

Hudak v Roe

2023 NY Slip Op 32341(U)

July 11, 2023

Supreme Court, New York County

Docket Number: Index No. 650300/2022

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 37

Justice

-----X

MARC T HUDAK,

Plaintiff,

- v -

JOHN ROE,

Defendant.

-----X

INDEX NO. 650300/2022

MOTION DATE 03/07/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to DISMISS

Upon the foregoing documents, and the for the reasons stated hereinbelow, the instant motion to dismiss is granted, without prejudice to plaintiff to reinstate in Michigan.

Background

This action arises from the flaming ruins of a business relationship between plaintiff, Marc T. Hudak ("Hudak"), an insurance broker, non-party Acrisure, LLC, and its various branches.

On March 1, 2019, Hudak entered into a series of interrelated agreements, including a Producer Agreement and Letter Agreement (collectively, the "Employment Agreement"), with Acrisure and one of its branches, non-party The Whitmore Group. NYSCEF Doc. Nos. 20 ¶¶ 19-26, 11.

Section 14 of the Employee Agreement states, as relevant: "[t]he parties agree that any action at law or equity or any judicial proceedings for enforcement of this Agreement or any provision thereof shall be instituted only in the federal or state courts located in the County of Kent, State of Michigan." NYSCEF Doc. No. 11.

On May 27, 2020, Hudak commenced a lawsuit in Supreme Court, New York County, captioned Hudak v Acrisure, LLC, The Whitmore Group, Ltd., and James Metzger, Index No. 652024/2020 (the "Prior Action").

On or about September 6, 2020, the parties to the Prior Action executed a "Confidential Settlement and Release Agreement" settling the matter (the "Settlement Agreement"). NYSCEF Doc. No. 13.

Section 9 of the Settlement Agreement states, in full:

This Agreement is entered into in the State of New York. However, it shall be construed and interpreted in accordance with the laws of the State of Michigan. All lawsuits related to this Agreement must be brought in the federal or state courts of Michigan. The Parties consent to the personal and subject-matter jurisdiction of the courts of the State of Michigan, including, but not limited to, without regard to principles of conflict of laws, venue, and forum non conveniens. However, if any action is brought solely under the Book Purchase Agreement and/or Side Letter which does not name Acrisure as a party, the parties agree that such action may be brought in the federal or state courts in the State of New York.

NYSCEF Doc. No. 13.

Pursuant to the Settlement Agreement, Hudak would continue to work for Acrisure but at its "Agency Partner," non-party City Underwriting Agency, Inc. ("City"), with his employment still bound by the Employee Agreement. NYSCEF Doc. No. 13 § 3.

On December 6, 2021, Acrisure sued Hudak in Circuit Court, Kent County, Michigan, captioned Acrisure, LLC v. Hudak, Case No. 21-11147- CBB (the "Michigan Action"). NYSCEF Doc. No. 16. Hudak then removed the Michigan Action to the United States District Court for the Western District of Michigan and, on January 22, 2022, filed counterclaims. NYSCEF Doc. No. 17.

On January 19, 2022, Hudak commenced the instant action against defendant, John Roe ("Roe"), the Branch President of City, asserting five causes of action: (1) tortious interference with contract; (2) tortious interference with prospective business advantage; (3) fraud/fraudulent inducement; (4) violation of New York Labor Law § 191(d); and (5) violation of New York Labor Law § 193. NYSCEF Doc. No. 20.

On February 18, 2022, Roe moved, pursuant to CPLR 3211(a)(1), (4), and (7), to dismiss the complaint. NYSCEF Doc. No. 7. Roe argues that, as an officer of Acrisure being sued specifically for matters relating to the Employment Agreement and Settlement Agreement (collectively, the "Agreements"), their forum selection clauses should apply, and the instant matter must be tried in Michigan. NYSCEF Doc. No. 8. Roe also argues that the case should be dismissed in favor of the pending first-filed Michigan Action. Id.

In the alternative, Roe argues that: Hudak's first and second causes of action, for interference, should be dismissed because Roe, as an officer of Acrisure, cannot have tortiously interfered with a contract to which he is a part; and that Hudak's fourth cause of action, for a violation of Labor Law § 191(d), should be dismissed because Hudak was not a "clerical worker" as defined in New York's Labor Law. NYSCEF Doc. No. 8

In opposition, Hudak argues that: the Agreements' forum selection clauses do not apply because Roe was not a party to them; Hudak's causes of action involve intentional torts outside the scope of the forum selection clauses; the Michigan Action does not include Roe and so CPLR 3211(a)(4) does not apply; Roe's alleged tortious interference with the Agreements was for his own personal financial gain and so he can held liable; and that

Hudak meant for his fourth cause of action to reference Labor Law § 191(c) instead of the § 191(d), an error that should be excused as nonprejudicial pursuant to CPLR 3026. NYSCEF Doc. No. 25.

Discussion

Dismissal pursuant to CPLR 3211(a)(1) is warranted where “documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” Leon v Martinez, 84 NY2d 83, 87-88 (1994).

It is the

well-settled “policy of the courts of this State to enforce contractual provisions for choice of law and selection of a forum for litigation.” Forum selection clauses, which are prima facie valid, are enforced “because they provide certainty and predictability in the resolution of disputes,” and are not to be set aside unless a party demonstrates that the enforcement of such “would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court.”

Sterling Nat. Bank as Assignee of NorVergence, Inc. v E. Shipping Worldwide, Inc., 35 AD3d 222 (1st Dept 2006) (internal citations omitted).

A “nonparty that is ‘closely related’ to one of the signatories can enforce a forum selection clause. The relationship between the nonparty and the signatory in such cases must be sufficiently close so that enforcement of the clause is foreseeable by virtue of the relationship between them.” Freeford Ltd. v Pendleton, 53 AD3d 32, 39 (1st Dept 2008).

Here the Agreements’ forum selection clauses are crystal clear that any lawsuits arising out of them must be litigated in the federal or state courts of Michigan. Hudak goes to great lengths to argue that his causes of action against Roe are separate and distinct from the Agreements, but his arguments are unpersuasive. As the branch president of City, an unincorporated division of Acrisure, Roe is a principal of Acrisure and, thus, sufficiently “closely related” that enforcement of the Agreements’ forum selection clauses is foreseeable. Further, each of Hudak’s causes of action are inexorably linked to the performance, or alleged non-performance, of the signatories of the Agreements.

Hudak has failed to argue, much less show, that enforcement of the forum selection clauses here would be unreasonable, unjust, or that the clauses, which he entered into as a sophisticated party with the help of counsel, are in any way invalid.

This Court has considered Hudak’s remaining arguments and finds them to be unpersuasive and/or non-dispositive.

Conclusion

Therefore, the instant motion of defendant, John Roe, to dismiss the complaint of plaintiff, Marc T. Hudak, is granted; and, accordingly, the Clerk is hereby directed to enter judgment dismissing the complaint, without prejudice to plaintiff to assert the instant claims in the state of Michigan.



7/11/2023

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE