

Khreshi v Concierge Auctions, LLC

2023 NY Slip Op 30719(U)

March 8, 2023

Supreme Court, New York County

Docket Number: Index No. 650615/2023

Judge: Leslie A. Stroth

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

PRESENT: HON. LESLIE A. STROTH PART 12

Justice

-----X

AHMAD KHRESHI

Petitioner,

- v -

CONCIERGE AUCTIONS, LLC D/B/A SOTHEBY'S
CONCIERGE AUCTIONS,

Respondent.

-----X

INDEX NO. 650615/2023

MOTION DATE 02/24/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 were read on this motion to/for STAY

This instant order to show cause arises out of a special proceeding brought by petitioner Ahmad Kreshi (petitioner) to stay an arbitration commenced against him, on the ground that he is not a party to an arbitration agreement with respondent Concierge Auctions, LLC (respondent).¹ Petitioner seeks a permanent injunction, pursuant to CPLR Article 75, to enjoin respondent from continuing the arbitration against him. Petitioner also seeks an order imposing a financial sanction against respondent for pursuing allegedly frivolous arbitration against him, and requiring respondent to reimburse him for legal costs and attorneys' fees incurred, pursuant to 22 NYCRR §130. Respondent opposes.²

¹ This is petitioner's second order to show cause requesting such relief. The Court declined to sign the first order to show cause but permitted petitioner to re-file the instant supplemental order to show cause.

² Respondent submits an improper cross-motion to compel petitioner to arbitrate without leave of court. The Court will not consider it at this time.

Upon the foregoing documents, petitioner's order to show cause and verified petition are granted and respondent is permanently enjoined from continuing the arbitration against him in his personal capacity.

I. Background

Petitioner is a member of a limited liability company known as A-M 2018 Homes LLC (the LLC). Respondent is a limited liability company doing business as Sotheby's Concierge Auctions. On March 29, 2019, the LLC purchased a single-family residence (the property). The purchase agreement lists both petitioner and Riyadh Hajjaj, the only other member of the LLC, as signatories for the LLC. *See* NYSCEF doc. no. 3.

On August 4, 2022, respondent entered into an auction agreement with the LLC for an auction intended to sell the property, following which respondent would be paid 12% of the purchase price. The agreement lists the owner of the property as "A-M 2018 Homes, LLC (Ahmad Kreshi)." NYSCEF doc. no. 35. The signature block also lists the owner in the same way, followed by a "by" line where petitioner signed his name. *Id.* The auction agreement contains an arbitration provision, which states,

"The parties shall submit any and all controversies, disputes, claims and matters of difference arising out of or relating to this Agreement, including but not limited to its performance, enforcement, scope and/or interpretation, exclusively to Confidential Arbitration in New York, New York in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association then in effect ('the Rules')....The parties understand and agree that, absent this agreement, they would have the right to sue each other in court, and the right to a jury trial, but they give up those rights voluntarily and agree to resolve any and all grievances by arbitration in accordance with this section 16." *Id.* at 6.

On September 8, 2022, petitioner signed an auction sale acknowledgment, which states, "I, A-M 2018 Homes, LLC (Ahmad Kreshi), (collectively, 'Owner'), authorize Sotheby's Concierge Auctions to open the bidding of the Auction sale..." NYSCEF doc. no. 36. The signature block leaves the line for "Owner" blank, followed by a signature line where petitioner signed his name.

Id. Petitioner also signed his initials on the "bidder sheet." NYSCEF doc. no. 42.

On September 15, 2022, the auction proceeded, at which the highest bid was \$3.4 million by Shoham Amin. Petitioner signed a purchase agreement to sell the property to Mr. Amin. *See* NYSCEF doc. no. 43. Petitioner agreed to pay respondent 12% of the purchase price. *See id.* The signature block of the purchase agreement lists the seller as “A-M 2018 Homes LLC,” followed by petitioner’s signature. Under his signature, there is a “by” line stating, “Ahmad Kreshi, its Manager.” *Id.* After signing the purchase agreement, an apparent dispute arose between the LLC and respondent as to the validity of the auction agreement and sale. The parties exchanged e-mails between September 19th and 30th in which petitioner stated that he did not have full authority to sign the auction and purchase agreements on behalf of the LLC and that his purported co-member, Mr. Hajjaj, also needed to sign. Therefore, petitioner asserted that the contract was invalid and that the LLC would not go forward with the sale.

On November 1, 2022, respondent sent petitioner a demand for arbitration under the American Arbitration Association’s commercial arbitration rules,³ naming both the LLC and petitioner Mr. Kreshi as parties and claiming breach of the auction agreement. Petitioner’s counsel then e-mailed respondent’s counsel, requesting that respondent withdraw its arbitration demand against petitioner on the ground that he was not a party to the auction agreement on an individual basis, and therefore could not be a party to any arbitration agreement concerning this matter. Respondent has not withdrawn its arbitration demand, and the subject arbitration commenced and continues to proceed.

II. Arguments

Petitioner argues that the arbitration against him personally must be stayed because he is not a party to the arbitration provision in the auction agreement and never agreed to arbitrate any

³ American Arbitration Association, *Commercial Arbitration Rules and Mediation Procedures*, October 1, 2013, available at https://adr.org/sites/default/files/CommercialRules_Web.pdf.

dispute with respondent individually. He asserts that he signed the auction agreement in his representative capacity on behalf of the LLC, not in his personal capacity, and he is therefore not subject to arbitration. Petitioner maintains that the auction agreement was between the LLC and respondent only and that respondent understood that petitioner signed the agreement in his representative capacity for the LLC. He argues that because the LLC is the owner of the property there would be no reason for him to be included as an individual party to the auction agreement and/or its arbitration provision. He adds that he has no ownership interest in the property itself, only in the LLC as a member.

Further, petitioner asserts that if respondent believed that he was signing the auction agreement in his personal capacity, it would have included a blank line without any reference to his title and without the word "by." He also contends that respondent's Vice President of Business Development, Rick Bradford, expressly acknowledged the LLC's ownership of the property in e-mails with petitioner and asked who would be signing on behalf of the LLC. *See* NYSCEF doc. no. 4. Accordingly, petitioner maintains that the Court should permanently enjoin respondent from seeking to force him to submit to arbitration personally.

Additionally, petitioner moves that sanctions should be imposed against respondent because the arbitration demand is without merit in law or fact. He asserts that respondent should be required to reimburse him for the costs he has incurred in making this order to show cause, including reasonable attorneys' fees.

Respondent argues that petitioner is bound by the arbitration provision because he signed in his personal *and* representative capacities. Respondent asserts that petitioner and the LLC are both parties because, *inter alia*, the auction agreement defines "A-M 2018 Homes, LLC (Ahmad Kreshi)" as "(collectively, 'Owner')." Respondent further contends that, if the allegations in the

petition herein are true, petitioner fraudulently misrepresented his authority to bind the LLC and that respondent proceeded in reliance upon said authority. Respondent adds that petitioner has been present at the arbitration proceedings since November 2022, although respondent has not established that petitioner ever submitted to arbitration individually, as opposed to in his role as a representative for the LLC. Moreover, respondent does not dispute that petitioner has repeatedly asked respondent to withdraw its arbitration demand against him personally.

III. Analysis

The law is clear that an individual who signs an arbitration agreement in his representative capacity cannot be compelled to arbitrate. *See Matter of Jevremov (Crisci)*, 129 AD2d 174 (1st Dept 1987). “An agreement to arbitrate requires a clear and unequivocal manifestation of an intention to arbitrate because it involves the surrender of the right to resort to the courts.” *Mionis v Bank Julius Baer & Co.*, 301 AD2d 104 (1st Dept 2002) (internal citations omitted). The Court of Appeals has held that an agent for a disclosed principal will not be personally bound unless there is “clear and explicit evidence” of his intention to substitute his personal liability for that of his principal. *Saltzman Sign Co. v Beck*, 10 NY2d 63 (1961). In fact, “where individual responsibility is demanded the nearly universal practice is that the officer signs twice – once as an officer and again as an individual.” *Id.* at 67. In addition, the Appellate Division, First Department has held that, absent a specific agreement to arbitrate, even the guarantors of a contract containing an arbitration clause cannot be compelled to arbitrate. *See Matter of Calvin Klein Co. (Minnetonka, Inc.)*, 88 AD2d 503 (1st Dept 1982).

A party seeking a permanent injunction must show that (1) there was a violation of a right or threatened violation; (2) there is no adequate remedy at law; and (3) the balance of equities is

in their favor. *See Islamic Mission of America, Inc. v Mukbil Omar Ali*, 152 AD3d 573 (2d Dept 2017). Petitioner has sufficiently demonstrated his right to a permanent injunction.

Here, petitioner asserts that, not only was he a party to the arbitration agreement solely in his representative capacity as a member of the LLC, but that should he be forced to participate personally in the arbitration his right to litigate would be violated. There is no evidence clearly and explicitly establishing that petitioner intended to waive his right to litigate when he signed the auction agreement containing the arbitration provision. Respondent has failed to set forth evidence that petitioner unequivocally intended to bind himself personally to the arbitration. In his verified petition, petitioner maintains that he intended to sign the auction agreement in his representative capacity only, and that he did not have full authority to bind the LLC on his own. *See* NYSCEF doc. no. 1 at ¶ 47. Petitioner sufficiently pleads that his rights will be violated if he is compelled to arbitrate, especially given the well-established, high legal standard for binding an individual to arbitration.

Petitioner also establishes that there is no adequate remedy at law other than a permanent injunction. The sole purpose of the instant special proceeding is to determine whether petitioner is subject to the arbitration. The only remedy available to petitioner is a permanent injunction to enjoin respondent from continuing the arbitration proceedings against him personally. According to respondent, the arbitration has been proceeding since November and continues to date. Without a permanent stay, petitioner would be forced to go forward with the arbitration in his individual capacity.

Finally, the balance of equities favors petitioner. His right to litigate this matter in the courts, rather than arbitrate, is fundamental to the constitutional due process protections set forth by the New York State and United States constitutions. Where a dispute exists as to whether an

individual has signed in his personal or representative capacity, the balance of the equities weighs in favor of maintaining those due process protections. Further, if respondent believes that petitioner misrepresented his full capacity to sign on behalf of the LLC and/or concealed that his partner's signature was also required in order to bind the LLC, respondent can bring a separate action for the alleged fraud or any other appropriate cause of action against petitioner personally.

For all of the forgoing reasons, petitioner's order to show cause seeking a permanent stay of the arbitration proceedings against him is granted.

The Court denies petitioner's request to impose financial sanctions against respondent and/or order respondent to reimburse petitioner for legal costs and attorneys' fees. Pursuant to 22 NYCRR §130, conduct is frivolous if (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false. *See* 22 NYCRR § 130.1-1 (c); *Todtman, Young, Tunick, Nachamie, Hendler, Spizz, Drogin, P.C. v Richardson*, 247 AD2d 318 (1st Dept 1998).

"The decision whether to impose costs or sanctions against a party for frivolous conduct ... is generally entrusted to the court's sound discretion." *Congregation Ahavas Moische, Inc. v Katzoff*, 134 AD3d 934 (2d Dept 2015); *Pickens v Castro*, 55 AD3d 443 (1st Dept 2008). Imposing financial sanctions is not warranted where a party did not intend to delay or harass. *See Kemeny v Liberty Mutual Insurance Company*, 194 AD3d 483 (1st Dept 2021); *Coccia v Liotti*, 129 AD3d 763 (2d Dept 2015).

Although petitioner is the prevailing party, the pursuit of arbitration against him by respondent was not frivolous, as although unavailing, respondent set forth several compelling

arguments in support of enforcing its arbitration demand based on respondent's apparent understanding of its agreement with petitioner.

Accordingly, it is hereby

ORDERED and ADJUDGED that the verified petition seeking a permanent stay of the arbitration is granted; and it is further

ORDERED that petitioner's order to show cause is similarly granted; and it is further

ORDERED that petitioner serve a copy of this decision and order upon respondent and the arbitral tribunal within 30 days from the date of issuance.

This constitutes the decision and order of the Court.

3/8/2023

DATE


LESLIE A. STROTH, 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

APPLICATION:

CHECK IF APPROPRIATE: