

DOCKET NO. CV 13-6037818 : SUPERIOR COURT  
JOHN W. MILLS : JUDICIAL DISTRICT OF NEW HAVEN  
V. : AT NEW HAVEN  
MEYERS, HARRISON & PIA, LLC : JULY 19, 2013

MEMORANDUM OF DECISION RE MOTION FOR STAY (#110)

The defendant filed a Motion for Stay of this action pending arbitration on May 28, 2013 (#110); and a Supplemental Brief on June 21, 2013 (#122). On June 6, 2013, the plaintiff filed an Objection (#112). On June 24, 2013, the plaintiff filed a Supplemental Brief (#123) to which the defendant filed a response (#126)<sup>1</sup>. Finally, on July 8, 2013, following oral argument before the undersigned, the plaintiff filed a Supplemental Objection to the defendant's Motion. (#129). The court heard oral argument on July 8, 2013<sup>2</sup>.

<sup>1</sup> The prior Response (#124) was withdrawn on June 26, 2013 (#126).

<sup>2</sup> The court initially scheduled Oral Argument on the Motion and the Objection on June 24, 2013. However, because the plaintiff did not understand that the court would entertain argument on that date, he did not appear. For this reason, the court set July 8, 2013 as a new date for Oral Argument. Because the defendant had argued its position on the record on June 24, 2013, the court allowed defense counsel to determine whether he would participate in the July 8, 2013 hearing. Defense counsel opted to participate. Accordingly, the court heard from both counsel on July 8, 2013.

Judicial District of New Haven  
**SUPERIOR COURT  
FILED**

JUL 19 2013

Judgment entered \_\_\_\_\_  
Counsel/self-rep. ind. notified 7/22 2013  
By  JDNO  copy of memo  other  
 Copy to Reporter of Judicial Decisions

CHIEF CLERK'S OFFICE

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The main issue in dispute is whether this action must be stayed, pending arbitration. The defendant argues that the contract which gives rise to all of the causes of action in this case, contains an applicable arbitration clause which requires that this action be stayed pending arbitration. The plaintiff counters that he is not precluded from bringing this action by that clause because the contract was not validly executed. The court finds that this action should be stayed pending arbitration.

In deciding the motion, the court considers the operative complaint, which is the Revised Amended Complaint filed June 4, 2013 (#111), as well as the specific contractual language at issue. The operative pleading is a Revised Complaint which contains five counts, one of which has been voluntarily withdrawn. (#128) The withdrawn count is the First Count, the Breach of Contract claim which alleged, inter alia, that the defendant received payment for a business evaluation “pursuant to the terms of a written contract entered between the defendant and Coleen Mills, to which the plaintiff became a third party beneficiary...” (Paragraph 4 of First Count). Although the plaintiff withdraws his breach of contract claim, he realleges this factual assertion in the four subsequent claims for Fraud (Second Count); Violation of Connecticut Unfair Trade Practices Act (Third Count); Theft (Fourth Count); and Conversion (Fifth Count). On July 8, 2013, the plaintiff filed a Request to Amend his Complaint seeking to recast his claims, alleging that there was no executed written contract. (#130). However, the defendant has filed an

Objection to that Revision. (#131). Therefore, the July 8, 2013 is not the operative pleading in this matter.

The contract at issue was executed between the defendant and Coleen Mills, the former spouse of the plaintiff. Ms. Mills signed the contract on January 13, 2012. On page 3 of the contract, the document provides that:

“In the event that you or your client and this firm have a dispute arising out of or relating to **any aspect of our relationship**, including, but not limited to, **issues pertaining to payment or fees and/or disbursements**, or issues pertaining to the **quality or adequacy of this firm’s representation** of your interests, both of us agree to submit any and all disputes to binding arbitration in lieu of litigating our dispute in a court of law. You, your client, and this firm both agree to waive any statutory or common law claims to any punitive damages award.” (Emphasis added).

The gravamen of the plaintiff’s claims seek to challenge the adequacy of the defendant’s professional services; and the amount of money charged for those services. It is clear that this action is founded upon the contractual relationship between the defendant and Coleen Mills, of which the plaintiff claims he was a third party beneficiary.

The contract between the defendant and Coleen Mills contains a clear and unambiguous arbitration clause. The signatories to that contract would not be free to

avoid that clause. Neither is the self-proclaimed third party beneficiary of the contract, the plaintiff, able to avoid it. One cannot seek the benefits of a contract, either directly or as a third party beneficiary, and then avoid the imposition of the arbitration clause contained therein. See, *American Bureau Shipping v Tencara Shipyard*, 170 F.3d 349 (1999).

In a Supplemental Brief filed on July 8, 2013, the plaintiff argues that because he has withdrawn his Breach of Contract claim, he should be allowed to litigate this matter in Superior Court. As noted above, notwithstanding the withdrawal of the allegation of breach of contract, the complaint still alleges a contractual relationship and that the plaintiff is a third party beneficiary of the contract.

Although it is not necessary for the court to consider the plaintiff's most recent Revised Complaint, because it is not the operative pleading, even assuming that it were, the ruling of this court would remain the same. The most recent revision attempts to avoid the provisions of the contract by challenging its enforceability and validity. Instead of alleging a written contract, the July 8, 2013 Complaint alleges the breach of an Oral Contract. Further, it alleges that "the defendant received payment from the plaintiff in connection with a purported 'business evaluation' of the Mills Law Firm, LLC." (Para. 3). Additionally, the complaint claims that "despite the fact that there was never an executed written contract between the parties, the business evaluation was later performed

pursuant to the terms of a subsequent oral agreement...to which the plaintiff became a third party beneficiary.” (Para. 5).

Challenging the enforceability or validity of the contract, does not negate the applicability of its provisions. The terms of the contract clearly state that the parties will resolve “any dispute arising out of or relating to any aspect of **our relationship...**” through arbitration. (Emphasis added.) Noteworthy is the fact that the contractual language refers to disputes arising out of “the relationship”, and not “the contract”, as the basis for going to arbitration. Therefore, assuming that the plaintiff had standing to raise these issues, the matter of challenging the enforceability or validity of the contract signed by the defendant and Coleen Mills would still have to be referred to arbitration.

Because the relationship between the plaintiff and the defendant derives from a contractual relationship between the defendant and Coleen Mills, and because the contract between the defendant and Coleen Mills contains an enforceable arbitration clause, this action must be stayed, pending arbitration. For that reason, the court grants the defendant’s motion to stay this action.

  
Robinson, A., J.