

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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GOWANUS PARK LLC,

Plaintiff, Decision and order

- against -

Index No. 517124/2022

Motion Sequence # 1

KSK CONSTRUCTION GROUP LLC and
ULGUR AYDIM a/k/a ULGUR AYDIN,

Defendants, January 25, 2023

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KSK CONSTRUCTION GROUP LLC,

Counterclaimant,

- against -

GOWANUS PARK LLC, ATLANTIC SPECIALY
INSURANCE COMPANY, KEN HUDES and
ATELIER NEW YORK ARCHITECTURE,

Counterclaim Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The defendant KSK Construction Group LLC has moved pursuant to CPLR §7503 seeking to stay this action pending arbitration. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court makes the following determination.

On July 1, 2018 the plaintiff owner of property located at 280 Bond Street in Kings County entered into a contract with defendant KSK Construction Group LLC for the construction of a four story residential building at the location. The complaint alleges that KSK made representations to the plaintiff upon which the plaintiff relied and that such representations were false. The complaint asserts causes of action for rescission, a declaratory judgement, fraud in the inducement and a permanent

injunction. KSK has now moved pursuant to CPLR §7503 seeking to stay this action on the grounds the parties have proceeded to arbitration pursuant to the agreement. The plaintiff opposes the motion arguing that since they have asserted fraud in the inducement there are questions whether the contract, and the arbitration clause contained within it, is even binding and this preliminary question must first be resolved in court. The defendant argues that pursuant to rules promulgated by the arbitrator even such preliminary matters should be resolved in arbitration.

Conclusions of Law

"It is firmly established that the public policy of New York State favors and encourages arbitration and alternative dispute resolutions" (Westinghouse Elec. Corp. v. New York City Tr. Auth., 82 NY2d 47, 603 NYS2d 404 [1993]). "Therefore, New York courts interfere as little as possible with the freedom of consenting parties to submit disputes to arbitration" (Smith Barney Shearson Inc. v. Sacharow, 91 NY2d 39, 666 NYS2d 990 [1997]).

An allegation of fraud in the inducement only affects the arbitration clause when either the fraud relates to the arbitration clause itself or where the fraud was "part of a grand

scheme that permeated the entire contract" (see, Anderson Street Realty Corp., v. New Rochelle Revitalization LLC, 78 AD3d 972, 913 NYS2d 114 [2d Dept., 2010]). "To demonstrate that fraud permeated the entire contract, it must be established that the agreement was not the result of an arm's length negotiation...or the arbitration clause was inserted into the contract to accomplish a fraudulent scheme" (id).

Thus, even 332 East 66th Street Inc., v. Walker, 59 Misc3d 1216(A), 106 NYS3d 727 [Supreme Court New York County 2018] cited by the plaintiff held that "generally, under a broad arbitration provision, the claim of fraud in the inducement of the agreement is deemed to be included as a matter for arbitrators to determine" (id). The court did explain that to avoid arbitration the fraud had to relate to the arbitration clause itself or that "something greater than the substantive provisions of the agreement were induced by fraud" (id).

Indeed, the Federal courts have adopted a similar approach. In Prima Paint Corporation v. Flood Conklin Manufacturing Company, 388 US 395, 87 S.Ct 1801, 18 L.Ed2d 1270 [1967] the Supreme Court observed that "arbitration clauses as a matter of federal law are 'separable' from the contracts in which they are embedded, and that where no claim is made that fraud was directed to the arbitration clause itself, a broad arbitration clause will be held to encompass arbitration of the claim that the contract

itself was induced by fraud" (id). The only time the courts really involve themselves in claims that should properly be before arbitration is questions whether a contract was entered into at all (see, Adams v. Suozzi, 433 F3d 220 [2d Cir. 2015]).

In this case the plaintiff alleges there was a grand scheme of fraud that permeated the entire contract. However, mere fraudulent inducement does not establish the fraud permeated the entire contract (Tiki Boatworks LLC v. Crusin' Tikis LLC, 2021 WL 1198256 [N.D.N.Y. 2021]). Consequently, without additional evidence that fraudulent inducement included something greater than the provisions of the agreement itself no such fraudulent scheme has been presented and there is no basis upon which to deny arbitration (see, Markowitz v. Friedman, 144 AD3d 993, 42 NYS3d 218 [2d Dept., 2016]). The plaintiff has failed to produce any evidence that the contract entered into between the parties was not an arms length negotiation or that any alleged fraud in the inducement was a scheme which permeated the entire contract.

Therefore, based on the foregoing the motion seeking to stay the action pending the arbitration is granted.

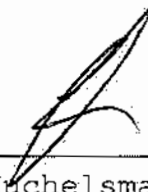
Concerning defendant Ulgur Aydin, although he is not a party to any arbitration agreement, the arbitration will resolve many of the significant issues in this lawsuit. The parties should not be expected to litigate similar issues in two distinct venues at the same time. Therefore, the stay of this action applies to

all parties. Upon the conclusion of the arbitration, any remaining claims may be pursued against Aydin.

So ordered.

ENTER:

DATED: January 25, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC