WNG Capital LLC v Genesis Aircraft Servs. Ltd.
2023 NY Slip Op 30329(U)
January 27, 2023
Supreme Court, New York County
Docket Number: Index No. 652380/2022
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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WNG CAPITAL LLC,

Plaintiff,

- v -

GENESIS AIRCRAFT SERVICES LIMITED, GENESIS FUNDING LIMITED, GFL HOLDINGS, LLC,

Defendant.

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INDEX NO. 652380/2022

MOTION DATE 08/24/2022, 09/16/2022

MOTION SEQ. NO. 004 006

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 29, 30, 31, 32, 33, 34, 35, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for COMPEL ARBITRATION.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 69, 70, 71, 75

were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth on the record (1.27.23), Genesis Funding Limited (**Genesis**) and GFL Holdings, LLC (**GFL Holdings**)'s motion to compel arbitration (Mtn. Seq. No. 004) is denied without prejudice. As discussed on the record, the Performance and Termination Compensation Agreement dated December 29, 2015 by and between the plaintiff and GFL Holdings (NYSCEF Doc. No. 3) does not contain a clear broad arbitration clause covering disputes relating to the Valuation Amount or the way in which the Valuation Agents were appointed. It simply is not clear from the agreement whether the agreement to submit disagreements as to the Company Calculation to a neutral included disagreements as to the Valuation Amount. Indeed, the opposite appears to be the case. As discussed, the Company Calculation expressly excludes the Valuation Amount and the claims asserted by plaintiff relate in large part to the Valuation Amount and the manner in which GFL

Holdings allegedly breached its obligations in the rejection of WNG's Valuation Agent, appointment of their own Valuation Agent (as not conflicted) and the manner in which they conducted their valuation calculation to skew the Valuation Amount (as it is an average of each parties valuation). Significantly, the Valuation Amount section itself does not provide for submission to the neutral – the section as to the Company Calculation does. To the extent that discovery reveals that the parties intended as the defendant contends, they are given leave to renew their motion.

The branch of their motion seeking alternatively to dismiss the plaintiff's claims for (i) breach of covenant of good faith and fair dealing against GFL Holdings (fourth cause of action) and (ii) unjust enrichment against Genesis and GFL Holdings (fifth cause of action) is granted solely to the extent that the unjust enrichment claim against GFL Holdings is dismissed because it is duplicative of the plaintiff's second cause of action against GFL Holdings. For completeness, as discussed on the record, the plaintiff's claim against GFL Holdings sounding in breach of the covenant of good faith and fair dealing (fourth cause of action) can not be dismissed because the plaintiffs allege that, among other things, GFL Holdings did not appoint an independent person for the purpose of calculating the Valuation Amount and inappropriately interviewed and rejected their Valuation Agent based on criteria not permitted by the agreement.

The plaintiff's claim against Genesis sounding in unjust enrichment (fifth cause of action) is also not ripe for dismissal. The Amended and Restated Equipment Management Agreement (the **EMA**; NYSCEF Doc. No. 2), dated December 29, 2015, by and between the plaintiff and Genesis Aircraft Services Limited's (**GASL**) appears to require GASL to cause Genesis to make

certain payments. The plaintiff contends that this includes Operating Expenses. The agreement simply is not clear on the point because the agreement indicates that Operating Expenses are to be paid by Genesis and they are not a party to the EMA and elsewhere in the agreement GASL obligated itself to cause Genesis to make certain payments.

"Operating Expenses" is defined in Section 4(b) of the EMA as "all its expenses as Servicer as and to the extent provided in the Servicing Agreement (the "Servicer Expenses") and all other expenses, other than Manager Overhead Expenses and Servicer Expenses, arising with respect to the Portfolio Assets and the obligations of any Company Affiliate under the Leases or otherwise" (*id.*, ¶4[b]). Inasmuch as the plaintiff alleges that Genesis should reimburse them for the $90,000 termination that they were required to pay as part of the Aerdata agreement they allege they were required to maintain, it is not clear whether such Aerdata agreement is included in Operating Expenses or Management Overhead or neither as the parties may not contemplated a wind down of more than the time set forth in the agreement pursuant to which base fees are paid.

For the reasons set forth on the record, Genesis Aircraft Services Limited's (**GASL**) motion to dismiss (Mtn. Seq. No. 006) is granted solely to the extent:

(i) The breach of contract claim (first cause of action) predicated on breach of Sections 9(c) and (d) is dismissed with prejudice and the claim predicated based on breach of Section 4 of the EMA is dismissed without prejudice. Section 9(b) and Section 9(c) and (d) of the EMA reflect the business dealt that the plaintiff would be compensated different in the event of for cause termination and a not for cause termination as to base fees. In the

event of a for cause termination, the plaintiff was to receive 30 days of its base fee. In the event of a not for cause termination, the plaintiff would receive 90 days of its base fee. In either case, the defendant reserved the right to have the plaintiff stop work immediately notwithstanding their obligation to continue making payments during the relevant period. Finally, the agreement reflects the business deal that the defendant could not shop the base fee agreement to find another service provider at a lower cost. The agreement does not reflect the bargain that if the plaintiff was terminated without cause and the need for a third party provider was eliminated that the plaintiff would continue to receive its base fee indefinitely. The parties do not dispute that GASL did not shop the agreement or hire another third party provider or otherwise did not pay the base fee during the 90 day wind down period. Thus, the plaintiff's claim sounding in breach of Sections 9(c) and 9(d) must be dismissed with prejudice. The plaintiff's claim relating to Section 4 of the EMA must also be dismissed because if the $90,000 AerData termination fee is an Operating Expense it was not GASL that is required to pay it directly. If anything, the claim must be pled (if possible) based on their failure to cause Genesis to pay it. Thus, the plaintiff's first claim must be dismissed without prejudice. As discussed above, it is not whether the $90,000 fee qualifies as an Operating Expense or Management Overhead Expense under Section 4 of the EMA or neither;

(ii) the plaintiff's remaining claims sounding in breach of covenant of good faith and fair dealing against GASL (second cause of action), unjust enrichment against GASL (fifth cause of action) and declaratory judgment against GASL (seventh cause of action) are dismissed because these claims are duplicative and predicated on the same sets of facts as the breach of contract claim (first cause of action).

It is hereby ORDERED that Genesis and GFL Holdings's motion to compel arbitration (Mtn. Seq. No. 004) is denied without prejudice; and it is further

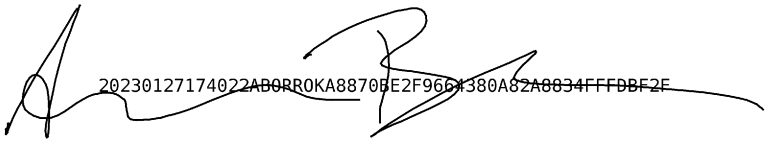
ORDERED that the branch of their motion (Mtn. Seq. No. 004) seeking alternatively to dismiss is granted solely to the extent that the plaintiff's claim for unjust enrichment against GFL Holdings (fifth cause of action) is dismissed; and it is further

ORDERED that GASL's motion to dismiss (Mtn. Seq. No. 006) is granted solely to the extent that (i) the plaintiff's claim for breach of contract against GASL (first cause of action) is dismissed without prejudice, (ii) claim for breach of covenant of good faith and fair dealing against GASL (second cause of action) is dismissed, (iii) claim for unjust enrichment against GASL (fifth cause of action) is dismissed and (iv) claim for a declaratory judgment against GASL (seventh cause of action) is dismissed; and it is further

ORDERED that, if the plaintiff fails to replead their claim for breach of within 30 days of this order, dismissal of the claim sounding in breach of contract (first cause of action) shall be with prejudice; and it is further

ORDERED that the defendants shall order a copy of the transcript (1.27.23) and have it uploaded to NYSCEF; and it is further

ORDERED that the parties shall appear for a preliminary conference on **February 21, 2023 at 11:30 AM**.



1/27/2023
DATE

ANDREW BORROK, J.S.C.

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