AIG Specialty Ins. Co. v Mobil Corp.

2022 NY Slip Op 33508(U)

October 14, 2022

Supreme Court, New York County

Docket Number: Index No. 653051/2022

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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AIG SPECIALTY INSURANCE CO.

Petitioner,

- v -

MOBIL CORPORATION,

Respondent.

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INDEX NO. 653051/2022

MOTION DATE 10/07/2022

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 11, 34, 35, 36, 37 were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 38, 39, 40, 41 were read on this motion to/for DISMISS.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to compel arbitration is granted in part and the motion to dismiss (MS002) by respondent is denied.

Background

Petitioner claims it issued an insurance policy, (the "Mobil First Layer Policy") for the period of January 1, 1995 through January 1, 2001 (it also purportedly provided retroactive coverage from January 1, 1993). The policy provided excess insurance with limits of $50 million with a $40 million annual aggregate retention and a $10 million per occurrence retention. Petitioner alleges it issued a second policy (the "Mobil Second Layer Policy") for the period of January 1, 1998 through January 1, 2001, with limits of $60 million.

Petitioner contends that respondent (along with a related entity, Exxon Mobil Corporation) is a defendant in hundreds of lawsuits relating to benzene exposure. It alleges that non-party ExxonMobil Oil Corporation ("ExxonMobil"), an entity claiming it was formerly respondent, sent a letter to petitioner seeking payment of the full limits under the Mobil First Layer Policy on May 26, 2020. Petitioner claims that after the submission of this letter, it has engaged in a series of discussions with respondent to resolve the dispute about both policies.

Petitioner observes that, unfortunately, there are still numerous outstanding issues about both policies. It contends that ExxonMobil filed an action against petitioner in Dallas, Texas on July 14, 2022 despite the fact that endorsements to both of the policies at issue contain clear arbitration provisions. Petitioner argues that it invoked the preconditions to binding arbitration under both policies. It observes that on August 23, 2022, it made a formal request to respondent to resolve the disputes in New York under alternative dispute resolution in accordance with the policies. It claims that the filing of the Texas action demonstrates the futility of engaging in a non-binding alternative dispute resolution (as contemplated in the insurance policies) and that binding arbitration is now required.

In opposition and in support of its motion to dismiss, respondent insists the instant petition is an improper attempt at forum shopping. It emphasizes that respondent is not a party to the Texas lawsuit and that the only plaintiff is ExxonMobil Oil Corporation. Respondent argues that this petition was commenced only against respondent and not ExxonMobil. It maintains that petitioner is not an aggrieved party under Article 75 as respondent has not refused to arbitrate.

Respondent also points out that there was a 2015 settlement agreement and that the issue in the Texas case is whether petitioner released ExxonMobil's obligation to pay self-insured retentions in connection with that agreement. Respondent observes that the 2015 settlement was

entered into by many parties, including petitioner and ExxonMobil. It acknowledges that the Mobil policies had a New York choice of law clause but points to a section of the 2015 settlement agreement that contains a superseding mandatory choice of law provision that requires cases to be brought in Dallas County in Texas (or the North District of Texas).

Respondent argues that in the Texas case, petitioner tried to remove that matter to federal court (even though there was no diversity of citizenship). It maintains that ExxonMobil agreed to arbitrate coverage issues under petitioner's policies that do not arise from the 2015 settlement agreement. It also insists that the Texas case is the proper forum to determine whether that lawsuit should be subject to an arbitration provision.

In reply, petitioner claims that respondent does not dispute the existence of the arbitration provisions in the subject insurance policies and respondent only raises a single issue that it wants to litigate in Texas. It asserts that respondent wants to circumvent the arbitration provisions in the insurance policies by raising a manufactured claim in Texas arising under a 2015 settlement agreement about separate disputes. It argues that the 2015 settlement dealt with exposure to methyl t-butyl ether ("MTBE") and here it wants arbitration about benzene claims.

Discussion

It is abundantly clear from the papers submitted in connection with this application that the parties have decided to unnecessarily complicate the procedural disputes present here. Instead of litigating in one forum with all applicable parties and issues, the parties seem to want to fight this out in forums across the country. To untangle this web, the Court must first identify the key issues.

First, the fact is that ExxonMobil (*not respondent*) started a case in Texas about interpreting the 2015 settlement agreement (NYSCEF Doc. No. 4). That settlement agreement involves MTBE exposure and does not mention benzene at all. ExxonMobil insists that the initial inclusion of the respondent's name in that case (as f/k/a Mobil Corporation) was a scrivener's error and that it should have been named as f/k/a Mobil Oil Corporation (a separate entity). Respondent claims that it is not a party to the Texas proceeding. Therefore, this Court finds that it has no power to stay the Texas case as petitioner requests here. The Court cannot stay a lawsuit involving an entity that is not a party to this proceeding where petitioner expressly chose to name a different entity (and only one respondent).

The Court has no idea whether respondent and ExxonMobil are playing fast and loose with corporate identities. But this is not the proper forum or application for this Court to explore the relationship between these entities or respondent's corporate status. There is no doubt that the Texas court can adequately consider those issues should petitioner insist that the respondent here is a necessary party in the Texas lawsuit and seek relief concerning the now-alleged "scrivener's error."

Second, the Court observes that there appears to be no disagreement that an arbitration is required for disputes between petitioner and respondent (although the parties disagree about what issues are arbitrable). The insurance policies at issue contain clear arbitration clauses. In fact, respondent's counsel sent a letter to petitioner's counsel in which respondent agreed to arbitrate certain issues (NYSCEF Doc. No. 17). Therefore, the Court grants the petition to the extent that respondent is compelled to arbitrate with petitioner. As stated above, the interplay between the 2015 settlement agreement and this proceeding is of no moment. ExxonMobil, respondent, or petitioner can pursue whatever relief they deem appropriate to the extent they believe the Texas

lawsuit or the arbitration improperly overlap. But that application should be brought in Texas (*see* CPLR 7503[a][requiring a motion compel arbitration to be made in the forum where an action is already pending]).

To be clear, the Court finds that arbitration is required here because there are clear arbitration provisions and the other lawsuit does not involve the respondent named here. And this proceeding does not include the plaintiff in the Texas case, ExxonMobil.

Summary

The Court recognizes, however, that there will likely be arguments raised about the interplay between the 2015 settlement agreement, the two subject insurance policies, and the scope of the arbitration between the parties in this proceeding. But that tension is a product of the parties' own making- the Court does not endeavor to assign blame. However, the Court declines to offer an advisory opinion about the scope of the arbitration at this juncture. As the arbitration proceeds, the Court has no doubt that the parties will seek the appropriate relief if they feel the arbitrator is exceeding his or her jurisdiction.

As stated above, the parties could have reached some agreement about where to handle these disputes. Instead, they seemed destined to fight about every procedural issue related to the instant dispute. While that is, of course, their right, it will undoubtedly delay getting to the merits and encourage endless motion practice.

With respect to the arbitration in which the parties must participate, the provisions provide that the parties shall try to agree and if they cannot agree to a forum, then the forum will be decided for them. To save the time and expense of making another application, the Court will decide the forum now. Unless the parties agree to a different forum within 45 days, and because

respondent did not object to petitioner's suggestion of JAMS, an organization chock full of experienced arbitrators, the Court finds the parties must apply to JAMS for the arbitration.

Accordingly, it is hereby

ORDERED that the petition is granted only to the extent that respondent is compelled to arbitrate the coverage disputes related to the two insurance policies cited in the notice of petition issued by petitioner to respondent and denied to the extent petitioner sought to stay the pending litigation in Texas; and it is further

ORDERED that the motion by respondent to dismiss is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly without costs or disbursements upon presentation of proper papers therefor.

10/14/2022
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE