

PriceWaterhouseCoopers LLP v Cahill
2022 NY Slip Op 31174(U)
April 6, 2022
Supreme Court, New York County
Docket Number: Index No. 653664/2020
Judge: Margaret Chan
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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 PRICEWATERHOUSECOOPERS LLP

INDEX NO. 653664/2020

Petitioner,

MOTION DATE N/A

- v -

JOHN CAHILL,

MOTION SEQ. NO. 004

Respondent.

**DECISION + ORDER ON
 MOTION**

-----X
 HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for

MISCELLANEOUS

Respondent John Cahill moves for an order (i) revoking or vacating the orders dated September 20, 2021 and September 8, 2020 pursuant to CPLR 5015(a)(3) and/or CPLR 2221, CPLR 5701(a), and the inherent authority of the court, (ii) remanding the action to the District Court of Hennepin County, State of Minnesota (the Minnesota court), in an action titled *Cahill v PriceWaterhouse Coopers LLC* (the Minnesota action) for further proceedings or, alternatively, (iii) scheduling an evidentiary hearing or jury trial to resolve any factual disputes regarding the relief sought. Petitioner PriceWaterhouse Coopers LLC (PwC), opposes the motion

PwC is a Delaware limited liability partnership and professional services firm that provides, *inter alia*, audit, tax and consulting services (NYSCEF # 1-Petition, ¶ 2). Cahill is an attorney who joined PwC as a partner in June 2016, as a resident in its Minneapolis office (*id.*, ¶3). At the time he joined PwC, Cahill became a party to the PwC Partners and Principals Agreement (the Partnership Agreement) (*id.*, ¶ 4; NYSCEF # 85-Partnership Agreement).

Section 12.1 of the Partnership Agreement provides, in pertinent part, that:

- (a) Any claim or controversy (including without limitation a claim or controversy involving a Former Individual) arising out of the provisions of this Agreement, the interpretation thereof or the practice, business or affairs of the Firm shall be settled by arbitration conducted by the American Arbitration Association

("AAA") in the City of New York in accordance with the Commercial Arbitration Rules of the AAA then in effect, or such other alternative dispute resolution ("ADR") service as the parties may agree.... The Supreme Court of the State of New York, New York County, shall have jurisdiction over any proceeding related to any arbitration under this Agreement and judgment on any award rendered in such arbitration may be entered in that court or in any other court having jurisdiction....

- (b) Without prejudice to the requirement for arbitration, each Individual agrees that [PwC] may seek provisional relief from a court of competent jurisdiction (in each case whether such Individual is at the time such relief is sought an Individual or a Former Individual): (i) in aid of such arbitration or to prevent any award sought from being rendered ineffectual; or (ii) to protect [confidential] Information

(NYSCEF # 85-§12.1 [a][b]).

After PwC required Cahill to withdraw from the firm effective June 30, 2020, Cahill commenced the Minnesota action, in which he alleged that PwC fraudulently induced him to accept a position at PwC with the intent to take advantage of his client relationships and then required him to withdraw from the firm (NYSCEF # 19-Complaint in Minnesota Action; NYSCEF # 20-Amended Complaint in Minnesota Action).

On August 7, 2020, PwC commenced this proceeding to stay the Minnesota action and to compel arbitration pursuant to the arbitration clause in the Partnership Agreement, and moved by order to show cause, in part, to enjoin Cahill from prosecuting the Minnesota action on the ground that the claims in the action are subject to arbitration under the Partnership Agreement (NYSCEF #'s 1, 3, 7). Cahill opposed the petition, and cross moved to dismiss it (NYSCEF #10-25). Cahill also moved in the Minnesota action to enjoin this proceeding, and by interim order dated September 3, 2020, the Minnesota court denied this relief.

On September 8, 2020, after hearing oral argument on the petition to compel arbitration, Hon. O. Peter Sherwood (ret.) found that based on the arbitration clause in the Partnership Agreement "arbitration is appropriate [and that] [q]uestions as to whether or not the Partnership Agreement is enforceable based on the defense...of fraud in the inducement may be properly raised before the arbitrator" (NYSCEF # 34-Transcript 9-8-20, at 24). By order dated September 8, 2020, Justice Sherwood granted the PwC's petition and denied Cahill's cross motion to dismiss and compelled Cahill to arbitrate his claims against PwC (NYSCEF # 26)(September 8, 2020 Order).

In the meantime, by Order dated September 25, 2020, the Minnesota court granted PwC's motion to stay the Minnesota action and denied Cahill's motion to stay this proceeding (NYSCEF # 76).

Cahill did not appeal the September 8, 2020 Order. However, on September 15, 2021, more than a year after its issuance, Cahill filed a proposed order to show cause seeking an order (i) temporarily staying an arbitration proceeding he commenced in compliance with the September 8, 2020 Order, (ii) vacating or modifying the September 8, 2020 Order, (iii) relieving Cahill from arbitrating the dispute, (iv) remanding the matter to the Minnesota court or, in the alternative, (v) granting an evidentiary hearing or trial pertaining to the validity of the arbitration agreement (NYSCEF # 35).

By Decision and Order dated September 20, 2021, this court declined to sign Cahill's proposed order to show cause on the ground that Cahill "has not shown a sufficient basis for vacating the [September 8, 2020 Order] ...or for granting injunctive relief based on the imminent commencement of the arbitration proceeding directed by the [September 8, 2020 Order]" (NYSCEF # 52 - September 20, 2021 Order).

On October 5, 2021, Cahill made this motion by notice of motion for an order revoking or vacating the September 20, 2021 Order and the September 8, 2020 Order, and for related relief. The gravamen of Cahill's argument is that this court should reconsider its September 20, 2021 Order and revoke or vacate the September 8, 2020 Order, which Cahill argues was issued as a result of PwC's fraud, misrepresentation and other misconduct within the meaning of CPLR 5015(a)(3). Specifically, Cahill argues that at the hearing before Justice Sherwood, PwC made certain misrepresentations by failing to fully quote the arbitration clause, and by providing misleading statements as to the rulings of the Minnesota court and the claims in the Minnesota action, which including allegations that arbitration clause was concealed.

In opposition, PwC argues that there is no basis for vacating the September 8, 2020 Order since contrary to Cahill's argument, PwC did not mislead the court by not fully quoting the arbitration clause particularly as the omitted part related to class actions which is irrelevant to this proceeding. Additionally, PwC asserts that because Cahill had the complete copy of the Partnership Agreement, his counsel could have brought the full arbitration clause to the court's attention, as well as any other issue regarding the Minnesota action. In any event, PwC argues that this motion to vacate cannot be used as a substitute for a timely appeal of the September 8, 2020 Order (*citing U.S. Bank, N.A. v Sartina*, 186 AD3d 649 [2d Dept 2020])

CPLR 5015(a)(3) provides that “fraud, misrepresentation or other misconduct of an adverse party” is a ground for vacating a judgment or order as long as the motion is made “within a reasonable time” (*Mark v Lenfest*, 80 AD3d 426, 426 [1st Dept 2011]).

Here, even assuming *arguendo* that the motion was made within a reasonable time, Cahill has not provided a sufficient basis to support his assertion that the September 8, 2020 Order should be vacated as a product of any fraud, misrepresentations or other misconduct by PwC (*Callwood v Cabrera*, 49 AD3d 394,395 [1st Dept 2008][noting that “[c]onclusory allegations are not sufficiently indicative of ‘fraud, misrepresentation, or other misconduct’ to warrant vacatur of the order pursuant to CPLR 5015[a][3]”). Specifically, Cahill’s argument that PwC inaccurately described the arbitration clause by omitting certain language is belied by the record showing that such language was irrelevant to the issues before Justice Sherwood, and that PwC’s counsel offered to provide a copy of the Partnership Agreement to the court, but that it was deemed unnecessary (NYSCEF #34, at 50). Likewise, Cahill has not adequately supported his other assertions of fraud or misconduct by PwC. In this connection, the parties’ disagreement as to whether the claims in the Minnesota action were subject to arbitration, and Justice Sherwood’s finding that such claims should be arbitrated, including those alleging fraudulent inducement, are not grounds for finding fraud, misrepresentations or other misconduct under CPLR 5015(a)(3). Further, under these circumstances and as argued by PwC, if Cahill disagreed with the September 8, 2020 Order, his remedy was to timely file an appeal (*U.S. Bank, N.A. v Sartina*, 186 AD3d at 650 [denying relief under CPLR 5015[a][3] including because defendants could have raised the contentions advanced on their motion on a direct appeal]).

In view of the foregoing, there is also no basis for the other relief sought by Cahill, including for an order vacating the September 20, 2021 Order declining to sign Cahill’s order to show cause which sought substantially the same relief as the instant motion.

Accordingly, it is

ORDERED that defendant John Cahill’s motion is denied.



MARGARET CHAN, J.S.C.

4/6/2022
DATE

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
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: