211 A.D.3d 631
Supreme Court, Appellate Division, First Department, New York.

In the Matter of DENTONS US LLP, Petitioner–Respondent,

v.

Jinshu "John" ZHANG, Respondent–Appellant.

17003-, 17003A
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Index No. 653795/21
|
Case No. 2021–03143
|
Entered December 29, 2022

Synopsis

Background: Law firm brought petition to confirm arbitral awards rendered by an emergency arbitrator in dispute with former equity partner and moved to compel former partner to arbitrate in New York the parties' disputes, including the arbitrability of those disputes. The Supreme Court, New York County, Barry R. Ostrager, J., confirmed the awards, granted the motion to compel, and denied former partner's cross-motion to stay or dismiss the proceeding.

Holdings: The Supreme Court, Appellate Division, held that:

arbitrability of disputes was an issue clearly and unmistakably delegated for decision to the arbitrator under arbitration clause in law-firm partnership agreement, and

whether former partner was an "employee" under the California Labor Code and thus could seek to void partnership agreement's arbitration provision insofar as it required him to arbitrate outside of California was an issue to be decided by the arbitrator.

Affirmed.

Procedural Posture(s): On Appeal; Petition to Confirm Arbitration Award; Motion to Compel Arbitration; Motion for Stay; Motion to Dismiss.

Attorneys and Law Firms

****63** Wollmuth Maher & Deutsch LLP, New York (Lyndon M. Tretter counsel), for appellant.

Gibson, Dunn & Crutcher LLP, New York (Akiva Shapiro of counsel), for respondent.

Manzanet–Daniels, J.P., Oing, Singh, Moulton, Mendez, JJ.

Opinion

*****1** ***631** Orders, Supreme Court, New York County (Barry R. Ostrager, J.), entered on or about August 20, 2021, which, in this special proceeding pursuant to CPLR article 75, granted petitioner's motion to compel respondent to arbitrate in New York the parties' underlying disputes and the arbitrability of the disputes, granted the petition to confirm three arbitral awards rendered by an emergency arbitrator under the authority of the International Institute for Conflict Prevention & Resolution (CPR), and denied respondent's cross motion to stay or dismiss this proceeding, unanimously affirmed, with costs, without

prejudice to respondent raising before the arbitration panel the issue of whether he is an "employee" under California Labor Code section 925.

Contrary to respondent's contention, the law firm partnership agreement between the parties contains a clear and unmistakable delegation clause that delegated questions of arbitrability to the arbitrator (*see Zhang v. Superior Ct. of Los Angeles County,* 85 Cal.App.5th 167, 301 Cal.Rptr.3d 164 [Cal. Ct. App. 2022]). The agreement's arbitration provision, which stipulated Chicago or New York as the ****64** place for arbitration, applies to "all disputes of any kind," and incorporates the rules of the CPR, including the rules that give CPR arbitrators the power to rule on their own jurisdiction to decide what, if any, issues are not to be decided by the arbitrator (*see Life Receivables Trust v. Goshawk Syndicate 102 at Lloyd's,* 66 A.D.3d 495, 496, 888 N.Y.S.2d 458 [1st Dept. 2009], *affd* 14 N.Y.3d 850, 901 N.Y.S.2d 133, 927 N.E.2d 553 [2010], *cert denied* 562 U.S. 962, 131 S.Ct. 463, 178 L.Ed.2d 288 [2010]). The Delaware law pursuant to which the partnership agreement was constructed does not support a contrary finding.

Given that full delegation, Supreme Court, which has personal jurisdiction over respondent in this proceeding based on his agreement to arbitrate in New York (*see Zurich Ins. Co. v. R. Elec.,* 5 A.D.3d 338, 773 N.Y.S.2d 560 [1st Dept. 2004]), was not, prior to addressing ***632** the petition and motions, required to first determine whether respondent, a former law firm equity partner, was an "employee" protected by section 925 of the California Labor Code such that he may seek to void the arbitration provision insofar as it required him to arbitrate the underlying disputes outside of California. That is an issue delegated for a decision by the arbitrator (*see e.g., Ratajesak v. New Prime, Inc.,* 2019 WL 1771659, *5–6, 2019 U.S. Dist. LEXIS 70506 [C.D.Cal., Mar. 20, 2019, No. SA CV 18–9396–DOC (AGRx)]). To the extent that issue, which was raised and decided in expedited fashion, has not been squarely decided by the emergency arbitrator, or otherwise been addressed by a CPR arbitrator or tribunal, Supreme Court's grant of the motion to compel arbitration is without prejudice to respondent's ability to raise the issue before the arbitration panel or tribunal. We further find that respondent raises no basis for overturning the challenged emergency interim arbitral awards or reversing the court's grant of the petition to confirm those awards.

All Citations

211 A.D.3d 631, 181 N.Y.S.3d 62, 2022 WL 17981407, 2022 N.Y. Slip Op. 07498

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