

Mittel v Beth Din of the United States of Am.

2024 NY Slip Op 34428(U)

December 12, 2024

Supreme Court, New York County

Docket Number: Index No. 655814/2021

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 04

Justice

-----X

YITZCHOK MITTEL, WEST ORANGE BAKE SHOP NJ,
LLC,

Plaintiffs,

- v -

THE BETH DIN OF THE UNITED STATES OF AMERICA,
INC., SHLOMO WEISSMAN, DANI RAPP, ITAMAR
ROSENSWEIG,

Defendants.

-----X

INDEX NO. 655814/2021

MOTION DATE 04/29/2022,
05/10/2024

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for SANCTIONS.

In motion sequence 002, defendants move to dismiss this action. In motion sequence 003, plaintiffs move for sanctions against defendants’ counsel. These motions are consolidated for disposition and, upon the foregoing documents, defendants’ motion to dismiss is granted and plaintiffs’ motion for sanctions is denied.

FACTUAL BACKGROUND

The following factual recitation is taken from plaintiffs’ amended complaint, taken as true for purposes of this motion, and undisputed documentary evidence submitted by the parties.

Plaintiff West Orange Bake Shop NJ, LLC (the “Bake Shop”) is a bakery located in New Jersey (NYSCEF Doc. No. 18 [Am. Compl. at ¶3]). Bake Shop agreed to bake bread for non-party

Yoni's Food, a retail bakery (Id. at ¶35). At some point, Bake Shop and Yoni's Food had a dispute concerning the baking and distribution of challah, a Jewish ceremonial bread, and agreed to arbitrate this dispute before defendant The Beth Din of the United States of America, Inc. (the "BDA") (Id.). Bake Shop and Yoni's Food then entered into an Agreement to Arbitrate on or about November 20, 2018 (the "Arbitration Agreement") (Id. at ¶8). The Arbitration Agreement provided in pertinent part:

There exists between the above-named parties' certain differences and disputes in reference to money owed and rights to bake and distribute "Pretzel Challa", with each party having certain claims and counterclaims against each other (the "Disputes"). In consideration of the above recitals, the terms and mutual covenants of this Agreement and other valuable consideration, the receipt of which is acknowledged, and intending to be legally bound, the parties agree as follows:

The parties agree to submit the Disputes to arbitration before the Beth Din of America. In addition to the Disputes, the Beth Din of America shall have jurisdiction to decide any disputes relating to the enforceability, formation, conscionability, and validity of this Agreement (including any claims that all or any part of this Agreement is void or voidable) and the arbitrability of any disputes arising hereunder (the "Ancillary Disputes"). The Beth Din of America shall arbitrate this matter in accordance with its rules and procedures (available at www.bethdin.org; the "Rules"), which the parties agree that they have read and accept. The parties agree to accept the ruling of the Beth Din of America as a final, binding and legally enforceable decision.

...

In addition to any final award, the arbitrators may make other decisions, including interim or partial orders and awards. The Beth Din of America shall retain jurisdiction over this matter for one year after publishing its award, and shall be authorized to modify the award for any reason they deem proper ...

(NYSCEF Doc. No. 10 [Arbitration Agreement at §§A, D, E [emphasis added]).

The rules of the BDA, accepted by plaintiffs and Yoni's Food, provide in pertinent part that: "[i]f the parties settle their dispute during the course of the arbitration, the Beth Din, at the written request of the parties, may set forth the terms of such settlement in an award, although such a settlement shall not be considered an 'award of the Beth Din'" and, of particular relevance here,

that “[p]arties to an arbitration under these rules shall be deemed to have consented that neither the Beth Din of America nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules” (NYSCEF Doc. No. 26 [BDA Rules at §§29, 33]).

The arbitration began in November 2018 (NYSCEF Doc. No. 18 [Am. Compl. at ¶36]). Defendants Shlomo Weissman, Dani Rapp, and Itamar Rosensweig (collectively, the “Individual Defendants”) were appointed by the BDA as arbitrators (Id. at ¶34). In December 2018, the Individual Defendants “mediated” an impasse in settlement negotiations, engaging in ex parte communications with each side, which resulted in Bake Shop and Yoni’s Food entering into a Settlement Agreement on or around August 8, 2019 (Id. at ¶¶37-40).

This Settlement Agreement provided, in pertinent part that, simultaneously with the execution of the Settlement Agreement, Yoni’s Food would execute a Confession of Judgment in the amount of \$31,083.20 less any payments made pursuant to the Settlement Agreement and deliver same to counsel for Bake Shop (NYSCEF Doc. No. 11 [Settlement Agreement at ¶5]). The Settlement Agreement further provided that

The Parties agree that any and all disputes that arise from or that are related to this Agreement shall be adjudicated before the Beth Din of America and shall be governed by the Rules and Procedures of the Beth Din of America as then in force. The Parties agree that this shall constitute an agreement to arbitrate any claim or dispute arising from this Agreement before the Beth Din of America.

(Id. at ¶13]).

Plaintiffs assert that Yoni’s Food executed a Confession of Judgment but despite the Settlement Agreement’s directive that this Confession of Judgment was to be sent to plaintiffs’ counsel, the Individual Defendants took possession of same and used it as leverage to force plaintiffs to meet with the Individual Defendants, after which meeting the defendants issued an

award against plaintiffs (NYSCEF Doc. No. 18 [Am. Compl. at ¶¶41, 44]). No other information about the nature of this award is included in this complaint. In any event, the Superior Court of New Jersey vacated the award in a decision dated June 25, 2021, and, according to plaintiffs “held that the Individual Defendants were absolutely prohibited from having any continued involvement with disputes between Plaintiffs and Yoni’s foods” (Id. at ¶47). Thereafter, plaintiffs have repeatedly demanded the Individual Defendants release the Confession of Judgment to them, which the Individual Defendants have not done (Id. at ¶50).

Plaintiffs commenced this action on October 4, 2021, by summons with notice. Their Amended Complaint, filed on February 16, 2022, asserts causes of action for tortious interference with contract against the Individual Defendants and BDA, respectively, alleging that the Individual Defendants intentionally induced Yoni’s Food to breach the Settlement Agreement by delivering the Confession of Judgment to the Individual Defendants rather than plaintiffs; and that the BDA has also “encouraged and induced Yoni’s Food to refuse to deliver the confession of judgment to Plaintiffs” while possessing either a copy of the Confession of Judgment or the original version (Id. at ¶¶76-88). Finally, plaintiffs’ third cause of action alleges that the BDA “committed unlawful acts” by various misrepresentations, including that it is an expert in secular law, the extent of the involvement of certain respected individuals in the BDA, stating its prenuptial agreement has been endorsed by certain luminaries, that certain specific individuals would take in any arbitration proceeding, and that the BDA is a large and established organization (Id. at ¶¶89-97). As defendants note, plaintiffs do not specify the nature of this claim, although it is susceptible to at least three possible interpretations, i.e. false advertising, negligent misrepresentation, or fraudulent inducement.

Defendants now move to dismiss this action pursuant to CPLR 3211(a)(1) and (a)(7) on the grounds that plaintiffs' first two causes of action, for tortious interference against the Individual Defendants and the BDA, are barred under the Arbitration Agreement and BDA Rules as well as by arbitral immunity. Defendants also argue that plaintiffs' third cause of action fails to state a claim for false advertising (because the services provided by the BDA do not involve the sale of a commodity or product, or the offer of an employment opportunity, or an impact on consumers at large), negligent misrepresentation (because the plaintiffs and the BDA were not in privity at the time of the purported misrepresentations), and fraudulent inducement (because plaintiffs have failed to set forth factual allegations satisfying any element of this claim beyond defendants' misrepresentation or omission of fact).¹

In opposition, plaintiffs argue that defendants are not protected by arbitral immunity because the Individual Defendants were no longer acting as arbitrators after the execution of the Settlement Agreement or, at the latest, after the vacatur of the arbitration award by the New Jersey Superior Court on June 25, 2021. As to their third cause of action, plaintiffs do not dispute that their complaint fails to state a claim for false advertising, negligent misrepresentation, or fraudulent inducement under New York Law but assert, for the first time, that they have stated a claim under the New Jersey Consumer Fraud Act ("NJCFA"). In reply, defendants argue that the NJCFA is inapplicable to arbitrators, as "learned professionals."

Well over a year after defendants' filed the reply on their motion to dismiss, plaintiffs moved to sanction defendants' counsel, pursuant to 22 NYCRR 130-1.1, for asserting in his reply affirmation that the New Jersey Superior Court's order vacating the arbitral award did not make any finding as to the defendants' jurisdiction, did not find that the Individual Defendants served

¹ Defendants also argue that the Court's adjudication of these claims are barred by the First Amendment of the U.S. Constitution, an argument not reached here.

as mediators and did not conclude that defendants had engaged in “misconduct.” Plaintiff argues that, in fact, the New Jersey Superior Court did make conclusions on the record at oral argument on the motion to vacate and defendants’ failure to mention this was an intentional assertion of a false statement warranting sanctions under 22 NYCRR 130-1.1(c).

DISCUSSION

Defendants’ Motion to Dismiss

Defendants’ motion is granted. On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleadings are to be afforded a liberal construction and the court should accept as true the facts alleged in the complaint, accord the pleadings the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (See Leon v Martinez, 84 NY2d 83 [1994]). On a motion to dismiss pursuant to CPLR 3211(a)(1), “[d]ismissal is warranted only if the documentary evidence submitted utterly refutes plaintiff’s factual allegations and conclusively establishes a defense to the asserted claims as a matter of law” (Amsterdam Hosp. Group, LLC v Marshall-Alan Assoc, Inc., 120 AD3d 431, 433 [1st Dept 2014] [internal citations and quotations omitted]). “To be considered documentary” such evidence “must be unambiguous and of undisputed authenticity” (Toribio v 575 Broadway LLC, 61 Misc 3d 1224(A) [Sup Ct, NY County 2018] [internal citations and quotations omitted]).

The BDA is immunized from suit for its alleged conduct in withholding the Confession of Judgment. Plaintiffs, in signing the Arbitration Agreement, agreed to the rules of the Beth Din, including that neither the BDA nor its arbitrators could be liable for any damages arising from the arbitration and the dispute over the Confession of Judgment clearly arises from the arbitration; Yoni Food’s obligation to produce the Confession of Judgment to plaintiffs was a term of the Settlement Agreement, and any breach of the Settlement Agreement is, by the plain terms of

paragraph 13 of that agreement, an arbitrable issue that must be resolved before the BDA.² Neither did the vacatur order of the New Jersey Superior Court terminate the BDA's jurisdiction; indeed, the order of that court expressly remanded all "arbitrable issues" to the BDA (NYSCEF Doc. No. 41).

The tortious interference causes of action are also precluded by the defendants' arbitral immunity. "It is well established that arbitrators are immune from liability for acts performed in their arbitral capacity" and that "[s]uch immunity also applies to acts taken in excess of authority" including where an arbitrator's award is vacated for an action in excess of such authority (Pinkesz Mut. Holdings, LLC v Pinkesz, 139 AD3d 1032, 1033-34 [2d Dept 2016]). In short, the BDA's alleged withholding of the Confession of Judgment and instruction to Yoni's Food not to produce same to plaintiffs are acts within their arbitral capacity and cannot provide a basis for a claim by plaintiffs.

Even assuming for the sake of argument that the Individual Defendants have no arbitral immunity for acts taken after the New Jersey Superior Court's vacatur order (as there is no dispute that they played no formal role in the dispute between plaintiffs and Yoni's Food after that decision was rendered), plaintiffs' allegations fail to state a cause of action for tortious interference with contract as against them. The elements of tortious interference with a contract are: "(1) the existence of a contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional inducement of the third party to breach or otherwise render performance impossible; and (4) damages to plaintiff" (Kimso Apartments, LLC v Rivera, 180 AD3d 1033, 1035 [2d Dept 2020]). However, "to avoid dismissal of a tortious interference with

² To the extent plaintiffs suggest that the Individual Defendants acted as mediators during the arbitration, and therefore lost any arbitral immunity for acts taken thereafter, the Court disagrees (See e.g., Shevetz, MD v Fensterman, 2020 WL 254649 [Sup Ct, NY County 2020]).

contract [cause of action], a plaintiff must support his [or her cause of action] with more than mere speculation” (Kimso Apartments, LLC v Rivera, 180 AD3d 1033, 1035 [2d Dept 2020] [internal citations omitted]) and plaintiffs’ allegation that the Individual Defendants “induced” Yoni’s Food to give them the Confession of Judgment rather than provide same to plaintiffs is of no moment since nothing in the complaint indicates how they were able to induce Yoni’s Food to do so or why the Individual Defendants’ alleged possession of an executed Confession of Judgment precludes Yoni’s Food from executing another Confession of Judgment and providing same to plaintiffs (See e.g. Kind Operations Inc. v AUA Priv. Equity Partners, LLC, 195 AD3d 446, 447 [1st Dept 2021] [complaint failed to state a cause of action for tortious interference because “allegation that PA Co-Man’s CEO was ‘directed’ by [defendant] to conceal the asset purchase from plaintiff” was not “sufficient to establish procurement since the CEO was free to reject that ‘direction’”]).

The third cause of action must also be dismissed. Plaintiffs’ *post hoc* effort to characterize this cause of action as a NJCFA claim is improper but this claim would, in any event, fail on its merits—the NJCFA does not apply to learned professionals such as the arbitrators at issue here (See Crisitello v St. Theresa School, 255 NJ 200, 221 [2023]; Macedo v Dello Russo, 178 NJ 340 [2004]).

Accordingly, defendants’ motion to dismiss is granted and defendants’ request for sanctions pursuant to 22 NYCRR 130–1.1 is denied.

Plaintiffs’ Motion for Sanctions

Plaintiffs’ motion for sanctions is denied. Mr. Lyons’ characterization of the written order of the New Jersey Superior Court in his reply affirmation was accurate and his failure to address statements that this court made at oral argument has been credibly explained by his reasonable belief that this order was the entirety of the record being referenced by plaintiffs in their opposition

to the motion to dismiss. If plaintiffs’ counsel believed that the transcript of this oral argument was relevant to the resolution of defendants’ motion to dismiss, the proper course was to seek leave for a sur-reply on the motion to dismiss so they could submit the full transcript rather than raise this issue over a year later.

Accordingly, it is

ORDERED that the defendants’ motion to dismiss this action is granted and it is hereby dismissed; and it is further

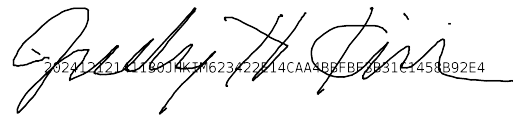
ORDERED that plaintiffs’ motion for sanctions is denied; and it is further

ORDERED that defendants are to serve a copy of this decision and order, with notice of entry, upon plaintiffs within ten days of the date of this order; and it is further

ORDERED that defendants are to serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “Efiling” page on this court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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12/12/2024
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

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APPLICATION:

CHECK IF APPROPRIATE: