PT

Feb 26, 2020

Martin Chan
Allen & Proctor LLP
Three Emerson Center
Northport, Columbia

Re: Western Insurance Co. v. Secure Trade Inc.

Dear Mr. Chan;

This is in response to your letter dated February 20, 2020. You made a request that our client, Western Insurance Co ("Western") voluntarily submit its fraud claim to arbitration. We agree w/ the Columbia Arbitration Act's strong policy in favor of compelling arbitration.

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Tuscany Builders v. Norman Prop. (Colum. Sup. Ct. 2011).

However, we are responding that our client will not submit its fraud claim to arbitration b/c it is likely that ~~your~~ any motions you file to compel arbitration will likely be denied. and your argument for arbitration is unsound.

We base our argument against arbitration on basis that the claims SecureTrade is seeking against our client is not intertwined w/ the Brokerage + Admin Agreement btw. SecureTrade and Assurance, which includes the arbitration clause. In addition, we ~~als~~ argue that our client did not seek or obtain a direct benefit from the Brokerage.

and Admin Agreement.

As mentioned before, the Columbia Arbitration Act reflects a strong policy in favor of ~~arbitra~~ arbitration. However, Arbitration is nevertheless a matter of contract and a party cannot be compelled to arbitrate any dispute that he or she has not agreed to arbitrate. Tuscany.

I. The Claims ST is seeking ag our client is not intertwined w/ The Brokerage + Admin agreement.

~~TA~~ The Columbia courts have concluded that a nonsignatory ~~A~~ party may compel a signatory to arbitrate when the claims the nonsignatory

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is seeking ~~to are~~ to arbitrate are intertwined with the contract containing the arbitration clause. Tuscany. The Court in Tuscany held that nonsignatory may compel a signatory to arbitrate via equitable estoppel when the signatory's claims ag. non-signatory are intertwined w/ the ~~the~~ contract containing the arbitration clause. Id. A claim is intertwined if it is dependent on rights or duties of the contract. Id.

Here the facts ~~do not~~ support that our client's claim ~~w~~ ag. ST is not intertwined

w/ the Brokerage - Admin K. Here our client is suing ST for fraud. ST had represented that it ① complied w/ its claims handling obligations under insurance policy ② reasonably determined that more than 17,000 consumers had presented valid claims for product failure or damages totaling more than $36 million and ③ certified in good faith that W was responsible for satisfying the claims. Complaint for Fraud (Feb 14, 2020)

Here, the contract w/ the Arbitration Clause was the Agmt between Assurance and ST

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to procure an Insurance Policy to ST. The duties of that Agreement is to procure insurance policy and review consumer claims prior to rejection or acceptance. Complaint. However, ST failed to provide Assurance w/ timely or accurate reports. Id.

Here, our clients claim does not intertwine ~~w/ the~~ ∴ not dependent on rights or duties under the B-A Agreement b/c they are suing for fraud, since ST made material ~~misrepresent~~ misrepresentations re. what they did. and the B-A Contract was required that Assurance

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procure the Insurance ~~E~~ contract for ST.

This is in contract w/ Tuscany, where the Supreme Court found that the claims of the ~~defendants~~ nonsignatories who are seeking arbitration are intertwined w/ the contract w/ arbitration. Id.

Thus, our clients claims are not intertwined w/ the B-A Agreement b/c it is not dependent on the rights and duties of that Agreement.

~~II. The claims ST is seeking against our client is~~

II. Our client did not seek or obtain direct benefit from the Brokerage - Admin Agreement.

The Supreme Ct in Tuscany holds that, in contrast to its sister-courts, it is foreseeable.

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that a party who has chosen to become a signatory to a contract w/ an arbitration clause might be compelled to arbitrate not only w/ other signatories but also w/ non-signatories. Tuscany. However, it is not a foreseeable or reasonable that a party who has not ~~the~~ chosen to be a signatory to any contract w/ an arbitration clause might be compelled to arbitrate ~~s~~ w/ anyone. Id. In that case, the courts have concluded that a nonsignatory may compel another nonsignatory to arbitrate only when the other party has

sought or obtained a direct benefit from the contract containing the arbitration clause. via equitably estoppel.

Id. The Court determined that whether a nonsignatory has sought or determined a direct benefit from the contract should turn ultimately on what the party "has done" such as effectively suing on the contract.

Here, our client did not obtain or seek a direct benefit from the contract b/c client didnt sue when the B-A contract was breached by

Therefore, our client ~~is not~~ did not seek or obtain a benefit from the B-A K.

Conclusion.

~~In conclusion~~

Therefore, we will not submit to arbitration b/c based on our analysis your claim is unsound, as the claims are not intertwined w/ B-A K and our client did not seek a benefit from the B-A contract.