Fundamental Capital LLC v Lunar Elec.
2024 NY Slip Op 35626(U)
April 4, 2024
Supreme Court, Nassau County
Docket Number: Index No. 600589/24
Judge: James P. McCormack

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice of the Supreme Court

TRIAL/IAS, PART 8
NASSAU COUNTY

______________________________________x

FUNDAMENTAL CAPITAL LLC D/B/A NEXI,

Petitioner(s),

-against-

LUNAR ELECTRIC and ERIC S. LOVETT,

Respondent(s).

______________________________________x

Index No. 600589/24

Mot. Seq. 001
Motion submitted 2/9/24

The following papers read on this motion:

Notice of Petition/Supporting Exhibits..X

Petitioner, Fundamental Capital LLC (Fundamental), petitions this court to confirm an arbitrator's award. There is no opposition

Fundamental and Lunar Electric (Lunar), entered into a contract whereby Fundamental agreed to purchase $156,139.69 of Lunar's future receivables in return for an up-front payment of $109,265.00, which would be paid in installments. Fundamental would receive its payment by taking 24% of the daily receivables from a certain bank account until it received the $156,139.69. Respondent, Eric S. Lovett (Lovett), guaranteed the contract. Fundamental made $51,815.32 of payments.

The contract further contained an arbitration clause. Should there be a dispute, the parties were required to submit the dispute to Mediation and Civil Arbitration, Inc. (MCA). Fundamental claims that Respondents stopped meeting their obligation of allowing Fundamental access to 24% of its daily receivables. As a result, Fundamental brought a proceeding through MCA. Respondents did not appear for the arbitration, and Fundamental was granted an award of $74,642.70, representing the unpaid receivables, counsel fees and other costs and interest. Fundamental now moves to confirm the award.

"[J]udicial review of arbitration awards is extremely limited" (*Sheriff Officers Ass'n, Inc., ex rel. Ranieri v. Nassau County*, 113 AD3d 620 [2d Dept 2014] *quoting Wien & Malkin LLP v. Helmsley–Spear, Inc.*, 6 NY3d 471, 479 [2006]). In determining any matter arising under CPLR article 75, "the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute" (CPLR 7501). Accordingly, it is " 'not for the courts to interpret the substantive conditions of the contract or to determine the merits of the dispute' " *(Matter of United Fedn. of Teachers, Local 2, AFT, AFL–CIO v. Board of Educ. of City School Dist. of City of N.Y.*, 1 NY3d 72, 82–83 [2003], *quoting Board of Educ., Lakeland Cent. School Dist. of Shrub Oak v. Barni*, 51 NY2d 894 [1980]). "An arbitration award must be upheld when the arbitrator 'offer [s] even a barely colorable justification for the outcome reached' " (*Wien & Malkin LLP v. Helmsley–Spear, Inc.*, 6 N.Y.3d at 479, *quoting Matter of Andros Compania Maritima, S.A. [Marc Rich & Co., A.G.]*, 579 F2d 691, 704

[2d Cir 1978]).

The Court of Appeals has recognized "three narrow grounds that may form the basis for vacating an arbitrator's award—that it violates public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Shenendehowa Cent. Sch. Dist. Bd. of Educ. (Civil Serv. Empls. Assn., Inc., Local 1000, AFSCME, AFL–CIO, Local 864)*, 20 NY3d 1026, 1027 [2013]; *see Matter of New York City Tr. Auth. v. Transport Workers Union of Am., Local 100*, 14 NY3d 119, 124 [2010]).

Of concern to the court is a liquidated damages fee of $17,472.99, which is 30% of the outstanding balance. A liquidated damages clause in a contract is enforceable as long as it is rationally related to the party's damages, and is not a penalty for breaching the contract. (*Truck Rent-A-Ctr. v. Puritan Farms 2nd*, 41 NY2d 420 [1977]). Herein, the fee is clearly a penalty. It has no connection to the outstanding balance. The court accepts that a default might cause a party some administrative expenses, and as a result has allowed a specific default fee, such as $2,500.00, in similar cases. But the fact that the default fee in this contract is based upon the amount of the outstanding balance makes it clear that it is simply an added expense designed to punish the defaulting party for defaulting.

CPLR §7511(c)(1) allows the court to modify an award where "there was a miscalculation of figures...". Subsection (c)(3) allows the court to modify an award where "the award is imperfect in a matter of form not affecting the merits". The court finds that the arbitrator miscalculated the amount of damages owed to Fundamental and that the damages were imperfect in form because they were based upon an improper liquidated damages fee. The damages Fundamental is entitled to is the amount of the outstanding balance. As such, the award will be confirmed, minus the liquidated damages fee.

Accordingly, it is hereby

ORDERED, that the petition is GRANTED to the extent that Fundamental is entitled to an award of $56,669.71 together with costs, disbursements and interest.

This constitutes the Decision and Order of the Court.

Settle judgment on notice.

Dated: April 4, 2024
Mineola, N.Y.

Hon. James P. McCormack, J. S. C.

ENTERED
Apr 11 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE