

Snazzi Reporting, Inc. v Veritext, LLC
2023 NY Slip Op 32343(U)
July 10, 2023
Supreme Court, New York County
Docket Number: Index No. 650680/2022
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON**PART****37***Justice*-----X
SNAZZI REPORTING, INC.,

Plaintiff,

- v -

VERITEXT, LLC,

Defendant.
-----X**INDEX NO.** 650680/2022**MOTION DATE** 04/21/2022**MOTION SEQ. NO.** 001**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to

DISMISS

Upon the forgoing documents, and for the reasons stated hereinbelow, defendant's motion to dismiss is denied.

Background

On November 16, 2016, the New York City Council passed the Freelance Isn't Free Act ("FIFA"), effective May 15, 2017. Administrative Code § 20-927 *et seq.* FIFA defines a freelance worker as "any natural person or any organization composed of no more than one natural person." Administrative Code § 20-927.

FIFA requires that companies hiring a freelancer for work worth more than \$800 have a written contract that states, inter alia, "the value of the services to be provided pursuant to the contract and the rate and method of compensation." Administrative Code § 20-928. FIFA also requires that all compensation shall be paid either on or before the compensation date or, if not specified, "no later than 30 days after the completion of the freelance worker's services under the contract." Administrative Code § 20-929. FIFA specifically forbids hiring parties from any sort of retaliation related to a FIFA claim. Administrative Code § 20-930 ("No hiring party shall threaten, intimidate ... deny a work opportunity ... or take any other action that penalizes ... or is reasonably likely to deter a freelancer worker from, exercising or attempting to exercise any right guaranteed under this chapter.").

FIFA also states that, "any provision of a contract purporting to waive rights under [FIFA] is void as against public policy." Administrative Code § 20-935.

On March 30, 2021, plaintiff Snazzi Reporting, Inc. ("Snazzi") entered into an independent contractor agreement (the "Contract") with defendant Veritext, LLC ("Veritext") for court reporting services. NYSCEF Doc. No. 19. The Contract gives a Livingston, New Jersey,

address for Veritext and a Seaford, New York, address for Snazzi. *Id.* Snazzi is a corporation composed of one natural person, Ambria Ianazzi. NYSCEF Doc. No. 12.

Section 3(a) states Snazzi “shall periodically bill [Veritext] for performance of the Contract Services but within thirty (30) days of completion of the Contract Services for a particular assignment. The rates shall be agreed upon between [Veritext] and [Snazzi] and input into [Veritext’s] Vision system so that proper payment will be made.” NYSCEF Doc. No. 19.

Section 6 states that Snazzi “shall be at liberty to operate his/her business from any location, subject only to the demands of [Veritext’s] clients under the terms of the assignment. In the event that [Snazzi] needs to use a [Veritext] location for any purpose, then [Veritext] shall charge [Snazzi] an annual hoteling fee at a rate to be agreed upon.” NYSCEF Doc. No. 19.

Section 17 includes an extensive arbitration agreement, subsection (e) of which includes a non-exhaustive list of covered claims:

breach of contract, any claims challenging the independent contractor status of Independent Contractor, alleging misclassification as independent contractor, or claims premised upon status other than independent contractor status (such as discrimination or harassment claims, disability claims, tort claims, claims for leave, retaliation claims, and claims for unpaid compensation), and any claims arising out of or pertaining to the work relationship between Independent Contractor and the Company.

NYSCEF Doc. No. 19.

Between March 26 and November 3, 2021, Snazzi invoiced Veritext for 25 assignments, 10 “in-person” at locations around Manhattan and 15 “remote,” the latter of which Snazzi alleges she completed at Veritext’s headquarters in Manhattan. NYSCEF Doc. No. 18.

On February 11, 2022, Snazzi sued Veritext, asserting two causes of action: (1) violation of Administrative Code § 20-928 and (2) violation of Administrative Code § 20-929. NYSCEF Doc. No. 1.

On March 13, 2022, Veritext moved, pursuant to CPLR 3211(a)(1) and (7), to dismiss the complaint, or, in the alternative, pursuant to CPLR 7503, to compel arbitration. NYSCEF Doc. No. 5. Veritext argues that because it is a New Jersey company and Snazzi lists its address in the Contract and its W-9 form as being on Long Island, FIFA does not apply. Defendant also argues that the Contract’s arbitration clause should prevail here.

On April 25, 2022, Snazzi filed an amended complaint adding a third cause of action, alleging retaliation in violation of Administrative Code § 20-930. NYSCEF Doc. No. 12.

On April 29, 2022, Veritext, mistaking Snazzi’s amended complaint for opposition papers, filed a memorandum of law in reply. NYSCEF Doc. No. 14. Reiterating its argument that FIFA does not apply to a contract between two parties outside of New York City, a possibility FIFA does

not address, Veritext asks the Court to follow Justice Arlene Bluth's decision in Turner v. Sheppard Grain Enters., LLC, 68 Misc 3d 385, 388 (Sup Ct, NY County, June 23, 2020). In that well-reasoned decision the court, faced with a FIFA claim by a non-resident, chose to adopt the Court of Appeals' "impact" analysis from Hoffman v Parade Publs., 15 NY3d 285, 290 (2010), holding that in similar statutory situations "the nonresident plaintiff must demonstrate that the alleged discriminatory conduct had an 'impact' within the city."

On May 23, 2022, Snazzi filed its opposition arguing, inter alia, that: it had plead sufficient facts to establish an "impactful" connection to New York City; that compelling arbitration would go against public policy and against the plain language of FIFA that allows any freelancer to bring a FIFA claim in a court of competent jurisdiction; that, in any event, the complaint's claims fall outside the scope of the Contract's arbitration clause; and, if the Court does decide to compel arbitration, that it stay the instant proceeding rather than dismiss it. NYSCEF Doc. No. 17.

In an Interim Order dated May 27, 2022, Justice Verna L. Saunders granted Veritext leave to file a sur-reply, which it did on June 6, 2022. NYSCEF Doc. Nos. 24, 25.

Discussion

"In the posture of defendants' CPLR 3211 motion to dismiss, our task is to determine whether plaintiffs' pleadings state a cause of action. The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law. In furtherance of this task, we liberally construe the complaint, and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion. We also accord plaintiffs the benefit of every possible favorable inference." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-52 (2002).

As an initial matter, although defendant is a New Jersey-based company, and plaintiff, a corporation, has a listed address on Long Island, utilizing the Hoffman "impact" analysis, FIFA applies. Unlike in Turner, where a non-resident plaintiff who did the majority of his work outside of the City was not entitled to FIFA's protections, here Snazzi sufficiently plead that its sole employee, Ms. Inazzi, is *based* in New York County and that *all* of the work in question was done *in* New York County, such that FIFA should apply to the Contract.

That Snazzi's principal, Ms. Inazzi, could have done 60% of the work from anywhere but chose to do "remote" work from Veritext's Manhattan offices (an option that the Contract specifically allows for) is irrelevant. Snazzi's principal is based in the City and worked in the City and therefore is entitled to the protections of the City's laws. As Justice Bluth found in Turner, at 390, the "intention is clear: FIFA was passed to ensure that people working in the City are afforded protection in an economy where workers are increasingly hired for discrete or short-term tasks rather than for full-time employment."

"It is settled that a party will not be compelled to arbitrate and, thereby, to surrender the right to resort to the courts, absent evidence which affirmatively establishes that the parties expressly agreed to arbitrate their disputes." The agreement must be clear, explicit and unequivocal and must not depend upon implication or subtlety." Matter of Waldron v Goddess, 61 NY2d 181, 183-84 (1984) (internal citations and quotations omitted).

Here, Veritext's argument that the Contract's arbitration clause precludes the instant action fails because Snazzi's causes of action are not implied in the (non-exhaustive) list of claims the Contract assigns to arbitration. Snazzi is not alleging that the Contract was breached, challenging its independent contract status, alleging discrimination, etc. Snazzi is alleging violations of specific New York City laws that were in effect at the time the parties entered into the Contract.

Further, and more persuasively, FIFA is clear that "a freelance worker alleging a violation of this chapter may bring an action in any court of competent jurisdiction for damages" and that "any provision of a contract purporting to waive rights under [FIFA] is void as against public policy." Administrative Code §§ 20-933(a)(1) and 20-935(a). Veritext is asking this Court to find that Snazzi waived its right to bring its case before this Court. Snazzi must be allowed to bring its FIFA claims, including its FIFA-related retaliation cause of action, in a court of competent jurisdiction.

This Court has considered Veritext's remaining arguments and finds them to be unavailing and/or non-dispositive. This Court, however, also notes that this case appears ripe for settlement and would be happy to preside over negotiations. A conference call (646-346-4374) or email (ARGREENF@nycourts.gov) to the Court's Principal Law Clerk, Allison Greenfiled, can get the ball rolling.

Conclusion

Therefore, defendant Veritext LLC's motion to dismiss is hereby denied.

7/10/2023

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

OTHER

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REFERENCE



ARTHUR F. ENGORON, J.S.C.