Gibson, Dunn & Crutcher LLP v World Class Capital Group, LLC
2020 NY Slip Op 31801(U)
June 9, 2020
Supreme Court, New York County
Docket Number: 650318/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

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GIBSON, DUNN & CRUTCHER LLP,

Plaintiff,

- v -

WORLD CLASS CAPITAL GROUP, LLC, WORLD CLASS ACQUISITIONS, LLC

Defendants.

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INDEX NO. 650318/2020

MOTION DATE 03/16/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 19, 20, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76

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

Upon the foregoing documents, it is

In motion sequence number 001, petitioner Gibson, Dunn & Crutcher LLP (GDC) moves, pursuant to CPLR 7510 and 7514 and the Federal Arbitration Act, 9 USC § 9, for confirmation of the November 18, 2019 arbitration award against respondents World Class Capital Group, LLC (Group) and World Class Acquisitions, LLC (WCA). Respondents cross-move, pursuant to CPLR 3211(a) (8), for dismissal or, pursuant to CPLR 7511, to vacate the award or modify it.[1] The petition is granted, and the cross motion is denied.

[1] The court granted respondents' motion sequence number 002 to "re-open" and adjourn the petition when respondents failed to timely respond, and the court issued a briefing schedule. (NYSCEF Doc. No. [NYSCEF] 42, Decision of Feb. 21, 2020.) Though not authorized by this court or the CPLR, respondents filed a reply in further support of their cross- motion. (NYSCEF 74, Respondents' Memo of Law in Reply to Petitioner's Reply and in Support of Cross Motion.) Accordingly, the court rejects respondents' objection to allegedly new arguments raised in petitioner's reply.

GDC provided legal services pursuant to two engagement letters. (NYSCEF 1, Verified Petition, filed Jan. 14, 2020.) In the first engagement letter, addressed to nonparty WC JC Real Estate Partners I GP, LLC, dated February 1, 2016, the project is described as "drafting a JV agreement with the intent of purchasing real estate debt and equity opportunities in the US;" it was executed on July 18, 2016 by Linda Thong, designated as General Counsel of respondent WCA. (NYSCEF 6, First Engagement Letter at 1, 4.) The second engagement letter is dated July 18, 2016 and addressed to WCA and again executed by Thong as WCA's general counsel wherein the project is described as "Project Lasso" and "portfolio refinancing." (*Id.*, Second Engagement Letter.) The arbitrator noted that both engagement letters provide "'[u]nless otherwise agreed in writing, the terms of this letter and the attached Terms of Retention will also apply to any additional matters that we may handle on behalf of WC, and any affiliate of WC for whom we also provide legal services, as to which you represent that you have the authority to bind such affiliates to the terms of this letter.'" (NYSCEF 7, Oct. 18, 2019 Arbitration Award at 4.)

When GDC was not paid for legal services, it initiated an arbitration against respondents. (NYSCEF 8, Arbitration Demand.) Counsel responded by letter on Group letterhead. (NYSCEF 9, Norwood Dec. 18, 2018 Letter.) On October 18, 2019, the arbitrator issued an 11-page award setting forth facts, law, legal conclusions, and findings of fact after four days of trial. (NYSCEF 7, Arbitration Award.) The arbitrator found that GDC had established its breach of contract claim against both respondents. (*Id.* at 10.) On Project Lasso, the arbitrator awarded the invoiced amount of $90,233.55. (*Id.*) On the other matter, the arbitrator applied a 20% discount, as requested by respondents, for a total amount due of $605,736.05. (*Id.*) The arbitrator applied a 1% late fee and statutory

prejudgment interest, pursuant to the engagement letters and New York law, and directed the parties to calculate the amount of interest and fees on both invoices. (*Id.* at 9, 10; NYSCEF 5, Corrected Final Award, Nov. 18, 2019.) Finally, the arbitrator directed respondents to pay 80% of the arbitration fees and expenses in light of "Respondents' bad faith refusal to pay any amount of the underlying fees and costs in either of the matters." (NYSCEF 7, Arbitration Award at 10.) However, the arbitrator declined GDC's request for attorneys' fees and costs. (*Id.*)

During the arbitration and again here, respondents argue that there was no written engagement letter with either Group or WCA, that GDC sued the incorrect parties, and that GDC performed inadequate, ineffective, and negligent work. Respondents insist that Group was never a signatory to any agreement with GDC, and WCA was a party to a previous retainer agreement for a different project for which GDC was paid in full.

Preliminarily, the court rejects respondents' objection to jurisdiction of this court for this proceeding. Respondents are headquartered in Texas allegedly with an office in New York. (NYSCEF 1, Petition ¶ 5.) As to service of the notice of petition and petition, on January 17, 2020, petitioner delivered the documents to respondents at their New York office, followed by a mailing of the same documents. (NYSCEF 17, Ali Aff of Service.) On February 3, 2020, petitioner served respondents by delivering the petition papers to the New York Secretary of State's office in Albany. (NYSCEF 20, Bonneville Affidavits of Service.) On February 5, 2020, petitioner mailed a notice of service and a copy of the filings to both respondents at their New York and Texas offices via registered mail, return receipt requested. (NYSCEF 38, Feb. 18, 2020 Arias Aff of Service ¶ 2 and ex A, Group's Mail Return Receipt; NYSCEF 71, Arias Aff ¶¶ 5, 8.) On February 18, 2020, petitioner received

a return receipt from service on Group at the New York office and petitioner filed an affidavit of service with the court attaching the return receipt. (NYSCEF 38, Arias Aff, ex A.) Pursuant to LLC Law § 304, "[s]ervice of process shall be complete ten days after such papers are filed with the clerk of the court." Therefore, GDC asserts that service on respondents was completed on February 28, 2020.

Respondents argue that service was not complete because petitioner did not note in its affidavit of service filed with the court that it also served respondents with the notice of service indicating that petitioner had served the Secretary of State. Petitioner mailed respondents both a notice of service and a copy of the petition filings on February 5, 2020 by registered mail, return receipt requested. (NYSCEF 71, Arias Aff ¶ 5; NYSCEF 57, Arias Amended Aff of Service ¶ 2; NYSCEF 59, Karlan Aff ¶ 2.) Respondents admit that they received petitioner's notice of service on the Secretary of State in this February 5, 2020 package. (NYSCEF 75, Norwood Aff.) On March 9, 2020, petitioner filed an amended affidavit of service, confirming that a notice of service was mailed with copy of the filings on February 5, 2020. (NYSCEF 57, Arias Amended Aff of Service.) LLC Law § 304(c) (2) states that service is sufficient if notice and a copy of the process are mailed to respondents. LLC Law § 304 (e), provides that an affidavit of service shall be filed with the signed return receipt. The question is whether respondents were properly served with GDC's notice that it had served the Secretary of State; they were. To the extent the Arias's February 18, 2020 affidavit of service is silent on the notice of service on the Secretary of State, the March 9, 2020 amended affidavit of service clarifies it.

"[O]nce jurisdiction and service of process are questioned, plaintiff [ ] [has] the burden of proving satisfaction of statutory and due process prerequisites." (*Stewart v*

Volkswagen of Am., 81 NY2d 203, 207 [1993].) Arias's affidavits satisfy petitioner's burden and respondents fail to raise any legitimate reason to question service as described therein. Respondents' objection to petitioner's reference to BCL § 307 is a distraction since no prejudice is asserted by referencing the BCL instead of the LLC Law. Indeed, courts routinely look to the BCL for guidance in interpreting the LLC Law because of the similarity between the statutes and the dearth of cases interpreting the relatively newer LLC Law. (*Elzofri v Am. Express Co.*, 29 Misc 3d 898, 900 [Sup Ct, Albany County 2010] [court relied on "the legal principles applicable to Business Corporation Law § 307--a substantively identical statute governing service of process on unauthorized foreign corporations."].)

