

DARAG Deutschland AG v LOGO, LLC
2022 NY Slip Op 30683(U)
March 3, 2022
Supreme Court, New York County
Docket Number: Index No. 654800/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

DARAG DEUTSCHLAND AG

Petitioner,

- v -

LOGO, LLC,

Respondent.

-----X

INDEX NO. 654800/2021

MOTION DATE 09/24/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for STAY.

Upon the foregoing documents, it is

The following read on a Notice of Petition to i) grant a permanent stay of Arbitration, per CPLR 7503, for Respondent’s failure to prove Petitioner was properly served with a valid Arbitration Demand per CPLR 7503; ii) that the dispute between DARAG Deutschland AG (“DARAG”) and LOGO, LLC (“LOGO”) is an arbitrable claim per the narrow terms of the Arbitration Clause; iii) the assigned rights and reinsurance recoverables assigned to LOGO includes recoverables owed by DARAG/Imperio; iv) that LOGO has standing to demand Arbitration per the terms of the Assignment and Surplus Treaties; or v) that Respondent’s claims are not barred by the statute of limitations and/or barred by LOGO’s failure to present claims within a reasonable time; and

LOGO cross-moves for security costs, per CPLR 8501(a). This litigation involves an aggregate amount of \$306,657.00 generated by uncollected reinsurance recoverables in relation to a Liquidation.

BACKGROUND

Baltica Skandinavia Reinsurance Company of America, Inc. (“ICM”) entered into Non-Obligatory First Surplus Retrocession Agreements with multiple Retrocessionaires (“Surplus Treaties”), including Imperio Reinsurance Company (U.K.) Ltd. Imperio was part of Hanseatic U.K. and transferred its liabilities via a loss portfolio transfer to the German entity Hanseatic Ruck and was dissolved on March 16, 2012. DARAG Deutschland AG (“DARAG”) then acquired the liabilities of Hanseatic Ruck on May 28, 2013. The Surplus Treaties contain an Arbitration Clause that stipulates New York as the location of arbitration. In 2013, ICM went into liquidation ... The Liquidator asserted that under the treaties, ICM is entitled to reinsurance recoverables on paid losses and certain other balances totaling \$303,657.00. The Liquidator sought an assignment of the Reinsurance recoverables to another entity. After negotiations, the Liquidator and Logo, LLC (“LOGO”) entered into an Assignment Agreement which was affirmed by the Liquidation Court on July 21, 2017” (see NYSCEF Doc. No. 1 Pars. 6 – 8, 16).

The affirmation of Michael S. Chuyen for Petitioner – DARAG affirms, “DARAG’S Petition should be granted because a valid agreement to arbitrate does not exist between DARAG and Respondent LOGO; the purported agreement to arbitrate has not been complied with: LOGO failed to effectuate proper service of its demand to arbitrate” (see NYSCEF Doc. No. 2 Par. 3).

The Surplus Treaties contain an Arbitration Clause

Article 16

[i]f any dispute shall arise between the Reinsured and the Retrocessionaires with reference to the interpretation of this Agreement or their rights with respect to any transaction involved ... such dispute, upon the written request of either party, shall be submitted to three arbitrators.

Article 17

In the event of the failure of Retrocessionaires hereon or any of them to pay any amount claimed to be due hereunder, Retrocessionaires

hereon, at the request of the Reinsured, will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of each Court.

Respondent's affirmation states, "Article 17 of the Reinsurance Treaty authorizes the service of process, in the United States, upon the law firm of Mendes and Mount. Mendes has since relocated. Service was made by Registered Mail. Additionally, service was attempted directly upon DARAG by Registered Mail, Return Receipt Requested in Germany" (see NYSCEF Doc. No. 17 Pars. 15 – 16).

Respondent's affirmation continues, "Petitioner DARAG Deutschland AG is a foreign corporation. Section 8501(a) of the CPLR reads: Security for Costs. As of right. ... [t]he Court or a judge thereof shall order security for costs to be given by the plaintiffs where none of them is a domestic corporation" (see NYSCEF Doc. No. 15 Pars. 4, 6).

Respondent highlights *Clement v. Durban*, "[s]ecurity for costs is a device ordinarily used against a nonresident plaintiff to make sure that if he loses the case he will not return home and leave defendant with the costs judgment that can be enforced only in plaintiff's home state" and because by "directing a nonresident to post a bond, the defendant is protected from frivolous suits and is assured that, if successful, he will be able to recover costs from the plaintiff" (see *Clement v. Durban*, 147 AD3d 39 [2nd Dept 2016]).

"It is the opinion of this court that service by mail, in the fair sense of the statute, is effected on the date when the postal authorities deliver or first attempt to deliver the registered or certified mail" (see *In the Matter of Arbitration between Finest Restaurant Corp. and L&A Music*, 52 Misc. 2d 87, 275 NYS2d 1 [NY County 1966]).

"New York 'favors and encourages arbitration as a means of conserving the time and resources of the courts and the contracting

parties' (*Smith Barney Shearson Inc. v. Sacharow*, 91 NY2d 39, 49-50 [1997]). Under the federal Arbitration Act, which governs any agreement to arbitrate contracts evidencing a transaction involving commerce, 'questions of arbitrability must be addressed with a healthy regard for the federal policy ... [and] any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration' (*Singer v. Jefferies & Co., Inc.* 78 NY2d 76, 81-82 [1991]).

ADJUDGED that the petition to stay the subject arbitration is denied in all respects, and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that the parties shall proceed to arbitration forthwith and respondent's counsel shall serve a copy of this judgment upon the arbitral tribunal.

3/3/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE