

Guzman v First Chinese Presbyt. Community Affairs Home Attendant Corp.
2020 NY Slip Op 30096(U)
January 13, 2020
Supreme Court, New York County
Docket Number: 157401/2016
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED **PART** **IAS MOTION 2EFM**

Justice

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INDEX NO. 157401/2016

ALVARO RAMIREZ GUZMAN, ELIDA AGUSTINA MEJIA
HERRERA, and LETICIA PANAMA RIVAS,

Plaintiffs,

MOTION SEQ. NO. 003

- v -

THE FIRST CHINESE PRESBYTERIAN COMMUNITY
AFFAIRS HOME ATTENDANT CORPORATION, OR ANY
OTHER RELATED ENTITIES,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

In this putative class action, plaintiff home health care workers Alvaro Ramirez Guzman, Elida Agustina Mejia Herrera, and Leticia Panama Rivas seek to recover wages and benefits to which they claim they were statutorily and contractually entitled to receive from their employer, defendant The First Chinese Presbyterian Community Affairs Home Attendant Corporation (“First Chinese”), pursuant to the New York Labor Law. Plaintiffs move, by order to show cause (“OSC”), for an order: 1) directing First Chinese to comply with the order of this Court dated March 29, 2019, which denied First Chinese’s motion to compel arbitration on the ground that plaintiffs’ claims were not arbitrable; 2) issuing a preliminary and permanent injunction against the arbitration of plaintiffs’ claims; and 3) granting such other relief as this Court deems just and

proper. After oral argument, and after a review of the motion papers and the relevant statutes and case law, the motion, which is opposed by First Chinese, is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case are set forth in detail in the decision and order of this Court dated and entered March 29 and April 5, 2019, respectively (“the 3/29/19 order”) (Doc. 55) which denied First Chinese’s motion seeking to compel arbitration and to stay this action. Any additional relevant facts are set forth below.

First Chinese neither moved to reargue nor appealed from the 3/29/19 order. After that order was issued, plaintiffs amended their complaint to proceed on behalf of all similarly situated individuals employed by First Chinese prior to April 7, 2016. Doc. 58. First Chinese answered the amended complaint in July 2019 and did not raise arbitration as an affirmative defense. Doc. 59. The parties have since been engaged in pre-class certification discovery. Docs. 60-61; Doc. 64 at par. 10.

On December 24, 2019, plaintiffs’ counsel received email correspondence from Martin F. Scheinman, Esq., the contract arbitrator for plaintiffs’ union, 1199 SEIU United Healthcare Workers East (“the Union”), who was identified in the 2015 MOA, advising that a global arbitration was scheduled for January 15, 2020 to resolve all unpaid wage and benefit claims filed against various home health care agencies which had CBA’s with the Union, including the claims by plaintiffs against First Chinese. Doc. 68. In his email, Scheinman stated, inter alia, that “the Union has determined [that] it represents all of the employees’ claims and wishes to pursue those claims promptly in arbitration [and that] the Agencies agree this is now the proper course.” Doc.

68. Additionally, Scheinman stated that he would be deciding whether “the claims encompassed by the wage and hour related grievances involving current and former [Union] bargaining unit members, including those arising under federal, state and local law, [are] arbitrable” and whether he “ha[s] jurisdiction to adjudicate the claims asserted in the wage and hour grievances, arising under federal, state and local law, filed by the parties to the [CBA] which encompass all claims arising under the federal, state and local laws named in the [CBA], as well as any pending litigation...irrespective of whether employees’ terminated prior to the effective date of the [MOA].” Doc. 68.

On January 6, 2020, plaintiffs filed the instant OSC seeking an order: 1) directing First Chinese to comply with the order of this Court dated March 29, 2019, which denied its motion to compel arbitration on the ground that plaintiffs’ claims were not arbitrable; 2) issuing a preliminary and permanent injunction against the arbitration of their claims; and 3) granting such other relief as this Court deemed just and proper. In support of the motion, plaintiffs argue that they are entitled to injunctive relief since they would suffer irreparable harm if this matter proceeded to arbitration; that they were likely to prevail on the merits of their claim; and that the equities dictated that they be granted injunctive relief. They further assert that Scheinman cannot determine the issue of arbitrability since that matter was already resolved by this Court in its 3/29/19 order, and that this Court had the authority to make that determination.

In opposition, First Chinese argues that this Court lacks jurisdiction to grant injunctive relief herein since CPLR 6313 precludes a court from issuing a temporary restraining order [TRO] in an action arising from a “labor dispute” as defined by Labor Law § 807(10)(c). First Chinese further asserts that plaintiffs’ motion is premature since Scheinman has heretofore only requested the positions of the Union and First Chinese regarding arbitration and has yet to decide whether

he has jurisdiction over plaintiffs' wage and hour claims. Further, First Chinese maintains that plaintiffs have failed to demonstrate that they would be irreparably harmed if the industry-wide arbitration sought by the Union were to proceed. Finally, First Chinese argues that this Court cannot grant plaintiffs a TRO because the Union, a necessary party to this action, has not been joined in this litigation.

LEGAL CONCLUSIONS

"A preliminary injunction substantially limits a defendant's rights and is thus an extraordinary provisional remedy requiring a special showing. Accordingly, a preliminary injunction will only be granted when the party seeking such relief demonstrates a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of the equities tipping in favor of the moving party." *1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23 (1st Dept 2011). "Irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction. To prevail, the movant must establish not a mere possibility that it will be irreparably harmed, but that it is likely to suffer irreparable harm if equitable relief is denied' (*Bank of Am., N.A. v. PSW NYC LLC*, 29 Misc 3d 1216[A], 918 NYS2d 396, 2010 NY Slip Op 51848[U], *10 [Sup Ct, NY County 2010])." *Moore Freres & Co., LLC v Mercury Partners GMBH*, 2018 NY Slip Op 31979[U], *5 [Sup Ct, NY County 2018]).

Here, plaintiffs have established that they are likely to succeed on the merits of their claims. Specifically, plaintiffs maintain that their wage and hour claims must be determined by this Court since they left the employ of First Chinese before the 2015 MOA became effective. Since this Court has denied First Chinese's motion to compel arbitration, and has determined that it, and not

an arbitrator, will hear and determine plaintiffs' claims, plaintiffs have established the likelihood that they will succeed on their argument regarding the arbitrability of their claims.

Plaintiffs also establish that that they would suffer irreparable harm in the event that they were denied injunctive relief. "[A] party that has not agreed to arbitrate a dispute will suffer irreparable harm if it is forced to submit to arbitration." *Int'l. Trust Co. of Bermuda, Ltd. v Fahnestock & Co., Inc.*, 1995 U.S. Dist. LEXIS 15050, 1995 WL 606275 at *3 (S.D.N.Y. 1995). This Court has already determined that plaintiffs' dispute is not arbitrable and, thus, plaintiffs would be irreparably harmed in the event they were forced to arbitrate. Specifically, if the arbitration is not enjoined and plaintiffs choose to participate, they "will have waived [their] objections to the [a]rbitration." *Int'l. Trust Co. of Bermuda, Ltd. v Fahnestock & Co., Inc.*, citing *Halley Optical Corp. v Jagar Int'l. Marketing Corp.*, 752 F Supp 638, 639-40 (SDNY 1990). "On the other hand, if [plaintiffs refuse] to [arbitrate], the claims against [them] may be adjudicated in [their] absence, and any award would be subject to 'very limited review' by [this] [C]ourt." *Int'l. Trust Co. of Bermuda, Ltd. v Fahnestock & Co., Inc.*, quoting *Folkways Music Publishers, Inc. v Weiss*, 989 F2d 108, 111 (2d Cir 1993).

Since plaintiffs would be prejudiced if they were forced to arbitrate, this Court also finds that the equities weigh in their favor and that they be granted the injunctive relief they request. The equities also warrant this relief because, although the Union, in a letter to First Chinese dated November 7, 2016, advised that it objected to the submission of plaintiffs' claims to arbitration (Doc. 67), Scheinman, in his December 24, 2019 email, has, with virtually no advanced notice, now advised plaintiffs that "the Union has determined [that] it represents all of the employees' claims and wishes to pursue those claims promptly in arbitration" regardless of whether plaintiffs'

employment terminated prior to the effective date of the MOA. Doc. 68. Such late notice, especially of the Union's changed position, is prejudicial and cannot be countenanced.

In addition to being entitled to injunctive relief, that branch of plaintiffs' motion seeking to enforce the 3/29/19 order must be granted, since that order, which denied First Chinese's motion to compel arbitration on the ground that plaintiffs' claims were not arbitrable, is law of the case and thus binding on the parties herein. *See Smyczynski v Genesis Mktg. Group, Inc.*, 185 AD2d 58 (4th Dept 1992) (citations omitted).

This Court rejects First Chinese's argument that plaintiffs are not entitled to a preliminary injunction because such relief cannot be granted in connection with a "labor dispute", defined by Labor Law § 807(10)(c) as "any controversy concerning terms or conditions of employment." In discussing section 876-a of the Civil Practice Act (the predecessor of Labor Law § 807 [1]), the Court of Appeals stated that "[t]he effect of that statute is to prevent courts from enjoining peaceful picketing. It was never intended to deprive the Supreme Court of jurisdiction to enjoin dangerous, illegal acts which constituted disorderly conduct and breach of the peace." *Busch Jewelry Co. v United Retail Employees' Union*, 281 NY 150, 156 (1939). Since that statute does not apply to the facts herein, First Chinese's reliance on it is misplaced and plaintiffs are not prevented thereby from moving for injunctive relief.

The parties' remaining arguments are without merit or need not be addressed given the findings above.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of plaintiffs' motion seeking a preliminary injunction is granted, pursuant to CPLR 6301, provided that an undertaking in the fixed sum of \$250, in the

form of a surety bond or a deposit of cash, money order, or bank check be deposited with the County Clerk of the County of New York, and remain in effect until further order of this Court; and it is further

ORDERED that the branch of plaintiffs' motion seeking to enforce the order of this Court dated and entered March 29 and April 5, 2019, respectively, is granted; and it is further

ORDERED that plaintiffs are not required to appear at the arbitration in this matter scheduled for January 15, 2020; and it is further

ORDERED that plaintiffs' counsel is directed to serve this order, with notice of entry, as well as a copy of this Court's order dated and entered March 29 and April 5, 2019 (Doc. 55), respectively, by email, on counsel for defendant, counsel for 1199 SEIU United Healthcare Workers East, and on Arbitrator Martin F. Scheinman, Esq. forthwith; and it is further

ORDERED that this constitutes the decision and order of the court.

1/13/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

KATHRYN E. FREED, J.S.C.