Finally, respondents accepted service in writing. (NYSCEF 35, Email.) In an email on January 29, 2020, Maryann Norwood, Esq., corporate counsel to respondents, does not dispute that she agreed to accept service in exchange for 10 business days to respond: "[t]hat's agreeable," she said. (*Id.*) Later the same day, Norwood agreed to respond to GDC's proposed stipulation, but she never did. (NYSCEF 36, Email.) Norwood submits two affidavits to this court subsequent to these emails but fails to mention her agreement. This is yet another troublesome example of respondents' failure to comply with New York practice and procedure; an attorney's agreement in writing must be reliable.[2] This agreement is to be distinguished from that where the parties simply agree to an extension of time. (*See Elzofri*, 29 Misc 3d at 901 [stipulation "by which to move or answer – an

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[2] The court notes that respondents have yet to comply with this court's February 21, 2020 order. (NYSCEF 42, Decision And Order Motion Sequence Number 002.) This is particularly disturbing in light of the court's admonition to respondents' counsel to familiarize themselves with the New York State court rules, Commercial Division rules, Part 48 Rules, the Standards of Civility, and ethics rules applicable to attorneys based on their papers and appearance before this court.

agreement necessitated by plaintiff's failure to file the required affidavit of compliance –does not constitute a waiver of its jurisdictional objection"].) A defect in service, if any, was waived when counsel Norwood accepted service.

Petitioner relies on the engagement letters, which set New York as the venue for arbitration, as also establishing the jurisdiction for this court. However, the signatories to the engagement letters did not agree to the jurisdiction of New York courts. While respondents' participation in the arbitration waives the issue of arbitrability,[3] participation in the New York arbitration alone is not enough for this court to acquire jurisdiction. (*Rochester City Sch. Dist. v Rochester Teachers Asso.*, 41 NY2d 578, 583 [1977] ["By statute that question must be raised before arbitration, and if it is not it is deemed to be waived."]; *Lane v Centron Installation, Inc*, 37 Misc3d 1215 [Sup Ct, Queens Cty 2012].) However, respondents' contacts with New York are numerous and meaningful: (1) Group's LinkedIn page states that it is a "leading private investment firm with a primary focus on global real estate" and has a New York office at "540 Madison Avenue" (NYSCEF 69, Respondents' Web Page); (2) both engagement letters were signed by Group's General Counsel Thong, at an office address in New York (540 Madison Avenue) (NYSCEF 6, Engagement Letters); (3) in an email transmitting the WCA's engagement letter, Thong's signature line provides that Group is also located at 540 Madison Avenue (NYSCEF 56, Project Lasso Emails); (4) GDC's final invoices were addressed to the attention of Thong at respondents' 540 Madison Avenue address (NYSCEF 60, Invoice to Group for Project Lasso; NYSCEF 61, Invoice to Group for

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[3] The court also notes that with regard to arbitratiblity, respondents informed the arbitrator that there were no such issues. (NYSCEF 12, Procedural Order 1 ¶ 2.) "A party who has participated in arbitration cannot later seek to vacate the award on the ground that the controversy was not arbitrable." (*See Rochester City Sch. Dist. v Rochester Teachers Assn*, 41 NY2d 578, 583 [1977].)

private placement); (5) during the arbitration in New York, respondents' corporate counsel Norwood, requested that petitioner send documents to "our NY office" which she confirmed is located at "767 Fifth Avenue, 16th Floor" (NYSCEF 67, Email); and (6) Norwood requested that the binder be sent to the attention of Rebekah Medwed whose LinkedIn page confirms that she has served as an office administrator for "World Class Capital Group LLC" in New York for the last three years. (NYSCEF 68, LinkedIn.) Respondents' casual denial otherwise is troubling. Moreover, in a fee dispute between a New York attorney and an out-of-state client, a New York court may exercise personal jurisdiction over an out-of-state client who purposely availed themselves of the services of New York attorneys. (*Fischbarg v Doucet*, 38 AD3d 270 [1st Dept 2007], *affd* 9 NY3d 375 [2007].) Therefore, this court has jurisdiction.

CPLR 7511(b) sets forth the limited grounds to vacate an arbitration award; respondents' unsuccessful arguments made to the arbitrator and rejected are not listed as such grounds.

First, respondents challenge the arbitration award arguing that the arbitrator exceeded the scope of her authority, manifestly disregarded the law and violated the strong public policy that requires law firms to execute retainer agreements with clients and to specify the parties being represented. Respondents insist that there was absolutely no rational basis for the arbitrator to find that the private placement matter, for which GDC had billed $757,170.07 and the arbitrator had awarded a total of $718,402.96, was a "similar representation" to the $90,233.55 "Project Lasso" matter.

The arbitrator found that no new written engagement letter was required for the Project Lasso matter because WCA had "expressly retained" GDC to perform work in

connection with the portfolio refinancing and previously paid GDC for the first modification of the Project Lasso loan. (NYSCEF 7, Arbitration Award.) The court rules provide that a new written letter of engagement is not required "where the attorney's services are of the same general kind as previously rendered to and paid for by the client." (22 NYCRR 1251.) Here, the arbitrator found that no new written engagement letter was required for the private placement matter because Sheena Paul, Chief Operating Officer and Internal Counsel of World Class, elected not to seek a new engagement letter and asked GDC to proceed with working on the matter. (NYSCEF 7, Arbitration Award at 8.)

The court finds that, since the arbitrator applied the law regarding engagement letters, she did not exceed her authority. (*In re Kowaleski*, 16 NY3d 85, 91 [2010].) Further, the arbitrator's finding that GDC's failure to create a new engagement letter cannot be against public policy since even noncompliance with 22 NYCRR 1215 is not a basis for refusal to pay legal fees. A tribunal does not exceed its authority simply because the award was based on the tribunal's interpretation of the evidence and was therefore not totally irrational. (*Seth Rubenstein PC v Ganea*, 41 AD3d 54, 60, 63 [2d Dept 2007].)

Next, respondents challenge the arbitrator's conclusion that petitioner performed adequate work and is entitled to be paid as totally irrational. Respondents' objection to the arbitrator's application of the 20% discount to the Private Placement Matter Invoice, that respondent's requested, is rejected. Unless respondents' request was irrational, then the arbitrator's application is certainly not "totally irrational." Moreover, the arbitrator's decision is "founded upon an interpretation of the evidence presented." (*Sherri Const Corp. v Capek Corp*, 231 AD2d 576, 577 [2d Dept 1996].)

The arbitrator granted the contractual penalty interest of 1% per month dating back to the date when GDC deemed its bills to be final and statutory interest. The arbitrator's application of the contract and law is not irrational.

The court has considered the balance of the parties' arguments and they do not yield an alternative result.

Accordingly, it is

ORDERED and ADJUDGED that the petition and motion are granted and petitioner shall have judgment against respondents World Class Capital Group, LLC and World Class Acquisitions, LLC; and it is further

ORDRED that petitioner's request for pre- and post-judgment interest running on the amount awarded from the date of the final award until the date of payment is granted; and it is further

ORDERED that the cross motion is denied; and it is further

ORDERED that petitioner shall submit by email to SFC-Part 48@nycourts.gov a proposed judgment to the court on 3 business days' notice to respondents which shall have 3 days to submit a counter judgment.

6/9/2020
DATE

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CHECK ONE:	[X] CASE DISPOSED		[ ] NON-FINAL DISPOSITION	
APPLICATION:	[X] GRANTED	[ ] DENIED	[ ] GRANTED IN PART	[ ] OTHER
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