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| Echavarria v David Lawrence Studio, LLC |
| 2012 NY Slip Op 32027(U) |
| July 24, 2012 |
| Sup Ct, NY County |
| Docket Number: 112246/20 |
| Judge: Paul Wooten |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

SEBASTIAN ECHAVARRIA and NATALIA ECHAVARRIA,

Plaintiffs,

-against-

DAVID LAWRENCE STUDIO, LLC.,
DAVID LAWRENCE, CLARK MAYFIELD
NOEL BRICENO, JANE DOE, IDENTIFIED
HEREIN AS "RAI,"

Defendants.

INDEX NO. 112246/10

SEQUENCE NO. 001

FILED

AUG 02 2012
NEW YORK
COUNTY CLERK'S OFFICE

The following papers numbered 1 to 5 were read on this motion by defendants for an order and judgment pursuant to 7503 seeking to stay the proceedings and compel arbitration.

| | PAPERS NUMBERED |
|---|-----------------|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | 1, 2 |
| Answering Affidavits — Exhibits (Memo) | 3, 4 |
| Replying Affidavits (Reply Memo) | 5 |

Cross-Motion: Yes No

David Lawrence Studio, LLC., David Lawrence, and Clark Mayfield (collectively "defendants") bring the herein motion by Order to Show Cause (OSC), pursuant to CPLR 7503, seeking to stay this action and to compel arbitration. Plaintiffs oppose this application and cross-move for sanctions pursuant to 22 NYCRR § 130-1.1 and for attorneys fees. Defendants are in opposition to plaintiffs' cross-motion and assert, among other things, that defendants should be entitled to attorneys fees and that plaintiffs and or their attorneys should be sanctioned for bringing a frivolous cross-motion.

BACKGROUND

The parties entered into an agreement (Project Agreement) dated October 8, 2009 and signed on November 4, 2009 for the defendants to undertake an "interior design project" of plaintiffs' home located in Bridgehampton, New York. Section two of the Project Agreement

stated that the defendants were to provide "Design Services" at a flat fee and section three entitled "Interior Architectural Consulting /Construction Management," stated, *inter alia*, that the "Interior Architectural Consulting (if any) and Construction/Contractor Management (if any) will happen in tandem with Design Services" (Defendants' OSC, exhibit B, sections 2 and 3). Moreover, section three also stated that "the following items [are] considered part of this service, but not limited to: drafting architectural drawings, including: plans, elevations & other related drawings. . . drafting technical drawings for Reflected Ceiling Plans & Power Plans. . . coordinating and reviewing drawings for submission to respective building department's, boards, commissions, townships, agencies, et al. . . managing, supervising and providing comments on the quality of work being performed by outside contractors sub contractors and specialty trades people . . . (id. at section 3). Additionally, the Project Agreement also contained an arbitration provision at section 13, which provided that "All disputes arising under this Agreement will be settled by arbitration in accordance with the rules of the American Arbitration Association. . . A waiver of a breach of any of the provisions of this agreement will not be construed as a continuing waiver of other breaches of the same or other provisions hereof" (id. at p. 6, section 13).

There came a time after the interior design commenced that plaintiffs became dissatisfied with defendants' services and as a result, on September 16, 2010, plaintiffs commenced this action alleging breach of contract, unlawful conversion, fraud and deceptive business practices and sought damages in excess of \$5,000,000. Now before the Court is defendants' motion, pursuant to CPLR 7503(a), seeking to stay this proceeding and compel arbitration pursuant to section 13 of the Project Agreement. Plaintiffs are in opposition to defendants' motion and also cross-move for sanctions against defendant pursuant to 22 NYCRR § 130-1.1. Plaintiffs assert that defendants, in preparing detailed floor plans and architectural drawings, and in managing and supervising the work performed by the electricians, carpenters, and painters, among other things, acted as unlicensed architects and

home improvement contractors in violation of Education Law § 7302, Business Corporation Law § 1503(a) and the Suffolk County and Town of Southampton Administrative Codes. Plaintiffs aver that because defendants provided architectural and home improvement contractor services to plaintiffs without a license to do so, the Project Agreement including the arbitration provision is rendered void and unenforceable. Plaintiffs also claim that defendants' motion to stay the proceedings and compel arbitration is frivolous and as a consequence defendants should be directed to pay plaintiff's reasonable attorney fees in the amount of \$8,570.00 and should be sanctioned not less than \$10,000.00 (see plaintiffs' affirmation in opposition ¶¶ 3-11).

In opposition to plaintiffs' cross-motion, defendants proffer that they did not hold themselves out as licensed architects in the Project Agreement nor did they provide architectural services to the plaintiffs. The defendants also state that the complaint does not allege that the defendants did so. Defendants maintain that section 3 of the Project Agreement relied upon by the plaintiffs in opposition, only applies if the client is having interior architecture done. Defendants claim that this section is inapplicable here as the plaintiffs only contracted with the defendants for interior decorating services. Moreover, defendants assert that the Project Agreement specifically states that any drawings created by defendants proposing millwork or renovations are for design intent only, and any architectural drawings must be signed and sealed by a licensed architect. This language, defendants aver, is further evidence that defendants were not acting as architects, but rather as interior designers. Furthermore, defendants proffer that the cases relied upon by the plaintiffs are distinguishable to the case at bar and the Project Agreement entered into between the parties is not void. Based on the foregoing, defendants claim that plaintiffs' cross-motion for sanctions is itself frivolous and on that basis plaintiffs should be sanctioned in the amount of \$10,000.00.

In reply, plaintiffs claim that while defendants were initially retained to provide interior design services, the actual services provided exceeded interior design services such that

defendants acted as unlicensed home improvement contractors and architects. Thus the Project Agreement is void and section 13 is unenforceable.

DISCUSSION

CPLR 7503(a) provides as follows:

(a) Application to compel arbitration; stay of action. A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.

In order to compel arbitration pursuant to a contractual agreement, there must be "no substantial question [as to] whether a valid agreement was made or complied with" (CPLR 7503[a]; see *Matter of Cassone*, 63 NY2d 756 [1984]). In deciding an application to compel arbitration pursuant to CPLR 7503(a), "the court is required to first make a determination whether the parties have entered into a valid arbitration agreement and, if so, whether the issue sought to be submitted to arbitration falls within the scope of that agreement" (*Edgewater Growth Capital Partners, L.P. v Greenstar N. Am. Holdings, Inc.*, 69 AD3d 439, 439 [1st Dept 2010], citing *Koob v IDS Fin. Servs.*, 213 AD2d 26 [1st Dept 1995]). "On a motion to compel or stay arbitration, the court's role is that of gatekeeper, limited to deciding only three threshold questions: whether the parties made a valid agreement; if so, whether the parties complied with the agreement; and whether the claim sought to be arbitrated is barred by the statute of limitations" (*Cooper v Bruckner*, 21 AD3d 758 [1st Dept 2005]).

The Court finds that defendants have met their burden of establishing that this action should proceed to arbitration pursuant to section 13 of the Project Agreement. The Court also

finds that there is no substantial question that there is a valid agreement among the parties and contrary to the plaintiffs' contentions, the Project Agreement and arbitration provision contained therein are not void. After reviewing the documentary evidence submitted, including plaintiffs' submissions of emails and floor plans, the Court determines that defendants did not hold themselves out to provide licensed architectural services, nor did they actually engage in unauthorized or unlicensed architectural services in violation of Education Law and Business Corporation Law. Unlike in *Greenberg v SNA Consultants, Inc.* (55 AD3d 418 [1st Dept 2007]), which plaintiffs rely on in opposition, defendants here characterized the work being contracted for as "interior design services" throughout the Project Agreement. Furthermore, the floor plans drawn up by defendants were not architectural in nature and did not include plans for substantive changes to the structure of the plaintiffs' home, nor did the supervision of the painters amount to architectural or home improvement contractor services (*cf. Greenberg v SNA Consultants, Inc.*, 55 AD3d 418, 418 [1st Dept 2007]). Moreover, plaintiffs' allegations that defendants acted as unlicensed home improvement contractors and architects is unsupported by the allegations in the complaint, wherein plaintiffs describe the defendants as interior designers and state that they retained the defendants to "provide interior design services for plaintiffs' property" (Notice of Cross-Motion, exhibit 1, ¶ 8). Arbitration is the proper avenue for resolution of this matter as the nature of the dispute between the parties falls within the scope of the agreement. Accordingly, the Project Agreement between the parties is valid and the arbitration provision is enforceable. Therefore, defendants' motion seeking to stay the proceeding and to compel arbitration is granted (*see Stark v Molod Spitz DeSantis & Stark, P.C.*, 9 NY3d 59, 66 [2007] [New York Courts have "a long and strong public policy favoring arbitration . . . [and] New York Courts interfere as little as possible with the freedom of consenting parties to submit disputes to arbitration"] [internal quotation marks and citations omitted]).

The Court now turns to plaintiffs' cross-motion seeking the imposition of attorneys' fees

and sanctions against the defendants. Part 130 of the Rules of the Chief Administrator permits courts to sanction attorneys for engaging in frivolous conduct, which includes conduct: (1) "completely without merit in law"; (2) "undertaken primarily to... harass or maliciously injure another"; or (3) "assert[ing] material factual statements that are false" (see 22 NYCRR § 130-1.1; *Tavella v Tavella*, 25 AD3d 523, 524 [1st Dept 2006]). The Court finds that defendants' conduct in bringing the herein motion was not frivolous within the meaning of 22 NYCRR § 130-1.1 and therefore plaintiffs' cross-motion is denied. Moreover, defendants' request in their opposition to the cross-motion for sanctions against the plaintiffs is also denied.

Upon the foregoing papers, it is,

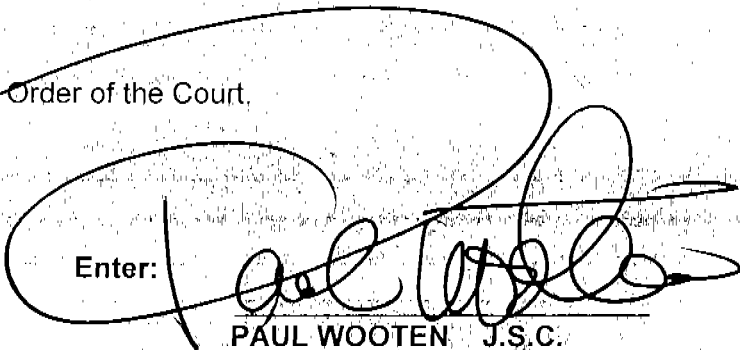
ORDERED that defendants David Lawrence Studio, LLC, David Lawrence, and Clark Mayfield's motion for a stay of the proceeding and to compel arbitration, is granted, and it is further,

ORDERED that plaintiff's cross-motion for attorneys' fees and sanctions pursuant to 22 NYCRR § 130-1.1 is denied, it is further,

ORDERED that defendant David Lawrence shall serve a copy of this order on all parties.

This constitutes the Decision and Order of the Court.

Dated: 7-24-12

Enter: 
 PAUL WOOTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 Check if appropriate: : DO NOT POST REFERENCE

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