

Gowanus Park LLC v KSK Constr. Group LLC

2024 NY Slip Op 30726(U)

March 6, 2024

Supreme Court, Kings County

Docket Number: Index No. 517124/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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GOWANUS PARK LLC,

Plaintiff, Decision and order

- against -

Index No. 517124/2022

KSK CONSTRUCTION GROUP LLC and
ULGUR AYDİM a/k/a ULGUR AYDİN,

Defendants, March 6, 2024

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KSK CONSTRUCTION GROUP LLC,

Counterclaimant,

- against -

GOWANUS PARK LLC, ATLANTIC SPECIALY
INSURANCE COMPANY, KEN HUDES and
ATELIER NEW YORK ARCHITECTURE,

Counterclaim Defendants,

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #3 & #4

The defendant KSK Construction Group LLC has moved pursuant to CPLR §7510 seeking to confirm an arbitration award and to vacate a stay imposed in a prior order of the court. The plaintiff Gowanus Park has cross-moved seeking to vacate that arbitration award. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court makes the following determination.

As recorded in a prior order, on July 1, 2018 the plaintiff owner of property located at 280 Bond Street in Kings County entered into a contract with defendant KSK Construction Group LLC for the construction of a four story residential building at the location. Gowanus Park alleges KSK was not equipped to complete

the job and in fact did not complete it and the work they did perform was defective. KSK seeks payment for work performed that remains outstanding. The court ordered the parties to submit to arbitration pursuant to the contract. On December 12, 2023 the arbitrator issued a decision and held Gowanus Park was required to pay KSK \$589,913.36 plus \$1,100 in administrative fees. Following that decision these motions have now been filed. KSK seeks to confirm that award. Gowanus Park argues the arbitrator failed to properly calculate the amount Gowanus Park had paid various subcontractors and that such mistake amounted to an almost \$300,000 windfall in KSK's favor. Further, Gowanus Park argues the arbitrator failed to consider damages suffered by Gowanus Park due to KSK's improper work performed. Thus, they seek to vacate the award.

Conclusions of Law

CPLR Article 75 establishes mechanisms for court confirmation, vacatur, modification, and enforcement of arbitration awards. The Article states that a "court shall confirm an award upon application of a party...unless the award is vacated or modified upon a ground specified in section 7511" (CPLR §7510). Where no such grounds exist, a "judgment shall be entered upon the confirmation of an award" (CPLR §7514(a)). Thus, to vacate an arbitration award the party

maintains a heavy burden and must establish such vacatur by clear and convincing evidence (Jurcec v. Moloney, 164 AD3d 1461, 84 NYS3d 433 [2d Dept., 2018]). CPLR §7511 present four grounds for vacatur of an arbitration award. They are, 1) corruption, fraud or misconduct in procuring the award, 2) partiality of an arbitrator, 3) an arbitrator making the award exceeded his power, and 4) the failure to follow the procedures of CPLR Article 75.

Gowanus Park argues that while the arbitrator concluded Gowanus Park had already paid KSK \$846,203.58 the plain facts demonstrate Gowanus Park actually paid KSK \$1,140,219.19 which means the arbitrator impermissibly awarded KSK an extra \$294,015.61. The basis for that assertion is the testimony of Ulgar Aydin, KSK's principal who testified at the arbitration hearing that Gowanus Park had paid subcontractors \$1,140,219.19 (see, Hearing Transcript dated April 20, 2023 [NYSCEF Doc. No. 59]). However, the arbitrator was free to ignore such isolated testimony without any supporting documentation. Gowanus Park did produce checks totaling \$1,055,077.06 paid to subcontractors, however, there were no invoices produced (other than two invoices totaling \$70,498) substantiating that those checks concerned work under the direction of KSK. Indeed, KSK introduced competent evidence in the form of a detailed spreadsheet that the amount paid by Gowanus Park to subcontractors amounted to no more than \$846,203.58 and the arbitrator appropriately credited that

testimony. Thus, the amount still owed by Gowanus Park amounted to \$589,913.36. There can be no improper conclusion reached by the arbitrator for failing to credit unsubstantiated payments urged by Gowanus Park. Moreover, as noted, to the extent any witness of KSK may have assumed otherwise, such unsubstantiated testimony was rejected by the arbitrator. Thus, the motion seeking to vacate that portion of the arbitration award is denied.

Turning to the arbitrator's failure to consider damages suffered by Gowanus Park, the arbitrator explained that damages in the amount of \$1,440,000 allegedly for delay caused by KSK were consequential damages that were waived by Gowanus Park pursuant to the construction agreement. Further, in any event the arbitrator concluded Gowanus Park failed to prove such a claim. Likewise, the arbitrator rejected any claims that Gowanus Park is entitled to any damages in any way. Gowanus Park moves seeking to vacate that conclusion, essentially, on the grounds that conclusion cannot possibly be correct. However, merely disagreeing with the arbitrator's conclusions is not a basis upon which to vacate any arbitration award. Indeed, it is well settled that even where an arbitrator's award "contains errors of law and fact committed by the arbitrator" the decision will not be vacated and that "the courts should not assume the role of overseers to mold the award to conform to their sense of justice"


(Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 NY3d 471, 813 NYS2d 691 [2006], citing, Matter of Sprinzen [Nomberg], 46 NY2d 623 [1979]). Of course, no such errors have been made by the arbitrator and therefore, surely, mere dissatisfaction with the award is not grounds upon which to seek its vacatur.

Therefore, based on the foregoing, the motion seeking to vacate the arbitration award is denied. The motion seeking to confirm the arbitration award is granted.

So ordered.

ENTER:

DATED: March 6, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC