Matter of Goldstein v Felberbaum
2024 NY Slip Op 31805(U)
May 23, 2024
Supreme Court, Kings County
Docket Number: Index No. 508317/2024
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8
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In the Matter of the Application of :
AVROHOM "AVI" GOLDSTEIN, COPIER TECHNOLOGIES INC. d/b/a DIGITAL OFFICE SOLUTIONS and DOCUMAX LLC,
Petitioners,

Decision and order

- against -

Index No. 508317/2024

ABRAHAM a/k/a SHIA FELBERBAUM, DIGITAL COPIER TECH INC. d/b/a DIGITAL COPIER TECHNOLOGIES and SHIA HESHEL INC.,
Respondents,

May 23, 2024
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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The petitioners have moved seeking a temporary restraining order restraining the respondent from engaging in the sale of copiers while the petition seeking to vacate an arbitration award is decided. The respondents have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

This lawsuit is a petition seeking to vacate an arbitration award pursuant to CPLR §7511(b). The petition alleges that in 2014 the petitioner Goldstein hired respondent Felberbaum as a sales representative selling copiers and ceased working for the petitioner in 2020. In July 2022 the petitioner discovered that Felberbaum was utilizing customer information of petitioner's company and was soliciting petitioner's clients. The petitioner

sent the respondent a cease and desist letter. The respondent counterclaimed that he was still owed commissions for work performed. On March 15, 2023 the parties entered into an arbitration agreement and agreed to have the matter heard by the Rabbinical Court of Mechon L'Hoyra [hereinafter 'RCML']. The arbitration panel issued a decision and granted the respondent access to the petitioner's records to determine whether he was owed any commissions. Further, the arbitration panel held that the respondent was permitted to sell copiers to any customers that he had brought to the petitioner's business.

The petitioner filed the instant action seeking to vacate the award on the grounds the award was biased since the arbitrators engaged in an ex parte communication with the respondent and therefore were not impartial. The petitioner further asserts the arbitration decision is vague and requires further clarification. As noted the motion is opposed.

Conclusions of Law

In relevant part, CPLR §6301 allows the court to issue a preliminary injunction "in any action...where the plaintiff has demanded and would be entitled to a judgment restraining defendant from the commission or the continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff" (id).

It is well established that "the party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of the injunction and a balance of the equities in its favor" (Nobu Next Door, LLC v. Fine Arts Housing, Inc., 4 NY3d 839, 800 NYS2d 48 [2005], see also, Alexandru v. Pappas, 68 AD3d 690, 890 NYS2d 593 [2d Dept., 2009]). The Second Department has noted that "the remedy of granting a preliminary injunction is a drastic one which should be used sparingly" (Town of Smithtown v. Carlson, 204 AD2d 537, 614 NYS2d 18 [2d Dept., 1994]). Thus, the Second Department has been clear that the party seeking the drastic remedy of a preliminary injunction has the burden of proving each of the above noted elements "by clear and convincing evidence" (Liotta v. Mattone, 71 AD3d 741, 900 NYS2d 62 [2d Dept., 2010]).

Considering the first prong, establishing a likelihood of success on the merits, the plaintiff must prima facie establish a reasonable probability of success (Barbes Restaurant Inc., v. Seuzer 218 LLC, 140 AD3d 430, 33 NYS3d 43 [2d Dept., 2016]). In this case the basis for the injunction is the fact the arbitration panel engaged in improper and impartial conversations which taint the entire arbitration award.

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]).

First, there is no merit to the argument the arbitration panel engaged in ex parte and hence improper communications by sending an email to the respondent purporting to "advise" the respondent how the navigate the arbitration process. The email was sent to the petitioner as well undermining any claims of impropriety. Indeed, the actual allegation is internally inconsistent. The Petition states that the arbitration panel favored the respondent. Specifically, Paragraph 18 of the petition states that "this favoritism became evident where RCML sent an e-mail, ex parte, to Respondents and inadvertantly [sic] included Goldstein in the correspondence. The e-mail addressed a false claim by Respondents' representative that Petitioners sought criminal charges against Respondents" (id). There can hardly be any favoritism if all parties were copied on the email. The assertion the inclusion of the petitioner was inadvertent is completely speculative and alleged merely to contrive a claim of bias against the arbitration panel. Moreover, there is no basis to impugn the arbitration award on the grounds its ruling was ambiguous. Any ambiguity can be resolved by returning to the

panel for further clarification. None of the ambiguities alleged undermine the clear ruling of the panel in favor of the respondent. Thus, the petitioner has not presented any likelihood of success on the merits restraining the respondent from continuing his employment. It must be noted that this decision does not mean the petition has no merit. The standard seeking an injunction is entirely different than the standard for a motion to dismiss (see, West 97th-West 98th Streets Block Association v. Volunteers of America of Greater New York, 153 Misc2d 321, 581 NYS2d 523 [Supreme Court New York County 1991], KDH Consulting Group LLC v. Iterative Capital Management L.P., 528 F.Supp3d 192 [S.D.N.Y. 2021]). In any event, the petitioner has failed to demonstrate a likelihood of success on the merits. Consequently, the motion seeking an injunction restraining the respondent Felberbaum is denied.

So ordered.

ENTER:

DATED: May 23, 2024
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC