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*****1** Matter of the Application of Joseph Pinson, Petitioner,
v.
Mendel Pinson, Respondent.
14424/06

Supreme Court, Kings County

Decided on September 7, 2006
CITE TITLE AS: Matter of Pinson v Pinson

ABSTRACT

Arbitration

Agreement to Arbitrate

Fraudulent Inducement

Pinson, Matter of, v Pinson, 2006 NY Slip Op 51685(U). Arbitration--Agreement to Arbitrate--Fraudulent Inducement. (Sup Ct, Kings County, Sept. 7, 2006, Schack, J.)

APPEARANCES OF COUNSEL

Appearances:

Petitioner

Tratner & Molloy, LLP

NY NY

Respondent/ Cross-Respondent

Novak Juhase & Stern

Cedarhurst NY

OPINION OF THE COURT

Arthur M. Schack, J.

Petitioner (Joseph) and respondent (Mendel) are brothers. Petitioner seeks by

order to show cause, pursuant to CPLR § 7503 (a), to compel respondent to proceed to *****2** arbitration, in accordance with their January 6, 2006 agreement to arbitrate a dispute with respect to real property known as 327 Kingston Avenue, Brooklyn, New York. The arbitration agreement, written in Hebrew, is for a three member Rabbinical Court, a Beth Din, "to consider and adjudicate the controversy" [exhibit B of order to show cause - Hebrew agreement with English translation and certificate of accuracy]. Further, petitioner seeks a preliminary injunction, pursuant to CPLR § 6301, to enjoin any further proceedings in Kings County Civil Court, Part 52 commercial landlord and tenant holdover case, Index Number 66895/2006, Mendel Pinson and Hanna Pinson v Joseph Pinson and Joseph Pinson d/b/a Weinstein's Stores 327 Kingston Avenue, pending the outcome of the instant petition. The Civil Court action was commenced on April 3, 2006, subsequent to the January 6, 2006 arbitration agreement. It was stayed pending the decision on the instant order to show cause. Lastly, petitioner seeks to temporarily restrain respondent, pursuant to CPLR § § 6301 and 7502 (c), from selling, transferring or encumbering the 327 Kingston Avenue property.

Respondent, in his cross-petition, moves to either stay the arbitration permanently, pursuant to CPLR § 7503 (a), or restore to the active calendar the above-named Civil Court, Part 52 case and permit the holdover action to go forward with Mendel Pinson deleted from the caption. The amended caption would allow Mendel's wife, Hanna, to continue the action against her brother-in-law, Joseph, on the grounds that since she is not a party to the Beth Din arbitration, she can proceed.

Respondent, in his affirmation in opposition, § 3, claims that his brother "and his Rabbi tricked me into signing the Hebrew Arbitration Agreement

which I did not really understand," and in § 9, he claims that Joseph "and his Rabbi got me to sign the Hebrew arbitration agreement under false pretenses."

An arbitration before a Beth Din is a valid form of alternate dispute resolution. The parties entered into a broad agreement for the rabbinical court "to consider and adjudicate the controversy" between them. All claims with respect to 327 Kingston Avenue, Brooklyn, New York, are before the Beth Din, as per the agreement of the parties. Further, pending the outcome of the Beth Din proceedings: the pending litigation in Kings County Civil Court, Part 52, Index Number 66895/2006, Mendel Pinson and Hanna Pinson v Joseph Pinson and Joseph Pinson d/b/a Weinstein's Stores 327 Kingston Avenue, is stayed; and, respondent Mendel Pinson and his wife, Hanna Pinson, are temporarily restrained from selling, transferring or encumbering the property in dispute at 327 Kingston Avenue.

Background

The instant dispute goes back to 1983. On July 7, 1983, Baruch (a third brother) and Joseph Pinson entered into a contact to purchase 327 Kingston Avenue from its owners, Mendel and Hanna, tenants by the entirety [exhibit A of motion], for $85,000.00. The contract, with a closing date set for five years later, on July 7, 1988, was recorded with the City Register on July 20, 1983 [ACRIS (Automated City Register System) for ***3 Block 1279, Lot 6, Brooklyn].

Respondent Mendel claims that he agreed to sell the building because he was moving to Israel with his family. The closing date in 1988 came and went. Subsequently, Mendel and his family moved back to Brooklyn. Joseph has continuously operated a hardware store at the disputed premises.

Mendel claims, in § 7 of his affirmation in opposition, that the three brothers and his wife signed "a contract before a notary memorializing our agreement to rescind that 1983 contract" [exhibit A of cross-petition]. However, this alleged rescission was never recorded. Further, the notary printed that "this is to certify that Baruch Pinson, Joseph Pinson, Mendel Pinson and Hanna Pinson signed this paper before me this November 21st, 1995." This "certification" is not the function of a notary public. According to Executive Law § 135, a notary public administers oaths and affirmations, and performs related duties, such as taking depositions or certifying deeds and mortgages. CPLR § 2309 (b) requires that "an oath or affirmation shall be administered in a form calculated to awaken the conscience and impress the mind of the person taking it in accordance with his religious or ethical beliefs." In Bookman v City of New York, 200 NY 53, 56 (1910), the Court instructed that:

It is, therefore, apparent that some form of an oath or affirmation is

essential, by or in the presence of the officer, by which the affiant's

conscience becomes bound with an oath . . . Whatever the form

adopted, it must be in the presence of an officer authorized to administer

it, and it must be an unequivocal and present act by which the affiant

consciously takes upon himself the obligation of an oath.

See People v Semonite, 18 Misc 2d 427, 428 (Sullivan County Ct 1959). Joseph claims in § 4 of his petition that the "business was purchased by the Petitioner from the Respondent more than twenty years ago." Even if Joseph purchased the hardware business, there is no recorded deed for Joseph purchasing 327 Kingston Avenue listed in ACRIS.

Mendel claims, in his cross-petition, that he seeks a stay of the arbitration so that he can sell the building at full value. Further he claims that Joseph is time-barred by the six-year statute of limitations for

his contract action from 1983. Then, he claims that his brother is paying him and his wife only $1,400 per month in rent, when the fair market rent is $3,500 per month. Mendel's $3,500 per month claim is based upon a May 26, 2006-notarized letter of an alleged Brooklyn real estate broker, in which the notary does not state that the broker swore to the truth of the statement. Thus, this alleged sworn statement is baseless. Bookman v City of New York, *supra*; People v Semonite, *supra*. Lastly, Mendel claims that this Court cannot stay Hanna, his wife, from proceeding in the *****4** Civil Court holdover action against Joseph, because she is not a party to the Beth Din arbitration agreement.

Discussion

New York State, in the early1920's established its present public policy of favoring voluntary arbitration to resolve commercial disputes. The Legislature enacted the Arbitration Law (L 1920, ch 275), which recognized the right of parties to use commercial arbitration forums and the courts to enforce arbitration agreements and awards. The Civil Practice Act, the predecessor to the CPLR, reflected this public policy change at § 1448 *et seq*. The Court of Appeals, in Gilbert v Burnstine, 255 NY 348, 353-354 (1931), observed that:

Settlements of disputes by arbitration are no longer deemed contrary

to our public policy. Indeed, our statute encourages them. Contracts

directed to that end are now declared valid, enforceable and irrevocable

save upon such grounds as exist at law or in equity for the revocation

of any contract. (Arbitration Law; Cons. Laws, ch. 72, § 2; Matter of

Berkowitz v Arib & Houlberg, 230 NY 261 [1921]; Matter of

Zimmerman v Cohen, 236 NY 15 [1923]).

The Court, in Siegel v Lewis, 40 NY2d 687, 688-689 (1976), instructed:

that commercial arbitration is a creature of contract. Parties, by

agreement, may substitute a different method for the adjudication

of their disputes than those which would otherwise be available to

them in public courts of law . . .When they do so, they in effect select

their own forum. Their quest is usually for a nonjudicial tribunal that

will arrive at a private and practical determination with maximum

dispatch and at minimum expense (Mandel, Preparation of Commercial Agreements [1973 ed], p 65). It has long been the policy of the law to

interfere as little as possible with the freedom of consenting parties to

achieve that objective.

Recently, in State v Philip Morris, Inc., 30 AD3d 26, 31 (1st Dept 2006), the Court held that "[a]rbitration is strongly favored under New York law (Matter of Nationwide Gen. Ins. Co. v Investors Ins. Co. of Am., 37 NY2d 91, 95 [1975]). Any doubts as to whether an issue is arbitrable will be resolved in favor of arbitration (Matter of Smith Barney Shearson v Sacharow, 91 NY2d 39, 49-50 [1997])."

Religious courts have long been recognized as proper venues for the voluntary *****5** resolution of contractual disputes. The U.S. Supreme Court, in Gonzalez v Roman Catholic Archbishop of Manila, 280 US 1, 16 (1929), held that: "[i]n the absence of fraud, collusion, or arbitrariness, the decisions of

the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." In Sieger v Union of Orthodox Rabbis of U.S. and Canada, Inc., 1 AD3d 180, 181-182 (1st Dept 2003), the Court quoted from Watson v Jones, 80 US 678, 728-729 (1871), which observed that:

The right to . . . create tribunals for the . . . ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. [*Emphasis added*]

A Beth Din, by voluntary agreement of the parties, can resolve contractual disputes. Weisenberg v Sass, 209 AD2d 424 (2d Dept 1994); Meisels v Uhr, 79 NY2d 562 (1992); Avitzur v Avitzur, 58 NY2d 108 (1983); Kingsbridge Center of Israel v Turk, 98 AD2d 664 (1st Dept 1983).

CPLR § 7501, "effect of arbitration agreement," is a very expansive statue. It states:

A written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award. In determining any matter arising under this article, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. [*Emphasis added*].

In the instant action, Mendel claims that arbitration is time barred by the statute of limitations for contract actions. However, as the parties agreed to go to the Beth Din to resolve their dispute, this Court will not bar the issue of a twenty-three-year old contract from being considered by the rabbinical court. In *****6**Brown v Bussey, 245 AD2d 255 (1st Dept 1997), the Court instructed that "[o]n a motion to compel or stay arbitration, the court must determine, in the first instance, whether the parties made a valid agreement to arbitrate (*see*, Sisters of St. John the Baptist v Geraghty Constructor, 67 NY2d 997, 998 [1986]; *see also*, Matter of Smith Barney, Harris Upham & Co. v Luckie, 85 NY2d 193, 201-202 [1995])." Neither Joseph nor Mendel denies that they signed the January 6, 2006 arbitration agreement. Mendel's allegation is that he was fraudulently induced into signing the agreement by an unnamed rabbi. That issue will be discussed below. Therefore, in the instant case, the parties have to proceed to arbitration. The Court, in Matter of Prudential Property and Cas. Ins. Co., 133 AD2d 87, 88 (2d Dept 1987), instructed that, "when the parties properly agree to submit a dispute or claim to arbitration, a trial court should not pass on the merits of that claim, but rather it is for the arbitrator to make that determination and to interpret provisions in the contract in resolving the dispute (CPLR 7501, 7503 [b] . . .)." *See* Sisters of St. John the Baptist v Geraghty Constructor, *supra;* Praetorian Realty Corp. v Presidential Tower, Inc., 40 NY2d 897 (1976); Nationwide Gen. Ins. Co. v Investors Ins. Co. of Am., 37 NY2d 91, 95 (1975).

Arbitration agreements are either narrow or broad. It is clear that the January 6, 2006 agreement of the Pinson brothers is broad. The first paragraph of the Agreement names the three rabbis appointed "to consider and adjudicate the controversy between us." Then in the second paragraph, it states:

we are hereby committing in a most effective manner to present our

demand, claims and arguments that's between us before the above

mentioned Rabbinical Court, and the Rabbinical Court will consider

and adjudicate. And any ruling which may be issued by a majority

of the Rabbinical Court, we would accept and would adhere to without

any evasion. And from the outset, we waive any right to challenge [the

ruling] either before another Rabbinical Court or before the secular

courts of the government.

With this broad agreement the Beth Din can address not only the validity of the 1983-recorded contract of sale, but related issues with respect to the rental of the hardware business at 347 Kingston Avenue, and the appropriate rent or fee for use and occupancy. In Blum Folding Paper Box Co. v Friedlander, 27 NY2d 35, 28 (1970), the Court instructed that "[t]he very broad limits of arbitrability envisioned in CPLR 7502 . . . forbid any judicial interference with disputes logically connected with the agreement." *See* Meisels v Uhr, *supra*; Opan Realty Corp. v Pedrone, 36 NY2d 943, 944 (1975); Weinrott v Carp, 32 NY2d 190, 199 (1973).*****7**

Mendel alleges that he was fraudulently induced to sign the January 6, 2006 arbitration agreement by an unnamed rabbi. The Court of Appeals addressed the issue of "fraud in the inducement" of an arbitration agreement, in Weinrott v Carp, *supra*, with the Court developing the "separability" doctrine for broad arbitration clauses. Professor David Siegel, in NY Prac § 589, at 1034-1035 [4th ed], explained the Weinrott "separability" doctrine with respect to claims of fraud in the inducement of arbitration agreements. He noted that:

The doctrine's theory is that whatever the motivations that led the party to make this bargain, the one item in the contract to which the party subscribed with eyes open is its arbitration clause. Thus, unless the fraudulent inducement can be demonstrated to touch the arbitration clause itself, the party's agreement to arbitrate will be deemed voluntary, sufficing to turn all the rest of the case over to the arbitrator--including the charge of fraud in respect of all the rest of the contract. To that extent the arbitration provision of the contract is "separable." If, when so separated, the inducement charge cannot be shown to touch it directly, the party is remitted to the arbitrator for any other plaints under the contract. The "valid agreement" whose making CPLR 7503 (a) authorizes the court to determine has been construed, in short, to mean "a valid agreement to arbitrate." By segregating the arbitration provision and testing its validity independently, it can be deemed valid "even if the substantive portions of the contract were induced by fraud [Weinrott at 198]." [*Emphasis added*]

The courts were at least partly motivated in reaching for this separability rule by their experience with the law in its earlier state, which made the inducement issue easy to raise. Merely raising it often postponed arbitration indefinitely as the issue "laboriously worked its way through the New York court system [Weinrott at 198]." This was of course at war with arbitration, a primary aim of which is expedition.

It is clear that respondent Mendel admits, in his verified cross-petition and affirmation in opposition, that he signed the arbitration agreement. He claims, in paragraph 9, that Joseph "and his Rabbi [sic] got me to sign the Hebrew arbitration agreement under false pretenses . . . After I signed without understanding what I signed they, my brother and his rabbi, threw the 1983 contract at me and walked out of the room *****8** laughing." Therefore, pursuant to the Weinrott "separability" doctrine, the issue of Mendel's allegation of being fraudulently induced to sign the arbitration agreement by an unnamed rabbi is, in Professor Siegel's words, "remitted to the arbitrator." In Weinrott, at 199, the Court instructed that "[a]s a general rule, however, under a broad arbitration provision the claim of fraud in the inducement should be determined by arbitrators." The only evidence presented by Mendel of fraud in the inducement are his self-

suffering, conclusory allegations. In Cologne Reinsurance Co. Of America v Southern Underwriters, Inc., 218 AD2d 680, 681 (2d Dept 1995), the Court instructed that "bare conclusory assertions are insufficient to demonstrate that the alleged fraud was part of a grand scheme that permeated the entire contract including the arbitration provision' (Matter of Weinrott [Carp], *supra*, at 197; *see also*, Stoianoff v New Am. Lib., 148 AD2d 600). Accordingly, arbitration of the instant dispute is appropriate." *See* Riverside Capital Advisors, Inc. v Winchester Global Trust Co. Ltd., 21 AD3d 887, 889 (2d Dept 2005); Schalifer v Sedlow, 51 NY2d 181, 184 (1980); Information Sciences, Inc. v Mohawk Data Science Corp., 43 NY2d 918, 920 (1978); Schachter v Lester Witte & Co., 52 AD2d 121 (1st Dept 1976).

Mendel's claim that the arbitration is barred by the statute of limitations lacks merit. The arbitration agreement itself is timely. Any claims, with respect to the failure to close on the 1983 real estate contract by 1988 and whether the alleged 1995 recession is valid, are all proper under the broad agreement of the parties. Allowing these substantive issues to be decided by a Beth Din will resolve these claims and be consistent with New York's public policy, as articulated in CPLR Article 75, to favor arbitration as a valid alternate dispute resolution process. Corbo v Les Chateau Associates, 127 AD2d 657 (2d Dept 1987); Application of Uddo, 21 AD2d 402 (1964).

In the instant case, Mendel and his wife are tenants by the entirety in their ownership of 327 Kingston Avenue. Each owns one-half of an undivided whole. Reister v Town Bd. of the Town of Fleming, 18 NY2d 92, 94 (1966); Matter of Klatzl, 216 NY 83 86-87 (1916). Despite being legally "joined at the hip" as tenants by the entirety, Mendel argues that his wife, not a party to the arbitration agreement, should be allowed to proceed in the Civil Court holdover proceeding, with Mendel's name removed from the caption. The Civil Court action was commenced subsequent to the execution of the Beth Din agreement, with both respondent and his wife conscious of the Beth Din agreement. Further, Hanna Pinson signed both the 1983 contract of sale and the alleged 1995 rescission. Hanna's real estate activities are inextricably interwoven with those of her husband. In Promofone, Inc. v PCC Management, Inc., 224 AD2d 259 (1st Dept 1996), the Court held that, "New York courts have stayed litigation proceedings that included parties who were not signatories to the arbitration agreement, where the nonsigning party . . . is closely related to the signatories and is alleged to have engaged in substantially the same improper conduct." *See* ***9Brown v V & R Advertising, 112 AD2d 856 (1st Dept 1985), *affd* 67 NY2d 772 (1986); Edwards v Bergner, 22 AD2d 808 (2d Dept 1964).

CPLR § 7502 (b) provides that a party seeking arbitration may seek "a preliminary injunction in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief." In the instant action, if Mendel and his wife evict Joseph from 327 Kingston Avenue, or sell, transfer or encumber 327 Kingston Avenue, it could make any Beth Din award to Joseph "rendered ineffectual." The Court will grant petitioner a temporary restraining order, pursuant to CPLR § 6313 (a), to prevent any irreparable harm that might occur to Joseph by his eviction from 327 Kingston Avenue or from the sale, transfer or encumbrance of the premises by respondent and his wife. However, the Court will conduct a hearing to determine if a preliminary injunction shall be granted to Joseph for the relief he seeks, and if a preliminary injunction is granted the amount of the undertaking. The Court, pursuant to CPLR § 6313 (c), in its discretion, is not requiring petitioner to give an undertaking for the temporary restraining order.

Conclusion

Accordingly, it is

ORDERED, that petitioner Joseph Pinson's order to

show cause is granted to the extent that respondent Mendel Pinson is directed to proceed, pursuant to CPLR § 7503 (c), to an arbitration of all their disputes with respect to 327 Kingston Avenue, Brooklyn, New York, as per the January 6, 2006 arbitration agreement between Joseph Pinson and Mendel Pinson to have a Beth Din "consider and adjudicate the controversy" between the parties, and it is further

ORDERED, that Kings County Civil Court, Part 52, holdover action, Mendel Pinson and Hanna Pinson v Joseph Pinson and Joseph Pinson d/b/a Weinstein's Stores 327 Kingston Avenue, Index Number 66895/2006 is stayed pending the outcome of the instant Beth Din arbitration, pursuant to the January 6, 2006 arbitration agreement of the parties, and it is further

ORDERED, that respondent Mendel Pinson and his wife Hanna Pinson, are temporarily restrained, pursuant to CPLR § 6313, from selling, transferring, or encumbering the real property known as 327 Kingston Avenue, Brooklyn, New York, and it is further

ORDERED, that petitioner Joseph Pinson, respondent Mendel Pinson and respondent's wife, Hanna Pinson, appear in Supreme Court, Kings County, Part 27, Room 479, 360 Adams Street, Brooklyn, New York, on Friday, September 29, 2006, at 2:15 P.M. for a hearing to determine if the Court will issue a preliminary injunction to petitioner, to prevent respondent and his wife from selling, transferring, or encumbering the real property known as 327 Kingston Avenue, Brooklyn, New York, and it is further

ORDERED that the cross-petition of respondent Mendel Pinson to stay the arbitration, pursuant to CPLR § 7503 (c), of the disputes with respect to 327 Kingston Avenue, Brooklyn, New York, as per the January 6, 2006 arbitration agreement between *****10** Joseph Pinson and Mendel Pinson to have a Beth Din "consider and adjudicate the controversy" is denied, and it is further

ORDERED that the cross-petition of respondent Mendel Pinson to lift the stay of

Kings County Civil Court, Part 52, holdover action, Mendel Pinson and Hanna Pinson v Joseph Pinson and Joseph Pinson d/b/a Weinstein's Stores 327 Kingston Avenue, Index Number 66895/2006, or to remove Mendel Pinson's name from the caption and permit Hanna Pinson to maintain the action in her own name, is denied.

This constitutes the Decision and Order of the Court.

E N T E R

_____ HON. ARTHUR M. SCHACK

J. S. C.

N.Y.Sup. 2006.

Matter of Pinson v Pinson

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