Umeh v Checole
2019 NY Slip Op 31144(U)
April 22, 2019
Supreme Court, New York County
Docket Number: 159884/2018
Judge: Joel M. Cohen

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOEL M. COHEN** **PART** **IAS MOTION 3EFM**

Justice

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MARIE UMEH,

Plaintiff,

- v -

KASSAHUN CHECOLE, AFRICA WORLD PRESS, INC. D/B/A THE RED SEA PRESS

Defendant.

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INDEX NO. 159884/2018

MOTION DATE 11/13/2018

MOTION SEQ. NO. 002

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 33, 34, 35, 36, 37

were read on this motion to COMPEL ARBITRATION AND STAY LITIGATION.

Upon the foregoing documents:

This is a contract dispute between an author and a publisher. Plaintiff Umeh, a college professor and an expert in African Literature, contracted with Defendants Africa World Press, Inc. ("AWP") and its President Defendant Checole, to publish what eventually ended up as the book called "Kema Chikwe Across Borders: Selected Speeches and Essays." Plaintiff was editor of the book, which is a collection of speeches and essays by Dr. Chikwe, a former Nigerian government official and ambassador and the founder of Women's Leadership Academy in Abuja, Nigeria.

The parties executed a Memorandum of Agreement (the "Agreement") under which Professor Umeh granted AWP the "sole and exclusive right to print, publish, distribute, sell or license" her book. (NYSCEF Doc. No. 10 at ¶ 1.) The Agreement contained the following arbitration provision: "In the event of disputes or disagreements arising from the agreement, both the Editor and Publisher consent to settle such disputes under the auspices of the American

Arbitration Association and to abide by its judgment." (*Id.* at ¶ 12.) The Agreement further provides that it is to be "governed by and interpreted in accordance with the laws of the State of New Jersey, USA." (*Id.*)

Professor Ume alleges that she made payments to Defendants to facilitate preparation and publication of the book. She claims that Defendants failed to provide the agreed upon number of books in a timely fashion. Moreover, she avers that the product was "not up to the proper specifications and the parties' agreement," and that "the printing was not authorized by me as it was insufficient and subpar." NYSCEF Doc. No. 6 at ¶ 17.

Defendants move to compel arbitration consistent with the straightforward terms of the Agreement. In response, Plaintiff contends that the arbitration provision contained in the Agreement is not enforceable under New Jersey law because it did not make it sufficiently clear to Professor Umeh that she was waiving her right to pursue remedies in court. In view of the general policy favoring arbitration under federal law, New York law, and New Jersey law, the Court finds that the arbitration language of the Agreement is sufficient to bind the parties to arbitrate the present dispute.

Plaintiff's reliance on *Atalese v. U.S. Legal Services Group L.P.*, 99 A.3d. 306 (N.J. 2014), is misplaced. That case involved an arbitration clause buried on page nine of a twenty-three-page standard form contract of adhesion prepared by a company offering "debt-adjustment services" to consumers. The plaintiff consumer alleged that the defendant violated two New Jersey consumer protection statutes that provide an explicit right for consumers to bring actions in court. In that context, the New Jersey Supreme Court found that the arbitration provision was not binding on the consumer plaintiff because it "did not clearly and unambiguously signal to

plaintiff that she was surrendering her statutory right to pursue her statutory claims in court." *Id.* at 448.[1]

By contrast, the Agreement here is a three-page, straightforward commercial contract between a book editor and a small publishing company and does not present any statutory claims. That is quite different from the consumer-protection/contract of adhesion setting in *Atalese*. Although there is language in *Atalese* suggesting that the arbitration provision generally should alert the parties that they are waiving the right to pursue relief in the courts, the Court emphasized that: "[N]o prescribed set of words must be included in an arbitration clause to accomplish a waiver of rights. Whatever words compose an arbitration agreement, they must be clear and unambiguous that a consumer is choosing to arbitrate disputes rather than have them resolved in a court of law. In this way, the wording will assure reasonable notice to the consumer." *Id.* at 447.

The Agreement reflects a clear and unmistakable intent by two willing parties to resolve disputes by arbitration. Although Professor Umeh may not be a sophisticated commercial entity, the Court does not view her to be akin to a naïve consumer facing a dense contract of adhesion. Nor does the Court view the New Jersey courts' focus on specificity of arbitration provisions in the context of statutory claims by consumers to mandate a *per se* rule broad enough to cover a straightforward commercial contract dispute such as the one at issue here. The arbitration provision in the Agreement is straightforward and clear, and Plaintiff has not advanced any reasonable grounds to avoid its agreed-upon mandate.

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[1] In *Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A.*, 168 N.J. 124 (2001), the New Jersey Supreme Court faced a case in which the plaintiff advanced both statutory and common law claims. The court found that the arbitration provision in the relevant agreement did not provide sufficient notice that the plaintiff was waiving the right to pursue his statutory claims in court. The Court assumed, but did not decide, that the common law claims would be subject to the arbitration provision but found that judicial economy nevertheless dictated that all of plaintiff's claims be joined in a single action in court. *Id.* at 137.

Accordingly, it is:

ORDERED that Defendants' motion to compel arbitration and stay litigation is granted; and it is further

ORDERED that the parties are directed to alert the Court promptly if and when the matter is resolved and, if the matter has not been resolved by August 2, 2019, to provide a joint written status report to the Court on that date.

This constitutes the decision and order of the Court.

4/22/2019
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE