

Tristate Fire Sprinkler, Inc. v Klein

2025 NY Slip Op 34787(U)

December 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 511790/2022

Judge: Lisa S. Ottley

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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 – PART 24

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TRISTATE FIRE SPRINKLER, INC., AISH MECHANICAL
CORP.,

Petitioners,

Mot. Seq. # 2

Index # 511790/2022

For an Order Pursuant to CPLR Article 75 to Confirm
The Arbitration Award, dated March 6, 2022

DECISION AND ORDER

-against-

YIDEL KLEIN a/k/a JUDA KLEIN, PARKVIEW BUILDERS,
LLC, THE 329 LLC

Respondents.

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HON. LISA S. OTTLEY, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion to Confirm Arbitrator’s Award and Granting Judgment submitted January 13, 2025.

Papers	Numbered
Notice of Motion & Affirmation.....	1&2 [Exh. A-B]
Memorandum of Law in Opposition.....	3
Reply	4 [Exh. A-B]

Petitioners move by Order to Show Cause for an order pursuant to CPLR 7510 confirming the arbitration award of Givas Hamorah Rabbinical Court (hereinafter, “the Rabbinical Court”), dated August 21, 2023, and granting judgment in favor of petitioners and against respondent, Parkview Builders, LLC (hereinafter, “Parkview”) in the amount of \$102,000.00.

Parkview is the general contractor for a construction project located at 329 Broadway in Williamsburg, Brooklyn. The 329 LLC (hereinafter, “329”) is the owner of the subject property. Yidel Klein a/k/a Juda Klein (hereinafter, “Klein”) is the principal and manager of 329 and Parkview. In or around July 2019, Parkview hired the petitioners as subcontractors to perform certain plumbing services and provide plumbing material for the construction project. A dispute arose between the petitioners and Parkview regarding the work performed and as a result Parkview has not paid the petitioners the outstanding balance of \$118,030.09 due under the agreement for petitioners’ work. On November 17, 2021, the petitioners filed a mechanic’s lien on the subject property in the amount of \$118,030.09.

After careful consideration of the moving papers, opposition thereto and reply, the court finds as follows:

Discussion

It is alleged in the petition that on January 5, 2022, the parties signed an agreement to submit to arbitration. After hearing the case and evaluating the evidence and arguments of all parties, the arbitrator rendered a judgment on March 6, 2022, in favor of the petitioner and against the respondents in the amount of \$102,000.00 (hereinafter, "the initial award"). On April 25, 2022, petitioner commenced this special proceeding to confirm the initial award. Respondents opposed the entry of judgment on the initial award. Respondents, Klein and 329, argued that they were not parties to the arbitration agreement and were thus not bound by the initial award. Parkview argued that it had not been given an opportunity to submit a certain expert report to the arbitrator. Pursuant to the decision/order of Hon. Karen B. Rothenberg, dated October 11, 2022, the court denied the application as to Klein and 329 on the grounds that they were not parties to the agreement. The court also denied the application as to Parkview based on its allegation that it was unable to present an expert report.

On January 22, 2023, petitioner, Aish Mechanical Corp., commenced an action in Kings County Supreme Court, captioned Aish Mechanical Corp v. The 329 LLC, Parkview Builders, LLC, Yidel Klain a/k/a Juda Klein, et al, Index No 502853/2023 (hereinafter, "the plenary action"). The plenary action sought to foreclose on a mechanic's lien petitioners filed on the subject property. The complaint in the plenary action recited the facts surrounding the agreement, the initial award, and the court's denial of entry of judgment. The plenary action sought a money judgment against Klein and 329 only, explicitly omitting Parkview from the ad damnum clauses of each cause of action.

On February 27, 2023, the arbitrator advised the parties that it wished to hold a final session for the parties to submit any additional documents or evidence. The arbitrator asked the parties to choose between March 19 or March 20, 2023. In response, Parkview's arbitration representative refused to agree to a date and advised the arbitrator that the arbitration agreement has been nullified due to the commencement of the plenary action. Thereafter, on June 29, 2023, the arbitrator scheduled a final appearance date for August 14, 2023, for the parties to submit any additional documents or evidence. However, Parkview failed to appear. Accordingly, the arbitrator rendered an award in favor of petitioners on August 21, 2023, directing Parkview to pay petitioners \$102,000.00, within 30 days from the issuance of said award. Only upon receiving the full payment, petitioner must complete all tasks related to the projected and detailed in its proposal, within 30 days of receiving payment.

To date, Parkview has failed to comply with their obligations pursuant to the arbitration award and have not paid petitioners any part of the awarded amount. More than thirty days have passed from the signing of the award by the arbitrator. This application is made within one year of the issuance of the instant award. The award also provided that if Parkview fails to make the payment on time, petitioners are allowed to confirm this award

and collect the debt through the civil court, as well as fees associated with Parkview's noncompliance.

In opposition, respondents argue that the instant arbitration award was granted on default without the respondent's having an opportunity to be heard and petitioner waived any right to arbitration by commencing a plenary action against the respondents on the very same issues after this court denied petitioner's first application to confirm the award. According to the respondents, after Parkview advised the arbitrator that its belief and understanding was that any previous agreement to arbitrate was a nullity due to the commencement of the plenary action, no determination was made on that issue. Instead, without Parkview's consent, the arbitrator scheduled a date of August 14, 2023, for the parties to be heard and proceeded to render an award against Parkview, dated August 21, 2023. The respondents further argue that parties cannot arbitrate and litigate simultaneously as they need to choose one or the other, and petitioner has chosen litigation. Parkview claims that it should not be forced to defend the plenary action and at the same time defend the very same claims in arbitration.

In reply, petitioners argue that respondents' opposition consists solely of a bare memorandum of law, without any supporting affidavits, exhibits, or other evidentiary support. Petitioners further argue that Justice Rothenberg, in her prior order directed that "In light of Parkview's contentions that it was not given an opportunity to be heard and that its expert report was not considered, this matter, as against Parkview only, is remitted for rehearing before the same panel that issued the March 6, 2022, arbitration award." Accordingly, respondent, Parkview, was given the opportunity to appear at the rehearing to present its expert report as the panel gave it a choice of dates. In response, Parkview replied that it was not required to appear since arbitration was a nullity due to the commencement of the plenary action and proceeded to decline to appear.

Petitioners also argue that that they did not waive their arbitration rights by filing a plenary action because paragraph 13 of the complaint explicitly states that the plenary action does not seek monetary relief against Parkview since those claims are being addressed in arbitration as follows:

Plaintiff brings this instant action to assert its monetary claims as against KLEIN and the Owner, including a claim to foreclose on a mechanic's lien filed against the Broadway Property. Defendant PARKVIEW is named in this action as a necessary party to Plaintiff's mechanic's lien foreclosure claim. Pursuant to the Court's Order, Plaintiff's instant action does not seek monetary relief as against Defendant PARKVIEW, as the monetary award must first issue from the Arbitrator. To the extent that the Arbitrator issues a subsequent award against PARKVIEW or if arbitration otherwise does not result in a determination on the merits, Plaintiff expressly reserves the right to amend this complaint to include monetary claims for relief as against PARKVIEW.

According to the petitioners, this language unequivocally demonstrates petitioners' intent to preserve arbitration as the exclusive forum for resolving the monetary dispute and seeking judgment against Parkview. On the other hand, the plenary action is limited to claims

against Klein and 329 and to foreclose on petitioner's mechanic's lien as arbitration panels have no authority over mechanic's lien foreclosure actions. As such, the petitioners explicitly reserved their rights to arbitration and do not seek duplicative remedies.

Pursuant to CPLR 7510, "the court shall confirm an award upon application of a party made within one year after its delivery to them, unless the award is vacated or modified upon a ground specified in section 7511." Furthermore, pursuant to CPLR 7506(c), "the parties are entitled to be heard, to present evidence and to cross-examine witnesses."

The right to arbitrate, like any other contractual right, may be modified, waived, or abandoned. See, Les Constructions Beauce-Atlas v Tocci Bldg. Corp. of N.Y., 294 A.D.2d 409, 742 N.Y.S.2d 356 (2nd Dept., 2002). A determination that a party has waived the right to arbitrate requires a finding that the party engaged in litigation to such an extent as to manifest a preference clearly inconsistent with its later claim that the parties were obligated to settle their differences by arbitration and thereby elected to litigate rather than arbitrate. See, Sherrill v Grayco Bldrs., 64 N.Y.2d 261, 486 N.Y.S.2d 159 (1985).

As the court set forth in Reynolds & Reynolds Co., Automotive Sys. Div. v Goldsmith Motor Corp., 251 A.D.2d 312, 672 N.Y.S.2d 804 (2nd Dept., 1998), [t]here is no inflexible or mechanical rule as to what constitutes a waiver of the right to arbitrate. Rather, determination of the issue depends on the facts and circumstances of each particular case. Among the factors to be considered are the extent of the party's participation in litigation and conduct inconsistent with the assertion of a right to arbitrate, the delay in seeking arbitration, and whether the other party has been prejudiced. See, Willer v Kleinman, 114 A.D.3d 850, 980 N.Y.S.2d 567 (2nd Dept., 2014).

However, not every foray into the courthouse effects a waiver of the right to arbitrate and where urgent need to preserve the status quo requires some immediate action which cannot await the appointment of arbitrators, waiver will not occur. See, Stark v Molod Spitz DeSantis & Stark, P.C., 9 N.Y.3d 59, 876 N.E.2d 903, 845 N.Y.S.2d 217 (2007); Sherrill v Grayco Bldrs., *supra*; Preiss/Breismeister Architects v Westin Hotel Co.-Plaza Hotel Div., 56 N.Y.2d 787, 437 N.E.2d 1154, 452 N.Y.S.2d 397 (1985).

Although parties may agree to resolve their disputes by arbitration, "where jurisdiction over a particular type of dispute is statutorily bestowed exclusively upon the courts ... an agreement to arbitrate will not be given effect by the courts. See, Maross Constr. v Central N.Y. Regional Transp. Auth., 66 N.Y.2d 341, 497 N.Y.S.2d 321 (1985).

Article 3 of the Lien Law, enforcement of liens on real property, presents a statutory scheme whereby enforcement is accomplished "by an action ... in the supreme court" (§ 41). Reference is made to "an action in a court of record" (§44) and "an action ... brought in a court not of record" (§46). "The court may adjust and determine the equities of all the parties to the action and the order of priority of different liens" (§45) and may, in its discretion, award costs and disbursements (§53). Enforcement by action is contemplated, not by arbitration. See, Matter of Tsombikos v Brager, 147 Misc.2d 995, 559 N.Y.S.2d 460 (Sup. Ct., New York Co., 1990).

Section 35 of the Lien Law expressly provides that the filing of a notice of lien shall not be a waiver of any right to arbitrate, and it has been held that a lienor cannot be stayed from proceeding “except through arbitration” since there is no power to discharge a mechanic’s lien except in the manner provided in section 19 of the Lien Law. See, Matter of R.G.R. Constr. Corp. v Robert J. Harder, Inc., 19 Misc.2d 920, 192 N.Y.S.2d 1010 (Sup. Ct., Queens Co., 1959). Where the mechanic’s lienor is compelled to arbitrate, the arbitrators’ decision as to the value of the labor and materials is conclusive as between all parties to the arbitration in any action to foreclose the lien. See, Mancini v Stern, 28 Misc.2d 77, 210 N.Y.S.2d 329 (Sup. Ct., Queens Co., 1960). However, any award made by the arbitrators is not conclusive as to the validity of the mechanic’s lien, or as to whether the amounts so found to be due are chargeable against the surety who bonded the lien. See, Cincrete Corp. v Sansouci Realty Corp., 7 Misc.2d 717, 168 N.Y.S.2d 973 (Sup. Ct., Queens Co., 1957).

Based upon the foregoing, the petitioners’ application to confirm the arbitration award of the Rabbinical Court, dated August 21, 2023, against respondent, Parkview, is granted. Here, Parkview unilaterally decided that the petitioners waived arbitration by filing a plenary action against the respondents. Parkview did not move to stay arbitration before the final arbitration date and did not move to vacate the instant arbitration award. Instead, Parkview made a non-binding determination to no longer participate in arbitration that was not based on a ruling from the arbitrator or court.

Under the totality of circumstances, the court finds that the petitioners did not waive arbitration by filing the plenary action and their conduct was consistent with the assertion of a right to arbitrate. Specifically, the petitioners preserved their rights to arbitration against Parkview by only seeking a money judgment against Klein and 329 and explicitly omitting Parkview from the ad damnum clauses of each cause of action in the plenary action. The petitioners further preserved their rights to arbitration as the complaint explicitly states in paragraph 13 that the plenary action does not seek monetary relief against Parkview since those claims are being addressed in arbitration. The court also finds that the petitioners had an urgent need to take immediate action which could not await the appointment of arbitrators since the power to enforce a mechanic’s lien has been “statutorily bestowed exclusively on the courts” and an arbitration proceeding cannot be substituted for a judicial decree. See, Maross Constr. v Central N.Y. Regional Transp. Auth., *supra*. See, Matter of Tsombikos v Brager, *supra*. The arbitration proceedings have resulted in an adjudication of the amount due and owing from Parkview to the petitioners as subcontractors, whereas the plenary action to foreclose on the mechanic’s lien will determine if this amount due is chargeable against the property. See, Matter of Brescia Constr. Co. v Walart Constr. Co., 264 N.Y. 260 (1934). In opposition, respondents failed to satisfy any of the statutory grounds for vacating or modifying the arbitration award pursuant to CPLR 7511.

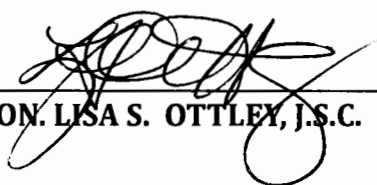
Based upon the foregoing, the court hereby grants the petitioners’ motion for an order pursuant to CPLR 7510 confirming the arbitration award of Givas Hamorah Rabbinical Court, dated August 21, 2023, in the amount of \$102,000.00 against Parkview, and it is hereby

ORDERED that the arbitration award of Givas Hamorah Rabbinical Court, dated August 21, 2023, in the amount of \$102,000.00 against Parkview is confirmed, along with costs and expenses, including attorney's fees. Respondent shall pay reasonable attorney's fees pursuant to 11 NYCRR 65-4.10 [j][4], to be determined by the court upon submission of an affirmation for legal services.

Petitioner is hereby granted leave to serve and file an affirmation setting forth its reasonable attorney's fees in this action for consideration by this court

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
December 3, 2025



HON. LISA S. OTTLEY, J.S.C.

KINGS COUNTY CLERK
FILED
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