Digitalworks LLC v Abraham
2023 NY Slip Op 32699(U)
August 3, 2023
Supreme Court, New York County
Docket Number: Index No. 652456/2022
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **38M**

Justice

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DIGITALWORKS LLC, A DELAWARE LIMITED LIABILITY COMPANY,

Plaintiff,

- v -

RETTA ABRAHAM; RDM PARTNERS, A FLORIDA LIMITED LIABILITY COMPANY; and DOES 1-25,

Defendants.

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INDEX NO. 652456/2022

MOTION DATE 09/15/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 27, 28, 29, 30, 32, and 33

were read on this motion to COMPEL ARBITRATION.

LOUIS L. NOCK, J.

Upon the foregoing documents, defendants' motion to compel arbitration is denied for the reasons set forth in the opposition memorandum of law (NYCSFE Doc. No. 32), in which the court concurs, as summarized herein.

Plaintiff seeks compensation for its work, through its principal, nonparty Edward Rivera, in securing the acquisition of the company Natural Beauty by defendants RDM Partners, LLC, and Retta Abraham ("defendants"). Defendants were assisted in the acquisition, not just by plaintiff, but also by nonparty Opes Group ("Opes"), with whom RDM Partners signed an engagement agreement (engagement agreement, NYSCEF Doc. No. 30). The agreement provides, in relevant part, that either party may, in the event of a dispute, "submit the dispute to binding arbitration to be conducted in New York City, New York, before the American Arbitration Association ('AAA') in accordance with the Commercial Arbitration Rules of the AAA and the Dispute Resolution Procedures attached thereto" (*id.* at 4). Neither plaintiff nor

Rivera are parties to the engagement agreement, yet defendants now seek to compel plaintiff to arbitrate this dispute based on the agreement.

On a motion to compel arbitration pursuant to CPLR 7503, if the court finds no substantial question that "a valid agreement was made," that it was "complied with," and there is no statute of limitations bar, the court must direct the parties to arbitrate and stay a pending or subsequent action (*see*, CPLR 7503[a]). The validity of the entire agreement is a question for the arbitrators; the court may decide only whether the arbitration clause itself is valid (*Prinze v Jonas*, 38 NY2d 570, 577 [1976] ["Thus even when it is alleged, as it is in this case, that the contract itself is invalid in its entirety, the court's role is still confined to determining the validity of the arbitration clause alone. If the arbitration agreement is valid, any controversy as to the validity of the contract as a whole passes to the arbitrators").

Here, the threshold questions cannot be answered in defendants' favor. Plaintiff is undisputedly not a party to the arbitration agreement. Defendants argue that the question of arbitrability is more properly committed to the arbitrators under the AAA rules. However, even where, as here, the designated arbitrator has the power to consider whether a dispute is arbitrable (*Denson v. Donald J. Trump For President, Inc.*, 180 A.D.3d 446, 453 [1st Dept 2020] ["The parties agreed that the rules of the AAA would apply, which provide that questions concerning the scope and validity of the NDA, including issues of arbitrability, would be decided by the arbitrator"]), it is for the court to determine whether the contract binds the party sought to be compelled to arbitrate (*Granite Rock Co. v International Broth. of Teamsters*, 561 US 287, 296 [2010]; *Bidermann Indus. Licensing, Inc. v Avmar N.V.*, 155 AD2d 303 [1st Dept 1989] ["The Supreme Court, New York County, properly stayed the arbitration as to Bidermann Industries,

U.S.A. Inc., since Bidermann Industries U.S.A., Inc., never agreed to arbitrate any disputes with respondents with regard to the contracts in question"]).

Defendants assert that plaintiff can still be bound, even as a nonsignatory, citing *Merrill Lynch Intern. Fin., Inc. v Donaldson* (27 Misc 3d 391, 396 [Sup Ct 2010]). That case itself relies on a decision of the U.S. Court of Appeals for the Second Circuit, which lists five scenarios under which a nonsignatory to an arbitration agreement can be compelled to arbitrate: "1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter ego; and 5) estoppel" (*Thomson-CSF, S.A. v Am. Arbitration Ass'n*, 64 F3d 773, 776 [2d Cir 1995]). None of these scenarios is supported by the record herein, defendant Abraham's self-serving affidavit to the contrary notwithstanding. Moreover, the allegations of the complaint make clear that Rivera's, and by extension, plaintiff's, relationship with defendants predates the engagement agreement, and that Rivera performed work independent of the deal between Opes and defendants, for which he expected to be compensated.[1] This is not a direct benefit of the kind that the *Thomson-CSF* court held might have supported an estoppel argument (*see, Thomson-CSF, S.A.*, 64 F3d at 779).

Defendants' argument that a "close and connected relationship" between and among Opes, Rivera, and plaintiff operates to bind plaintiff to the engagement agreement, also fails. That argument will "estop a *signatory* from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed" (*id.* [emphasis in original]). Here, defendants, signatories to the engagement agreement, are instead attempting to bind a nonsignatory. Defendants' reliance on *Revis v Schwartz* in support of this argument is unavailing, as there, the parties seeking to

[1] Defendants argue that "it is implausible" that plaintiff "relied on an unwritten, unnegotiated, and unexecuted agreement for his expected compensation" (reply memorandum of law, NYCSFE Doc. No. 33 at 4 n 2); yet given the close familial, alumni, and business relationships involved between the parties, the court finds such conduct to be plausible under the circumstances alleged.

compel arbitration were also nonsignatories seeking to compel a signatory (*Revis v Schwartz*, 192 AD3d 127, 144 [2d Dept 2020], affd, 38 NY3d 939 [2022] ["Given the allegations in the complaint, the nonsignatory defendants identified therein—Feinsod and S & F—were entitled to enforce the arbitration provisions contained in the SRA and the NFLPA Regulations"]).

Accordingly, it is hereby

ORDERED that the defendants' motion to compel arbitration is denied; and it is further

ORDERED that defendants are directed to file an answer to the complaint within 20 days of service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a preliminary conference in Room 1166, 111 Centre Street, on September 6, 2023, at 2:00 PM.

This constitutes the decision and order of the court.

ENTER:

Louis L. Nock

8/3/2023
DATE

LOUIS L. NOCK, J.S.C.

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