

NY Dealer Stations, LLC v Shari Realty, LLC

2011 NY Slip Op 32665(U)

October 7, 2011

Supreme Court, New York County

Docket Number: 107558/2011

Judge: Saliann Scarpulla

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

PRESENT: _____
Justice

PART 19

My Dealer Station, Inc
- v -
Shari Realty, Inc

INDEX NO. 107558/11
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

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

FILED PAPERS NUMBERED

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

Answering Affidavits -- Exhibits _____ **OCT 2 2011**

Replying Affidavits _____

NEW YORK
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Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this ~~motion~~ *Article 75 proceeding*
is decided in accordance with the accompanying
memorandum decision.

Dated: 10/7/11

Parvinder Singh
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X
NY DEALER STATIONS, LLC, AMSTERDAM 181
REALTY, LLC, JAMES WEIL AND
LEON SILVERMAN

Petitioners,

- against-

Index No.: 107558/2011
Submission Date: 07/27/11

SHARI REALTY, LLC

Respondent.

FILED

OCT 12 2011

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----- X
For Petitioners: Kornstein Veisz Wexler & Pollard LLP
757 Third Avenue
New York, NY 10017
For Respondent: Rubin Ferziger
708 Third Avenue, Suite 2010
New York, NY 10017

Papers considered in review of this motion for summary judgment:

Verified Petition 1
Mem of Law in Support of
Verified Petition 2
Mem of Law in Opposition
to Motion 3

HON. SALIANN SCARPULLA, J.:

In this CPLR 7503 proceeding, petitioners NY Dealer Stations, LLC (“NYDS”),
Amsterdam 181 Realty, LLC (“Amsterdam 181”), James Weil and Leon Silverman
(collectively “Petitioners”) move to stay or dismiss arbitration demanded by Respondent
Shari Realty, LLC (“Shari Realty”). Petitioners argue that Shari Realty is demanding
arbitration based on a nonbinding letter of intent.

The underlying dispute arises over rights to two parcels of real property on Amsterdam Avenue between 180th and 181st streets in Manhattan. Shari Realty owns a parcel at the corner of 181st Street and Amsterdam Avenue (the “Shari Realty Site”). This property is adjacent to a parcel on the corner of 180th Street and Amsterdam Avenue (the “Motiva site”), which Motiva Enterprises, LLC, an assignee of Shell Oil Company, previously occupied. Motiva Enterprises, LLC also held a leasehold interest on the Shari Realty site which included a purchase option on that site.

On or about November 30, 2010, Shari Realty and NYDS signed a Letter of Intent (LOI). In the introduction, Shari Realty and NYDS confirmed their “mutual intent to enter into a definitive ground lease agreement” for the Shari Realty site. In Paragraph 5, NYDS “hereby” agreed to waive the Shari Realty site purchase option. The LOI also included an arbitration clause in Paragraph 8.

However, paragraph 21 stated that, with the exception of paragraphs 4 and 16, the LOI would not be binding on either NYDS or Shari Realty “until the formal ground lease is executed between the parties setting forth all material terms . . .” Paragraph 4 stated that NYDS would use its best efforts to acquire the Motiva site and paragraph 16 stated that Shari Realty would not try to acquire or make agreements with other parties to acquire the Motiva site.

Amsterdam 181 was incorporated after the drafting of the LOI. Defendants James Weil (“Weil) and Leon Silverman (“Silverman”) are members of both NYDS and

Amsterdam 181. Amsterdam 181 filed its certificate of Formation with the State of Delaware on January 12, 2011 and was registered to do business in the State of New York on January 24, 2011. On or about January 24, 2011, Amsterdam 181 acquired the fee interest in the Motiva site and the leasehold interest in the Shari Realty site. It subsequently sent a written notice to Shari Realty to exercise the site's purchase option. In response, Shari Realty sent Petitioners a Demand for Arbitration seeking performance of the LOI.

Petitioners now move to dismiss or stay arbitration. They argue that because the LOI expressly states in paragraph 21 that it is not binding until the parties execute a formal ground lease, the arbitration provision is non-binding. Petitioners further argue that, in any event, the LOI does not bind Amsterdam 181, Wiel or Silverman because they are not signatories.

In opposition, Shari Realty maintains that the entire LOI was a binding agreement and that petitioners are taking paragraph 21 out of context. It further argues that the LOI binds Amsterdam 181, Wiel and Silverman even though they were not signatories because they knowingly received direct benefits under the agreement. Finally, Shari Realty argues that Petitioners violated their implied contractual duty of good faith and fair dealing.

Discussion -

Courts will not compel arbitration unless the parties “expressly agreed to arbitrate their disputes.” *Schubtex, Inc. v. Allen Snyder, Inc.*, 49 N.Y.2d 1, 6 (1979). Arbitration agreements are themselves contracts, thus courts in CPLR 7503 proceedings limit review to the agreements’ terms and will not rewrite or impose additional terms. *Salvano v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 85 N.Y.2d 173, 182 (1995). Arbitration clauses in contracts that are invalid or void are unenforceable. *Tarrytown v. Woodland Lake Estates, Inc.*, 19 N.Y.2d 660, 661 (1967).

Where, as here, one party attempts to bind another through an LOI, courts look to a LOI’s language to determine whether the parties intended it to be a binding contract. *See Aksam v. Ju*, 21 A.D.3d 260, 261-62 (1st Dept. 2005). “Where the written exchanges between parties clearly establish that the agreement was to take effect only after it had been reduced to a formal written document signed by both parties, there is no contract as a matter of law.” *Schomann Entertainment Corp. v. Fribley*, 167 A.D.2d 808, 809 (3rd Dept. 1990).

Here, by its express terms, the LOI was a nonbinding agreement. Paragraph 21 clearly states the LOI would not be binding before the ground lease’s execution, which never occurred. Furthermore, the letter’s introduction stated that it confirmed the parties’ “mutual intent to enter a definitive ground lease agreement,” not to create a binding contract. The only binding provisions were paragraphs 4 and 16, neither of which

included an arbitration clause. *See Hollinger Digital, Inc. v. LookSmart,-Ltd.*, 267 A.D.2d 77, 77 (1st Dept. 1999) (holding that a letter agreement was not binding contract where the agreement “expressly stated their intention not be bound until a stock purchase agreement was executed and all requisite consents were delivered”). Thus, the LOI’s arbitration clause is unenforceable. *See Tarrytown*, 19 N.Y.2d at 661.

Shari Realty argues that Petitioners incorrectly focus on paragraph 21, effectively nullifying the entire LOI. It argues that the letter as a whole shows that the parties intended it to be a binding agreement. But by its explicit terms, paragraph 21 does not nullify the entire LOI. As stated above, paragraphs 4 and 16 were binding even before NYDS and Shari Realty ground lease was executed. Moreover, courts do not disregard a contract clause simply because it makes an entire agreement nonbinding pending further written agreements. *See Hollinger Digital, Inc.*, 267 A.D.2d at 77 (1st Dept. 1999)

Shari Realty further argues that Paragraph 5's purchase option waiver was a binding agreement because it was the consideration for Paragraph 16's exclusivity agreement. Even if this Court were to accept this argument, it would have no effect on the arbitration clause. In a CPLR 7503 proceeding, the Court’s sole responsibility is to determine the arbitration clause’s validity. Thus, the merits of Shari Realty’s underlying claims relating to the alleged violation of paragraph 5, as well as its claim that Petitioners violated their implied duty of good faith fair dealing, are beyond this Court’s review. *See Wyandanch Union Free Sch. Dist. v. Wyandanch Teachers Ass’n*, 48 N.Y.2d 669, 671

(1979) (decision to stay arbitration limited to interpretation of arbitration clause and does not include evaluating parties' "substantive rights and obligations"). Moreover, because the arbitration clause is nonbinding against any parties, this Court does not address whether the clause would have been binding against nonsignatories Amsterdam 181, Wiel and Silverman.

In accordance with the foregoing, it is hereby

ORDERED that the petition of NY Dealer Stations, LLC, Amsterdam 181 Realty, LLC, James Weil and Leon Silverman to stay and/or dismiss arbitration is granted; and it is further

ORDERED that petitioners are directed to settle judgment accordingly.

This constitutes the decision and order of the Court.

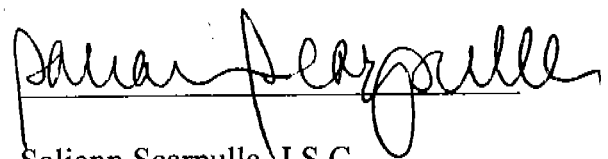
Dated: New York, New York
October 7, 2011

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OCT 12 2011

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Saliann Scarpulla, J.S.C.