

WM Meadow, LLC v Sierra Pac. Indus.
2020 NY Slip Op 32299(U)
July 13, 2020
Supreme Court, New York County
Docket Number: 655499/2019
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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WM MEADOW, LLC,

Plaintiff,

- v -

SIERRA PACIFIC INDUSTRIES, WATER MILL BUILDING
SUPPLY, LLC, J&R WINDOW REPAIRS, LLC, TRADE
SUPPLY GROUP, LLC, ASSA ABLOY RESIDENTIAL
GROUP, INC.,

Defendants.

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INDEX NO. 655499/2019
MOTION DATE 02/13/2020
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 64, 65, 66, 67, 68, 69, 70, 71, 76, 77, 78, 79, 80, 83, 84

were read on this motion to COMPEL ARBITRATION.

Upon the foregoing documents, it is hereby ordered that the motion of defendant Sierra Pacific Industries to stay the instant action pending mediation and/or arbitration is granted, and all other requests for relief are denied without prejudice, for the reasons stated hereinbelow.

Background

For a complete background to the instant motion, see this Court’s March 6, 2020 Decision and Order of Motion Seq. 001 (NYSCEF Doc. 74). As noted therein, plaintiff, WM Meadow, LLC, and defendant Sierra Pacific Industries (“SPI”) contracted for the supply of building materials. That contract includes the following provisions.

Section V of the subject SPI Warranty (the “SPI Warranty,” e-filed as Exhibit D, NYSCEF Doc. 8, to plaintiff’s Summons with Notice) states, in pertinent part:

- A. In order to achieve a quick and final resolution of disputes, [plaintiff] and [SPI] agree that any dispute or claim of any kind or amount arising out of the sale of windows, doors, and related or associated products (“Residential Products”), or otherwise relating to [SPI] shall be resolved as follows, hereinafter “Dispute Resolution Agreement” or “Agreement”:
 - i. The dispute or claim shall be submitted to mediation, as described herein; and
 - ii. If the mediation does not resolve the dispute or claim in its entirety, then that dispute or claim, or portion thereof, shall be resolved through binding arbitration, as described herein.

B. Disputes and claims subject to this Agreement include, but are not limited to:

- i. Any alleged breach of contract or breach of the duty of good faith and fair dealing;
- ii. Any alleged breach of warranty, express or implied...

(NYSCEF Doc. 8, at 6).

Additionally, pursuant to Section III(E) of the SPI Warranty, the parties agreed “to waive any right to a jury trial and agree to have all disputes heard and decided solely by the arbitrator conducting the binding arbitration” (NYSCEF Doc. 8, at 6).

On or about September 20, 2019, plaintiff commenced the instant action against defendants SPI; Water Mill Building Supply, LLC (“WMBS”); J&R Window Repairs LLC (“J&R”); Trade Supply Group, LLC (“TSG”); and Assa Abloy Residential Group, Inc. (“AARG”) (NYSCEF Doc. 1). Plaintiff seeks damages arising out of the delivery of goods (apparently nine doors, twenty-seven windows, and additional corresponding components) that SPI manufactured and which, according to plaintiff, the SPI Warranty between the parties apparently covers (NYSCEF Doc. 66, at 3-4). In its complaint, plaintiff alleges the following causes of action: (1) breach of contract against WMBS; (2) breach of contract against SPI; (3) breach of contract against AARG; (4) breach of express warranty against SPI; (5) breach of implied warranty of merchantability against WMBS; (6) breach of implied warranty of merchantability against SPI; (7) breach of implied warranty of merchantability against AARG; and (8) unjust enrichment against TSG (NYSCEF Doc. 4).

Defendants WMBS and TSG moved to dismiss plaintiff’s complaint on the ground of untimeliness (NYSCEF Doc. 15). Plaintiff opposed that motion, asserting that it served its complaint late because the parties were negotiating a settlement (NYSCEF Doc. 36). On March 6, 2020, this Court denied that motion without prejudice, stating (1) plaintiff tendered sufficient evidence that the subject delay did not arise out of plaintiff’s willful neglect; and (2) the parties were negotiating a settlement at the relevant time (NYSCEF Doc. 74).

Defendant SPI now moves for an order (1) pursuant to CPLR 7503, staying this action as against itself only and compelling mediation, and, if unsuccessful, arbitration between plaintiff and itself; and (2) pursuant to CPLR 2004, extending its time to respond to the complaint (NYSCEF Doc. 64). (Although the “Nature of the Paper” in the caption refers to dismissal, this Court believes that that was a typographical error, as there is no other mention of dismissal in movant’s papers.)

On March 17, 2020, plaintiff opposed the instant motion, requesting that this Court grant SPI’s motion to stay the instant action and compel mediation and/or arbitration but only if this Court also compels WMBS and TSG to join the subject mediation and/or arbitration and stays the proceeding as to J&R and AARG; or in the alternative, deny SPI’s instant motion (NYSCEF Doc. 77). Plaintiff argues that WMBS and TSG “are in privity of contract with plaintiff and [SPI] and therefore are appropriate parties to the mediation and/or arbitration” (NYSCEF Doc. 76, at 3).

Discussion

SPI's Request to Stay the Instant Action As Against Itself Only and to Compel Mediation and/or Arbitration Between Itself and Plaintiff

CPLR 7503(a) states:

A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.

SPI argues that, pursuant to the SPI Warranty's arbitration clause, the instant action should be stayed pending mediation and/or arbitration (NYSCEF Doc. 66, at 1).

In opposition to the instant motion, plaintiff asserts that it would consent to SPI's requests "if and only if" this Court adds defendants WMBS and TSG to the subject mediation and/or arbitration as said defendants "benefited from the Purchase Order" (NYSCEF Doc. 76, at 3). Plaintiff claims that although Matter of Belzberg v Verus Invs Holdings Inc., 21 NY3d 626, 630 (2013), held that "arbitration is a matter of contract grounded in the agreement of the parties," this Court should add WMBS and TSG to the subject arbitration pursuant to the theory of estoppel, citing Merrill Lynch Intl Fin v Donaldson, 27 Misc 3d 391, 396 (Sup Ct, NY County 2010) (NYSCEF Doc. 76, at 4). Plaintiff emphasizes that the Purchase Order that WMBS submitted to SPI on plaintiff's behalf references the SPI Warranty and states "unless otherwise noted in the line item, this product is covered under a [an SPI] limited warranty." Plaintiff also claims that WMBS and TSG "benefited directly from the Purchase Order because" they distributed SPI's products (NYSCEF Doc. 76, at 5).

Plaintiff further points to its multiple breach of contract causes of action against the subject defendants. Thus, plaintiff asserts that New York courts have found equitable estoppel to apply when "the signatory to the contract containing the arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract," Hoffman v Finger Lakes Instrumentation, LLC, 7 Misc 3d 179, 185 (Sup Ct, Monroe County 2005).

In reply, SPI asserts that such additions are "not expressly supported by the arbitration agreement," which "should be enforced precisely as written" (NYSCEF Doc. 83, at 2). E.g. R/S Assoc. v New York Job Dev. Auth., 98 NY2d 29, 32 (2002). SPI also claims, "while [plaintiff] cites to Belzberg for its position that [WMBS and TSG] should be compelled to arbitrate with [plaintiff and SPI] under the [SPI Warranty], Belzberg does not in any way cut against [SPI's] right to compel arbitration with [plaintiff] under the [SPI Warranty]" (NYSCEF Doc. 83, at 4).

Despite plaintiff's arguments, and what this Court respectfully considers its misreading of the case law, plaintiff may not compel defendants WMBS and TSG to mediate/arbitrate, as they never agreed to do so. On the other hand, SPI has demonstrated that it is entitled to have this Court stay the instant action and compel mediation and/or arbitration between SPI and plaintiff only. Plaintiff's request to stay this action as against defendants J&R and AARG is denied without prejudice, as plaintiff failed to cross-move for this relief.

SPI's Request to Extend (By Thirty Days) its Time to Answer the Complaint
CPLR 2004 requires a movant to establish "good cause" for a time extension. The Appellate Division holds that a court may consider the following factors in evaluating "good cause:"

The stated reason for the delay, the length of the delay, any prejudice to the opposing parties, whether the moving party was in default prior to seeking the extension, and finally whether an affidavit of merit has been proffered.

Saha v Record, 307 AD2d 550, 551 (2003) (NYSCEF Doc. 66, at 6). SPI asserts that it is entitled to extend its time to respond to the complaint until thirty days after the entry of any order denying its motion to compel mediation and/or arbitration.

SPI has established "good cause" because there was no need to answer the complaint until the instant motion was decided.

Conclusion

Thus, for the reasons stated herein, the motion of defendant Sierra Pacific Industries to compel mediation, and, if necessary, arbitration between itself and plaintiff WM Meadow, LLC, only, is hereby granted. All other requests for relief are denied without prejudice. The instant action is hereby stayed, pending arbitration, as against defendant Sierra Pacific Industries, only, and said defendant's time to answer the complaint is hereby extended to twenty days from the date of the lifting of this stay.

<u>7/13/2020</u> DATE					<u>ARTHUR F. ENGORON, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE