

**One City Block LLC v Crown Castle Fiber LLC**

2023 NY Slip Op 33952(U)

November 2, 2023

Supreme Court, New York County

Docket Number: Index No. 654994/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ONE CITY BLOCK LLC		INDEX NO.	<u>654994/2023</u>
	Petitioner,	MOTION DATE	<u>10/12/2023</u>
	- v -	MOTION SEQ. NO.	<u>001</u>
CROWN CASTLE FIBER LLC,			
	Respondent.		

**DECISION + ORDER ON MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 were read on this petition to APPOINT ARBITRATOR.

Petitioner One City Block LLC (“Petitioner”) filed a petition to stay an arbitration pursuant to CPLR 7502 and have the Court appoint an arbitrator pursuant to CPLR 7504 in the arbitration known as *Crown Castle Fiber LLC v. One City Block LLC*, JAMS Case No. 5425001429 (the “Arbitration”). For the reasons that follow, the Petition is **denied**, and this special proceeding is dismissed.

### BACKGROUND

Petitioner and Respondent Crown Castle Fiber LLC (“Respondent”) (through their respective predecessors) are parties to an Agreement of Lease (NYSCEF 31) and First Lease Amendment (NYSCEF 2). The Lease and Amendment cover portions of 111 Eighth Avenue including a specialized “carrier hotel” for telecommunications equipment (“Premises”).

Respondent commenced the Arbitration to determine the Premises’ fair market rental value in connection with its renewal of the lease (NYSCEF 40 [First Amended Statement of Claim]).

The First Lease Amendment includes an arbitration provision providing that, absent an agreement, fair market value in this context:

shall be determined by a single arbitrator appointed by JAMS. Such arbitrator shall be impartial and shall have not less than ten (10) years' experience in the New York metropolitan-area in a calling related to the leasing of commercial space in buildings comparable to the Building. . .

(First Lease Amendment Sec. 3[j][ii]). Arbitration is to proceed in accordance with “the JAMS arbitration procedures then in effect. . .” (First Lease Amendment Sec. 3[j][ii]).

On August 24, 2023, JAMS provided a list of eleven Arbitrator candidates, including a number of retired judges as well as attorneys (NYSCEF 5). The parties were asked to agree on an Arbitrator or to strike and rank the candidates.

On August 31, 2023, Petitioner objected to the list of Arbitrator candidates, asserting that “while each of the proposed neutral arbitrators are eminently qualified in general commercial disputes, none has the requisite experience set forth in the First Amendment to the Lease” (NYSCEF 6). Respondent submitted a response on September 5, 2023, stating that the Arbitrator candidates were qualified and requesting an administrative conference (NYSCEF 7). Petitioner replied on September 7, 2023 (NYSCEF 9).

On October 5, 2023, JAMS notified the parties that their correspondence had been considered and that JAMS would provide an amended list of “proposed arbitrator candidates who have advised they meet the qualifications as outlined in the parties’ agreement” (NYSCEF 11). JAMS provided an Amended Strike List containing six candidates (including an attorney, three retired Appellate Division judges and two retired Commercial Division judges), five of whom were on the original JAMS list of eleven candidates provided in August, and directed the parties to file their respective strike lists on or by October 12, 2023 (NYSCEF 12, 13).

Petitioner commenced this special proceeding on October 12, 2023 (NYSCEF 1 [Verified Petition]) seeking to temporarily stay the Arbitration pursuant to CPLR 7502 and to have the Court appoint an arbitrator pursuant to CPLR 7504. Following a hearing, on October 16, 2023, the Court declined to preliminarily stay the Arbitration and directed expedited briefing on the Petition to appoint an arbitrator (NYSCEF 26). Following the hearing, the Hon. Anthony J. Carpinello (Ret.) was appointed as Arbitrator by JAMS on October 18, 2023 (Kaufman Aff. ¶41 [NYSCEF 30]; Reply Memo at 11 [NYSCEF 49]).

### DISCUSSION

Arbitration is a “matter of contract” (*Matter of Belzberg v Verus Investments Holdings Inc.*, 21 NY3d 626, 630 [2013]). “Consent to arbitrate occurs in the most straightforward manner when a party signs a formal agreement to arbitrate” (*People ex rel. Cuomo v Coventry First LLC*, 13 NY3d 108, 113 [2009]).

Parties may, of course, designate an arbitral forum in their agreement to arbitrate (*WN Partner, LLC v Baltimore Orioles Ltd. Partnership*, 179 AD3d 14, 16 [1st Dept 2019] citing *Skyline Steel, LLC v PilePro LLC*, 139 AD3d 646, 646 [1st Dept 2016] [other citations omitted]). Further, “the parties to an arbitration contract are completely free to agree upon the identity of the arbitrators and the manner in which they are to be chosen” (*Astoria Med. Group v Health Ins. Plan of Greater New York*, 11 NY2d 128, 133 [1962]).

The CPLR provides that, in certain circumstances, the Court may select an arbitrator at the request of a party. Specifically, CPLR 7504 provides:

If the arbitration agreement does not provide for a method of appointment of an arbitrator, or if the agreed method fails or for any reason is not followed, or if an arbitrator fails to act and his successor has not been appointed, the court, on application of a party, shall appoint an arbitrator.

Accordingly, the Court may step in to select an arbitrator when (1) there is no method to appoint an arbitrator; (2) the method fails; (3) the method is not followed; or (4) the chosen arbitrator fails to act.

Petitioner argues that the third circumstance is present here because none of the candidates proposed by JAMS is employed in a “calling related to the leasing of commercial space in buildings comparable to the” Premises, which Petitioner construes to require appointment of a real estate professional with specialized experience in leasing rather than an experienced lawyer or judge. Petitioner argues that JAMS “has been unable to propose an arbitrator possessing the specific qualifications in the Lease (presumably because JAMS does not have any individuals on its roster that possess these qualifications)” (Petition ¶6). Petitioner requests that the Court appoint an arbitrator using procedures that are not authorized by the parties’ agreement but which are “similar to procedures that have been successfully used in other matters” (Petition ¶53), namely requiring the parties to submit lists of acceptable and qualified candidates for the Court’s review.

As noted above, the First Amendment to Lease Agreement provides that the Arbitration “shall be determined by a single arbitrator appointed by JAMS. . .in accordance with the JAMS arbitration procedures then in effect. . .” Rule 1(b) of JAMS Comprehensive Arbitration Rules & Procedures (“JAMS Rules” [NYSCEF 47]) provides that the JAMS Rules apply if JAMS is designated in the arbitration agreement. JAMS Rule 11(c) provides that “[d]isputes concerning the appointment of the Arbitrator shall be resolved by JAMS.” Rule 15 of the JAMS Rules provides that, unless the parties have agreed on an arbitrator, that an arbitrator will be selected through JAMS’ strike-and-rank process. In the event the process fails, “JAMS shall designate the sole Arbitrator” (JAMS Rule 15[d]).

Petitioner does not raise a “gateway issue” of arbitrability – that is, whether the parties agreed to arbitrate their dispute – and instead challenges JAMS selection of an arbitrator pursuant to its own Rules (*Howsam v Dean Witter Reynolds, Inc.*, 537 US 79, 85, 123 S Ct 588, 592, 154 L Ed 2d 491 [2002]). Generally, once a matter is determined to be arbitrable, arbitral tribunals like JAMS are left to interpret their own rules and procedures (*Id.* at 593). With specific respect to selecting an arbitrator, the Court should enforce the parties’ contract as written (*Silberman v Farkas*, 179 AD3d 1075, 1075 [2d Dept 2020]), which in this case means that the arbitrator should be chosen by JAMS.

In accordance with the JAMS Rules, JAMS considered Petitioner’s objections and provided a list of Arbitrator candidates who represented that they possess the qualifications required by the parties’ agreement. Although one certainly *could* read the parties’ agreement as evincing an intent to have the dispute be resolved by a real estate executive, the language they chose was not explicit in that regard. It required only that the candidates have a calling “related” to the leasing of commercial space in buildings comparable to the Building. If they wanted to specify that the arbitrator must be a real estate professional rather than a retired judge, they could have done so.

The Court does not believe it was irrational for JAMS (and the arbitrator applicants) to conclude that decades-long “callings” involving resolution of commercial real estate disputes similar to those at issue could qualify. In those circumstances, the Court sees no justification to impose its own judgment in the selection of an arbitrator when the parties by contract clearly chose JAMS to make that determination pursuant to its Rules.

None of the cases cited by Petitioner involve a provision providing that JAMS shall appoint the arbitrator or involving the JAMS Rules. Further, none of the cases cited stands for the

proposition that substantial experience as a judge or attorney in commercial real estate disputes cannot rationally be considered a calling “related to” the leasing of commercial space of the type involved in this case.

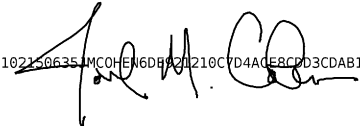
In sum, the Petitioner has not established that the Court should ignore the plain language of the First Lease Amendment and substitute its judgment for that of JAMS. In light of the Court’s denial of the petition to appoint an arbitrator, the request to stay the Arbitration is also denied.

\* \* \* \*

Accordingly, it is

**ORDERED** that the Petition to stay the arbitration and appoint an arbitrator is **DENIED** and this special proceeding is **DISMISSED**.

This constitutes the decision and order of the Court. The Clerk of Court is directed to mark this proceeding disposed.

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JOEL M. COHEN, J.S.C.

11/2/2023  
DATE

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	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	