

<b>Capstone Bus. Funding, LLC v Judlau Contr., Inc</b>
2020 NY Slip Op 31548(U)
May 7, 2020
Supreme Court, New York County
Docket Number: 655855/2017
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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CAPSTONE BUSINESS FUNDING, LLC,

Plaintiff,

- v -

JUDLAU CONTRACTING, INC, TRAVELERS CASUALTY
AND SURETY COMPANY OF AMERICA, TIGHTSEAL
CONSTRUCTION INC, MICHAEL DICKERSON

Defendants.

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INDEX NO. 655855/2017

MOTION DATE 12/31/2019

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38

were read on this motion to CONFIRM ARBITRATION AWARD.

Pursuant to CPLR § 7510, Plaintiff Capstone Business Funding LLC (Capstone) seeks to confirm the arbitration award rendered in Capstone Business Funding, LLC v. Judlau Contracting, Inc. et al. (AAA Construction Arbitration Case No. 01-18- 0001-3744), which found in favor of Capstone and against Defendants Tightseal Construction Inc. (Tightseal) and Michael Dickerson, jointly and severally, in the amount of \$805,087.48, and against Defendant Judlau Contracting, Inc. (Judlau) in the amount of \$1,333.34. For the reasons set forth below, the motion is granted.

CPLR § 7510 mandates that “[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.” “It is well settled that judicial review of arbitration awards is extremely limited” (Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 479-80 [2006]; Brown & Williamson Tobacco Corp. v Chesley, 7 AD3d 368, 372 [1st Dept. 2004] [“It is beyond cavil that the scope of judicial review of an arbitration proceeding is extremely

limited.”]; *see Levin & Glasser, P.C. v Kenmore Prop., LLC*, 70 AD3d 443, 445 [1st Dept 2010] [noting “the summary nature of a special proceeding pursuant to CPLR 7510 to confirm an arbitration award”]. The award may not be vacated “unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on [the arbitrator’s] power” (*Silverman v Benmor Coats, Inc.*, 61 NY2d 299, 308-09 [1984]). In sum, “[a] party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high” (*U.S. Elecs., Inc. v Sirius Satellite Radio, Inc.*, 17 NY3d 912, 915 [2011] [quoting *Ecoline, Inc. v Local Union No. 12 of Int’l Ass’n of Heat & Frost Insulators & Asbestos Workers, AFL-CIO*, 271 F App’x 70, 72 [2d Cir. 2008]).

Here, Tightseal and Dickerson fail to meet that burden.<sup>1</sup> These Defendants object to Capstone’s motion to confirm the arbitrator’s award because the arbitrator purportedly “had no authority to determine the award or rule on the case because the parties did not enter into an agreement to arbitrate the contracts upon which the arbitrator’s decision was based” (NYSCEF 36 at ¶10 [Aff. in Opp.]). But this view conflicts with the December 31, 2017 stipulation (the Stipulation), signed by Tightseal’s and Dickerson’s counsel, submitting all relevant claims in this action to arbitration (*see* NYSCEF 9). Under CPLR § 7501, “[a] written agreement to submit . . . any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award.” “To exclude a substantive issue from arbitration,” the instrument sending the dispute to arbitration must spell out “the subjects intended to be put beyond the arbitrator’s reach” (*Silverman*, 61 NY2d at 308 [1984]; *Brown & Williamson Tobacco Corp.*, 7

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<sup>1</sup> Judlau, meanwhile, does not object to confirming the award, and notes that it is already “sending a check for that amount to Capstone” (NYSCEF 33).

AD3d at 373 [“[A]ny limitation on an arbitrator's power must be set forth as part of the arbitration clause itself.”]).

Nothing in the Stipulation, which authorized the arbitration (*see* NYSCEF 24 at 1 [arbitrator’s decision]), supports Tightseal’s and Dickerson’s narrow view of the arbitrator’s jurisdiction over Capstone’s claims against them (*see* NYSCEF 9 [“The claims asserted by plaintiff Capstone Business Funding, LLC against all defendants shall be submitted to arbitration pursuant to section 33 of the subcontract between Judlau Contracting, Inc. and Tightseal Construction Corp. dated May 1, 2015[.]”]; *see also id.* [“All defenses, counterclaims and cross-claims between and among the parties to this action shall also be submitted to said arbitration[.]”]). The Stipulation does carve out one set of issues – exempting certain claims asserted by Tightseal and Dickerson against Judlau – underscoring that where the parties wished to circumscribe the scope of the arbitration, they knew how to do so.

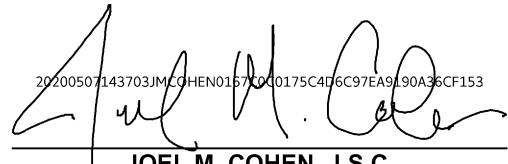
Therefore, it is:

**ORDERED AND ADJUDGED** that the motion by Plaintiff Capstone Business Funding LLC to confirm the arbitration award is **GRANTED** and the award rendered in favor of Plaintiff and against Defendants Tightseal Construction Inc., Michael Dickerson, and Judlau Contracting, Inc. is **CONFIRMED**; it is further

**ADJUDGED** that Plaintiff Capstone Business Funding LLC do recover from Defendants Tightseal Construction Inc. and Michael Dickerson, jointly and severally, the amount of \$805,087.48, and that Plaintiff have execution therefor; and it is further

**ADJUDGED** that Plaintiff Capstone Business Funding LLC do recover from Defendant Judlau Contracting, Inc. in the amount of \$1,333.34, and that Plaintiff have execution therefor.

This constitutes the Decision and Order of the Court.

  
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 JOEL M. COHEN, J.S.C.

5/7/2020  
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 DATE

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CASE DISPOSED  
 GRANTED  DENIED  
 SETTLE ORDER  
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NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER  
 SUBMIT ORDER  
 FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: