

Vicus Partners, LLC v Domaine Select Wine & Spirits, LLC
2021 NY Slip Op 30591(U)
February 25, 2021
Supreme Court, New York County
Docket Number: 653026/2020
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL R. EDMOND PART IAS MOTION 35EFM

Justice

-----X

VICUS PARTNERS, LLC

Plaintiff,

- v -

DOMAINE SELECT WINE & SPIRITS, LLC,

Defendant.

-----X

INDEX NO. 653026/2020

MOTION DATE 07/10/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for COMPEL ARBITRATION.

Upon the foregoing documents, it is

ORDERED that Petitioner Vicus Partners, LLC's application for an order pursuant to CPLR 7503(a) directing Respondent Domaine Select Wine & Spirits, LLC to arbitrate the dispute between the parties (Motion Seq. 001) is granted; and it is further

ORDERED that Respondent is directed to appear for arbitration before the Real Estate Board of New York ("REBNY"); and it is further

ORDERED that Petitioner shall serve a copy of this order with notice of entry upon Respondent and REBNY within twenty (20) days of entry.

MEMORANDUM DECISION

In this Article 75 proceeding, Petitioner Vicus Partners, LLC, moves for an order pursuant to CPLR 7503(a) directing Respondent Domaine Select Wine & Spirits, LLC to submit to arbitration before the Real Estate Board of New York (“REBNY”) (motion seq. 001). Respondent opposes the petition in its entirety.

BACKGROUND FACTS

On December 14, 2018, Petitioner, a boutique real estate firm, entered into an Exclusive Sublet Agreement with Respondent, an alcohol distributor (“the Agreement”) (NYSCEF doc No. 1, ¶ 1). Under the Agreement, Petitioner granted Respondent the exclusive right to lease the 13th Floor of 105 Madison Avenue in Manhattan (“the subject premises”) as its office space for one year (*id.*, ¶ 11). In exchange for its services, Petitioner was to receive a Fee of \$95,119 (“the Fee”) (*id.*, ¶ 15). The Agreement included an arbitration provision providing, to wit:

“In the event of any dispute or difference with respect to any matter arising out of or in connection with this Agreement, either party shall have the right to submit such dispute or difference for binding arbitration to the Real Estate Board of New York in accordance with its arbitration rules then in effect at its office in the Borough of Manhattan of the City of New York, and judgment upon the award rendered by the arbitrators may be entered party in any proceeding such arbitration proceeding, in any court of competent jurisdiction. The prevailing party in any proceeding in connection with any dispute or difference, including such arbitration proceeding, shall be entitled to recover its expenses, including the cost of the proceeding and reasonable attorneys’ fees.”

(*id.*, ¶ 13).

On October 16, 2019, within the one-year term of the Agreement, Petitioner learned that the subject premises was disposed of by means of landlord recapture (*id.*, ¶ 14). By letter to Respondent dated January 2, 2020, Petitioner demanded to receive the Fee in full as the

Agreement provided that Petitioner had the exclusive right to “otherwise dispose of” the subject premises during the one-year term (NYSCEF doc No. 3).

On June 4, 2020, after Respondent failed to deliver Petitioner the Fee, Petitioner filed a demand for arbitration with REBNY (NYSCEF doc No. 4). Respondent was served with demand on June 12, 2020 (NYSCEF doc No. 1, ¶ 18). REBNY then requested that Petitioner and Respondent enter into a separate form agreement to arbitrate as Respondent is not a REBNY member (*id.*, ¶ 19). In response, counsel for Respondent advised the parties via email dated June 24, 2020 that Respondent “does not agree to submit any alleged dispute to REBNY arbitration” (NYSCEF doc No. 5).

On July 10, 2020, Petitioner commenced the petition now before this Court, arguing that Respondent is bound by the Agreement which conferred the right by either party to submit “any dispute or difference” to arbitration before REBNY (NYSCEF doc No. 1, ¶ 24). In opposition, Respondent argues that the terms of the Agreement expired before Petitioner sought arbitration, and its arbitration demand is thus unenforceable (NYSCEF doc No. 15 at 1). Respondent further argues that there is “no claim to arbitrate” as no lease or sublet of the subject premises ever occurred (*id.*).

DISCUSSION

CPLR 7503 provides that “[a] party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration.” On an application to compel arbitration pursuant to CPLR 7503(a), the court’s function is to determine whether an agreement to arbitrate and an issue referable to arbitration exists (Advisory Committee Notes; *see also Edgewater Growth Capital Partners, L.P. v. Greenstar N. Am. Holdings, Inc.*, 69 AD3d 439 [1st Dept 2010]).

Here, the Agreement contains an arbitration clause that pertains to “*any* dispute or difference with respect to *any* matter arising out of or in connection with this Agreement” (emphasis added). Courts have deemed such provisions to have very broad applications (*See Sisters of St. John the Baptist v Geraghty*, 67 NY2d 997, 998 [1986] [holding that an arbitration clause providing for arbitration of all disputes “arising out of or relating to, the Contract Documents” is to be interpreted broadly]; *Praetorian Realty Corp. v. Presidential Towers Residence, Inc.*, 40 NY2d 897, 898 [1st Dept 1976]) [finding that an arbitration clause encompassing “[a]ny and all disputes of whatsoever kind and nature arising out of ... this agreement” to be “concededly broad”]).

Respondent’s arguments in opposition, which are not supported by any caselaw or other legal authority, are unavailing. It is of no moment that Petitioner submitted its arbitration demand after the one-year term of the Agreement, as a broad arbitration clause “survives and remains enforceable for the resolution of disputes arising out of that agreement subsequent to the termination thereof and the discharge of obligations thereunder, irrespective of whether the termination and discharge resulted from the natural expiration of the term of the agreement” (*Primex Int’l Corp. v. Wal-Mart Stores, Inc.*, 89 NY2d 594, 598–99 [1997], citing *Hamilton & Co. v. American Home Assur. Co.*, 21 AD2d 500, 503 *aff’d* 15 NY2d 595 [1964]).

Respondent’s argument that there is no claim to arbitrate as Petitioner’s claim does not arise out of a lease or sublet is also immaterial. The Agreement clearly provides that Respondent would pay Petitioner its Fee for services during the exclusive period “in connection with any such subleasing, licensing or disposal of any part of tenant’s space” (NYSCEF doc No. 2, ¶ 2). As the subject premises was disposed during the term, Petitioner’s claim for its Fee is clearly a dispute that has arisen out of the Agreement and is thus within REBNY’s jurisdiction.

Accordingly, the Court finds that Respondent had no grounds to refuse to comply with Petitioner's arbitration demand, and grants Petitioner's application in its entirety.

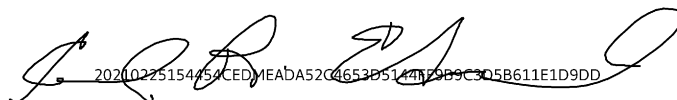
CONCLUSION

Based on the foregoing, it is hereby

ORDERED that Petitioner Vicus Partners, LLC's application for an order pursuant to CPLR 7503(a) directing Respondent Domaine Select Wine & Spirits, LLC to arbitrate the dispute between the parties (Motion Seq. 001) is granted; and it is further

ORDERED that Respondent is directed to appear for arbitration before the Real Estate Board of New York ("REBNY"); and it is further

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DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

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DENIED

SETTLE ORDER

APPLICATION:

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

GRANTED IN PART

☐

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

REFERENCE

CAROL R. EDMAD, J.S.C.