

<b>Locascio v Hobbs, Inc.</b>
2020 NY Slip Op 32226(U)
July 8, 2020
Supreme Court, New York County
Docket Number: 652318/2020
Judge: Andrew Borrok
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM**

*Justice*

-----X

LOCASCIO, ROBERT P.

Plaintiff,

- v -

HOBBS, INC.

Defendant.

-----X

INDEX NO. 652318/2020

MOTION DATE 06/16/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents and for the reasons set forth on the record (7/8/2020), this petition to stay an arbitration proceeding commenced before the AAA on My 23, 2020 (the **Arbitration**) is granted.

Reference is made to (i) a General Conditions of the Contract for Construction (the **GCC**) and (ii) the Standard Form Agreement (the **SFA**) (GCC and SFA, collectively, the **Agreement**; NYSCEF Doc. Nos. 2-3) dated July 25, 2018 by and between Robert LoCascio as owner and Hobbs, Inc. (**Hobbs**) as construction manager for a renovation project located at 241 East 48<sup>th</sup> Street, New York, NY (the **Project**).

Hobbs commenced the Arbitration against Mr. LoCascio in May of 2020 seeking to recover \$919,856 (the **Claim**) for allegedly unpaid work on the Project. Mr. LoCascio claims that Hobbs never completed its work, and that what work it did complete was defective. Mr. LoCascio also

claims that the parties never agreed to arbitrate their disputes and that, in any event, even if they did agree to arbitrate, Hobbs has failed to meet a condition precedent to arbitration, i.e., the submission of the claim to an architect before any arbitration can take place.

### **I. The Parties Agreed to Arbitration**

Section 9.1 of the SFA provides:

Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007.

(NYSCEF Doc. No. 3, § 9.1).

Section 9.2 of the SFA further provides:

For any claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not substantively agree in writing to a binding resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007**
- Litigation in a court of competent jurisdiction
- Other (*Specify*)

(*id.*, § 9.2 [emphasis added]).

Section 15.4 of the GCC entitled “Arbitration” provides:

If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration

(NYSCEF Doc. No. 2, § 15.4).

The parties however elected to forego mediation as Section 15.3 of the GCC entitled “Mediation,” provides that it was “intentionally omitted” (*id.*, § 15.3).

Notwithstanding the foregoing, Mr. LoCascio argues that because the mediation provision was omitted and there are no claims that are subject to mediation, this necessarily means that no claims may be subject to arbitration either. This twisted reading of the agreement is simply unsupported because the parties expressly selected arbitration by checking the box marked “**Arbitration** pursuant to Section 15.4 of AIA Document A201-2007” on the SFA (NYSCEF Doc. No. 3, § 9.2). The fact that the parties intentionally omitted mediation as a first step before going to arbitration does not in any way undo their agreement to arbitrate. Plainly the parties agreed to arbitrate their disputes or the express election made in Section 9.2 of the SFA would be entirely meaningless.

## II. A Condition Precedent to Arbitration Has Not Been Met

Nevertheless, Mr. LoCascio correctly points out that a condition precedent to arbitration has not been met. Section 15.2.1 of the GCC states:

Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9 and 11.3.10 [which are not applicable here], shall be referred to the Initial Decision Maker for initial interpretation. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except those claims excluded by Section 15.2.1, ***an initial interpretation shall be required as a condition precedent to arbitration of any Claim brought by the Contractor against the Owner***, arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no interpretation having been rendered.

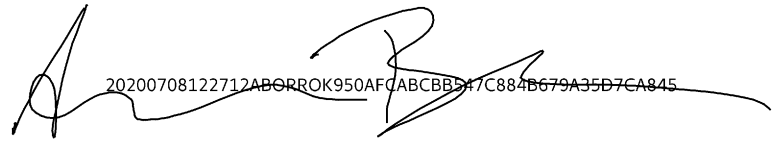
(NYSCEF Doc. No. 2, § 15.2.1 [emphasis added]).

It is undisputed that the claims Hobbs seeks to arbitrate were not first referred to the Initial Decision Maker for initial interpretation. Thus, under the plain terms of Section 15.2.1 a condition precedent to arbitration has not been met and Hobbs is therefore not entitled to proceed with the Arbitration against Mr. LoCascio (*Lopez v 14<sup>th</sup> St. Dev., LLC*, 40 AD3d 313, 315 [1<sup>st</sup> Dept 2007] [interpreting same form contract and finding that “in the absence of any assertion by the contractor that the owners’ indemnity claim was ever submitted to the architect for decision, the arbitration provision is inapplicable, and this dispute is subject to judicial resolution”]).

Accordingly, it is

ORDERED that the petition is granted, and it is further

ORDERED and ADJUDGED the arbitration is stayed because a condition precedent to arbitration was not complied with.



20200708122712ABORROK950AFCABCBB547C884B679A35D7CA845

7/8/2020

DATE

ANDREW BORROK, 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