

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

ROCKWOOD AUTOMATIC MACHINE, INC.,

Plaintiff,

DECISIONS AND ORDER

v.

INDEX No. 2005/11145

LEAR CORPORATION,

Defendant.

This is a motion by defendant for an order staying the action pursuant to the Federal Arbitration Act and to compel arbitration of the dispute. The action involves a goods and services contract in which Rockwood was to manufacture and supply to Lear, on a regular basis, certain screw machine parts based on specifications supplied by defendant in a Request for Quotation prepared and written by Lear. The Request for Quotation characterized the 'Commercial Specifications' as follows:

§6.01 Standard Terms and Conditions[:] Lear corporation's standard terms and conditions can be found online at <http://www.lear.com> (under Supplier PO Information).

§6.02 Length of Supply Contract[:] This contract will be . . . for a three year term.

(bracketed material supplied). The Request for Quotation did not itself have any reference to arbitration, but the online standard terms and conditions referred to in §6.01 (quoted above) contained a broad arbitration clause.

The record does not reveal precisely how Lear accepted

Rockwood's bid but the parties agree that Lear issued a purchase order dated September 13, 2001, "after accepting Rockwood's bid." Fowler Affidavit, at ¶7. The purchase order stated that it was "subject to and includes terms and conditions which may be accessed via the internet at "www.lear.com * * * Invoicing against this order for payment shall constitute binding acceptance by you of these terms and conditions." See Purchase Order dated 09/13/01, at p.14. The referenced terms and conditions contained a broad arbitration clause providing that "[a]ll disputes arising under or in connection with this order shall be finally settled by arbitration in Detroit, Michigan, before a single arbitrator appointed by the American Arbitration Association ('AAA')."

Although Rockwood alleges that the 09/13/01 order was the only order placed by Lear during what it contends was a three year term of the contract, the complaint states that Rockwood notified Lear of a price increase in October 2004, and seeks damages for invoices submitted from October 2004 through March 2005, when plaintiff succeeded in negotiating the requested price increase with Lear. The parties have an ongoing relationship to this day.

Rockwood's principal argument against the motion is that the contract in question expired prior to the time it imposed a price increase and the dispute arose. Rockwood contends that the

arbitration clause was only enforceable during the length of the contract despite its invoicing for parts supplied between October 2004 and March 2005 at Lear's urging (failure of continued supply, according to Rockwood, would have meant that Lear might have to close an Ohio plant) against the 09/13/01 purchase order. Since the causes of action accrued after the contract expired, and there were no separate purchase orders attached to these transactions, Rockwood's use of the 2001 purchase order in its 2004-05 invoices being only a convenient device to obtain payment, Rockwood contends that the arbitration clause was not in effect.

Although defendant contends that the parties' agreement was governed by the on-line terms and conditions incorporated into the 2001 purchase order, which had no specified term and in its merger clause excluded any other writings between the parties as part of the contract (other than the purchase order and invoices themselves), the court will assume that the parties' agreement did have a fixed term, as plaintiff contends, for purposes of this motion. Whether it did or not may have effect on the merits of the dispute, which as I hold below should be determined by the arbitrator. So the court merely assumes, without deciding, that the agreement had a three year term. Notwithstanding, defendant contends that, by virtue of plaintiff's continued performance of the agreement after the purported expiration thereof in September

2004, the arbitration clause remained in effect. Defendant points to plaintiff's invoices during the relevant period which all referenced the original purchase order ("Your Order 12119355") which incorporated the arbitration clause. Additionally, defendant contends that, even if the contract is determined to have expired, the parties continued to deal with one another as they had previously when the contract was in effect, and therefore are presumed to have mutually assented to the continuation of the contract under the old provisions, including the arbitration provision.

Analysis

The Federal Arbitration Act (FAA) applies to any written agreement to arbitrate contained in "a contract evidencing a transaction involving commerce." 9 U.S.C. § 2. See Singer v. Jefferies & Company, Inc., 78 N.Y.2d 76, 81 (1991). "The FAA evinces Congress's intent to establish 'an "emphatic" national policy favoring arbitration which is binding on all courts, State and Federal' . . . [quoting Singer, 78 N.Y.2d at 81] such that 'any doubts concerning the scope of the arbitrable issues should be resolved in favor of arbitration.'" Matter of Arbitration between Ayco Co, L.P., 3 A.D.3d 635, 636 (3d Dept. 2004), quoting Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983).

In Nolde Bros. v. Local No. 358, Bakery Workers Union, 430

U.S. 243, 97 S. Ct. 1067 (1977), the Court held that, as a general matter, "in the absence of some contrary indication, there are strong reasons to conclude that the parties did not intend their arbitration duties to terminate automatically with the contract." Id. 430 U.S. at 253, 97 S. Ct. at 1073. In other words, "where the dispute is over a provision of the expired agreement, the presumptions favoring arbitrability must be negated expressly or by clear implication." Id. 430 U.S. at 255, 97 S. Ct. at 1074. Later, however, the Supreme Court narrowed this rebuttable presumption by concluding that it "was limited by the vital qualification that arbitration was of matters and disputes arising out of the relation governed by the contract." Litton Financial Printing Div. v. NLRB, 501 U.S. 190, 204, 111 S. Ct. 2215, 2224 (1991). Although reaffirming Nolde Bros' holding that an arbitration agreement might survive expiration of a fixed term contract, the Court nevertheless held that the presumption of arbitrability "is limited to disputes arising under the contract." Id. 501 U.S. at 205, 111 S. Ct. at 2225. "A post expiration grievance can be said to arise under the contract only where [1] it involves facts and occurrences that arose before expiration, or [2] an action taken after expiration infringes a right that accrued or vested under the agreement, or [3] where, under normal principles of contract interpretation, the disputed contractual rights survives expiration of the remainder of the

agreement.” Id. 501 U.S. at 205-06, 111 S. Ct. at 2225 (bracketed material supplied). The Court was not concerned that its qualification of Nolde Bros would require courts at times to determine the arbitrability issue by interpreting the provisions of the underlying agreement between the parties that had expired. Again acknowledging the continuing force of the Nolde Bros presumption in the three instances above specified, the court declared:

But we refused to apply that presumption wholesale in the context of an expired bargaining agreement, for to do so would make limitless the contractual obligation to arbitrate. Although “[d]oubts should be resolved in favor of coverage,” [citation omitted], we must determine whether the parties agreed to arbitrate this dispute, and we can not avoid that duty because it requires us to interpret a provision of a bargaining agreement.

Litton Financial Printing, 501 U.S. at 209, 111 S. Ct. at 2227.

Although it has been observed that “[t]he Supreme Court has not commented on whether its analysis of post-labor contract arbitration requirements would apply to commercial agreements governed by the FAA,” Mark Berger, Arbitration and Arbitrability: Toward an Expectation Model, 56 Baylor L. Rev. 753, 778 (2004), the Court’s opinion in Litton directly addressed this issue. Litton found that the Nolde Bros presumption “is similar to the rule of contract interpretation which might apply to arbitration provisions of other commercial contracts.” Id. 501 U.S. at 208,

111 S. Ct. at 2226. Whether this observation signaled that the Litton qualification of the Nolde Bros presumption is not applicable to other commercial contracts outside the context of collective bargaining is a question upon which the court finds no clear guidance in the cases. For example, compare the cases of Sweet Dreams Unlimited, Inc. v. Dial-A-Mattress International, Ltd., 1 F.3d 639, 643-44 (7th Cir. 1993) (applying the Nolde Bros presumption outside the context of collective bargaining to an ordinary employment agreement without reference to Litton), with, Nissan North America, Inc. v. Jim M'Lady Oldsmobile, Inc., 307 F.3d 601 (7th Cir. 2002) (applying the Litton qualification in an ordinary commercial contract context, but without any citation to Sweet Dreams). Although Litton appeared to fully distinguish the collective bargaining context from ordinary commercial disputes as quoted above, i.e., in favor of applying Nolde Bros in the commercial agreement context, there is authority, even, that it ought to be the other way around, that in the commercial arena Litton should prevail. The Basketball Marketing Company, Inc. v. Urbanworks Entertainment, unpublished, 2004 WL 2590506 (E.D. Pa. Nov. 10, 2004). I would disagree with the latter position, take Litton at its word that Nolde Bros applies to ordinary commercial disputes, distinguish Litton anyway as limited to collective bargaining disputes, Mark Berger, Arbitration and Arbitrability: Toward An Expectation Model, 36 Baylor L. Rev. at 778-79, find on

these facts that the presumption of arbitrability has not been rebutted, and grant the stay on this basis alone. But the caselaw has not developed along these lines.

The Second Circuit, in its post Litton cases, has not distinguished between ordinary commercial contracts and the collective bargaining context, but has substantially refined the Litton qualification of the Nolde Bros presumption in Abram Landow Real Estate v. Benova, 123 F.3d 69 (2d Cir. 1997) (collective bargaining agreement context), and in two subsequent cases, CPR (USA) Inc. v. Spray, 187 F.3d 245 (2d Cir. 1999) (collective bargaining employment contract) and ACEquip Ltd. v. American Engineering Corp., 315 F.3d 151 (2d Cir. 2003) (construction contract dispute with subcontractor). In ACEquip Ltd. v. American Engineering Corp., the court summarized its approach as follows:

[I]n Abram Landow Real Estate v. Benova, 123 F.3d 69, 72 (2d Cir.1997), we offered further clarification as to how a court should approach a motion to compel arbitration. Problems of arbitrability arise in two contexts, first, when parties disagree whether an arbitration clause covers a particular dispute, and second, when the parties disagree not about the scope of the arbitration clause but about "whether there is even a valid agreement to arbitrate in effect at a particular time." Id. We further divided the second context into two "factual scenarios: (1) whether the parties ever entered into an arbitration agreement at all, and (2) whether an arbitration agreement has expired or been terminated." Id. The first type of factual scenario, involving the existence of the arbitration agreement itself, generally presents an issue for the court to decide. Id. In cases like the second type of factual scenario, the arbitrator decides

issues like expiration or termination, which involve the interpretation of other contractual provisions and not of the arbitration clause itself. Id. at 73.

ACEquip Ltd. v. American Engineering Corp., 315 F.3d at 155-56.

Because this case falls into the second scenario of the second context described above, Lear's motion for a stay must be granted and the matter sent to arbitration. In other words, because plaintiff seeks to enforce duties arguably "arising out of the relation governed by the contract," Litton, 501 U.S. at 204, 111 S. Ct. at 2224, and more particularly to enforce disputed provisions of the expired agreement allegedly made applicable between October 2004 and April 2005 by the invoices it submitted, which referenced the original purchase order, Rockwood is, "under normal principles of contract interpretation, [seeking to enforce] . . . disputed contractual right[s] surviv[ing] expiration of the remainder of the agreement." Litton, 501 U.S. at 206, 111 S. Ct. at 2225 (bracketed material supplied). Conversely, Lear is seeking to enforce provisions of the allegedly expired agreement, including the price term, by reference to normal principles of contract interpretation. Accordingly, even under the Litton qualification, the Nolde Bros presumption of arbitrability applies, and on these facts has not been rebutted.

New York courts also generally apply this formulation.

Matter of Primex International Corp. v. Wal-Mart Stores, Inc., 89 N.Y.2d 594, 601-02 (1997) ("the prevailing general rule of both

New York and Federal common law of contracts is that, absent a clear manifestation of contrary intent, it is presumed that the parties intended that the arbitration forum for dispute resolution provided in an agreement will survive termination of the agreement as to subsequent disputes *arising thereunder*, whether its cessation was the result of the expiration of its term, exercise of a unilateral termination option, or breach") (emphasis supplied); Excel Group, Inc. v. New York City Transit Authority, 22 A.D.3d 794, 797 (2d Dept. 2005); L & R Exploration Venture v. Grynberg, 22 A.D.3d 221, 221-22 (1st Dept. 2005); Fairfield Towers Condominium Association v. Fishman, 1 A.D.3d 252 (1st Dept. 2003) (citing Abram Landau Real Estate v. Bevona, *supra*); NEC America, Inc. v. Northeastern Office Equipment, Inc., 274 A.D.2d 339 (1st Dept. 2000); 31 West 47th St. Co. v. Bevona, 215 A.D.2d 152, 154 (1st Dept. 1995); Application of Popular Publications, Inc., 36 A.D.2d 927, 928 (1st Dept. 1971) (applying pre-Litton law). The cases in Michigan - the contract invokes Michigan law - are less clear, in that they apply the Litton qualification without the categorization identified above, Gibraltar School District v. Gibraltar Mespas-Transportation, 443 Mich. 326, 505 N.W.2d 214 (1993), but the Second Circuit's analysis is stated to be faithful to Litton, and therefore I find that applying it would not be violative of Michigan law. In any event, the issue is governed by the FAA,

not state law.

The foregoing analysis also does not run afoul of Matter of Waldron (Goddess), 61 N.Y.2d 181 (1984), for the reasons stated in Matter of Meetze (LaBelle), 295 A.D.2d 991 (4th Dept. 2002), and esp., Scheunkers International Forwarders, Inc. v. Meyer, 164 A.D.2d 541, 543-44 (1st Dept. 1991) ("operative criterion in deciding a case of this type is the existence of a valid issue with respect to termination of the underlying agreement" - if the pleadings "raise a valid issue with respect to termination of the agreement," the matter "must be referred to arbitration").

The motion for a stay is granted.

SO ORDERED

KENNETH R. FISHER
JUSTICE SUPREME COURT

DATED: February 6, 2006
Rochester, New York