

Cooper-Nolasco v Royal Waste Servs. Inc.

2023 NY Slip Op 32700(U)

August 2, 2023

Supreme Court, New York County

Docket Number: Index No. 653586/2021

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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KIERO J. COOPER-NOLASCO,

Plaintiff,

INDEX NO. 653586/2021

MOTION DATE 02/22/2023

MOTION SEQ. NO. 002

- v -

ROYAL WASTE SERVICES INC. D/B/A ROYAL WASTE SERVICES, ROYAL WASTE RECYCLING SERVICES INC., PAUL REALI, PETER L. REALI, MICHAEL II REALI, and CHRIS ADAMS,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 52, 53, 54, 55, 56, 57, 58, 59, and 61

were read on this motion to COMPEL ARBITRATION.

LOUIS L. NOCK, J.

Upon the foregoing documents, the defendants’ motion to compel arbitration is denied.

The court assumes familiarity with the facts and circumstances of this action as set forth in its prior decision and order dated September 15, 2022 (decision and order, NYSCEF Doc. No. 44).

Briefly, plaintiff seeks wage and hour damages pursuant to various provisions of the Labor Law from, among others, defendant Royal Waste Services, Inc. (“Royal”), his former employer. In the court’s prior decision, the court denied plaintiff’s motion to extend time for class certification, and denied defendants’ cross-motion to, *inter alia*, compel arbitration pursuant to the Collective Bargaining Agreement (“CBA”) between Royal and plaintiff’s union, Local Union No. 813 of the International Brotherhood of Teamsters (the “Union”). For the benefit of the record, the provision of the CBA in effect at the time provides that “[a]ll complaints, disputes and grievances arising between the parties to [the CBA], involving

questions of interpretation or application of any clause of [the CBA], or any act or conduct in relation hereto directly or indirectly” shall be resolved by arbitration before the American Arbitration Association if not first resolved by the parties (CBA, NYSCEF Doc. No. 34, Art. 11). The court held that such provision did not specifically address statutory claims, and therefore did not operate to waive plaintiff’s right to bring this action (decision and order, NYSCEF Doc. No. 44 at 2).

Subsequent to that decision, Royal and the Union entered into a memorandum of agreement extending the CBA and modifying certain provisions thereof. Relevant to the instant action, a new Article 38 titled “Grievance” provides as follows:

All claims from prior employees, current employees or future employees of [Royal] accruing at any time pursuant to the Fair Labor Standards Act, the New York State Labor Law or similar wage claims (collectively, “Covered Claims”) shall be exclusively resolved by arbitration under the grievance and arbitration provisions of [the CBA]. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of this arbitration agreement. The Arbitrator shall apply appropriate law and may provide all remedies available under the applicable statute(s).

(Memorandum of agreement, NYSCEF Doc. No. 54 at 4.) Based upon this provision, defendants now move to dismiss or stay the instant action and compel plaintiff to arbitrate his claims.

On a motion to compel arbitration pursuant to CPLR 7503, if the court finds no substantial question that “a valid agreement was made”, that it was “complied with” and there is no statute of limitations bar, the court must direct the parties to arbitrate and stay a pending or subsequent action (CPLR 7503[a]). The validity of the entire agreement is a question for the arbitrators; the court may decide only whether the arbitration clause itself is valid (*Prinze v Jonas*, 38 NY2d 570, 577 [1976] [“Thus even when it is alleged, as it is in this case, that the contract itself is invalid in its entirety, the court's role is still confined to determining the validity

of the arbitration clause alone. If the arbitration agreement is valid, any controversy as to the validity of the contract as a whole passes to the arbitrators”). Unlike common law claims, a purported waiver of a union member’s right to pursue statutory claims before a judicial forum must be explicitly stated in the CBA (*Wright v Universal Mar. Serv. Corp.*, 525 US 70, 80 [1998]). “The inclusion of such claims must be unmistakable, so that the wording is not susceptible to a contrary reading” (*Lawrence v Sol G. Atlas Realty Co., Inc.*, 841 F3d 81, 83 [2d Cir 2016], *citing Wright* 525 US at 80-81). Thus, where a mandatory arbitration provision in a CBA lacks “the necessary explicit incorporation of statutory . . . requirements,” there is no waiver (*Conde v Yeshiva Univ.*, 16 AD3d 185, 186 [1st Dept 2005]).

Here, the new provision in the memorandum of agreement explicitly covers plaintiff’s claims. Moreover, plaintiff does not dispute that he remains a member of the Union, even if he no longer works for Royal, and is thus bound by the Union’s agreement with Royal (*14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 256-257 [2009]). The question is, whether the court should give the memorandum of agreement retroactive effect to dismiss the action at this advanced stage of the controversy, given that: (i) litigation has gone forward; (ii) there has been motion practice in the litigation; and (iii) the parties have engaged in discovery in the litigation.

Defendants, citing case law of the U.S. Court of Appeals for the Second Circuit, argue that the new grievance provision should have retroactive effect. It is true that the Second Circuit has said that where there is no temporal limitation in the arbitration clause, it should be read to encompass claims that accrued before the agreement was signed (*Smith/Enron Cogeneration Ltd. Partnership, Inc. v Smith Cogeneration Intern., Inc.*, 198 F3d 88, 99 [2d Cir 1999] [“As the arbitration clause here similarly does not contain any temporal limitation, the relevant inquiry is whether SCI’s claims ‘relat[e] to any obligation or claimed obligation under’ the 1994

Agreement, not when they arose”]; *Arrigo v Blue Fish Commodities, Inc.*, 408 Fed Appx 480, 482 [2d Cir 2011] [“As a result, the agreement is at least ‘susceptible of an interpretation’ that it covers preexisting disputes between the parties”]). There are, however, two problems with this argument.

First, the Second Circuit has both expressly and impliedly abrogated this line of reasoning pursuant to a later decision of the U.S. Supreme Court (*Local Union 97, Intl. Bhd. of Elec. Workers, AFL-CIO v Niagara Mohawk Power Corp.*, 67 F4th 107, 114 [2d Cir 2023] [“Of course, to the extent that decisions of this Court are inconsistent with the Supreme Court’s holdings in *Granite Rock*, those decisions cannot be good law”]). In *Granite Rock*, the Court held that “a court may order arbitration of a particular dispute only where the court is satisfied that the parties agreed to arbitrate *that dispute*” (*Granite Rock Co. v International Broth. of Teamsters*, 561 US 287, 297 [2010] [emphasis in original]). Thus, a broad presumption of arbitrability only applies “where a validly formed and enforceable arbitration agreement is ambiguous about whether it covers the dispute at hand” and remains unrebutted (*id.* at 301). As the Second Circuit has stated post-*Granite Rock*, in another case involving the temporal scope of an arbitration clause:

We are not persuaded by Defendants-Appellants’ argument that we must interpret the arbitration agreement here to have an expansive temporal scope simply because this Court has done so in other cases. Instead, the correct approach is to assess whether the parties intended for the arbitration clause to cover the present dispute.

(*Holick v Cellular Sales of New York, LLC*, 802 F3d 391, 398 [2d Cir 2015].)

Secondly, the court notes in both *Arrigo* and *Smith/Enron* (if they remained good law in the aftermath of the foregoing U.S. Supreme Court decisions) the arbitration dispute arose at the very inception of the lawsuit, and the relevant arbitration provision had been entered into prior to

commencement of the action (*Smith/Enron*, 198 F3d at 90 [parties' agreement signed in 1994, four years before commencement of the action in 1998]; *Arrigo*, 408 Fed Appx at 481 [plaintiff signed arbitration agreement in 2008, one year before commencing suit in 2009]). Here, by contrast, litigation has already gone forward and the purported arbitration agreement was signed during the pendency thereof; neither case addresses such a situation.

Based on the above-cited case law, the court denies the motion to compel arbitration. If this motion were brought at the inception of litigation, and the memorandum of agreement had been ratified prior to commencement of suit, the court might decide the matter differently. The scope of the new grievance provision, however, is unambiguous, both as to what it does and does not cover. While the language of the provision broadly covers the kind of claims that plaintiff raises, the provision has no language suggesting that the memorandum of agreement was intended to, in effect, nullify any already-extant litigation commenced prior to its signing. Thus, the court is not obliged to presume arbitrability (*Granite Rock Co.*, 561 US at 301), and finds that this case should continue.

Accordingly, it is hereby

ORDERED that the defendants' motion to compel arbitration is denied.

This constitutes the decision and order of the court.

ENTER:



<u>8/2/2023</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER
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