy relating to the employee's employment, including those arising under state labor statutes and New York Labor Law are to be arbitrated and further states that "[e]mployee waives his right to be included in any class action claim and instead agrees to bring any such claim to arbitration on an individual basis." These submissions fail to establish the defendants' entitlement to dismiss the plaintiffs' claims under CPLR 3211(a)(1). It is well settled that an enforceable arbitration clause is a ground to stay an action pending arbitration, and to thereby compel arbitration, but not to dismiss an action on the merits pursuant to CPLR 3211(a)(1). See De Sapio v Kohlmeyer, 35 NY2d 402 (1974); Dissolution of Princeton Info., Ltd., 235 AD2d 234 (1st Dept. 1997); Aschkenasy v Teichman, 12 AD2d 904 (1st Dept. 1961); Lapolla v Hurwitz, No. 654041/12, 2013 WL 3070137 (Sup Ct, New York County 2013). The only additional argument that the defendants make under CPLR 3211(a)(1) is that this action should be dismissed because the plaintiffs cannot be class representatives as they signed an arbitration agreement. This argument is unavailing inasmuch as the plaintiffs have also sued in their individual capacities, which is undisputedly permitted under their agreement.

However, the arbitration agreement submitted by the defendants does establish their entitlement to compel arbitration pursuant to CPLR 7503(a). The courts have "repeatedly recognized New York's 'long and strong public policy favoring arbitration.'" Stark v Molod Spitz DeSantis & Stark, P.C., 9 NY3d 59, 66 (2007) (*quoting* Matter of Smith Barney Shearson v

Sacharow, 91 NY2d 39, 49 [1997]). Nonetheless, “a party will not be compelled to arbitrate ... absent evidence which affirmatively establishes that the parties expressly agreed to arbitrate their disputes. The agreement must be clear, explicit, and unequivocal.” Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc., 115 AD3d 128, 132-133 (1st Dept. 2014) (quoting Matter of Waldron, 61 NY2d 181, 183 [1984]); see also Shah v Monpat Construction, Inc., 65 AD3d 541 (2nd Dept. 2009).

Here, the defendants undisputedly demonstrate that the arbitration agreement signed by plaintiffs Xue Wen and Cui Liang, expressly states that any legal controversy relating to the employee’s employment, including those arising under state labor statutes and New York Labor Law are to be arbitrated. The agreement further states that the “[e]mployee waives his right to be included in any class action claim and instead agrees to bring any such claim to arbitration on an individual basis.” As such, the defendants have met their burden to compel arbitration pursuant to CPLR 7503(a).

The plaintiffs only argument in opposition is unavailing. They claim that they did not speak English, and thus they did not know or understand what they signed. This argument fails because it is well settled that “[a] party who executes a contract is presumed to know its contents and to assent to them.” British W. Indies Guar. Tr. Co. v Banque Internationale a Luxembourg, 172 AD2d 234, 234 (1st Dept. 1991); Moon Choung v Allstate Ins. Co., 283 AD2d 468, 468 (2nd Dept. 2001). A claimed inability to understand the English language, absent allegations of fraud or duress, none of which the plaintiffs assert, is insufficient to circumvent this rule. See Holcomb v TWR Express, Inc., 11 AD3d 513 (2nd Dept. 2004). There is no showing that the plaintiffs made any reasonable effort to have the contract interpreted for them before signing. See id.; Shklovskiy v Khan, 273 AD2d 371 (2nd Dept. 2000).

Accordingly, and upon the foregoing papers, it is,

ORDERED that the branch of the motion by defendant American Business Institute Corp. to dismiss the complaint pursuant to CPLR 3211(a)(1) is denied; and it is further,

ORDERED that the branch of defendant American Business Institute Corp. seeking to compel arbitration pursuant to CPLR 7503(a) and to stay this action pending arbitration is granted; and it is further,

ORDERED that the plaintiffs shall arbitrate their claims against the defendants in accordance with the parties' agreement.

This constitutes the Decision and Order of the Court.

5/20/2020

DATE



NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE