

Sklar v Itria Ventures, LLC

2019 NY Slip Op 33477(U)

November 25, 2019

Supreme Court, New York County

Docket Number: 154067/2019

Judge: Robert D. Kalish

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT DAVID KALISH PART IAS MOTION 29EFM

Justice

-----X

JEFFREY SKLAR,

Plaintiff,

- v -

ITRIA VENTURES, LLC, NOSSON SKLAR, GRAND STREET MEDICINE AND REHABILITATION, PC, COMPREHENSIVE KIDS DEVELOPMENTAL SCHOOL, COMPREHENSIVE EVALUATION SERVICES, PLLC, COMPREHENSIVE MANAGEMENT MSO, INC., COMPREHENSIVE STAFFING SOLUTIONS LLC, MARGOT SIGMONE, CAROLANN O'DELL, JORDON PARKER and JONATHAN GITLIN,

Defendants.

-----X

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 139, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 170, 172, 174, 175, 178

were read on this motion to/for COMPEL ARBITRATION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 122, 123, 124, 126, 127, 140, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 171, 173, 176

were read on this motion to/for STAY

Motion (Seq. 002) by Defendants Itria Ventures LLC ("Itria"), Jonathan Gitlin and Jordon Parker (collectively, "Itria Defendants") for an order, pursuant CPLR 7503 (a), compelling arbitration of all matters in the instant action arising out of certain Future Receivables Sale Agreements ("FRSAs") between Itria and Grant Street Medicine & Rehabilitation PC and motion (Seq. 003) by Plaintiff Jeffrey Sklar ("Plaintiff") to stay arbitration are both denied without prejudice; and the issue of whether Plaintiff's signatures were forged on certain documents, attached to Exhibit A of Itria Defendants' affirmation in support of their motion to compel (Seq. 002), is respectfully referred to a Special Referee/Judicial Hearing Officer for a traverse hearing on said issue.

Plaintiff brought the instant action alleging, in sum and substance, that Itria Defendants had filed roughly 15 confessions of judgment which "appear[ed] to bear [his] signature ... but [were] fraudulent and forgeries because [he] did not sign them and the signature on them [was] not [his]." (Complaint ¶ 1.) In his complaint, Plaintiff asserts, upon information and belief that his brother, Defendant Nosson Sklar ("Nosson") "or others at his direction, forged Plaintiff's signatures on numerous loan documents and confessions of judgment in order to avoid liability

and to enforce future default liabilities against Plaintiff and not against Nosson and/or [certain corporate entities named as defendants in this action ('Nosson Corporate Defendants')].” (Complaint ¶ 34.)

In contrast, Itria Defendants assert that Plaintiff signed these affidavits of confessions of judgment pursuant to a series of 19 “funding transactions known as Future Receivables Sale Agreements ('FRSAs'),” wherein Itria purchased the future accounts receivable from Defendant Grand Street Medicine and Rehabilitation, PC (“Grand Street”). (Memo in Supp of Motion to Compel [Seq. 002] at 2.) According to Itria Defendants, Grand Street was wholly owned by Plaintiff and the day-to-day operations were managed by Nosson. Itria Defendants further assert that, pursuant to those funding transactions, both Plaintiff and Nosson executed the FRSAs, as well as annexed guaranties of payment and corresponding affidavits of confessions of judgment. Itria Defendants further assert that in each case Plaintiff’s guaranty and affidavit in support of the confession of judgment were duly notarized.

On May 28, 2019, this Court granted Plaintiff’s motion for a preliminary injunction, enjoining Itria Defendants from taking any actions to enforce the aforesaid confessions of judgment, finding that there was a likelihood that Plaintiff would succeed on the merits.

Itria Defendants now move the Court to compel arbitration of the instant dispute based on the following provision contained in the FRSAs:

“[I]f Purchaser, Merchant or any Principal requests, the other parties agree to arbitrate all disputes and claims arising out of or relating to this Agreement. If Purchaser, Merchant or any Principal seeks to have a dispute settled by arbitration, that party must first send to the other party, by certified mail, a written Notice of Intent to Arbitrate. If Purchaser, Merchant or any Principal do not reach an agreement to resolve the claim within 30 days after the Notice is received, Purchaser, Merchant or any Principal may commence an arbitration proceeding with the American Arbitration Association ('AAA') in the jurisdiction specified in clause (a) above.”

(Affirm in Supp of Motion to Compel [Seq. 002], Ex. A [FRSA] ¶ 18 [d].) Plaintiff opposes and submits his own motion to stay arbitration on the ground that he never signed the FRSAs and that his purported signature is a forgery. As such, Plaintiff argues that he is not bound by the above arbitration provision.

Notwithstanding that the parties assert other arguments regarding the enforceability of the arbitration provision, this Court must first determine whether Plaintiff’s signatures were forged in order to resolve the instant motions. (*Alam v Uddin*, 160 AD3d 915, 917 [2d Dept 2018] “[T]he question of forgery is a threshold question for the court and not an arbitrator to determine.”), citing *Primex Intern. Corp. v Wal-Mart Stores, Inc.*, 89 NY2d 594, 598 [1997] “[W]hether there is a clear, unequivocal and extant agreement to arbitrate the claims, is for the

court and not the arbitrator to determine.”]; *see also* Memo in Supp. of Motion to Stay [Seq. 003] at 6; Memo in Supp of Motion to Compel [Seq. 002] at 5.)

As such, this Court refers the issue of whether Plaintiff’s signatures were forged on the subject FRSAs, the annexed guaranties, and the affidavits in support of confessions of judgment—as attached to Exhibit A of Itria Defendants’ affirmation in support of their motion to compel (Seq. 002)—to a Special Referee/Judicial Hearing Officer for a traverse hearing on said issue.¹

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion (Seq. 002) by Defendants Itria Ventures LLC (“Itria”), Jonathan Gitlin and Jordon Parker (collectively, “Itria Defendants”) for an order, pursuant CPLR 7503 (a), compelling arbitration of all matters in the instant action arising out of certain Future Receivables Sale Agreements (“FRSAs”) between Itria and Grant Street Medicine & Rehabilitation PC and motion (Seq. 003) by Plaintiff Jeffrey Sklar (“Plaintiff”) to stay arbitration are both denied without prejudice; and it is further

ORDERED that this matter is referred to a Special Referee/Judicial Hearing Officer for a traverse hearing; and it is further

ORDERED that a Special Referee/Judicial Hearing Officer shall be designated to hear and report to this Court on the issue of whether Plaintiff’s signatures were forged on the documents attached as Exhibit A to Itria Defendants’ affirmation in support of their motion to compel (Seq. 002), except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee/Judicial Hearing Officer may hear and determine the aforesaid issue; and it is further

ORDERED that the powers of the Special Referee/Judicial Hearing Officer shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that the instant motions are denied, with leave to renew upon: (1) receipt of the report and recommendations of the Special Referee/Judicial Hearing Officer and a motion pursuant to CPLR 4403; or (2) receipt of the determination of the Special Referee/Judicial Hearing Officer; and it is further

ORDERED that any motion to confirm or disaffirm the Report of Special Referee/Judicial Hearing Officer shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that Itria Defendants shall, within thirty (30) days, serve a copy of the instant order with notice of entry upon the Clerk of the Trial Support Office (Room 158M) and upon the

¹ The Court strongly encourages the parties to jointly retain a neutral handwriting expert to give testimony during the traverse hearing.

Special Referee Clerk (Room 119)—along with any required papers, including a completed Information Sheet—who is directed to place this matter on the calendar of the Special Referee’s Part at the earliest convenient date for the aforesaid traverse hearing; and it is further

ORDERED that the failure by Itria Defendants to comply with the preceding paragraph shall be deemed an abandonment of Itria Defendants’ request to compel arbitration; and it is further

ORDERED that the parties shall appear for the traverse hearing, including with all witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk, subject only to any adjournment that may be authorized by this Court; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320 [a]) and, except as otherwise directed by the assigned Special Referee/Judicial Hearing Officer, the trial of the issues specified above shall proceed day to day until completion.

The foregoing constitutes the decision and order of the Court.

Robert D. Kalish

HON. ROBERT D. KALISH
J.S.C.

11/25/2019
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE