

181 E. 64 LLC v Mindel Residential Props., L.P.
2023 NY Slip Op 31718(U)
May 19, 2023
Supreme Court, New York County
Docket Number: Index No. 650940/2023
Judge: Shahabuddeen Abid Ally
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**SUPREME COURT OF THE STATE OF NEW YORK NEW
YORK COUNTY**

PRESENT: HON. SHAHABUDEEN ABID ALLY PART 16TR
Justice

-----X 181 EAST 64 LLC, Petitioners, - v - MINDEL RESIDENTIAL PROPERTIES, L.P., Respondents. -----X	INDEX NO. <u>650940/2023</u> MOTION DATE <u>02/22/2023</u> MOTION SEQ. NO. <u>001</u>
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DECISION + ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for STAY.

Petitioner moves by order to show cause for an order enjoining respondent from proceeding with its claims in arbitration and permanently staying arbitration pursuant to CPLR § 7503. Respondent opposes and cross-moves for dismissal of this petition or, in the alternative, an order compelling arbitration. The Court heard oral argument on March 30, 2023. Upon hearing the parties and the above cited papers, the Court's decision is as follows:

Background

Petitioner is the owner of the townhouse located at 181 East 64th Street, New York, NY. Respondent is the owner of the adjacent property located at 185 East 64th Street, New York, NY. The properties share a party wall upon which two chimneys are located, both of which serve

petitioner's property. Petitioner, seeking to access portions of respondent's roof to conduct needed repairs to the chimneys, entered into an agreement with respondent setting forth terms for such access (the "License Agreement"). The License Agreement was negotiated by counsel for both parties and executed on or about September 24, 2021.

On or about July 8, 2022, the parties, again represented by counsel, entered into a First Amendment to License Agreement ("Amendment") that addressed, *inter alia*, procedures to resolve an emergent dispute regarding liquidated damages (respondent's ex B).

Respondent filed its Demand for Arbitration on February 1, 2023 (respondent's ex E). On February 22, 2023, petitioner commenced the instant action.

Discussion

CPLR § 7503(b) provides that a party who has not participated in the arbitration and who has not been served with an application to compel arbitration may move to stay arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under CPLR § 7502(b). Subsection (a) of the same section also provides that where "there is no substantial question whether a valid agreement was made or complied with" and the subject claim is not barred by the limitations period, a court "shall direct the parties to arbitrate" (CPLR § 7503[a]). In ascertaining the validity of an agreement to arbitrate, such agreements "must be interpreted under the accepted rules of contract law (*Matter of Salvano v Merrill Lynch, Pierce, Fenner & Smith*, 85 NY2d 173, 182 [1995]).

Petitioner contends that provisions in the License Agreement addressing dispute resolution are contradictory and therefore do not establish that the parties unequivocally agreed to mandatory arbitration to resolve disputes. The crux of petitioner's argument relies on its reading of Paragraph 10 of the License Agreement, which provides in relevant part as follows:

10. Breach. In the event of a breach of any of the terms of this Agreement by 181 East 64 or its Agents, including the failure to reimburse Mindel Residential for the costs incurred as set forth in paragraph 12 below, and such breach remains uncured following three (3) business days' notice and neither party initiates the dispute resolution procedures set forth in section 14 of this Agreement, this Agreement and the License granted herein shall terminate, be revoked and come to an end, as fully and completely as if such date were the license expired pursuant to this Agreement . . . The Parties agree that any dispute concerning the subject matter, terms, or application of this Agreement shall be resolved in accordance with section 14 of this Agreement. Notwithstanding any provision of this Agreement to the contrary, nothing contained herein shall preclude or limit any party from seeking injunctive relief or filing complaints or taking any other action with respect to the Department of Buildings. Any action or proceeding arising out of, or relating to this Agreement, shall exclusively be brought in the Civil Court, New York County, or Supreme Court, New York County, which the Parties acknowledge and agree is a convenient forum. . .

This provision, petitioner argues, irreconcilably conflicts with the dispute resolution procedure set forth in Paragraph 14 and therefore the parties cannot be considered to have unequivocally agreed to mandatory arbitration.

In opposition, respondent argues that Paragraph 10 clearly refers back to the dispute resolution procedure set forth in Paragraph 14, which provides in relevant part as follows:

14. Dispute Resolution. (a) Except as otherwise provided in this Agreement, the provisions of this section shall apply to all disputes between the Parties.
 (b) Disputing parties shall make a reasonable attempt to resolve the dispute by themselves before employing the arbitration provisions set forth below . . .
 (c) In the event such dispute has not been resolved, and except as otherwise provided in this Agreement, any dispute concerning the subject matter, terms, or application of this Agreement shall be resolved through mandatory arbitration . . . Any Party affected by a dispute may initiate arbitration by written demand . . .

Respondent contends that Paragraph 14 clearly demonstrates that the intent of the parties was to resolve disputes through arbitration and that Paragraph 10 simply serves to identify the agreed-upon venue for litigation in select circumstances. Respondent further argues that the subsequently executed Amendment belies the parties' mutual agreement that arbitration is the proper mechanism for dispute resolution.

As an initial matter, the Court recognizes the long-recognized principle that conflicting contract provisions should be harmonized to the extent reasonably possible so as not to leave any provision without force and effect (*see* 22 NY Jur 2d, Contracts, §§ 252-253). Following this principle, where an agreement contains an express arbitration provision, such provision is “not negated by an additional clause in the agreement vesting the courts of this State with exclusive jurisdiction in all actions and proceedings, particularly where there was no express denial of the agreement to arbitrate” (*Isaacs v Westchester Wood Works*, 278 AD2d at 185). Here, the License Agreement includes an express arbitration provision that sets forth a clear protocol for the resolution of disputes arising from the License Agreement. Further, Paragraph 10 itself expressly refers Paragraph 14 as the mechanism for resolution of disputes. As such, the Court is not persuaded that the general provision contained in Paragraph 10 negates the more specific arbitration provision in Paragraph 14, particularly where the latter is clearly acknowledged by the former.

Additionally, the Court notes that the Amendment, to which the parties agreed after the emergence of a possible contract dispute, unequivocally acknowledges the existence of that dispute and the parties’ agreement that it shall be “specifically reserve[d] for resolution pursuant to the dispute resolution provisions in paragraph 14 of the License Agreement” (Agreement at par 7). Taken together, these provisions demonstrate a clear intent by the parties at the time of execution to resolve contract disputes through arbitration.

The Court finds that the duly executed License Agreement and Amendment clearly provide for resolution of disputes through arbitration and that contrary to petitioner’s assertions, Paragraph 10 does not introduce ambiguity. The Court further finds that respondent has demonstrated that a valid agreement to resolve disputes arising under the License Agreement

through arbitration exists between the parties and that as such, its motion to compel arbitration should be granted.

Accordingly, it is hereby:

ORDERED that petitioner's motion for a stay of arbitration is denied; and it is further

ORDERED that any and all temporary restraints are lifted; and it is further

ORDERED that respondent's cross-motion is granted to the extent that the parties are directed to proceed to arbitration in accordance with the License Agreement and Amendment and this action is dismissed without prejudice to the determination in the arbitration; and it is further

ORDERED that all other requested relief is denied.

This constitutes the decision and order of the Court.

5/19/2023

DATE


SHANABUDEEN ABID ALLY, A.J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

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DENIED

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE