

Sussman v Bryah, LLC
2022 NY Slip Op 32300(U)
July 14, 2022
Supreme Court, New York County
Docket Number: Index No. 156210/2021
Judge: Louis L. Nock
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

RONNIE SUSSMAN,

Plaintiff,

- v -

BRYAH, LLC, d/b/a ORNARE,

Defendant.

-----X

INDEX NO. 156210/2021

MOTION DATE 01/06/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29

were read on this motion to COMPEL ARBITRATION.

Upon the foregoing documents, defendant’s motion to compel arbitration is granted, per the following memorandum.

Background

Defendant moves to compel arbitration, or alternatively, to dismiss the complaint based on documentary evidence, lack of subject matter jurisdiction, lack of standing, and failure to state a cause of action (CPLR 3211[a] [1-3], [7]). The complaint alleges four causes of action: “Unlawful Contract” in violation of New York City Administrative Code § 20-387 and General Business Law § 771 (first cause of action); unjust enrichment (second cause of action); negligence (third cause of action); and violation of General Business Law § 349 (fourth cause of action).

On September 26, 2019, the parties entered into a sales agreement, pursuant to which defendant agreed to design and install kitchen cabinets for a price of \$41,444.06 (NYSCEF Doc. No. 19). The agreement provides that “[a]ny dispute arising under this Sales Contract shall be

settled by binding arbitration pursuant to the rules of the American Arbitration Association” (*id.*, ¶ 2.13).

Once the cabinets arrived, defendant’s crew worked for approximately five days before stopping at the request of plaintiff, who was dissatisfied with defendant’s work and asked for a complete refund of monies paid. Plaintiff made defendant aware of the alleged defects in the cabinetry by email in February 2020. Plaintiff claims that defendant ordered cabinets with the wrong measurements. Defendant insists that the alleged issues would be resolved upon completion; however, plaintiff did not allow the installation to get that far.

Significantly – for purposes of this motion – plaintiff also alleges that defendant was not licensed as a Home Improvement Contractor, pursuant to Administrative Code § 20-387, at the time of the service. Defendant maintains that it is licensed, submitting what presents as a New York City Department of Consumer Affairs print-out (*see*, NYSCEF Doc. Nos. 16, 17).

Standard of Review on a Motion to Compel Arbitration

“Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation . . . , the court shall direct the parties to arbitrate” (CPLR 7503 [a]). In a case where validity of the contract, overall, is in question (on account of alleged non-licensure, as in this case), this court retains authority, in the first instance, to assess whether the arbitration clause – independent of overall contractual validity – is valid (*see, Matter of Prinze*, 38 NY2d 570 [1976]). If the court finds the arbitration clause to be valid, then the case must give way to the arbitrator on the question of overall contractual validity (in this case, whether defendant was duly licensed to enter into the sales agreement as a licensed Home Improvement Contractor) (*see, id.*).

Discussion

Defendant moves to compel arbitration because the sales contract states “[a]ny dispute arising under this Sales Contract shall be settled by binding arbitration pursuant to the rules of the American Arbitration Association” (NYSCEF Doc. 19). Plaintiff disputes this on the basis that the sales agreement, overall, is invalid due to alleged non-licensure of the defendant. The New York City Administrative Code, § 20-387, provides that “[n]o person shall solicit, canvass, sell, perform or obtain a home improvement contract as a contractor from an owner without a license therefor.” Plaintiff argues that by violating Administrative Code § 20-387, the entire sales agreement is void (*see, Wildenstein v 5H&Co, Inc.*, 97 AD3d 488, 491 [1st Dept 2012] [the contract is deemed rescinded]).

As touched on in the above “Standard of Review” section, “attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause, itself, are to be resolved by the arbitrator in the first instance, not by a federal or state court” (*Monarch Consulting, Inc. v Natl. Union Fire Ins. Co.*, 26 NY3d 659, 675 [2016] [internal quotation marks omitted]). Here, plaintiff challenges the validity of the whole agreement and does not separately challenge the arbitration clause. Accordingly, the issue of whether this contract was legal must, therefore, be decided by the arbitrator.

The court has been provided no basis to assail the arbitration clause itself, as an expression of mutual consent to arbitrate disputes. This dispute must, accordingly, now move forward to arbitration for disposition of any and all relevant questions, including, importantly, whether defendant possessed the capacity, as a licensed Home Improvement Contractor, to enter into the sales agreement (the subject of plaintiff’s first cause of action).

Accordingly, it is hereby

ORDERED that defendant’s motion to compel arbitration is granted, and the parties are directed to arbitrate this dispute before the American Arbitration Association as provided for under the parties’ agreement (NYSCEF Doc. No. 19 ¶ 2.13); and it is further

ORDERED that further proceedings in this action are stayed pending the resolution of the Arbitration proceeding, except for an application to vacate or modify said stay; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) within ten days from entry and the Clerk shall mark this matter stayed as herein provided; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.



<p><u>7/14/2022</u> DATE</p>			<p>_____ LOUIS L. NOCK, J.S.C.</p>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE