

Slice Solutions Inc. v R.M.M.C. Foods Inc.
2023 NY Slip Op 30333(U)
January 25, 2023
Supreme Court, New York County
Docket Number: Index No. 653369/2022
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

-----X

SLICE SOLUTIONS INC. fka MYPIZZA TECHNOLOGIES,
INC.

Plaintiff,

- v -

R.M.M.C. FOODS INC., aka TASTE OF ITALY, LLC dba
TORTA PIZZA,

Defendant.

-----X

INDEX NO. 653369/2022

MOTION DATE 01/13/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for COMPEL ARBITRATION.

Plaintiff’s motion to dismiss defendant’s counterclaim or, in the alternative, to compel arbitration of that claim is granted. The Court also finds that plaintiff’s claims are subject to arbitration.

Background

Plaintiff contends it helps business launch and operate pizzerias. It alleges that defendant entered into an agreement wherein plaintiff helped defendant open a pizzeria, but defendant refused to pay plaintiff in accordance with the agreement. Plaintiff observes that as part of the agreement, it loaned defendant \$150,000 and it was supposed to receive 7% of defendant’s gross sales. Plaintiff contends that defendant failed to pay what it owes.

In this motion, plaintiff contends that defendant’s counterclaim must be handled in arbitration because it seeks relief under the Master Services Agreement, which contains a binding arbitration clause. Plaintiff observes that its claims are not subject to arbitration because

it seeks relief only under the terms of the note, a separate agreement wherein plaintiff loaned defendant \$150,000.

In opposition, defendant acknowledges the existence of the binding arbitration clause and contends that the entire action should be stayed pending the resolution of the counterclaim in arbitration. It argues that the Master Services Agreement incorporated the terms of the note and so the arbitrator should consider issues of arbitrability for all claims alleged in this matter.

In reply, plaintiff emphasizes that defendant breached the terms of its obligations under the note and that the note does not require arbitration. It claims that defendant's opposition is an improper cross-motion to stay the entire action.

Discussion

There is no dispute that the Master Services Agreement contains an arbitration provision.

It provides that:

“Slice and Restaurant will attempt to settle all disputes arising under or in connection with this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. If a dispute cannot be resolved in accordance with the preceding sentence within thirty (30) days of the Parties first meeting to discuss the dispute, then either Party can seek any remedy available to it at law or in equity. Except for claims solely for injunctive relief, as described below, any past, present, or future controversy or claim arising out of or related to this Agreement shall be brought exclusively in the Borough of Manhattan, City of New York and shall be resolved solely by binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and upon order of the arbitrator upon the request of one or more Parties, in accordance with the “Expedited Procedures” in those Rules, and including, if applicable, the supplementary procedures for the resolution of consumer-related disputes. Consolidated or class action arbitrations shall not be permitted and Restaurant agrees it shall not take part in any such action. No claim subject to arbitration under this Agreement may be combined with a claim subject to resolution before a court of law. The arbitrability of disputes shall be determined by the arbitrator. Judgment upon an arbitration award may be entered in any court having competent jurisdiction. If any portion of this Section is held to be unenforceable, the remainder shall continue to be enforceable” (NYSCEF Doc. No. 3, ¶ 7.4).

As an initial matter, there is no question that the counterclaim is governed by the Master Services Agreement and the binding arbitration provision. In fact, defendant concedes this point. The question, then, for this Court is whether the entire case should be stayed or whether only defendant's counterclaim should be sent to arbitration while plaintiff's affirmative causes of action proceed here.

Plaintiff emphasizes that it only seeks relief based on the note, the \$150,000 low interest loan plaintiff gave to defendant. The note contains a forum selection clause that requires any lawsuit to be brought in New York County (NYSCEF Doc. No. 2, ¶ 14). The issue for this Court is that plaintiff's complaint contends that it fulfilled its obligations under the Master Services Agreement, defendant breached that agreement, and it is therefore entitled to damages under the note (NYSCEF Doc. No. 1 at 13-14). For instance, plaintiff contends that it terminated the Master Services Agreement due to defendant's material breaches of that agreement (*id.* ¶¶ 78-83). Because plaintiff's own allegations detail breaches of the Master Services Agreement as the basis for its claimed damages under the note, the Court finds that the entire case should be stayed and sent to arbitration. Of course, plaintiff can make arguments about the arbitrability of certain claims before the arbitrator.

The arbitration provision cited above requires arbitration for all disputes "arising under or in connection with" the Master Services Agreement. Even according to plaintiff's own pleading, there must be an assessment of whether defendant breached its obligations under the Master Services Agreement in order for plaintiff to recover under the note. That requires this Court to stay this case pending arbitration of the entire instant dispute. The agreement requires the arbitration to take place at JAMS—therefore, the arbitrator is entitled to resolve questions of arbitrability (*Skyline Steel, LLC v PilePro LLC*, 139 AD3d 646, 646, 33 NYS3d 201 [1st Dept

2016] [observing the JAMS’ arbitration rules confer on the arbitrators the power to resolve questions of arbitrability]).

The Court recognizes that defendant did not cross-move to stay the entire action pending arbitration. But the fact is that plaintiff moved to compel arbitration of the counterclaim, which alleges that plaintiff failed to meet its obligations under the Master Services Agreement. A review of that counterclaim and the allegations in the complaint (and specifically, the allegations supporting the first cause of action) reveals that the two agreements, the note and the Master Services Agreement, are inextricably linked. The Court cannot disentangle recovery pursuant to the note from the Master Services Agreement based on the allegations in the complaint.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to compel arbitration of defendant’s counterclaim and to stay this action is granted and the entire dispute shall be sent to arbitration; and it is further

ORDERED that plaintiff and defendant shall arbitrate their claims against each other in accordance with the terms of the parties’ Master Services Agreement; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination in the arbitration.

1/25/2023

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE