SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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ANTHONY VUKSANAJ,

Plaintiff,

Index No. 158355/2013

-against-

DECISION/ORDER

QUALITY BUILDING SERVICES CORP., MIRJANA MIRJANIC and TOMASZ WOSZCZAK,

Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Notice of Cross Motion and Answering Affidavits.....	2
Affirmations in Opposition to the Cross-Motion.....	3
Replying Affidavits.....	4
Exhibits.....	

Plaintiff commenced the instant action against defendants alleging, among other things, that defendants unlawfully discriminated against him based on his disability and/or "serious health condition" in violation of Federal and New York State laws. Defendants now move to stay this action and compel arbitration. For the reasons stated below, defendants' motion is granted.

The relevant facts are as follows. Defendant Quality Building Services Corp. ("Quality") is a cleaning services company. Plaintiff was employed by Quality as a Cleaning Supervisor for approximately one and half years until he was terminated on September 14, 2011. At the time he

was hired, plaintiff entered into a Non-Compete Agreement with Quality (the "NCA"). The NCA contained an arbitration clause, which provided as follows:

> The parties agree that any disputes arising under this Agreement or otherwise between them or arising from the Employee's employment by the Employer will be submitted to resolution in accordance with the applicable rules of the American Arbitration Association ("AAA"). The parties agree that arbitration will take place in New York County, New York and that arbitration shall be the sole and exclusive forum for resolution of any dispute between them, provided, however, that either party may seek relief from a court of competent jurisdiction for provisional or preliminary relief in aid of arbitration. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any of the parties.

In his complaint, plaintiff asserts eleven causes of action, which all stem from his termination of employment with Quality including several claims under the Family Medical Leave Act ("FMLA") and the New York State and City Human Rights Laws.

On a motion to compel arbitration, "[i]f the court concludes that the parties made a valid agreement to arbitrate, that the dispute sought to be arbitrated falls within its scope, and that there has been compliance with any agreed on conditions precedent to arbitration, judicial inquiry is at an end (absent any issue as to bar by limitation of time) and the parties should be directed to proceed to arbitration." *Matter of County of Rockland*, 51 N.Y.2d 1, 8 (1980).

In the present case, the court grants defendants' motion to compel arbitration. The NCA clearly contains a valid agreement to arbitrate as it provides that the parties agree that "arbitration shall be the sole and exclusive forum for resolution of any dispute between [plaintiff and Quality]." As this action involves a dispute between the parties, it clearly falls within the arbitration clause. Further, there are no conditions precedent that must be met before the parties can be compelled to arbitrate. Thus, the court must direct the parties to proceed to arbitration.

Plaintiff's contention the arbitration clause in the agreement is void and unenforceable

because it was part of an adhesion contract is without merit. Whether or not a contract is one of adhesion is "judged by whether the party seeking to enforce the contract has used high pressure tactics or deceptive language in the contract and whether there is inequality of bargaining power between the parties." *Morris v. Snappy Car Rental, Inc.*, 84 N.Y.2d 21, 30 (1994) (internal quotations omitted). Here, plaintiff has provided no evidence that Quality used any high pressure tactics or deceptive language in the contract. The arbitration provision was written in clear English and was not hidden within the NCA. Additionally, while plaintiff asserts that he was given the NCA during a routine meeting with Quality's management and did not have time to read it or review it with an attorney, he fails to present any evidence that Quality or any of its managers prohibited plaintiff from taking such actions. Indeed, there is no evidence that plaintiff was prohibited from seeking clarification of the NCA's terms. Further, contrary to plaintiff's contention, the mere fact that he only has an 11th grade education does not mean there was inequality of bargaining power between the parties.

Finally, to the extent that plaintiff contends that this court should deny the motion to compel arbitration on the ground that plaintiff's FMLA claims may now be barred by the two year statute of limitations, such contention is without merit as plaintiff misconstrues the law regarding arbitration and a statute of limitations defense. While a party may move to permanently stay an arbitration that has been commenced on the ground that the claims sought to be arbitrated are time-barred, plaintiff has failed to cite any authority wherein a court excused a party from his contractual obligation to arbitrate on the ground that a statute of limitations defense may bar a claim in the arbitral forum. Indeed, CPLR § 7502 provides that the statute of limitations defense may be asserted "before the arbitrators, who may, in their sole discretion

apply or not apply the bar." Thus, the fact that the arbitrator may ultimately conclude that plaintiff's FMLA claims are time-barred is not a proper basis to deny defendants' motion to compel arbitration.

Accordingly, defendants' motion to compel arbitration is granted and the parties are directed to proceed to arbitration. This constitutes the decision and order of the court.

Dated: 5/27/14

Enter: _____
J.S.C.

CYNTHIA S. KERN
J.S.C.