

Sabr Chems. Group, LLC v Northeast Chem. Group, Inc.
2020 NY Slip Op 31518(U)
May 21, 2020
Supreme Court, New York County
Docket Number: 650608/2019
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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SABR CHEMICALS GROUP, LLC,
Plaintiff,

INDEX NO. 650608/2019
MOTION DATE 05/21/2020
MOTION SEQ. NO. 004

- v -

NORTHEAST CHEMICAL GROUP, INC.,
Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004)
were read on this motion to

REARGUE/RECONSIDER

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of defendant Northeast Chemical
Group, Inc., for leave to reargue the order dated February 18,
2020, that denied defendant's motion to dismiss, (which on
September 27, 2019, this court converted to a motion for summary
judgment under CPLR 3211[c]), and directed the parties to proceed
to arbitration, is GRANTED; and it is further

ORDERED and ADJUDGED that, upon reargument, this court
vacates its prior order only to the extent that it denied
defendant's motion to dismiss, and grants such motion, but
otherwise adheres to its decision/order dated February 18, 2020;
and is is further;

ORDERED and ADJUDGED that the Clerk shall enter judgment, accordingly, directing the parties to proceed to arbitration and dismissing the complaint.

DECISION

In Tarsel v Trombino, 167 AD3d 1462 (3d Dept. 2018), the court reasoned:

"As an initial matter, although plaintiffs did not seek declaratory relief, the court has the authority to "grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded, imposing such terms as may be just" (CPLR 3017[a]; see Buttonwood Ltd. Partnership v. Blaine, 37 A.D.3d 910, 912, 830 N.Y.S.2d 371 [3d Dept. 2007])."

In its complaint, plaintiff prayed for a judgment awarding inter alia, "(a)ny further and different relief that this Court finds just and equitable". Thus, contrary to defendant's argument, although plaintiff did not petition the court to compel arbitration, this court has the power to direct the parties to arbitrate their dispute in accord with the terms and conditions that both sides accepted.

Defendant, on its motion to dismiss, argued that the venue of this action belonged exclusively in New Jersey, based upon the statement under oath made by its principal that the Purchase Order that he issued on August 7, 2017, had the following Terms and Conditions:

"All disputes, controversies, or proceedings in connection with the transaction between Seller (Sabr Chemicals Group, LLC) and Buyer (Northeast Chemicals Group, LLC) shall be tried, litigated an(d) (sic) adjudicated exclusively in the State of New Jersey"

and did not include an arbitration clause.

By interim order dated September 27, 2019, this court set the matter down for an evidentiary hearing on whether, as a matter of fact, defendant signed (i.e. proffered) to plaintiff the Purchase Order (2821), on its letterhead, dated August 7, 2017, with Terms and Conditions that set venue exclusively in New York County and provided arbitration as the exclusive forum for the resolution of any and all disputes about the interpretation, performance or enforcement of their contract or rather proffered the Purchase Order (2821) whose Terms and Conditions had a New Jersey choice of forum but no arbitration provision. The court disagrees with defendant that it referred the matter for an evidentiary hearing on whether this court had long arm jurisdiction over defendant, as in its interim order dated September 27, 2019, the court determined that it had such jurisdiction, finding that defendant had the requisite minimum contacts with the State of New York. The only issue before the Special Referee was a factual one, i.e. which of the Purchase Orders with dueling choice of forum Terms and Conditions constituted the parties' contract.

On the eve of such hearing on February 18, 2020, with a whipsaw strategy, defendant stipulated that it waived "any claims that this action between the parties should be heard in any other court or proceeding other than the Supreme Court, New York County, or the appellate courts with jurisdiction." The court agrees with defendant that such stipulation did not resolve the question of whether it agreed to arbitration, and to the extent that the court found otherwise in its February 20, 2020 order, such finding was in error.

However, in its September 27, 2019 interim order, this court provided the parties with thirty-days notice that it was treating defendant's motion as one for summary judgment and permitted the parties to come forward with evidence on the question of the interpretation, performance and enforcement of the Terms and Conditions that constituted the parties' agreement. In opposition to defendant's motion to dismiss, plaintiff proffered two electronic messages dated August 15, and 16, 2017, purportedly from plaintiff's e-mail account to defendant's e-mail account, wherein defendant (Buyer) offered the Purchase Order with Terms and Conditions, paragraph 8, entitled "Governing Rules and Dispute Resolution", which states:

"Any controversy or claim relating to the interpretation, performance or enforcement of this contract shall be resolved exclusively by arbitration

by the American Arbitration Association (AAA) in New York City in accord with AAA Rules and Procedures and petition for judgment on the award by the AAA arbitrators shall be entered in Federal or State court having jurisdiction for enforcement purposes."

In addition, plaintiff submitted an affidavit of an artificial intelligence and computer consultant expert, in which such expert opined, that each such message and identical attached Terms and Conditions emanated and were transmitted from defendant's e-mail account, and not from plaintiff's, and that plaintiff never tampered with or altered such attachment.

Defendant submitted no affidavit or other evidence that refutes such expert opinion that at the time in question, defendant offered the Terms and Conditions that provided for the resolution of disputes under the Purchase Order by arbitration only, to plaintiff, which plaintiff does not dispute it accepted. Therefore, enforcement of the terms of such Purchase Order necessitates that the parties proceed to arbitration.

05/21/2020
DATE

[Signature]
DEBRA A. JAMES, J.S.C.

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