

Fora Fin. Asset Securitization 2021, LLC v Platinum Water & Fire Restoration LLC
2025 NY Slip Op 35503(U)
February 13, 2025
Supreme Court, Nassau County
Docket Number: Index No. 611348/2024
Judge: Denise L. Sher
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Supreme Court Justice

FORA FINANCIAL ASSET SECURITIZATION,
2021, LLC,

Plaintiff,

-against-

PLATINUM WATER AND FIRE RESTORATION LLC
d/b/a SERVICEMASTER RESTORATION BY PWF
and MICHAEL LARSEN,

Defendants.

TRIAL/IAS PART 27
NASSAU COUNTY

Index No.: 611348/2024
Motion Seq. No.: 01
Motion Date: 11/06/2024
XXX

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affirmation and Exhibits, Memorandum of Law	1

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendants move, pursuant to CPLR §§ 3211(a)(2), for an order dismissing plaintiff's Verified Complaint. No opposition was submitted to the motion.

Plaintiff commenced the instant action with the filing of a Summons and Verified Complaint on or about June 28, 2024. *See* Defendants' Affirmation in Support Exhibit A. Issue was joined on or about September 5, 2024. *See* Defendants' Affirmation in Support Exhibit B.

In support of the motion, counsel for defendants asserts, in pertinent part, that, "Defendants move to dismiss the Complaint due to the fact that the Court lacks subject matter jurisdiction over the action. Plaintiff's Complaint contends that Defendants agreed

to submit to the exclusive jurisdiction and venue of any court in the State of New York....

However, the subject agreement contains a provision that provide for the arbitration of *all* disputes and an express waiver by both Plaintiff and Defendants to go to Court.

Accordingly, Plaintiff's counsel's decision to bring this matter in the Supreme Court of the County of Nassau was incorrect, and the Court does not have jurisdiction over this matter.... The Agreement contains an arbitration clause (Agreement, §21), which states that the purchaser (Plaintiff and/or Plaintiff's assignor) *waives the right to have Courts other than small-claims courts*, to resolve disputes. The Agreement states, clearly and unequivocally, that the Parties 'waive the right to go to Court.' ... The Agreement expressly and unequivocally establishes that the parties 1) agreed to 'waive the right to go to Court'; 2) agreed to waive the right to 'Have courts, other than small-claims courts, resolve Disputes'. The Agreement leaves no doubt that this action is included in the term 'Disputes' --- as set forth in the Agreement:... Further, Section 7.5 of the Agreement provided that any remedies were 'subject to arbitration as provided in Section 21':..." See NYSCEF Document No. 3.

Section 21 of the Purchase and Sale of Future Receivables Agreement (Revenue Advance) reads, "**ARBITRATION** By signing this Agreement, you agree to the terms of this Arbitration clause ('Clause'). **Read the terms of this Clause carefully, as it substantially affects your rights.** **Background.** In arbitration, a third party ('Arbitrator') resolves Disputes in a hearing ('hearing'). The Parties waive the right to go to court. The Parties waive jury trials. The arbitration hearing is private and less formal than court. Arbitrators may limit pre-hearing fact finding, called 'discovery.' The decision of the Arbitrator is final. **Scope.** This Clause governs the Purchaser, Seller(s), and any Guarantor(s) (together, the 'Parties'), their heirs, successors, assigns, and third parties related to any Dispute.

In this Clause, the word ‘Disputes’ has the broadest possible meaning. This Clause governs all ‘Disputes’ involving the Parties to this Agreement and/or Purchaser’s servicers, assignees, and agents. This includes all claims even indirectly related to your application and agreement(s) with us. This includes claims related to information you previously gave us. It includes all past agreements. It includes extensions, renewals, refinancing, or payment plans. It includes claims related to collections, privacy, and customer information. It includes disputes based upon contract, tort, fraud and other intentional torts, constitution, statute, regulation, ordinance, common law and equity and claims for monetary damages and injunctive or declaratory relief. It includes claims related to setting aside this Clause. It includes claims about the Clause’s validity and scope. It includes claims about whether to arbitrate. **Waiver. You (Seller(s) and any Guarantor(s)) and we (Purchaser) waive the right to: (1) Have juries resolve Disputes; (2) Have courts, other than small-claims courts, resolve Disputes; (3) Serve as a private attorney general or in a representative capacity; and (4) Participate in a class action.**

UNDER THIS CLAUSE, COURTS AND ARBITRATORS CANNOT ALLOW CLASS ACTIONS. You and we waive the right to participate in a class action as a representative and as a member. Only individual arbitration or small-claims courts will resolve Disputes. You and we waive the right to have representative claims (emphasis added).” See Plaintiff’s Affirmation in Support of Motion (Seq. No. 03) Exhibit E.

It is evident from a plain reading of the terms of the subject Purchase and Sale of Future Receivables Agreement (Revenue Advance) that plaintiff and defendants agreed to “**wave the right to: ... (2) Have courts, other than small-claims courts, resolve Disputes;**”

as well as agreed that “only individual arbitration or small-claims courts will resolve Disputes.” See *id.*

Despite knowing this specific provision that was in the Agreement created by its client, counsel for plaintiff made the incorrect choice to bring this matter in the Supreme Court of the County of Nassau, and not in a small-claims court, nor in an arbitration forum.

It is evident, therefore, that, pursuant to the terms of the subject Agreement, this Court does not have jurisdiction over this matter.

Accordingly, defendants’ motion, pursuant to CPLR §§ 3211(a)(2), for an order dismissing plaintiff’s Verified Complaint, is hereby **GRANTED**.

This constitutes the Decision and Order of this Court.

ENTER:


DENISE L. SHER, J.S.C.
XXX

Dated: Mineola, New York
February 13, 2025

ENTERED

Feb 20 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE