enforcement arb. agreement

22 Oct. 1996

US 237

MEALEY'S INTERNATIONAL ARBITRATION REPORT

HIRSCHFELD

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 194
Hirschfeld Productions, Inc.,
Appellant,
v.
Edwin Mirvish, et al.,
Respondents.

Bruce H. Wiener, for appellant.
Jay Cohen, for respondents.

MEMORANDUM:

The order of the Appellate Division should be affirmed, with costs.

Defendants David and Edwin Mirvish are the president and chairman, respectivaly, of Mirvish Productions (MP), a Canadian theatrical production company. They also own the Old Vic Theater in London, England, through an entity called Ed Mirvish Enterprises Limited ("Enterprises"). In April 1993, plaintiff Hirschfeld Productions Inc. (HPI) and MP entered into a joint venture agreement to produce the theatrical production "Hair" at the Old Vic Theater. The agreement was signed by David Mirvish on behalf of MP, and contained the following arbitration clause:

"Should a dispute arise from this agreement or from its interpretation then the Producers agree that such dispute shall be referred to an Arbitrator to be appointed in the absence of agreement between the disputing parties by the President for the time being of the Society of West End Theatre in accordance with U.K. law."

The play closed soon after opening due to poor box office returns and plaintiff HPI commenced this action against defendants Edwin and David Mirvish individually in their capacities as officers of MP and owners of Enterprises. The complaint asserted claims of tortious interference with contract and breach of fiduciary duty. Defendants moved for an order staying the action and compelling arbitration. Supreme Court denied the motion and the Appellate Division reversed. The question is whether the arbitration clause was meant to cover defendants, non-signatories, permitting them to compel plaintiff to submit to arbitration.

Inasmuch as the dispute involves an international commercial contract, it is governed by the Federal Arbitration Act and federal law (see, 9 USC 201 et seq.; Fletcher v Kidder, Peabody & Co., 81 NY2d 623, 630-631, cert denied 510 US 993 [1993]). The federal courts have consistently afforded agents the benefit of arbitration agreements entered into by their principals to the extent that the alleged misconduct relates to their behavior as officers or directors or in their capacities as agents of the corporation (Roby v Corporation of Lloyds, 996 F2d 1353, 1360 [2d Cir.], cert denied 510 US 945 [1993]; Letizia v Prudential Bache Securities, 802 F2d 1185, 1188 [9th Cir. 1986]; Arnold v Arnold Corp., 920 F2d 1269, 1281 [6th Cir. 1990]; Pritzker v Merrill

Lynch, Pierce, Fenner & Smith, et al., 7 F3d 1110, 1121-22 (3rd Cir. 1993]). The rule is necessary not only to prevent circumvention of arbitration agreements but also to effectuate the intent of the signatory parties to protect individuals acting on behalf of the principal in furtherance of the agreement (see, Roby, supra, at 1360; Letizia, supra, at 1188; Arnold, supra, at 1281; Pritzker, supra, at 1122; McCarthy v Azure, 22 F3d 351, 357 [1st Cir. 1994]).

Plaintiff's complaint is directed to misconduct related to MP's failure to effectively produce and promote the play, not to defendants' roles as owners of Enterprises. Accordingly, the parties are bound by the agreement between plaintiff and MP to arbitrate their disputes.

* * * * * * * * * * * * * * * * * *

Order affirmed, with costs, in a memorandum. Chief Judge Kaye and Judges Simons, Titone, Bellacosa, Smith, Levine and Ciparick concur.

Decided October 22, 1996

Sent by: Michael Marks Cohen
Facts: JF
Typed: HR
Footnotes:
Proofread:
AJB:

.... New York State Court of Appeals, ..., 22 October 1996, No. 194

Parties: Appellant: Hirschfeld Productions, Inc.
Respondents: Edwin Mirvish, et al.

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Articles: II(3)

Subject matter: – non-signatory covered by arbitration agreement

Commentary Cases:

Facts

David and Edwin Mirvish are the president and chairman, respectively, of Mirvish Productions (MP), a Canadian theatrical production company. They also own the Old Vic Theater in London, England, through an entity called Ed Mirvish Enterprises Limited (Enterprises). In April 1993, Hirschfeld Productions Inc. (HPI) and MP entered into a joint venture agreement to produced the theatrical production "Hair" at the Old Vic Theater. The agreement was signed by David Mirvish on behalf of MP, and contained the following arbitration clause providing for arbitration in accordance with the law of the United Kingdom:

> 'Should a dispute arise from this agreement or from its interpretation then the Producers agree that such dispute shall be referred to an Arbitrator ... .'

The play closed soon after opening due to poor box office returns and HPI commenced a lawsuit against Edwin and David Mirvish individually in their capacities as officers of MP and owners of Enterprises. The complaint asserted claims of tortious interference with contract and breach of fiduciary duty. David and Edwin Mirvish moved for an order staying the action and compelling arbitration. The New York Supreme Court denied the motion and the Appellate Division reversed. The Court of Appeals affirmed the order of the Appellate Division and referred the parties to arbitration, finding that the arbitration clause was meant to cover non-signatories, David and Edwin Mirvish, permitting them to compel plaintiff to submit to arbitration.

Excerpt

[1] "Inasmuch as the dispute involves an international commercial contract, it is governed by the Federal Arbitration Act and federal law (see, 9 U.S.C. Sect. 201 et seq.; *Fletcher v. Kidder, Peabody & Co.*, 81 N.Y.2d 623, 630-631, cert. denied 510 U.S. 993 (1993)). The federal courts have consistently afforded agents the benefit of arbitration agreements entered into by their principals to the extent that the alleged misconduct relates to their behavior as officers or directors or in their capacities as agents of the corporation (*Roby v. Corporation of Lloyds*, 996 F.2d 1353, 1360 (2d Cir.), cert. denied 510 U.S. 945 (1933); *Letizia v. Prudential Bache Securities*, 802 F.2d 1185, 1188 (9th Cir. 1986); *Arnold v. Arnold Corp.*, 920 F.2d 1260, 1261 (6th Cir. 1990); *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, et al.*, 7 F.3d 1110, 1121-1122 (3rd Cir. 1993)). The rule is necessary not only to prevent circumvention of arbitration agreements but also to effectuate the intent of the signatory parties to protect individuals acting on behalf of the principal in furtherance of the agreement (see, *Roby*, supra, at 1360; *Letizia*, supra, at 1188; *Arnold*, supra, at 1261; *Pritzker*, supra, at 1122; *McCarthy v. Azure*, 22 F.3d 351, 357 (1st Cir. 1994)).

[2] "Plaintiff's complaint is directed to misconduct related to MP's failure to effectively produced and promote the play, not to defendants' roles as owners of Enterprises. Accordingly, the parties are bound by the agreement between plaintiff and MP to arbitrate their disputes."