Guo Wengui v Schiller
2019 NY Slip Op 31436(U)
May 23, 2019
Supreme Court, New York County
Docket Number: 150001/2019
Judge: Joel M. Cohen

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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GUO WENGUI,

Plaintiff,

- v -

JOSHUA SCHILLER, BOIES SCHILLER FLEXNER, LLP

Defendant.

INDEX NO. 150001/2019

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION AND ORDER

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18

were read on this motion to COMPEL ARBITRATION.

Upon the foregoing documents:

This case involves a claim by a client (Guo Wengui a/k/a Miles Kwok, "Kwok") against his former law firm (Boies Schiller Flexner, LLP, "Boise Schiller") and one of its partners (Joshua Schiller) based on conduct allegedly occurring after the attorney-client relationship had ended. Defendants move to compel arbitration of the claims (and to stay the instant litigation) on the ground that the claims are subject to mandatory arbitration pursuant to an engagement letter setting forth the terms of Kwok's retention of Boies Schiller. For the reasons set forth below, Defendants' motion is granted, and the action is stayed during the pendency of the arbitration.

In June 2017, Kwok retained Boies Schiller to represent him in connection with several lawsuits. The Engagement Letter to which the parties agreed included the following arbitration provision:

> "In the unlikely event that a dispute arises between the Client and the Firm ***arising from or relating to the Engagement***, the parties agree that such dispute shall be finally settled by binding, confidential arbitration under the JAMS Comprehensive Arbitration Rules and Procedures in force at the time such arbitration is commenced; provided, however, in the event that a dispute arises between the parties in connection with the Engagement relating to our fees involving a sum between $1,000 and $50,000, as an alternative to the arbitration provided for above you may have the right to arbitration of that dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts, a copy of which will be provided to you upon request." (NYSCEF 5) (emphasis added).

The retention proceeded smoothly, at first, with one lawsuit successfully dismissed and others resolved. It did not last. A dispute arose with respect to Kwok's failure to pay Boies Schiller's bills. The parties proceeded to arbitration, pursuant to the Engagement Letter. Boies Schiller prevailed, and Kwok was ordered to pay $653,837.93. (NYSCEF 7)

Kwok now sues Boies Schiller and partner Joshua Schiller in this Court alleging Legal Malpractice and Breach of Fiduciary Duty. Specifically, Kwok alleges that during the fee arbitration, Mr. Schiller impermissibly read portions of Kwok's asylum application into the record. In addition, Kwok alleges that Defendants collectively breached their fiduciary duty by failing to apply the $500,000 retainer monies already paid by Kwok to the outstanding legal bills to reduce the amount of interest that would be charged on the final arbitration award.[1]

Defendants maintain that Kwok's claims arise out of or relate to Plaintiff's engagement of Defendants for legal services pursuant to (and subject to the terms of) the Engagement Letter. In response, Plaintiff argues that the alleged misconduct took

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[1] Kwok made the same argument to the arbitrator, who rejected it. (*See* NYSCEF 6 at 14.)

place after the attorney-client relationship ended and, therefore, cannot relate back to Plaintiff's engagement of Defendants. Plaintiff's position cannot be squared with the broad language of the arbitration provision in the Engagement Letter.

New York has a "long and strong public policy favoring arbitration...as a means of conserving the time and resources of the courts and the contracting parties." *Stark v Molod Spitz DeSantis & Stark, P.C.*, 9 N.Y.3d 59, 66 (2007) (internal citations omitted). Parties "will not be held to have chosen arbitration as the forum for the resolution of their disputes in the absence of an express, unequivocal agreement to that effect." *BR Ambulance Serv., Inc. v Nationwide Nassau Ambulance*, 150 A.D.2d 745 (2nd Dep't 1989) (internal citations omitted).

Here, while the specific conduct of which Plaintiff complains took place after the attorney-client relationship ended, the claims in this case plainly arise out of and relate to Plaintiff's engagement of Defendants as his counsel. Absent the attorney-client relationship between the parties, Plaintiff would have no claim for legal malpractice or breach of fiduciary duty. As such, the claims are covered by the broad arbitration provision in the Engagement Agreement. See *Menche v. Meltzer, Lippe, Goldstein & Breitstone*, LLP, 129 A.D.3d 682, 682 (2nd Dep't 2015) (arbitration provision that "any dispute arising out of or relating to this agreement and/or the legal services rendered hereunder" was held to be "clear, explicit, and unequivocal, and [the plaintiff's] legal malpractice and breach of fiduciary duty causes of action fall within the broad scope of this provision.").

Kwok's contention that the arbitration agreement is applicable only to disputes over attorneys' fees is meritless. The arbitration clause is broad and unequivocally

refers to "a dispute" that "aris[es] from or relat[es] to the Engagement," without any substantive limitation. *See Menche*, *supra*. Although the arbitration paragraph provides for a different arbitration option *if* the dispute relates to "fees involving a sum between $1,000 and $50,000," which is not applicable here, it nowhere suggests that the arbitration right is limited to such disputes.

Kwok's argument that the arbitration provision is applicable only to disputes with the law firm, and not individual partners such as Mr. Schiller, is frivolous. Kwok cites no authority for that proposition, which if accepted would essentially negate the Engagement Letter's terms by permitting a client to sue individual partners rather than the firm. Mr. Schiller was not separately retained by Kwok. The claims against Mr. Schiller arise out of and relate to work done by the firm pursuant to the Engagement Letter, and thus are subject to the same terms and conditions that are applicable to Kwok's claim against the firm.

Kwok's final argument, that Defendants waived their right to arbitrate by filing the instant motion to *enforce* that right, is similarly unavailing. Defendants have done nothing to even remotely suggest that they have waived their right to arbitration.

Therefore, it is:

ORDERED that Defendants' motion to compel arbitration is Granted; and it is further

ORDERED and the case is stayed during the pendency of the arbitration.

This is the decision and order of the Court.

5/23/2019
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE