Anima Group, LLC v Emerald Expositions, LLC
2020 NY Slip Op 31736(U)
June 3, 2020
Supreme Court, New York County
Docket Number: 655455/2019
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

----------X

ANIMA GROUP, LLC,

Plaintiff,

- v -

EMERALD EXPOSITIONS, LLC,GANNON BROUSSEAU,

Defendants.

----------X

INDEX NO. 655455/2019

MOTION DATE N/A

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, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26

were read on this motion to/for COMPEL ARBITRATION.

The motion by defendants to compel arbitration is denied.

Background

Plaintiff is a fashion and jewelry promoter. It booked a booth at a trade show run by defendant Emerald Exposition, LLC ("Emerald") in 2017. Plaintiff contends that following a "miscommunication" about a $62,500 balance, Emerald banned plaintiff from any further events. Plaintiff contends that defendant Brousseau (Emerald's SVP) then contacted some of plaintiff's clients and told them plaintiff had been banned from future Emerald Events and offered to schedule meetings between those clients and some of plaintiff's competitors. Plaintiff contends that defendants were successful in interfering with plaintiff's business and plaintiff lost about $920,000 in fees and commissions.

Defendants move to dismiss and compel arbitration. They point to an arbitration provision contained in the Exhibit Space Agreement (the agreement related to reserving spaces at

the exhibition). They claim that plaintiff initially transferred a $10,000 deposit to Emerald to reserve its space and incurred a balance of $62,500. Defendants contend that plaintiff shared the booth with three of its clients and another company allegedly owned by plaintiff's president (Petrochi).

Defendants admit that after discussions with plaintiff's president about the outstanding debt, defendant Brousseau told Petrochi that he had three emails ready to send to plaintiff's customers telling them that plaintiff would be banned from future Emerald events. Defendants argue this was a tactic to pressure plaintiff to pay its bill. They claim that after more back and forth, including receiving multiple checks from Petrochi that later bounced, plaintiff stopped responding to demands for payment.

In opposition, plaintiff points out that Emerald continues to contact plaintiff's clients more than two and a half years after the 2017 exhibition in question. Plaintiff contends that it never signed the agreement containing the purported arbitration clause and that the exhibition concluded on June 6, 2017 and therefore has nothing to do with this case. It questions how it could be bound to an agreement it never signed or how the agreement could possibly apply to allegations about torts involving plaintiff's current clients. Plaintiff urges the Court to avoid interpreting a contract in such a way as to produce an absurd result.

In reply, defendants point out that it is immaterial whether plaintiff actually signed the agreement because it reaped the benefits of the agreement—it had a booth at the exhibition. They also point out that the issue of whether this case falls within the ambit of the arbitration clause (the question of arbitrability) must be decided, in the first instance, by an arbitrator under AAA Arbitration Rules.

Discussion

"Arbitration is a matter of contract grounded in agreement of the parties. As a consequence, notwithstanding the public policy favoring arbitration nonsignatories are generally not subject to arbitration agreements" (*Matter of Belzberg v Verus Investments Holdings Inc.*, 21 NY3d 626, 630, 977 NYS2d 685 [2013] [internal quotations and citations omitted]). However, "a nonsignatory may be compelled to arbitrate where the nonsignatory 'knowingly exploits' the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement" (*id.* at 631).

Based upon this clear precedent, the Court finds that plaintiff is bound by the terms of the agreement even though it did not sign it- plaintiff clearly benefited from the terms of the agreement; it paid a $10,000 fee to reserve its spot and had a booth at the exhibition. Therefore, the fact that plaintiff did not actually sign the relevant agreement which contained the arbitration clause is of no moment. If defendant wanted to arbitrate a claim for the alleged balance of the fee, plaintiff might be compelled to arbitrate that claim even if there was no signed agreement because plaintiff received the benefit of the booth. But that is not the case here.

The real question here is whether plaintiff's current tort claims fall within the scope of the arbitration clause. "The AAA rules authorize the arbitration tribunal to rule on its own jurisdiction, including objections with respect to the existence, scope or validity of the arbitration agreement. Although the question of arbitrability is generally an issue for judicial determination, when the parties' agreement specifically incorporates by reference the AAA rules, which provide that [t]he tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement, and employs language referring "all disputes" to arbitration, courts will leave the question of arbitrability to

the arbitrators" (*Life Receivables Tr. v Goshawk Syndicate 102 at Lloyd's*, 66 AD3d 495, 495-96, 888 NYS2d 458 [1st Dept 2009]).

The arbitration clause at issue here provides that:

> "Any and all disputes or claims arising out of or relating in any way to this Agreement . . . will be resolved in binding arbitration, rather than in court. This includes any disputes or claims concerning any prior event or agreement between the same parties or affiliated parties. . . . Arbitrations will be conducted by the American Arbitration Association (AAA) pursuant to its Commercial Arbitration Rules" (NYSCEF Doc. No. 11, ¶ 18).

This arbitration clause is extremely broad. It requires arbitration for any disputes "relating in any way" to the exhibition agreement, and even any "prior event or agreement" and it references AAA rules. Although the Court recognizes that questions of arbitrability are ordinarily decided by the arbitrator under the AAA's rules, caselaw is clear that arbitrability is generally determined by the courts. "[A] court will not order a party to submit to arbitration absent evidence of that party's unequivocal intent to arbitrate the relevant dispute. It is for the court to determine whether the parties have agreed to arbitrate the particular issue. The threshold determination of whether there is a 'clear, unequivocal and extant agreement to arbitrate' the disputed claims is to be made by the court and not the arbitrator" (*Pharmacia & Upjohn Co. v Elan Pharm., Inc.*, 10 AD3d 331, 333-34, 781 NYS2d 95 [1st Dept 2004] [internal quotations and citations omitted]).

Quite simply, the allegations here do not arise out of the exhibition agreement. Plaintiff admits that there was a dispute about paying for its booth. But this case is not about plaintiff's failure to pay its bill (it does not claim, for instance, that it was overcharged) and the tort alleged did not arise from conduct that took place during the exhibition. This is not about a fight or injury that occurred at the exhibition or anything that happened during exhibition. The agreement does not state that it covers future conduct by a party and that is exactly what plaintiff

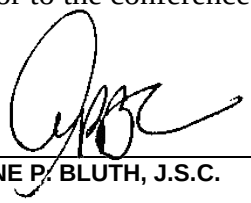
complains about here: that after the exhibition was over, defendant engaged in a course of conduct that interfered with plaintiff's business.

The Court cannot read the agreement's admittedly broad language to mean that any dispute between the parties must be arbitrated. While the dispute here relates to the *exhibition*, it does not relate to the *exhibition agreement*. That agreement allowed plaintiff to reserve a booth. Plaintiff does not allege it did not get its booth, it was unable to participate in the exhibition or that defendants' conduct interfered in any way with the exhibition itself. Rather, defendants purportedly tried to retaliate (and continues to retaliate) against plaintiff for not completing its payment for the booth. It would be an absurd reading of the exhibition agreement to find that conduct purportedly driven by spite and allegedly occurring more than two years after the exhibition somehow falls under an agreement to reserve a booth.

Accordingly, it is hereby

ORDERED that defendants' motion to compel arbitration is denied.

Conference: September 8, 2020 at 10 a.m. The parties are directed to consult the docket and this part's rules concerning whether the conference will take place remotely. The parties are encouraged to submit an e-filed conference order for court approval prior to the conference.



06/03/2020
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE