

Skyline Steel, LLC v PilePro LLC

2024 NY Slip Op 30196(U)

January 14, 2024

Supreme Court, New York County

Docket Number: Index No. 650531/2015

Judge: Margaret A. Chan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 49M

-----X
 SKYLINE STEEL, LLC,

Petitioner,

- v -

PILEPRO LLC, PILEPRO SALES CORP. INC., PILEPRO
 STEEL LP

Respondents.
 -----X

INDEX NO. 650531/2015

MOTION DATE 11/04/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
 MOTION**

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD

This matter was first brought to this court by petitioner Skyline Steel, LLC's (Skyline) petition to stay the arbitration at JAMS. Respondents PilePro LLC,¹ PilePro Sales Corp. Inc., and PilePro Steel LP (together, PilePro) opposed and successfully cross moved to compel arbitration, which order was affirmed by the First Department (139 AD3d 646 [1st Dept 2016]). The arbitration proceeded, as agreed by the parties, under JAMS Expedited Procedures. The arbitration was conducted in three phases with limited discovery. The arbitration panel (the Panel) determined Skyline as the prevailing party in each of the three phases. PilePro now moves under CPLR 7511 to vacate all three arbitration awards arguing that the Panel exceeded its authority, committed misconduct in contravention to Article 75, and issued awards that were irrational under JAMS Rules. Skyline opposes the motion and cross moves under CPLR 7510 and 7511(e) to confirm the three JAMS arbitration awards.

For the reasons below, PilePro's motion to vacate all three arbitration awards is denied. Conversely, Skyline's cross-motion to confirm the awards is granted.

¹ PilePro LLC was succeeded by Sheet Pile LLC and took PilePro's place in the arbitration (NYSCEF # 102 ¶ 8).

BACKGROUND

PilePro manufactures sheet piling connectors that are used in construction projects (NYSCEF # 75 – Resps’ MOL at 5). Skyline distributes steel sheet piling and products for use in construction projects (*id.*). Both Skyline and PilePro contracted with nonparty Plymouth Tube Co. (Plymouth) for domestic extruded connectors. PilePro asserts that “[d]uring all relevant times, Plymouth was the only source for domestic extruded connectors” (*id.*). But in 2010, Skyline started its own line of connectors, which infringed on PilePro’s connector patents (*id.*). Hence, PilePro filed a patent infringement lawsuit against Skyline (*id.*). The lawsuit prompted Skyline to discuss settling the lawsuit.

On October 31, 2011, Skyline and PilePro entered into a settlement agreement (SA), which contained an arbitration clause that “all disputes relating to this agreement ... shall be referred to final and binding arbitration, before a panel consisting of three arbitrators, under the JAMS commercial arbitration rules in New York, New York and pursuant to the New York statutes governing arbitration” (the Arbitration Clause) (NYSCEF # 77, SA ¶ H).

Almost two years after the execution of the SA, Skyline filed a Demand for Arbitration claiming that PilePro was not honoring certain pricing and delivery terms and invoked the Arbitration Clause (NYSCEF # 75 at 6). PilePro counterclaimed alleging Skyline’s failure to purchase, sell, and market PilePro’s connectors. Skyline subsequently terminated the SA and filed suit against PilePro and Plymouth in the District of New Jersey, asserting antitrust, unfair competition, and patent claims in an action captioned *Skyline Steel, LLC v PilePro LLC et al.*, No. 13-CV-4930 (D.N.J. Aug. 15, 2013) (NYSCEF # 1, Petition ¶ 32). PilePro and Plymouth responded to Skyline’s complaint by moving to compel arbitration (*id.* ¶ 33). Soon after, on November 15, 2013, Skyline commenced a separate action against PilePro in District Court for the Southern District of New York captioned *Skyline Steel, LLC v PilePro, LLC*, No. 13-cv-08171-JMF (SDNY Nov. 15, 2013) (the “SDNY Action”) (*id.* ¶ 37).

On February 4, 2015, PilePro filed a notice of claim before JAMS by paying an administrative fee (*id.* at ¶ 38). On February 18, 2015, JAMS issued a Commencement Letter for the arbitration (*id.* ¶ 38; NYSCEF # 75 at 7). In response, Skyline objected to the arbitration because PilePro’s commencement of the arbitration was “completely inconsistent with its past behavior” (NYSCEF # 1, Petition ¶ 39; NYSCEF # 75 at 7). As a result, on February 23, 2015, Skyline petitioned to stay the arbitration (*id.*). PilePro, in turn, cross moved to dismiss Skyline’s petition and to compel arbitration on April 6, 2015 (NYSCEF # 22). This court denied Skyline’s petition to stay and granted PilePro’s motion to compel arbitration on April 14, 2015 (NYSCEF # 57).

The parties proceeded to arbitration at JAMS, and throughout the course of the parties' arbitration, the Panel at JAMS issued several procedural orders that established the relevant schedule for the proceedings (NYSCEF ## 119, 120, 121). Under Procedural Order # 1, both PilePro and Skyline agreed that the Panel would "have the authority to determine 'arbitrability' and 'jurisdiction' issues to be argued during arbitration (NYSCEF # 119 at 1). Of note, both parties agreed that any objections to the jurisdiction of the Panel or to the arbitrability of any of the amended counterclaims must be resolved prior to any litigation of the amended counterclaims on the merits (*id.*).

As part of the first Procedural Order, the Panel ordered the arbitration be conducted into "Phases" in the interest of cost effectiveness and to promote efficiency (NYSCEF # 120 at 1). The Panel first ordered a hearing for any grounds objecting to the jurisdiction of the arbitrators or to the arbitrability of any of the amended counterclaims between the parties (*id.* at 1-2). Pursuant to this order, the Panel allowed for limited discovery, consistent with Rule 16.2 of the JAMS Rules where each party would "have the opportunity to seek the production of documents from the other and each party will have the opportunity to take one deposition of the other" (*id.*). The Panel allowed the parties to request up to five requests for the production of documents for each issue to be tried in the Phase One hearing (NYSCEF # 121 at 1). Depositions were to take place on video and noticed by each party (*id.*). After each of the three phases ended, the Panel issued a written award.

First Interim Award

On August 5, 2020, the Panel ordered a Phase One Merits Hearing and laid out three threshold issues: (a) whether PilePro fraudulently induced Skyline to enter into the SA, which would render the SA void and terminate the arbitration proceeding; (b) whether Skyline properly terminated the SA based on material breaches made by PilePro; and (c) if the Panel finds in favor of the Respondent on both issues in (a) and (b), whether the filing of the New Jersey action or the New York action by Skyline violates the Covenant Not to Sue in paragraph F of the SA (NYSCEF # 87 at 3).

Following a two-day evidentiary hearing on June 26 and July 2, 2020, the Panel found that although Skyline proved that PilePro intentionally misled Skyline through fraudulent language and material omission in the SA, Skyline failed to show a justifiable reliance on the non-disclosure and misrepresentation (*id.* at 10). Nonetheless, the Panel found that PilePro breached the SA such that Skyline was entitled to terminate the agreement (*id.* at 14). Given this conclusion, the Panel ruled that it did not need the third issue of the Phase One Hearing because "Skyline properly terminated the SA on August 15, 2013, thus, the Covenant Not to Sue was not in effect when Skyline brought the New Jersey and New York actions" (*id.*).

Second Interim Award

On September 15, 2021, the Panel conducted a conference with counsel regarding the post-Phase One schedule (NYSCEF # 122 at 1). PilePro requested to continue to litigate counts 3 to 5 and counts 7 and 8 of its amended counterclaims (*id.*). The Panel granted Skyline leave to file a motion for summary disposition (*id.*) Prior to the Phase Two hearing, the Panel reviewed PilePro's counterclaim submissions, which alleged a claim for breach of contract based on Skyline's refusal to market and sell connectors, as well as a claim for breach of good faith and fair dealing (NYSCEF # 93 at 7). In its filed submissions to the Panel, PilePro argued that the Panel's ordered phased hearings, which allowed for a summary disposition for Skyline, would be unfair and would violate its due process rights by not being able to properly conduct discovery (*id.*). PilePro further argued that Skyline's breach of the SA occurred immediately after the agreement was signed, which was before January 2013, the date that the Panel determined that PilePro had breached the agreement (*id.* at 7- 8).

In its Second Interim Award, the Panel found, in part, as follows:

“PilePro materially breached the SA as of shortly after October 31, 2011. Accordingly, the Panel finds that Pile Pro never performed (or never substantially performed) at least one of its material obligations under the Settlement Agreement . . . The Panel further concludes that whether Skyline breached the SA by failing to market or sell Pile Pro connectors – and when its purported breach occurred – does not, therefore, matter. Given Pile Pro's earlier or, at the very least, concurrent material breach, Pile Pro would not be entitled to recover damages from Skyline even if Pile Pro could prove the Skyline breaches. This conclusion is supported by New York law. The relevant New York cases establish that a material breach by one party to a contract – in this case Pile Pro – excuses further performance by the other party – in this case Skyline.”

Accordingly, the Panel dismissed all of PilePro's remaining contract-based counterclaims with prejudice and counts seven and eight without prejudice (*id.* at 14). Given its conclusions, the Panel determined that Skyline was the prevailing party because it “succeeded in achieving the dismissal of all the claims brought in this Arbitration by [PilePro]” (*id.* at 13).

Final Award

After deciding on the First and Second Interim Awards, the remaining issue was the issue of Fees and Costs under JAMS Rule 24 and Paragraph H of the SA (NYSCEF # 95 at 2). Having determined that Skyline was the prevailing party in

the arbitration, the Panel directed Skyline to submit a claim for the reimbursement of its “costs and expenses” (*id.*). Thus, on June 24, 2022, Skyline submitted the Declaration from Aldo A. Badini, which set forth costs and expenses incurred by Skyline, as well as data obtained from its counsel’s finance system (*id.* at 3). Skyline did not seek attorney’s fees to avoid further litigation but reserving its right to seek it should PilePro “seek costs, expenses or fees in this matter for any reason” (*id.* at 3). PilePro opposed the award questioning the amounts Skyline sought, the costs and expenses incurred before November 18, 2019 when Steel Pro was assigned PilePro’s claims(*id.* at 4).

In its decision, the Panel awarded the entirety of Skyline’s reimbursement of costs and expenses totaling \$216,261.39 (NYSCEF # 77, Exhibit 1 at ¶ H; NYSCEF # 95, Final Award at 6). The Panel made this determination by reviewing expenses certified by Skyline’s counsel, which referenced contemporaneous billing records (NYSCEF # 95 at 4). As for the expenses incurred prior to the assignment of PilePro’s claims to Steel Pro, the Panel found that the history of the language the Transfer Agreement and Court Order were “without prejudice” for Skyline’s right to seek full costs and expenses in this arbitration (*id.* at 5). Thus, the Panel concluded that the full costs and expenses should be awarded, which include computerized legal research, travel, meal expenses, costs for Document Imaging & OCR, Electronic Services, and Court Reporting (*id.*).

PilePro’s Contentions and Skyline’s Opposition

In moving to vacate the Awards, PilePro contends that the Panel exceeded its authority and engaged in misconduct by conducting the arbitration in phases in contravention to Article 75 and the procedure required by the parties’ contract (NYSCEF # 75 at 14-16). PilePro asserts that the JAMS Expedited Rules do not allow for a “piecemeal approach” to arbitration, and it should have been conducted in a single hearing (*id.* at 18). PilePro also asserts that the term “phasing” is not mentioned in the JAMS Rules, and therefore the Arbitration was improperly orchestrated (*id.*). And PilePro takes issue with the Panel’s decision to summarily dispose of PilePro’s counterclaims (NYSCEF # 75 at 14-18). Based on the Panel’s alleged misconduct, PilePro claims it was deprived of due process (*id.* at 16).

As to the Panel’s Final Award, PilePro contends that the JAMS Rules do not require the Panel to announce a prevailing party and to award costs and fees, yet the Panel did. PilePro argues that because the Panel had found “both parties were in material breach from the outset, and under New York law can have no claims against each other premised on the contract they both chose to dishonor,” the Panel’s announcing Skyline as the “prevailing party” was ill founded (*id.* at 14, 22).

In opposition, Skyline responds that the Panel appropriately followed the phased procedure which was agreed by both parties (NYSCEF # 110 at 12). Skyline

argues that PilePro agreed to conduct the arbitration in phases as evidenced from the signed SA, which procedure was fully consistent with JAMS Rule 16.2 permitting an arbitrator to alter any of the provisions for good cause (*id.* at 13). Because the arbitration was done in the interest of cost effectiveness and efficiency, Skyline argues that the Panel properly conducted the arbitration proceedings with good cause (*id.*). Thus, Skyline states the Panel did not exceed its authority, engage in any misconduct, or violate PilePro's due process rights (NYSCEF # 110 at 13-15).

As to PilePro's "prevailing party" arguments, Skyline responds that under JAMS Rule 24, an "[a]rbitrator may allocate Arbitration fees and Arbitration compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement"; the SA does not contain any restrictions on awards (NYSCEF # 110 at 22). Skyline cross moved to confirm the arbitration awards (*id.* at 12).

DISCUSSION

PilePro's motion to vacate the arbitration awards rests on its contention that the arbitration panel exceeded its authority under the JAMS rules and failed to follow Article 75, and the Final Award that designated Skyline as the prevailing party and awarding fees and costs was unnecessary and irrational.

Pursuant to CPLR 7511, a court may vacate an arbitration award "if the rights of the movant were prejudiced by: (1) corruption, fraud or misconduct in procuring the award; (2) partiality of the arbitrator; (3) the arbitrator exceeding or imperfectly executing his/her power or (4) the arbitrator failing to follow the procedure of CPLR article 75" (*Denson v Donald J. Trump For President, Inc.*, 180 AD3d 446, 449-450 [1st Dept 2020]; CPLR § 7511(b)(1)). "With respect to whether an arbitrator exceeded or imperfectly executed his/her power, an award will not be overturned unless the award violates a strong public policy, is totally irrational or exceeds a specifically enumerated limitation on the arbitrator's power" (*Denson*, 180 AD3d at 450).

It is initially noted that the parties "agree to use special expedited procedures of JAMS. . . . (NYSCEF # 113, First Interim Award at 2). PilePro's contention that conducting the arbitration in phases was inconsistent with Article 75, JAMS Rules, and the parties' SA (NYSCEF # 75 at 14-20) is belied by the record. The SA stated that the arbitration would be conducted under the JAMS commercial arbitration rules. JAMS' Rule 16.2 (h) allows an arbitrator to change the procedure with cause; conducting the arbitration to effectuate a cost-efficient and efficient manner is good cause. And the parties consented to this procedure.

In any event, the phases were conducted in a logical and reasonable manner in which Phase One addressed threshold questions on whether the SA was void which, if so found, would have ended the arbitration. Another crucial question that needed early addressing was the date of the alleged breaches. After establishing the date of the alleged breaches, Phase Two dealt with PilePro's counterclaims alleging breaches of the SA by Skyline, which the Panel dismissed upon finding that PilePro's material breach occurred on the day the SA was signed. This finding of PilePro's breach at the onset of the SA excused Skyline's alleged breaches. This left the awarding of fees and cost for Phase Three.

PilePro's next contention – that the Panel exceeded its authority by limiting discovery and evidence – also fails. JAMS Rule 16.2(b) on discovery states that “[t]he Arbitrator may edit or limit the number of requests” (JAMS Rule 16.2[b]). Another provision is: “[t]he limitation of one discovery deposition per side (Rule 17(b)) shall be applied by the Arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted . . .” (JAMS Rule 16.2(d)(i)). The parties here were permitted document discovery and one deposition per side, as provided in JAMS Rule 16.2(b).

Besides conducting the arbitration in phases and limiting discovery, PilePro argues that the Panel's decision to summarily dispose of its counterclaims constitutes misconduct. PilePro, relying on *Brooks v BDO Seidman, LLP* (31 Misc 3d 653 [Sup Ct, NY County, 2011]), *affd*, 94 AD3d 528 [1st Dept 2012], argues that courts in this county have “implicitly recognized that summary disposition of claims in arbitration may amount to a procedural defect or misconduct where an arbitrator fails to give parties a sufficient opportunity to submit or to carefully consider evidence presented, and proceeds with summary disposition over a party's objection” (NYSCEF # 75 at 17). This argument misses the point in *Brooks*, in which the court found that summary judgment was “properly used” in that case because the arbitrators there “1) gave the parties time to thoroughly brief the issues and submit evidence; 2) carefully considered the evidence presented; 3) issued a written decision; and 4) were confronted with no objections to the use of the procedure” (*id.* at 659).

Here, the parties both submitted briefs, and in reviewing the written awards, it is clear that the Panel carefully considered the evidence the parties had presented. While PilePro takes issue with the Panel's refusal to “permit PilePro to acquire evidence of the timing and extent of Skyline's breaches” (NYSCEF # 75 at 17), PilePro overlooks the reason for the Panel's refusal: the evidence already obtained showed that PilePro was in material breach of the Settlement Contract soon after the SA was signed, and therefore it did not matter at what point Skyline breached the contract. Further evidence, argument, or briefing to that effect would

not in any way advance the case. As such, it was not misconduct that the Panel used summary disposition in Phase two of the arbitration.

As to PilePro's characterization of the Final Award as unnecessary and irrational (NYSCEF # 75 at 22-23), Skyline responds that the SA does not explicitly prohibit awards to prevailing party, and further cites to JAMS Rule 24 where the "Arbitrator may allocate Arbitration fees and Arbitration compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement" (NYSCEF # 110 at 22).

There must be an "unmistakably clear" expression of a party's intention to waive the rule that parties are responsible for their own attorneys' fees (*Matza v Oshman, Helfenstein & Matza*, 33 AD3d 493, 495 [1st Dept 2006]). Here, although the Panel was not required to announce a prevailing party, there is no provision that prohibits the Panel from announcing a prevailing party (NYSCEF # 104, SA at ¶ H). In fact, at the onset of the arbitration, the Panel stated, and the parties agreed, that "[t]he costs and expenses of arbitration shall be borne by the non-prevailing Party." This agreement to arbitrate shall be specifically enforceable"]the Panel awarded Skyline its litigation fees and expenses based on the parties' clear intentions that the non-prevailing party would incur the costs of arbitration as expressly agreed in the SA (*id.*; NYSCEF # 93 at 13). In addition, the Panel considered JAMS Rule 24 which allowed the arbitrator to award fees and expenses unless the allocation was expressly prohibited by the parties' agreement (*id.* at 12). Thus, in accordance to JAMS Rule 24 and Paragraph H, the Panel appropriately found Skyline as the prevailing party (*id.* at 13).²

As to PilePro's argument that the Panel's award was irrational due to the lack of evidence justifying the accuracy of Skyline's costs (NYSCEF # 75 at 23), Skyline's submission disproves that argument. Skyline submitted its costs and expenses, certified from billing records maintained by Winston & Strawn, gave the Panel the basis to reach the amount that it did (NYSCEF # 95 at 4). Skyline responds that the SA does not explicitly prohibit awards to prevailing party, and further cites to JAMS Rule 24 where the "Arbitrator may allocate Arbitration fees and Arbitration compensation and expenses, unless such an allocation is expressly prohibited by the Parties' Agreement" (NYSCEF # 110 at 22).

There must be an "unmistakably clear" expression of a party's intention to waive the rule that parties are responsible for their own attorneys' fees (*Matza v*

² PilePro further argues that Skyline's claims for damages were dismissed, which is not correct (NYSCEF # 75 at 22). The Panel appropriately found that Skyline had made it clear in its motion that it did not seek to pursue any affirmative claims and reserved its rights to do so depending on the Panel's decision (*id.* at 2).

Oshman, Helfenstein & Matza, 33 AD3d 493, 495 [1st Dept 2006]). Here, although the Panel was not required to announce a prevailing party, there is no provision that prohibits the Panel from announcing a prevailing party. The Panel considered JAMS Rule 24 which allows the arbitrator to award fees and expenses unless the allocation was expressly prohibited by the parties' agreement (NYSCEF # 93 at 12-13).³ Here, the SA provides: "The costs and expenses of arbitration shall be borne by the non-prevailing Party. This agreement to arbitrate shall be specifically enforceable" (NYSCEF # 104, SA at ¶ H). Thus, the Panel properly awarded Skyline its arbitration fees and expenses based on the parties' clear intentions as expressly stated in the SA.

PilePro also argues that the Panel's award was irrational due to the lack of evidence justifying the accuracy of Skyline's costs (NYSCEF # 75 at 23). However, Skyline's submission of its costs and expenses, contemporaneously maintained by Winston & Strawn, was credited by the Panel. In the Final Award, the panel went through each step of review in conjunction with PilePro's objections. Given the detailed review and objective analysis of this issue by the Panel, there is no reason to disturb the Panel's findings (NYSCEF # 95 at 4). As for PilePro's contention that the Panel's Final Award determining Skyline as the prevailing party is irrational, PilePro would have the court dispense with the Panel's dismissal of PilePro's counterclaims leaving no claims against Skyline.

In sum, the Arbitration Panel did not exceed its authority in conducting the arbitration in phases or limiting discovery, nor was it misconduct for the Panel to issue a summary disposition upon the parties' briefs and arguments and evidence presented or awarding Skyline the prevailing party since PilePro's counterclaims against Skyline were dismissed. Consequently, Skyline's motion to confirm the Arbitration Awards is granted.

Conclusion

Based on the foregoing, it is

ORDERED that defendants' motion to vacate the arbitration awards is denied; and it is further

ORDERED that plaintiff's motion to confirm the arbitration award is granted in the amount of \$216,261.39 plus interest; and it is further

³ PilePro mistakenly argues that Skyline's claims for damages were dismissed (NYSCEF # 75 at 22). Skyline had made it clear to the Panel that it was not pursuing any affirmative claims and reserved its rights to do so depending on the Panel's decision (*id.* at 2).

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon defendants with 10 days; and it is further

ORDERED that the Clerk of the Court is to enter judgment in favor of plaintiff Skyline Steel, LLC.

1/14/2024
DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE