Steamer v Rinde
2021 NY Slip Op 30214(U)
January 19, 2021
Supreme Court, New York County
Docket Number: 652032/2019
Judge: Louis L. Nock

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **IAS MOTION 38EFM**

Justice

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JULIE STEAMER, BRUCE HART, STEAMER HART LLP

Plaintiffs,

- v -

JEFFREY RINDE, MICHAEL MALONEY, CKR LAW LLP,

Defendants.

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INDEX NO. 652032/2019

MOTION DATE 04/11/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

LOUIS L. NOCK, J.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48

were read on this motion to/for COMPEL ARBITRATION.

Upon the foregoing documents, and upon due deliberation, defendants' motion by order to show cause filed April 15, 2019 (NYSCEF Doc. No. 14), pursuant to CPLR 7503, to compel arbitration and to stay this action is granted as set forth in the following memorandum, and in the manner stated therein.

BACKGROUND

Plaintiffs commenced this action by summons with notice "for fraud, fraud in the inducement, and conversion of client funds" (NYSCEF Doc. No. 1). The allegations underlying the action are further fleshed out in plaintiffs' affidavit submitted in opposition to the instant motion (NYSCEF Do. No. 27), as follows.

Individual plaintiffs (the "Plaintiffs") are partners in the law firm of Steamer Hart LLP, also a plaintiff in this action. Plaintiffs' affidavit attests that Plaintiffs negotiated with defendants to join the defendants as law partners, culminating in their execution of August 2018

"Joinder" documents (NYSCEF Doc. Nos. 5 and 6) pursuant to a July 2018 Third Amended and Restated Partnership Agreement (the "Partnership Agreement") (NYSCEF Doc. No. 4). The Joinder documents reference an Addendum which sets forth provisions related to equity draws, year-end distributions, performance bonuses, and other incidents of a new partnership which would be comprised of all the individual parties hereto, to be known as CKR Law. Plaintiffs seem to be saying that although they definitely did execute Joinder documents, and definitely did assent to the terms of the Partnership Agreement, defendants "surreptitiously and fraudulently attached the parties' signature pages to an earlier draft of the Joinder . . . to which [they] never agreed and in fact flatly rejected" (NYSCEF Doc. No. ¶ 10). They say that that earlier draft "made no provision for [their] compensation and did not . . . reference the . . . Addendum" (*id.*).

The action seeks "a declaration that [Plaintiffs] are not and never were law partners with the defendants" and further seeks monetary relief representing fees paid to CKR Law by Plaintiffs' clients; costs involved in Plaintiffs' move into (and later, out of) the offices of CKR Law; and sums expended by Plaintiffs for which defendant Michael James Rinde promised to reimburse them for (NYSCEF Doc. No. 27 ¶ 4).

Prior to the filing of any complaint, or any demand for complaint, defendants filed the instant motion seeking to stay this action and compel arbitration based on broad, clear, and unambiguous arbitration provisions contained in the Partnership Agreement and in the Joinder documents.[1] In fact, it is undisputed that Plaintiffs actually did commence a JAMS mediation proceeding in October 2018 – an express prerequisite to arbitration found in the arbitration clause of the Partnership Agreement – albeit with their stated proviso that, according to them, they "were not party or subject to any written partnership agreement with the defendants"

[1] The arbitration clause requires the grieving party – in this case, plaintiffs – to pay for the arbitration (NYSCEF Doc. No. 4 ¶ 17.2).

(NYSCEF Doc. No. 27 ¶ 13). They state that their decision to commence mediation was, simply, an "expedient" means of trying to resolve their dispute (*id.*, ¶ 12). Moreover, Plaintiffs assert that they commenced this action because defendants failed to mediate in good faith (*id.*, ¶¶ 20-21).

DISCUSSION

It is the policy of this state to encourage arbitration (*see, Smith Barney Shearson Inc. v Sacharow*, 91 NY2d 39 [1997]; *Weinrott v Carp*, 32 NY2d 190, 199 [1973] ["The CPLR arbitration provisions evidence a legislative intent to encourage arbitration."]). "Any doubts as to whether an issue is arbitrable will be resolved in favor of arbitration" (*State of New York v Philip Morris Inc.*, 30 AD3d 26, 31 [1st Dept 2006], *affd* 8 NY3d 574 [2007]).

The Partnership Agreement expressly requires binding arbitration before JAMS for "[a]ny claim or dispute arising out of this Agreement or the alleged breach thereof" (NYSCEF Doc. No. 4 ¶ 17.2). It continues: "the cost of any arbitration shall be borne exclusively by the Partner asserting the claim, which party shall be obligated to advance such costs and expenses before commencing any proceedings" (*id.*). The Joinder documents recognize these provisions in paragraph 3.6 thereof (*see*, NYSCEF Doc. Nos. 5 and 6). Most significantly, plaintiffs, by letter of their counsel dated October 25, 2018, served an express "Demand for Arbitration" on defendants in connection with their instant dispute (*see*, NYSCEF Doc. No. 22). This, of course, belies Plaintiffs' newly stated position, in opposition to the instant motion, that they only acceded to *mediation*, and even then, only for the sake of expedience, and not due to their recognition that such proceedings were required for them to pursue as a matter of obligation, prerequisite to any arbitration of their dispute with defendants per the Partnership Agreement

(*see, Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999] ["'factual claims flatly contradicted by documentary evidence are not entitled to . . . consideration'"]).

Furthermore, the broadly worded arbitration clause – requiring binding arbitration of "[a]ny claim or dispute arising out of this Agreement or the alleged breach thereof" (NYSCEF Doc. No. 4 ¶ 17.2) – invokes a connotation of inclusivity, in terms of the scope of arbitrable controversy, as opposed to limitation in such scope (*see, Housekeeper v Lourie*, 39 AD2d 280, 281 [1st Dept 1972] ["The agreement of April 1, 1970 contained a clause broadly providing for the arbitration of 'any controversy or claim arising out of or relating to this contract or the subject matter hereof or the breach hereof'"], *appeal dismissed* 32 NY2d 832 [1973]).

In sum, the broadly worded arbitration provision, taken together with plaintiffs' counsel's express Arbitration Demand, and mindful of this state's policy encouraging arbitration, the court must grant defendants' motion to stay this action and compel arbitration as, indeed, plaintiffs have actually already commenced.[2] All the issues and claims summarized in plaintiffs' summons with notice filed in this action can just as well be determined by the arbitrator; i.e., the status of plaintiffs' clients' fee remittances to CKR Law; reimbursement for certain expenditures; and a determination regarding plaintiffs' affiliative status vis-à-vis CKR Law.

Because the Partnership Agreement requires that mediation be given a chance prior to any arbitration, this court's grant of defendants' motion necessarily requires that the parties first proceed to mediation which, if unsuccessful, will be followed by binding arbitration. But in the wake of this holding, the court is still called upon to determine an issue involving who bears the

[2] Defendants, in their supporting affirmation, suggest that the question of arbitrability underlying their motion should be determined by the JAMS arbitrator (*see*, NYSCEF Doc. No. 3 ¶¶ 23-24). However, that is in direct conflict with their own proposed order to show cause, endorsed by this court, seeking an order directly from this court "to compel arbitration" (NYSCEF Doc. No. 14).

cost of the mediation, which is a contractual prerequisite to any arbitration (*see*, NYSCEF Doc. No. 4 ¶ 17.2).

Plaintiffs assert that defendants unreasonably demanded that plaintiffs bear the cost of the mediation, which, pursuant to the Partnership Agreement, must precede arbitration (*see*, NYSCEF Doc. No. 27 ¶ 16). Plaintiffs proffer that assertion based on a gap in the arbitration clause concerning the cost burden. The Partnership Agreement states explicitly that "the cost of any *arbitration*" shall be borne by the grieving party (NYSCEF Doc. No. 4 ¶ 17.2 [emphasis added]). However, nothing is said about the cost burden underlying the *mediation*, which must precede any arbitration. Plaintiffs' point is well taken.

When a required term is missing in a contract, that term may be "determinable by reference to clear objective standards" (*Chapman, Spira & Carson, LLC v Helix BioPharma Corp.*, 115 AD3d 526, 527 [1st Dept 2014]). In this instance, the Partnership Agreement only set forth the cost burden for arbitration; not for mediation, which was contractually designed, clearly, as a means of avoiding any arbitration. In view of the contractual silence on that point, this court applies an objective standard which recognizes the mutual benefit to both sides inherent in mediation as a means of negotiation toward the goal of consensual resolution and settlement of their dispute. Viewed thusly, and objectively, this court supplies the missing term by adopting a construction requiring both sides to share equally in the cost of mediation.

Finally, in light of the within disposition, compelling mediation/arbitration and staying this action: that part of the motion, by order to show cause, couched in terms of a request for a preliminary injunction, is academic. The case is stayed, and mediation will go forward at equally shared cost. If mediation proves unsuccessful, arbitration will go forward at plaintiffs' cost.

Accordingly, it is

ORDERED that defendants' motion to stay this action and compel arbitration is granted to the extent that plaintiffs, should they desire to press their claims, will first engage in JAMS mediation of their claims, at equally shared cost with defendants, and, if such mediation proves unsuccessful, that plaintiffs, should they desire to further press their claims, will proceed to binding JAMS arbitration, at their cost.

This will constitute the decision and order of the court.

ENTER:

1/19/2021
DATE

LOUIS L. NOCK, 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