

Matter of Citnalta Constr., Corp. v LJC Dismantling Corp.

2021 NY Slip Op 30891(U)

March 22, 2021

Supreme Court, Kings County

Docket Number: 515428/20

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of March, 2021.

P R E S E N T:

HON. ELLEN M. SPODEK,

Justice.

-----X

IN THE MATTER OF THE APPLICATION OF CITNALTA CONSTRUCTION, CORP.,

PETITIONER,

-AGAINST-

Index No. 515428/20

LJC DISMANTLING CORP.

RESPONDENT.

-----X

The following papers numbered 1-29 read herein:

NYSCEF Docket No.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____
Opposing Affidavits Affirmations) _____
Reply Affidavits (Affirmations) _____

_____ 1-9 _____
_____ 10-20 _____
_____ 21-29 _____

Upon the foregoing papers, petitioner Citnalta Construction Corp. (Citnalta) moves in motion (mot.) sequence (seq.) 1, for a judgment permanently staying the arbitration sought by respondent LJC Dismantling Corp. (LJC). In the alternative, Citnalta moves for an order temporarily staying the arbitration pending and subject to the determination of LJC's order to show cause presently pending in front of this court under Kings County Index No. 505238/13.

Background Facts and Procedural History

The instant proceeding arises out of an underlying personal injury action commenced by Galbel Feliz under Kings County Index No. 505238/13 after he was involved in a construction site accident (the underlying action). In the underlying action, Mr. Feliz asserted various Labor Law claims against Citnalta, which served as the general contractor on the construction project, as well as STV Construction, Inc. (STV), which served as the construction manager. Thereafter, Citnalta commenced a third-party action against Mr. Feliz's employer, LJC, seeking, among other things, contractual indemnification. In a decision and order dated September 27, 2017, Hon. Loren Baily Schiffman of this court granted Mr. Feliz's motion for summary judgment against Citnalta under his Labor Law § 240 (1) cause of action.

On March 8, 2018, a jury trial was held before this court for the purpose of apportioning fault between the defendants in the underlying action. On that same day, before the jury returned its verdict, plaintiff and STV agreed to settle plaintiff's claims against STV for \$50,000 (fifty thousand dollars). However, STV remained on the verdict sheet. On March 9, 2018, after deliberating, the jury determined that Citnalta was 50% responsible for the accident, LJC was 50% responsible for the accident, and STV was 0% responsible for the accident.

After the jury reached its verdict on the issue of liability, the parties entered into a stipulation that was read into the record and so ordered by the court on March 12, 2018. Under the terms of the stipulation, Mr. Feliz agreed to settle his claims against Citnalta

for the amount of three million nine hundred thousand dollars (\$3,900,000.00). Of this amount two million dollars (\$2,000,000.00) was paid under a policy issued by Houston Casualty (Houston). In this regard, Houston, which defended Citnalta in the underlying action, was LJC's primary insurer and listed Citnalta as an additional insured. With respect to the \$1.9 million balance of the settlement amount, Citnalta took the position that this money should be paid by LJC's excess carrier, Nationwide/Scottsdale Insurance. In particular, Citnalta claimed that it was an additional insured under this policy. However, Nationwide/Scottsdale took the position that the balance should be paid under a Travelers Insurance policy which named Citnalta as an insured.

Given this background, the stipulation provided a mechanism that would allow Mr. Feliz to receive the balance of the settlement payment within 90 days while providing for a resolution of the coverage dispute between Nationwide/Scottsdale and Travelers at a later date. In particular, the stipulation stated:

“The issue of contractual indemnification will be decided by Judge Spodek prior to any arbitration. The issue of additional insured coverage and who is responsible for paying what part or parts of the settlement proceeds as between Travelers and Nationwide/Scottsdale shall be resolved at a later date as follows.

“Number one, Travelers and Scottsdale/Nationwide agree to participate in non-binding mediation of the aforementioned issues and preserve claims with Judge Ellen Spodek within the 90-day payment period.

“Two, if Travelers and/or Scottsdale/Nationwide cannot come to an agreement as to the aforementioned issues and preserve claims with Judge Spodek then they hereby mutually agree to submit such issues and claims to binding arbitration.

“Three, in the event of binding arbitration it is hereby mutually agreed that a three-person panel will be appointed for said arbitration as follows. One arbitrator will be picked by Travelers. One arbitrator will be picked by Nationwide/Scottsdale and one arbitrator shall be neutral.

“Four, if the aforementioned issues and preserved claims cannot be resolved within 90-day payout period then it is further agreed that the settlement shall be paid to plaintiff as follows. Two million by Houston Casualty, \$950,000 by Travelers, \$950,000 by Nationwide/Scottsdale. If the settlement is not timely funded - if settlement is not funded within 90 days, judgment can be entered pursuant to the CPLR.

“Five, in the event that the settlement is paid as discussed above, then the aforementioned issue and issues and preserved claims shall be resolved after payment to plaintiff at binding arbitration.”

In a decision and order dated January 28, 2020, this court granted Citnalta’s motion for contractual indemnification against LJC to the extent that the court ruled that LJC was responsible for reimbursing Citnalta for 50% of the \$3.9 million settlement amount. On July 14, 2020, the court awarded Citnalta a judgment against LJC in the amount of one million nine hundred fifty thousand dollars (\$1,950,000) based upon its ruling on Citnalta’s motion for contractual indemnification (i.e., 50% of the \$3.9 million settlement in the underlying action).

On August 7, 2020, LJC filed a proposed order to show cause in the underlying action which sought, among other things, a temporary restraining order preventing Citnalta from executing a judgment, an order vacating the judgment signed by the court,

and an order compelling arbitration. In connection with the proposed order to show cause, LJC filed and served upon Citnalta a demand for arbitration. The demand for arbitration sought:

- “(i) A determination, as between LJC and Citnalta, as to additional insured coverage and allocation of settlement proceeds;
- (ii) An award to LJC in the amount of one million nine hundred thousand dollars (\$1.9 million), plus interest;
- (iii) A determination that LJC owes no payment obligation to Citnalta in connection with the claims asserted by Citnalta against LJC in the underlying action;
- (iv) Any such and additional amounts due, on any basis, including without limitation, the cost of enforcing the Agreement.”

On August 17, 2020, the court held a virtual conference, on the record, regarding LJC’s proposed order to show cause. After hearing arguments on the matter, the court determined that it had already ruled on Citnalta’s entitlement to contractual indemnification against LJC and that, to the extent that LJC disagreed with this determination, it should seek the appropriate relief from the Appellate Division. Accordingly, the court declined to sign the proposed order to show cause.

Citnalta’s Motion to Stay Arbitration

Citnalta now moves for a judgment permanently staying the arbitration sought by LJC in the aforementioned demand for arbitration. In so moving, Citnalta argues that the relief sought by LJC in its demand is clearly beyond the scope of the limited

arbitration agreed to by the parties in the stipulation. In support of this argument, Citnalta notes that the stipulation called for binding arbitration between the two insurance carriers, Travelers and Nationwide/Scottsdale. Thus, Citnalta maintains that there is no basis for any form of arbitration between it and LJC. Citnalta further notes that the arbitration agreed to by the parties was strictly limited to the issue of which carrier (Travelers or Nationwide/Scottsdale) was responsible for paying the balance of the \$1.9 million settlement amount after the exhaustion of the \$2 million Houston policy. Thus, Citnalta contends that there is no basis for any arbitration that would result in LJC being awarded \$1.9 million, or any other amount, against Citnalta. Citnalta also points out that the arbitration awards sought by LJC would, in effect, alter the judgment derived from the court's ruling on Citnalta's motion for contractual indemnification against LJC. According to Citnalta, this clearly was not contemplated by the stipulation containing the arbitration agreement inasmuch as the stipulation specifically stated that the arbitration would take place after the court ruled on the issue of contractual indemnification.

In further support of its motion to stay arbitration, Citnalta argues that the information provided in LJC's demand for arbitration is factually incorrect. Specifically, Citnalta notes that the demand states that the \$2 million payment made by Houston toward the settlement amount was done so on LJC's behalf. However, according to Citnalta, this payment by Houston was made on Citnalta's behalf inasmuch as it was an additional insured under the policy and party defendant in the underlying lawsuit. In contrast, Mr. Feliz did not assert any claims against his employer LJC. Thus, Citnalta

concludes that it has already paid two million nine hundred fifty thousand dollars (\$2,950,000) toward the \$3.9 settlement (\$2 million from the Houston policy and \$950,000 from the Travelers policy) and the only issue to be addressed in arbitration is the priority of coverage for Citnalta as an additional insured under the Nationwide/Scottsdale policy or an insured under the Travelers policy.

In opposition to Citnalta's motion, LJC initially notes that Citnalta does not dispute that it agreed to the terms of the stipulation, including the agreement to enter into binding arbitration. LJC further notes that the preamble to the stipulation states that "[a] claims between defendant Citnalta, third party defendant LJC and their respective carriers, Travelers Insurance and Nationwide/Scottsdale for indemnification, additional insured coverage, and who is responsible for paying what part or parts of the settlement proceeds are hereby fully preserved." Thus, LJC concludes that, although not every provision of the stipulation specifically names Citnalta and LJC, the clear intent of the agreement was that Citnalta would be bound by the arbitration provision.

"It is well settled that, in deciding an application to stay or compel arbitration under CPLR 7503, the court is concerned only with the threshold determination of arbitrability, and not with the merits of the underlying claim" (*Matter of Alden Cent. School Dist [Alden Cent. Schools Administrators Assn.]*, 115 AD3d 1340 [2014]). "In making the threshold determination of arbitrability, the court applies a two-part test. It first determines whether 'there is any statutory, constitutional or public policy prohibition against arbitration of the grievance'" (*id.*, quoting *Matter of City of Johnstown*

[*Johnstown Police Benevolent Assn.*], 99 NY2d 273, 278 [2002]). “If no prohibition exists, [the court then determines] whether the parties in fact agreed to arbitrate the particular dispute” (*Matter of County of Chautauqua v Civil Serv. Empls. Assn., Local 1000 AFL-CIO, County of Chautauqua Unit 6300, Chautauqua County Local 807*, 8 NY3d 513, 519 [2007]). “It is settled that a party will not be compelled to arbitrate and, thereby, to surrender the right to resort to the courts, absent ‘evidence which affirmatively establishes that the parties expressly agreed to arbitrate their disputes’” (*Matter of Waldron [Goddess]*, 61 NY2d 181, 183 [1984], quoting *Schubtex, Inc. v Allen Snyder, Inc.*, 49 NY2d 1, 6 [1979]). Moreover, “[w]here the court finds that the parties may have made a valid agreement to arbitrate, but the particular agreement that they made was of limited or restricted scope and the particular claim sought to be arbitrated is outside that scope, then arbitration of that claim will be stayed” (*Matter of We’re Assoc. Co. [Chemical Bank]*, 163 AD3d 393, 395 [1990]).

Here, it is undisputed that the stipulation agreement contained a binding arbitration provision. Further, there is nothing in the arbitration provision that raises public policy concerns. However, under its clear terms, the agreement to arbitrate was between the insurers, Travelers and Nationwide/Scottsdale. Thus, Citnalta never agreed to arbitrate any disputes with LJC. Furthermore, even if the court were to deem Citnalta and LJC and their respective insurers to be alter egos or interchangeable, the demand seeks to arbitrate claims well beyond the limited scope of the arbitration agreement. In particular, as noted above, the only issue which the parties agreed to submit to arbitration

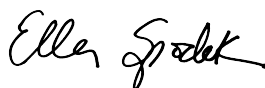
was which insurer (i.e., Travelers or Nationwide/Scottsdale) was first in line to pay the \$1.9 million balance of the settlement amount. Here, the demand seeks to arbitrate LJC's claim against Citnalta for \$1.9 million and a determination that LJC owes no payment obligation to Citnalta in connection with Citnalta's indemnification claim against LJC in the underlying action. These claims/issues are not within the limited scope of the arbitration agreement. Accordingly, LJC's demand for arbitration must be permanently stayed.

Summary

In summary, Citnalta's motion, in mot. seq. 1, for a judgment permanently staying LJC's demand for arbitration is granted.

This constitutes the decision, order and judgment of the court.

ENTER,



J. S. C.