

Bletas v Subway Intl. B.V.

2011 NY Slip Op 32327(U)

August 29, 2011

Supreme Court, New York County

Docket Number: 116156/10

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE

PART 10

Justice

Bletas, Panayota and Bletas, John

Petitioners,

INDEX NO.

116156/10

- v -

MOTION DATE

001

Subway International, B.V.,

MOTION SEQ. NO.

MOTION CAL. NO.

Respondent

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, the court's decision on this (these) motion (s) is as follows:

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Petition and Motion (s) decided in accordance with the accompanying memorandum decision, order and Judgment

Dated: 8/29/11

Hon. Judith J. Gische, J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE SETTLE/SUBMIT ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10

-----x
BLETAS, PANAYOTA, and BLETAS, JOHN,

Petitioners,

-against-

SUBWAY INTERNATIONAL B.V.,

Respondent.
-----x

Decision, Order and Judgment
Index No. 116156/10

Seq No.:
001, 003, 004, 006, 007

Present:
Hon. Judith J. Gische, JSC

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	Numbered
<u>Mot Seq No. 1</u>	
Bletas Notice of Pet and Pet (vacate) w/DM affid, POA, exhs	1,2,3
<u>Motion Seq No. 3</u>	
Subway n/m (dismiss) w/SBM affirm, exhs	4
Bletas opp w/pb and JB opp, exhs	5
Subway reply w/SBM affirm	6
<u>Motion Seq No. 4</u>	
Bletas' n/m (renewal) w/PB affid	7
Bletas various affids, folders, exhs	8-22
Subway opp w/SBM affirm, exhs	23
Bletas reply w/PB affid, exhs	24
<u>Motion Seq No. 6</u>	
Bletas OSC (disqualify) w/PB affid, exhs	25
Subway opp w/MK affirm, exhs	26
Bletas reply w/exhs	27
Various orders	28
<u>Motion Seq No. 7</u>	
Bletas (stay proceeding) w/PB affid, exhs	29
Subway opp w/SBM affirm, exhs	30
Reply w/SBM affirm, exh	31
Transcript of OA 6/16/11	32

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE J.:

Motion sequences 001, 003, 004, 006, 007 are consolidated for decision. In the instant proceeding, petitioners Panayota Bletas (Ms. Bletas) and her brother John Bletas seek to vacate two final arbitration awards, one dated August 2, 2010 (the August 2 Award), and the other dated August 11, 2010 (the August 11 Award).

The August 11 Award was rendered in an arbitration brought by respondent Subway International B.V. (Subway) against Ms. Bletas, related to a franchise agreement entered into between them on March 31, 2005, for Subway Restaurant # 36829, located in Greece. In the August 11 Award, Subway was awarded 11,367.82 euros for monies due for royalties and advertising fees.

The August 2 Award was rendered in an arbitration brought by Subway against both petitioners, related to a March 31, 2004 franchise agreement entered into between Subway and the petitioners for Subway Restaurant #33926, also located in Greece. In the August 2 Award, the arbitrator awarded 13,868.90 euros to Subway and 5,600 euros, for the costs of document production and translation, to petitioners, for a net award of 8,268.90 euros to Subway.

Ms. Bletas brought a prior proceeding (*Bletas v Subway Intl. B.V.*, index no. 111996/10, Sup Ct, NY County, Gische J.) (hereinafter "Matter 111996/10"), in which she sought to modify or vacate the August 11 Award. On December 9, 2010, this court denied her petition, finding that service was improper to confer jurisdiction over Subway, and that the petition "otherwise lacks merit." Petitioners also brought a prior proceeding (*Bletas v Subway Intl. B.V.*, index no. 111997/10, Sup Ct, NY County, Schlesinger, J.) (hereinafter "Matter 111997/10"), in which they

sought to vacate the August 2 Award. On November 10, 2010, that proceeding was dismissed without prejudice, on the basis of improper service.

The five motions in this proceeding, consolidated for decision, are: a) motion sequence 001, in which petitioners seek to vacate the August 2 and August 11 Awards; b) motion sequence 003, in which Subway moves to dismiss the petition; c) motion sequence 004, in which petitioners move for an order granting renewal of Ms. Bletas's motion, in Matter 111996/10, to vacate the August 11 Award; d) motion sequence 006, in which petitioners move to disqualify Subway's attorneys; and e) motion sequence 007, in which petitioners seek a stay of the instant proceeding.

In motion sequence 001, petitioners seek to vacate the underlying arbitration awards. In support of their petition, they submit the two memoranda of law that they submitted in support of Matters 111996/10 and 111997/10. In seeking to vacate the August 2 Award, they argue that the arbitrator credited the testimony of witnesses that she should not have believed, that there was corruption and fraud, that the arbitrator exceeded her powers by awarding types of relief not permitted by applicable law, and that the arbitrator is guilty of misconduct by refusing to hear relevant evidence, thereby prejudicing the rights of petitioners. In seeking to vacate the August 11 Award, Ms. Bletas argues that the award is based on an error in law or a manifest disregard of the law.

In motion sequence 003, Subway moves, pursuant to CPLR 3211, to dismiss the petition on the grounds that: a) the court lacks personal jurisdiction over Subway; b) the petition fails to state a cause of action; and c) petitioners' claims are barred by the doctrines of collateral estoppel and res judicata.

Subway asserts that the court lacks jurisdiction over it, such that the proceeding should

be dismissed. Subway states that petitioners sent a Connecticut State Marshal to its Franchise World Headquarters in Milford, Connecticut. Subway explains that it is a Netherlands corporation and that petitioners did not serve anyone authorized to accept service on its behalf, pursuant to CPLR 311 (a) (1), and did not otherwise properly effectuate service under New York law. Subway further notes that, even if this service had been effective, petitioners have not provided any competent affidavit of service.

Pursuant to CPLR 311 (a) (1), personal service upon any domestic or foreign corporation can be made by delivering the summons “to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service.” For the purported affidavit of service, petitioners submit a document dated December 15, 2010, that states, in part:

“The within and foregoing is the original Notice of Petition, Verified Petition, Request for Judicial Intervention, Affidavit of Dorotheous Mafidis, Power of Attorney I made service upon the within named.....

SUBWAY INTERNATIONAL, BV,,,,
I met with two Attornies at 325 Bic Druve, Milford, Ct. Afte4r a lengthy discussion, where I set forth all Positions, they refused to accept service, I left the service with the Receptionist to send up to the Legal Department.

and by leaving a true and attested copy in the manner described with my endorsement thereon
The within and forgoing is the original Notice of Petition, Verified Petition, Request for Judicial Intervention Affidavit of Dorotheous Mafidis, Power of Attorney with my doings hereon endorsed.”

(Text as in original).

The bottom of the document states ATTEST and is signed by Robert M. Hardiman, who, according to the document, is a State Marshal of New Haven County, Connecticut. This service is not adequate to satisfy CPLR 311 (a) (1), as it does not indicate that the petition and other

documents were delivered to any of the people set forth in CPLR 311 (a) (1) to receive service.

The instant petition otherwise lacks merit. Pursuant to CPLR 7511 (b) (1), an arbitration award shall be vacated if the court finds that the rights of a party “were prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral ...; or (iii) an arbitrator ... exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made ...”

Many of the papers submitted by petitioners are not set forth or submitted to the court in the standard manner, making it challenging to address all of their arguments and positions. The court also notes that petitioners at one point refer to themselves as “foreign pro se litigants,” yet at other times seem to be represented by and/or assisted by a Greek and Canadian attorney.

As this court found in Matter 111996/10, Ms. Bletas did not meet the “heavy burden” of proving a manifest disregard for the law. *Bletas v Subway Intl. B.V.*, index no. 111996/10, (Gische, J., December 9, 2010). “Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined.” *Matter of Goldfinger v Lisker*, 68 NY2d 225, 231 (1986). Petitioners’ allegations are not supported with sufficient evidence to meet the heavy burden of vacating an arbitration award pursuant to CPLR 7511. Thus, Subway’s motion to dismiss is granted and the petition is denied. Petitioners’ three other motions are unavailing and do not affect the court’s dismissal of the proceeding and denial of the petition.

In motion sequence 004, petitioners move, pursuant to CPLR 2221, for an order granting renewal of its September 10, 2010 motion, in Matter 111996/10, to vacate the August 11 Award. Petitioners contend that their motion to renew is based on new facts that have occurred that were not offered on the prior motion and which would change the prior determination. Petitioners

argue that there is reasonable justification for their failure to present such facts on the prior motion.

In support of the motion, petitioners submit several manila folders, with documents that purport to, among other things, indicate that petitioners' attorney was threatened and blackmailed, and that certain documents were forged and tampered with in the arbitration. Petitioners thus maintain that they have offered new facts as to "criminal offenses" committed by Subway and its attorney that are serious enough to change any prior determination. Petitioners also refer to what they describe as new facts concerning the bias and prejudice of the judge presiding in a case pending in federal court in Connecticut, where Subway has commenced actions to confirm the August 2 and August 11 Awards.

None of the documents submitted by petitioners persuades this court that there are facts that have subsequently arisen that were overlooked when, in Matter 111996/10, the court denied the petition that sought to modify and vacate the August 11 Award.

In motion sequence 006, petitioners move to disqualify Subway's attorneys from the instant proceeding "on the basis of unprofessional and bad faith behavior, misconduct, fraud and 'conflict of interest.'" Petitioners allege that oral arguments were scheduled in this proceeding without her being informed, and that Subway's attorneys misled her as to dates they intended to adjourn. Petitioners note that they do not have a New York address and that, as foreign "pro se" litigants, they do not now know how to use the Court Scroll System.

"A party seeking to disqualify an attorney or a law firm, must establish (1) the existence of a prior attorney-client relationship and (2) that the former and current representations are both adverse and substantially related." *Solow v Grace & Co.*, 83 NY2d 303, 308 (1994). Petitioners do not set forth allegations or proof of any conflict of interest on the part of Subway's attorneys.

Rather, petitioners contend that Subway's lawyers should be disqualified because of their alleged misbehavior, including allegedly misleading Ms. Bletas as to dates of oral argument on certain motions before this court. The motion is denied.

Subway states that its request to adjourn a March 9, 2011 oral argument on petitioners' motion to compel did not affect two other motions scheduled for argument on that date. Subway asserts that its counsel did not have a duty to remind petitioners that oral argument on other motions of petitioners were also scheduled for that date. Subway also notes that petitioners' motion to disqualify Subway's attorneys in the federal action in Connecticut was denied on May 3, 2011.

In motion sequence 007, petitioners move, pursuant to CPLR 2201, for a stay of this proceeding. CPLR 2201 states that "[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." Petitioners assert that, in March of 2011, upon learning about the purportedly unethical behavior of Subway's attorneys relating to the scheduling of oral arguments, Ms. Bletas collapsed outside this courthouse and was admitted to the emergency room of St. Luke's Roosevelt Hospital. She contends that, since then, she has been taking medication and receiving treatment.

Petitioners submit medical documentation, including an April 14, 2011 medical report, translated from Greek into English, which states that Ms. Bletas "suffers from stress disorders, panic and intense phobias in the context of depression." It also advises that she needs "up to two months of relaxation and avoidance of transportation," after which time she will be re-examined. The court has determined that petitioners are not entitled to the relief that they seek in the petition. Therefore, staying the matter would only delay, without affecting, the final result of the

instant proceeding. Thus, there is no reason to stay the proceeding and motion sequence 007 is denied.

Accordingly, it is

ORDERED that the motion to dismiss, sequence number 003, is granted; and it is further

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondent as taxed by the Clerk; and it is further

ORDERED that petitioners' motions, sequence numbers 001, 004, 006 and 007, are denied; and it is further

ORDERED that this constitutes the decision, order and Judgment of the court.

Dated: New York, New York
August 21, 2011

ENTER:

J.S.C. 

HON. JUDITH J. GISCHE
J.S.C.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).