SPX Corp. v Infoswitch, Inc.
2020 NY Slip Op 30326(U)
February 5, 2020
Supreme Court, New York County
Docket Number: 656188/2019
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 35EFM

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SPX CORPORATION

Petitioner,

- v -

INFOSWITCH, INC.,

Respondent.

INDEX NO. 656188/2019

MOTION DATE 01/09/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

----------X

HON. CAROL R. EDMEAD:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, it is

ORDERED that the petition of SPX Corporation is granted in its entirety; and it is further

ORDERED AND ADJUDGED that the Final Arbitration Award in the matter *SPX Corporation v InfoSwitch, Inc. (American Arbitration Association Case No. 01-18-0003-3355)*, is hereby confirmed; and it is further

ORDERED AND ADJUDGED that Petitioner does recover of Respondent InfoSwitch, Inc., the sum of $361,593.34, plus interest at the statutory rate of 9% from October 22. 2019, to be calculated by the Clerk; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that Petitioner's application for reasonable attorney's fees is granted; and it is further

ORDERED that the issue of the amount of reasonable attorneys' fees is hereby severed and referred to a Special Referee to Hear and Determine; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a date for the reference to a Special Referee; and it is further

ORDERED that Petitioner shall serve a copy of this order, along with notice of entry, on all parties within 15 days of entry.

CASE DISPOSED

MEMORANDUM DECISION

In this Article 75 Action, SPX Corporation (Petitioner) moves to confirm an arbitration decision issued in its favor pursuant to CPLR § 7510. Infoswitch, Inc. (Respondent) opposes the motion and cross-moves for an order vacating the award. For the reasons set forth below, the Court grants the petition in its entirety.

BACKGROUND FACTS

This action arises out of an underlying arbitration proceeding commenced by Petitioner, against Respondent to resolve an underlying indemnification dispute between the parties. In 1982, the predecessor companies for both parties entered into a Purchase Agreement wherein Petitioner acquired certain assets and properties, and Respondent agreed to indemnify Petitioner from all "obligations and liabilities" of Respondent "not assumed by" Petitioner in the agreement (NYSCEF doc No. 7, § 6). The agreement included an arbitration provision mandating that any disputes arising under the agreement would be resolved by the American Arbitration Association ("AAA") in New York (*id.* at § 17.6). The Purchase Agreement is governed by the law of the state of Delaware (*id.*).

After a dispute arose between the parties when both were named as defendants in a product liability lawsuit and Respondent refused to provide Petitioner with defense and indemnity, Petitioner commenced an arbitration proceeding against Respondent in September 2018. Following various telephonic hearings, the AAA entered an award in Petitioner's favor on September 11, 2019 in the amount of $222,227.34, along with statutory interest, reflecting the

damages Petitioner incurred by funding its own defense in the product liability action (NYSCEF doc No. 5). Following a motion by Petitioner, the award was later modified to include additional damages for Petitioner's costs and attorneys' fees totaling $139,366.00, which are recoverable under the Delaware law governing the original Purchase Agreement (NYSCEF doc No. 6).

Petitioner now moves for immediate conformation of this award pursuant to CPLR 7510, on the grounds that the award is not subject to any vacatur or modification grounds specified under CPLR 7511. Respondent opposes and cross-moves for an order vacating the award pursuant to CPLR 7511. As a preliminary matter, Respondent claims this Court does not have personal jurisdiction over Respondent as it is not domiciled in New York nor does it engage in any purposeful business activity in New York. On the merits, Respondent argues the award must be vacated as the 1982 agreement between the parties was supplanted by a 1993 Settlement Agreement, which did not contain an arbitration provision (NYSCEF doc No. 26). Respondent argues the arbitrator here exceeded its authority by denying Respondent's objection and proceeding to issue an award in favor of Petitioner.[1]

DISCUSSION

Personal Jurisdiction

As a preliminary matter, Respondent argues that this Court lacks personal jurisdiction over it and thus cannot render a judgment upon the arbitration award. According to Respondent, since it is a non-domiciliary of New York, this Court does not have jurisdiction unless the action is permissible under the long-arm statute and the exercise of jurisdiction comports with due process. (*See* CPLR § 302*; LaMarca v Pak-Mor Mfg. Co*. 95 NY2d 210, 214 [2000]). "Due

[1] Petitioner also raises a procedural issue with Respondent's cross-motion, arguing that Respondent failed to comply with CPLR 2214(a) as it did not include a Notice of Motion. However, the Court need not reach this argument as Petitioner has responded to the cross-motion with arguments, therefore waiving its objection to any defect in Respondent's pleadings.

process requires that a nondomiciliary have 'certain minimum contacts' with the forum and 'that the maintenance of the suit does not offend traditional notions of fair play and substantial justice' (*Id.* citing *International Shoe Co. v Washington*, 326 U.S. 310, 316 [1945]). Under CPLR § 302 (a)(1), New York courts have personal jurisdiction over a nondomiciliary when that entity transacts business in the state.

The question of whether a defendant has transacted business within New York is determined under the totality of the circumstances, and rests on whether the defendant, by some act or acts, has "purposefully avail[ed himself or her]self of the privilege of conducting activities within [New York]." (*Ehrenfeld v Bin Mahfouz*, 9 NY3d 501, 508 [2007]). Respondent claims it is not subject to jurisdiction pursuant to CPLR § 302 because it did not engage in any purposeful activity in New York in connection with this matter (NYSCEF doc No. 27 at ¶¶ 4- 6). Respondent is not domiciled in New York, transacts no business in New York, and maintains no other contacts with New York that would support the exercise of long-arm jurisdiction as it is an inactive corporation *(id.)*.

However, while Respondent is correct that this Court would not have general jurisdiction over it, this Court has personal jurisdiction for the purposes of this motion as Respondent has already participated in an arbitration within the jurisdiction of New York. It is well settled law that by contractually agreeing to arbitrate a dispute in New York, a party consents to personal jurisdiction for purposes of confirmation of the award. "[A]n agreement providing for arbitration of disputes in New York implies a consensual submission to the personal jurisdiction of the courts of this state to enforce it and to enter judgment on an award." (*Summit Jet Corp. v. Meyers*, 751 NYS2d 148, 149 [(NY App. Div. 2002], *see also Shalik v Coleman*, 975 NYS2d 741, 743 [NY App. Div. 2013], holding that "an agreement to arbitrate disputes in New York

constitutes consent to personal jurisdiction in New York.") The rules of the AAA similarly state that "Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof" (AAA Rule 52[c]). As the arbitration provision required that the arbitration take place in New York, the parties have thus consented to this Court's personal jurisdiction for this proceeding.

Article 75

An arbitration award may be vacated pursuant to CPLR 7511(b)(1)(iii) where an arbitrator exceeded his or her power, including where the award violates strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power (*See Matter of Isernio v Blue Star Jets, LLC*, 140 AD3d 480, 480 [1st Dept 2016]). Where arbitration is compulsory, "judicial review under CPLR Article 75 is broad, requiring that the award be in accord with due process and supported by adequate evidence in the record .... The award must also be rational and satisfy the arbitrary and capricious standard of CPLR article 78" (*Motor Veh. Mfrs. Ass'n of U.S. v State of New York,* 75 NY2d 175 [1990]). While compulsory arbitration decisions require a stricter scrutiny than consensual ones, courts are still bound by the arbitrator's factual findings, interpretation of relevant documents, and judgment concerning remedies. A court cannot substitute its judgment for that of the arbitrator simply because it believes its interpretation is superior to that of an arbitrator who has made errors of judgment or fact (*Matter of New York State Correctional Officers and Police Benevolent Assn. v. State of New York,* 94 NY2d 321 [1999]).

Vacatur is inappropriate even where the error claimed is the incorrect application of a rule of substantive law, unless the error is so 'irrational as to require vacatur'" (*Matter of Smith*

[Firemen's Ins. Co], 55 NY2d 224, 232 [1982]). To be upheld, an award in an arbitration proceeding need only have evidentiary support and not be arbitrary and capricious (*See Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). Even though the decision must have evidentiary support, "[a]ssessment of the evidence presented at an arbitration proceeding is the arbitrator's function rather than that of the court" (*Fitzgerald v Fahnestock & Co., Inc.*, 48 AD3d 246, 247 [1st Dept 2008], *quoting Peckerman v D & D Assocs.*, 165 AD2d 289, 296 [1st Dep't 1991]). Under Article 75, arbitrators are not bound by substantive rules of law, including those of evidence. (*Silverman v Benmore*, 61 N.Y.2d 299, 308 [1984]). "An arbitral award cannot be attacked on the ground that an arbitrator refused to consider, or failed to appreciate, particular evidence or arguments" (*Genger v. Genger*, 87 AD3d 871, 874 n. 2 [1st Dept 2011]). Under CPLR 7511(b)(1)(iii), as long as an arbitrator addresses the issues submitted for resolution, vacatur will not be granted, unless the award is completely irrational -- that is, the resulting award goes beyond the issues before the arbitrator (*Rochester City School Dist. v Rochester Teachers Assn.*, 41 NY2d 578, 582 [1977]).

Here, Respondent claims that the AAA exceeded its authority by proceeding with arbitration as the AAA lacked authority under the parties' contractual agreement. The original 1982 Purchase Agreement was superseded by a 1993 Settlement Agreement, which did not contain an arbitration provision and also included a section wherein all parties released prior rights under the 1982 agreement (NYSCEF doc No. 23 at 12). The 1993 agreement refers to the indemnification obligations discussed in the prior agreement but does not mention or reference the arbitration of such matters. It also contains an Entire Agreement clause which mandates:

> "All understandings and agreements heretofore made between the Parties are superseded by and merged into this Agreement, which alone fully and completely expresses the agreement between the Parties, and the same is entered into with no Party relying upon any statement or representation made by and Party not embodied in this Agreement."

(*id.* at 13).

Respondent argues that a plain reading of the 1993 agreement indicates that the dispute between the parties at issue here was not arbitrable and the arbitrator thus lacked jurisdiction to issue an award in favor of Petitioner. Respondent also notes that the later agreement is governed by the laws of Delaware, and Delaware law holds that the question of whether a dispute between parties is arbitrable is an issue for judicial determination (See *James & Jackson, LLC v. Gary, LLC*, 906 A2d 76, 79 [Del. 2006]). Respondent further claims that it is not precluded from asking this Court to vacate the award despite its participation in the arbitration proceeding because Delaware law regarding arbitration typically mirrors federal law, and the Supreme Court has held that "arguing the arbitrability issue to an arbitrator does not indicate a clear willingness to arbitrate that issue." (*First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 946 [1995]). To preserve an objection to arbitrability, a party need only state his or her objection on record at arbitration. The party may then proceed with arbitration and raise objection at later date in an enforcement proceeding. (*See Lukens Steel Co. v. United Steelworkers of America (AFL-CIO)*, 989 F2d 668, 679 n.11 [3rd Cir. 1993]).

However, Respondent neglects to acknowledge that the arbitration provision relied on by Petitioner mandates that the arbitration shall be held according to AAA rules, and Delaware law has also made clear that it adopts the federal view that "reference to the AAA rules evidences a clear and unmistakable intent to submit arbitrability issues to an arbitrator." (*James & Jackson, LLC v Willie Gary, LLC*, 906 A2d 76, 80 [Del. 2006])). New York courts are in accord with the federal view on this matter. (*See In re RD Mgmt. Corp.,* 196 Misc. 2d 579, 581, 766 NYS2d 304, 307 [NY Sup. Ct. 2003], holding that "Here, the parties have expressly agreed to proceed under the Commercial Arbitration Rules of the American Arbitration Association, which grant the

arbitrator the power to decide the scope of the arbitration clause."). Therefore, the question of whether Delaware or New York law governed the parties' agreement is moot as either choice leads to the same result of the arbitrator rendering a determination.

Here, the parties both briefed the arbitrator on the jurisdictional issue after the AAA notified the parties that per the AAA rules, the arbitrator would issue a decision ahead of the substantive hearing regarding jurisdiction (NYSCEF doc No. 10). Petitioner's brief argued that the arbitration provision from the Purchase Agreement was applicable to the dispute as partially integrated agreements do not supersede prior enforceable agreements when there is no conflict in the terms, and that the integration clause in the latter agreement is inapplicable to the Purchase Agreement as the latter agreement is signed by more parties than were signatories to the original agreement (NYSCEF doc No. 28 at 8-9). By decision dated January 11, 2019, the arbitrator issued his decision indicating that he agreed with Petitioner:

> "Claimant posits jurisdiction over the instant matter on the arbitration provisions of a certain 1982 Purchase Agreement. According to Respondent, however, the Purchase Agreement was superseded by the subsequent 1993 Settlement Agreement which contains a standard "merger clause" and has no arbitration provision that would apply to the instant dispute. Respondent is mistaken in its position that the subsequent "merger clause", written ten (10) years later and addressing a different subject matter, standing alone, supersedes the arbitration provisions of the Purchase Agreement relied on by Claimant. Accordingly, Respondent's motion is denied"
>
> (NYSCEF doc No. 11).

The arbitrator thus determined that he had jurisdiction to proceed and affirm the award. By continuing to then participate in the arbitration rather than immediately filing a motion to stay the proceeding, Respondent "waiv[ed] any claim that the agreement to arbitrate was invalid" (*Meisels v Uhr,* 79 NY2d 526, 538 [1992]). Respondent does not, and cannot, argue that the arbitration award violates one of the four bases set forth in Article 75, as there is no evidence that the arbitrator engaged in fraud or misconduct, failed to act impartially, exceeded his power, or

failed to follow proper Article 75 procedures (see CPLR 7511[b][1]). Even if the Court were to disagree with the arbitrator's interpretation of the parties' contractual agreements, the award would still not be subject to vacatur, as even an error in substantive law is not grounds for vacatur as long as the decision making had a rational evidentiary basis and was not arbitrary or capricious (*See Motor Veh. Acc. Indem. Corp..*, 89 NY2d 214 at 223). As Respondent has failed to meet its heavy burden of establishing grounds for vacatur of the award pursuant to Article 75, the award is confirmed in its entirety.

Attorney's Fees

Petitioner also contends it is entitled to the costs and attorney's fees it has incurred in this proceeding. As discussed, the agreement between the parties is governed by Delaware law. It is well settled that under Delaware law, an indemnitee forced to engage in litigation to secure contractually owed indemnification rights is entitled to the fees associated with the litigation. (See *Delle Donne & Assocs. v Millar Elevator Serv. Co*., 840 A2d 1244, 1256 [Del. 2004]). As Petitioner was obliged to commence the motion before this Court to affirm the award it was issued as a result of contractually owed indemnification, it follows that Respondent is responsible for reimbursing Petitioner the fees and costs associated with this litigation. Petitioner's application for attorney's fees is therefore granted, and the Court refers the issue of the amount of reasonable attorney's fees to a special referee to determine that amount.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the petition of SPX Corporation is granted in its entirety; and it is further

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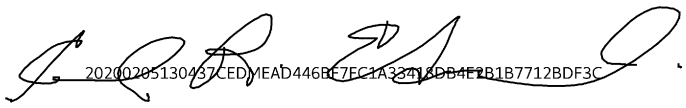

2/5/2020
DATE

CAROL R. EDMEAD, J.S.C.

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