

**Glynn v Moore**

2018 NY Slip Op 32594(U)

October 10, 2018

Supreme Court, New York County

Docket Number: 654428/2018

Judge: William Franc Perry

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. W. FRANC PERRY **PART** **IAS MOTION 23EFM**

*Justice*

-----X **INDEX NO.** 654428/2018

KATHLEEN GLYNN

Petitioner,

**MOTION DATE** October 3,  
2018

- v -

**MOTION SEQ. NO.** 001

MICHAEL MOORE,

Respondent.

**DECISION AND ORDER**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 11, 12, 13, 14, 15, 16 were read on this motion to/for COMPEL ARBITRATION.

Upon the foregoing documents, the Petition to compel arbitration in New York is denied and the Petition is dismissed.

This is a special proceeding brought pursuant to Article 75 of the CPLR for an order to compel arbitration, directing Respondent to engage in binding arbitration to resolve and finalize the terms of the parties' property settlement related to their 2014 Michigan divorce action. Petitioner alleges that the parties entered into a written agreement in 2018 naming retired New York State Supreme Court Justice Saralee Evans as the substitute arbitrator and specifying that the arbitration hearing would be conducted at her Manhattan law office beginning on February 15, 2018.

Respondent, in opposing the petition, asserts that, Paragraph 9 of the Judgment of Divorce, provides that the Michigan Circuit Court would "retain jurisdiction of this action to enforce, but not to modify, alter or change, the executory provisions of this Judgment of Divorce, the Settlement Agreement and the Separate Contract and to enforce or vacate any arbitration

awards made pursuant to the confidential arbitration provisions of the Confidential Settlement Agreement and the Separate Contract pursuant to Michigan law". (NYCEF Doc. No. 8, ¶9).

Respondent participated in arbitration in New York City for three days, from Thursday, February 15, 2018, to Saturday February 17, 2018. Respondent and Petitioner disagree as to why the arbitration did not continue before Justice Evans. The court notes that Respondent alleges that on March 30, 2018, Respondent submitted to Justice Evans a Motion to Close or Terminate Proofs, and on April 30, 2018, Petitioner's counsel submitted opposition to that application. On June 8, 2018, Justice Evans denied the motion.

On June 29, 2018, Judge Norman R. Hayes, who had presided over the parties' divorce litigation, signed and issued an Ex Parte Sealing Order that Respondent contends was expressly provided for in the Confidential Settlement Agreement of July 18, 2014. Petitioner never objected to the Sealing Order or appealed from its issuance.

On July 19, 2018, Respondent filed a Motion Regarding Arbitration in the Michigan Circuit Court for Antrim County. Respondent contends that Michigan law governs every agreement executed by the parties in connection with their divorce, including their agreements to arbitrate and that the filing of this Petition is an attempt to strip the Michigan court of its jurisdiction to resolve a motion that is to be heard in the Michigan court on October 9. Moreover, Respondent contends that his motion, which is sealed by the above noted Sealing Order, seeks relief related to the Confidential Settlement Agreement over which the Michigan Circuit Court retained jurisdiction. It is Respondent's position that if the motion is granted by the Michigan court, the parties will not continue the arbitration that was initiated before Justice Evans.

Respondent contends that the Michigan Circuit Court has presided over the parties' dispute since 2013, and it retained jurisdiction pursuant to the judgment of divorce entered in 2014 and that this court should dismiss the Petition with prejudice so that the parties can seek relief in Michigan where any issues related to the terms of the property settlement should be heard. Petitioner contends that she is simply attempting to enforce the benefit of her bargain and has been attempting to do so for five years, despite Respondent's attempts to delay the proceedings and finalization of the arbitration that commenced but has not concluded.

The issue before this court is very narrow; this court need only decide whether it or the Michigan court should determine whether the arbitration before Judge Evans should proceed. Given the history of this litigation in Michigan since 2013, the Michigan court's retention of jurisdiction, and the decisional law respecting the concept of comity, this matter must be resolved by the Michigan Circuit Court.

"The rule of comity forbids [New York] courts from enjoining an action in a sister State unless it is clearly shown that the suit sought to be enjoined was brought in bad faith, motivated by fraud or an intent to harass the party seeking an injunction, or if its purpose was to evade the law of the domicile of the parties." *Ackerman v. Ackerman*, 219 A.D.2d 515, 515 (1<sup>st</sup> Dep't 1995) (quotation marks omitted); see also *Chayes v. Chayes*, 180 A.D.2d 566, 566-67 (1st Dep't 1992); *George Hyman Const. Co. v. Precision Walls, Inc. of Raleigh*, 132 A.D.2d 523, 526 (2d Dep't 1987).

As noted above, Michigan law governs the interpretation, application and enforcement of the parties' agreements and the Michigan court specifically retained jurisdiction. Indeed, pursuant to the express terms of paragraph 9 of the Divorce Judgment, the Michigan Circuit Court will ultimately be responsible for confirming or vacating any arbitration award rendered.

(NYCEF Doc. No. 8, ¶9). The relief Petitioner seeks in this Court may impact or conflict with the relief sought by Respondent's motion scheduled to be heard in Michigan on October 9, 2018. Moreover, granting the relief sought in the Petition, would "constitute a significant affront to [a] sister state." *Four Seasons Solar Prod. Corp. v. Solarium Prod. of Fla., Inc.*, 102 A.D.2d 757, 758 (1st Dept'1984). Accordingly, it is hereby,

ADJUDGED that the application is denied and the Petition is dismissed, with costs and disbursements to Respondent as taxed by the Clerk, and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

10/10/2018

DATE

  
W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE