SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

BRG SPORTS, LLC f/k/a EASTON-BELL SPORTS, LLC And BRG SPORTS, INC. f/k/a EASTON-BELL SPORTS, INC.	651405
Plaintiffs,	Index No. ~~651404~~/2014
-against-	DECISION AND ORDER
CHRIS ZIMMERMAN	Motion Sequence No. 001
Defendant.	

MELVIN L. SCHWEITZER, J.:

Petitioners move for a stay of arbitration pursuant to New York CPLR 7503 (b) in connection with the Demand for Arbitration filed by Respondent Chis Zimmerman.

Background

Chris Zimmerman (Zimmerman or Respondent) the respondent, previously served as the president of Easton Sports, Inc. (Easton), a subsidiary of Petitioners which manufactures baseball, softball, hockey, and lacrosse equipment. Zimmerman signed his Employment Agreement, effective as of March 1, 2010. In it Zimmerman was promised (a) an annual base salary; (b) a housing allowance; (c) an annual bonus based on target objectives; and (d) an equity participation compensation package. In December 2012, Easton amended the company's equity compensation plan, implementing a Cash Incentive Plan (CIP) intended to replace the Class B structure previously used. Zimmerman was granted 500 Units in the CIP program.

Easton began going through some financial struggles and in March 2013, Zimmerman and Easton parted ways. Upon leaving the company, Zimmerman was granted a severance

package exceeding $800,000 and in return signed a Release of All Claims on April 10, 2013. One year later, on April 17, 2014, Zimmerman served an Arbitration Demand on Petitioners. Respondent Zimmerman claims he is entitled to additional severance payments as per his employment agreement with Easton. Easton maintains that Zimmerman was adequately compensated upon leaving the company. Easton further argues that any claim involving Easton has either been released as per the April 10, 2013 Release Agreement, or, in the alternative, that the claims must be brought in a federal or state court in New York because Easton never agreed to arbitration. Zimmerman maintains that his dispute relates to his Agreement with Easton, which contains an arbitration provision.

Relevant Provisions

Several documents work together to create the management compensation package Zimmerman agreed to. Zimmerman's Employment Agreement (Agreement) outlined Zimmerman's overall compensation including profit sharing benefits he was to receive. Section 4(c) of the Agreement granted "6,885,671 Class B Common Units (the Units) of Easton-Bell Sports, LLC under the Easton-Bell Sports, LLC 2006 Equity Incentive Plan (the Plan)" to Zimmerman. Those Units had a target value of $4 million. The Units were subject to the terms and conditions of another document, the Easton-Bell Sports, LLC Sixth Amended and Restated Limited Liability Company Agreement (the LLC Agreement). The LLC Agreement outlined the structure of the equity participation package: section 5 defines how the payments were to be made by Easton, section 14 controls Easton's call rights with respect to the Units, and Exhibit 1 has relevant definitions including "Fair Market Value" to be paid upon calling the Units.

In 2012, Easton adopted the Cash Incentive Plan which was created to replace the Units. Under the new equity compensation scheme, Zimmerman's equity package was divide into two components: (a) a short-term guaranteed cash incentive (i.e. Cash Incentive Plan); and (b) a longer-term equity appreciation pool (i.e. B Units). The CIP defined the Fair Market Value of the CIP Units and required all persons participating in the CIP to "return to the Company for cancellation any outstanding "Class B Common Units. . . ." (Verified Petition to Stay Arbitration, Exh. C). Zimmerman signed his CIP form dated December 14, 2012. In addition to being granted CIP units, Easton restructured Zimmerman's Class B Units. In a separate Class B Common Unit Certificate, dated December 14, 2012, Zimmerman was granted 6,885,671.440 new Class B Units, the same amount of Units he had previously held. 3,442,835.720 Units were "Time-Vesting Units", vesting with Zimmerman at specific time intervals. The remaining 3,442,835.720 were "Performance-Vesting Units" which vested with Zimmerman if Easton met certain EBITDA targets. Missing from the CIP, the new Class B Certificate, and the LLC Agreement is any agreement to arbitrate.

Unlike the CIP and the LLC Agreement, the Agreement contains a mandatory arbitration provision. Section 24 of the Agreement states: "Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration. . . ." (Petition, Exh. A).

Discussion

Section 7503 (b) of the New York Arbitration Act authorizes parties to seek a stay of arbitration (New York CPLR 7503 (b)). A party seeking a stay of arbitration has the burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would

justify the stay. *Matter of Hertz Corp. v Holmes*, 106 AD3d 1001, 1002 (2d Dept 2013). Thereafter, the burden is on the party opposing the stay to rebut the prima facie showing by demonstrating, with clear and convincing evidence that the parties agreed to arbitrate the dispute at issue. *Gerling Global Reins. Corp. v Homes Ins. Co.*, 302 AD2d 118, 123 (1st Dept), *lv denied* 99 NY2d 511 (2003). New York courts favor arbitration as a matter of public policy because it conserves time and resources of the courts and the contracting parties. *See Matter of Smith Barney Shearson v Sacharow*, 91 NY2d 39, 49 (1997).

Class B Units

The Petitioners argue that Zimmerman's arbitration demand asserted claims under the LLC Agreement which does not contain any agreement to arbitrate. The LLC Agreement provides for jurisdiction and venue in the state and federal courts located in New York, NY "in connection with any action relating to this agreement." (Petition, Exh. B).

However, paragraph 4(c) of the Agreement expressly deals with the Class B Units under the company's equity incentive plan, which was intended to provide a target value of $4 million if Easton achieved certain EBITDA results of $130 million by the end of 2012. Any claim made by Zimmerman with regard to his Class B Units necessarily "aris[es] out of or relate[s] to" the Agreement and therefore emanates from Paragraph 24's arbitration provision.

The CIP Units

The Petitioners argue that the CIP Units granted to Zimmerman in December 2012 are not related to his employment agreement. Petitioners claims the CIP Units are subject to the terms and conditions of the LLC Agreement and could not be incorporated by reference into Zimmerman's employment agreement because the CIP was not created until 2 years after Agreement was made.

Respondent argues that the CIP Units are covered by paragraph 4(c) of his employment agreement. The court finds that *both* the Agreement and the LLC Agreement apply to the CIP Units. The CIP form, outlining the terms and conditions of the CIP specifically incorporates the LLC Agreement. However, the CIP, together with the new Class B units, was intended to replace the old Class B Unit structure. The CIP Agreement states, "In order to receive Units under the CIP, a prospective Unitholder must return to the Company for cancellation any outstanding 'Class B Common Units' that were previously issued. . . ." Zimmerman was granted old Class B Units in his Agreement with Easton. Because the CIP Units and the new Class B Units replace the old Class B Units, the court finds that by definition they "arise out of or relate to" the Agreement.

Even if the CIP Units are not intended to replace the old Class B Units, but are additional equity participation units, at a minimum they "arise under or relate to" the Agreement. Paragraph 4(c) of the Agreement governs "Equity Participation" and says, "Any further equity awards granted to the executive thereunder shall be at the discretion of the Board of Managers of the Parent." The Agreement specifically addresses the ability of the Board to grant additional equity to Zimmerman. Thus, regardless if the CIP Units are additional equity units, or a replacement of the old Class B Units, the CIP Units relate to the Agreement and are therefore subject to the arbitration provision.

The Release of Claims

The Petitioner also argues that Zimmerman executed a release of all claims on April 10, 2013, wherein he broadly agreed to release and discharge the company and its affiliates from any and all causes of action including any rights or claims "resulting from, arising out of, or connected with" his employment by the company or affiliates, or the termination of that

employment. However, the Release of Claims Zimmerman signed contains an exclusion. Excluded from the Release of Claims is "any claim arising under the terms of the [Employment] Agreement. . . ." The Court finds that Zimmerman's Class B Units and CIP Units "arise under the terms of the Agreement" and are therefore excluded from the Release of Claims.

Additionally, the Employment Agreement incorporates terms and conditions outlined in the LLC Agreement, the Equity Incentive Plan, and the Class B Certificate. Therefore, although the petitioners are right to argue that the LLC Agreement and the CIP apply here, they fail to establish that the Employment Agreement does not. At best for the Petitioners, there is a conflict of venue provisions. Easton specifically agreed to arbitration in its Agreement with Zimmerman. Applying New York Court's public policy favoring arbitration to the facts here at issue, the court holds that arbitration is the appropriate forum within which this dispute should proceed.

Conclusion

Accordingly, it is hereby

ORDERED Petitioners' motion to stay arbitration is denied.

Dated: June 24, 2014

ENTER:

J.S.C.

MELVIN L. SCHWEITZER