

Go v Marto Capital LLC
2022 NY Slip Op 32127(U)
July 6, 2022
Supreme Court, New York County
Docket Number: Index No. 652149/2022
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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STEPHANIE SIY GO, RICKY CHAN GO, TAOTAO HE	INDEX NO. <u>652149/2022</u>
Plaintiffs,	MOTION DATE <u>06/07/2022</u>
- v -	MOTION SEQ. NO. <u>001</u>
MARTO CAPITAL LLC, MARTO CAPITAL PARTNERS GP, LLC, MARTO CAPITAL LP,	DECISION + ORDER ON MOTION
Defendants.	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 23
 were read on this Petition to CONFIRM ARBITRATION AWARD.

Petitioners Stephanie Siy Go, Ricky Chan Go, and Taotao He (“Petitioners”) seek an Order pursuant to CPLR 7510 confirming a January 18, 2022 arbitration award rendered by Hon. Helen E. Freedman (Ret.) in an action captioned *Stephanie Siy Go, et al. v. Marto Capital LLC, et al.*, JAMS Ref. No. 1425032732 (NYSCEF 2 [“Final Decision and Arbitration Award”]), and entering judgment thereon.

Petitioners filed a Demand for Arbitration and Statement of Claim against Respondents and certain others on July 17, 2020 (NYSCEF 1 ¶4 [“Petition”]). The dispute involved Petitioners’ combined equity investments of \$960,000 in Respondents (Petition ¶2). Respondents answered the Demand for Arbitration and Statement of Claim and filed defenses and counterclaims in the Arbitration on August 3, 2020 (*see* NYSCEF 7), which were subsequently amended over the course of the Arbitration, such that only one affirmative defense and one counterclaim remained at the time of the Final Award. The Final Decision and Arbitration Award dated January 18, 2022, (a) requires Respondents to pay to Petitioners a

combined total of \$900,000 together with “18% simple interest to run from December 31, 2018 until paid,” plus costs of \$64,814.85, and (b) denied and dismissed Respondents’ affirmative defense and counterclaim.

CPLR 7510 mandates that the court “shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511” (*see Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 3 [1st Dept 2009]). “Giving the word ‘shall’ its ordinary meaning, CPLR 7510 unequivocally directs the Court the confirm an arbitration if a timely application is made whenever the award is not vacated or modified under CPLR 7511” (*Joseph Gunnar & Co. LLC v Besarkarski*, 2020 WL 203832 [Sup Ct, NY County 2020], citing *Bernstein*, 66 AD3d at 3). Here, it is undisputed that Petitioners brought this action within one year of the delivery of the Final Decision and Arbitration Award. Respondents filed a Stipulation Acknowledging and Accepting Service (NYSCEF 23) and have not filed any opposition to this Petition or made a motion to vacate or modify the Final Decision and Arbitration Award. Accordingly, the Final Decision and Arbitration Award is confirmed.

Petitioners’ request for post-award, pre-judgment statutory interest presents some complexity. Upon confirmation of an arbitrator’s award, statutory interest is typically available pursuant to CPLR § 5002, from the date of the award (*n re Gruberg (Cortell Group, Inc.)*, 143 AD2d 39, 40 [1st Dept 1988], quoting *Bd. of Ed. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston and Cambria v Niagara-Wheatfield Teachers Ass’n*, 46 NY2d 553, 558 [1979]). However, “when the arbitrator's award requires a party to pay within a certain time period, ‘interest should run only from the expiration of that period’” (*In re Gruberg*, 143

AD2d at 40, quoting *Penco Fabrics, Inc. v Louis Bogopulsky, Inc.*, 1 AD2d 659 [1st Dept 1955]).

Here, the Final Decision and Arbitration Award provides that Petitioners Stephanie Siy Go and Ricky Chan Go are entitled to 18 percent simple interest on \$500,000 from December 31, 2018, until paid, with the resulting sum to be paid by Respondents no later than June 30, 2022 (NYSCEF 2 at 23). Thus, Petitioners Ms. Go and Mr. Go are only entitled to post-award, pre-judgment statutory interest from June 30, 2022 until the date judgment is entered. As to Mr. He, the Award held that he is entitled to 18 percent simple interest to run from December 31, 2018 to the date of payment, payable no later than June 30, 2029 (NYSCEF 2 at 23). Thus, Mr. He is not entitled to statutory post-award, pre-judgment statutory interest.

Accordingly, it is

ORDERED that the Petition to confirm the Final Decision and Arbitration Award in the matter of *Stephanie Siy Go, et al. v. Marto Capital LLC, et al.*, JAMS Ref. No. 1425032732, is **GRANTED**; it is further

ORDERED that Petitioners' request for post-award, pre-judgment interest is **GRANTED in part**; and it is further

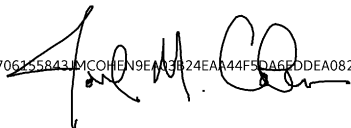
ORDERED that the County Clerk is directed to enter judgment in favor of Petitioners and against Respondents pursuant to the confirmed Award as follows:

(i) \$500,000 to Petitioners Stephanie Siy and Ricky Go, with simple interest at 18% from December 31, 2018, until June 30, 2022; and post-award pre-judgment statutory interest on any unpaid amount at 9% from June 30, 2022 until the date judgment is entered; and

(ii) \$400,000 to Petitioner Taotao He, with simple interest at 18% from December 31, 2018, to the date judgment is entered, with no post-award pre-judgment interest.

Judgment shall also be entered against Respondents for costs in the amount of \$64,814.85, together with statutory interest (9%) from January 19, 2022 through the date judgment is entered, together with costs and disbursements as taxed by the County Clerk.

This constitutes the decision and order of the Court.

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7/6/2022
DATE

JOEL M. COHEN, 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