

1. MORENO V. TAHOE KEYS PROPERTY OWNERS ASSN., SCL2020087

Motion to Tax Costs

TENTATIVE RULING # 1: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO A DATE TO BE DETERMINED PENDING RESOLUTION OF PLAINTIFF'S PETITION FOR WRIT OF MANDATE.

2. WAGNER v. FIRSTPV INC., ET AL., 23CV0893**(1) Motion to Compel Arbitration****(2) Request to Stay Proceedings**

This case arises from an agreement between plaintiff and defendant FirstPV Inc. ("FirstPV") for the sale and installation of a solar panel system at plaintiff's residence. Defendant Service Finance Company, LLC ("Service") provided a loan to finance the contract. Defendant Western Surety Company ("Western") provided a contract surety bond. Defendant Service allegedly distributed the loan funds to defendant FirstPV before the installation was complete.

Plaintiff's Complaint states causes of action against defendants FirstPV and Service for (1) unfair business practices, in violation of the Consumer Legal Remedies Act ("CLRA"), Civil Code section 1760 *et seq.*; (2) unfair competition, in violation of the Unfair Competition Law ("UCL"), Business and Professions Code section 17200, *et seq.*; (3) violation of the Song-Beverly Consumer Warranty Act (also known as California's "Lemon Law"), Civil Code section 1790, *et seq.*; (4) breach of implied warranty of merchantability; and (5) breach of implied warranty of fitness. Plaintiff also alleges one cause of action against defendant Western for collection on Western's bond in connection with the work done under the Agreement.

On July 19, 2023, defendant Western filed its answer to plaintiff's Complaint. On August 1, 2023, defendant Service filed its answer to plaintiff's Complaint, as well as its Cross-Complaint against defendants FirstPV and Western for indemnity and declaratory relief.

1. Legal Principles

FirstPV's motion is made pursuant to the California Arbitration Act ("CAA"), Code of Civil Procedure section 1280, *et seq.* The CAA sets forth "a comprehensive statutory scheme regulating private arbitration in this state." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) California has a " 'strong public policy in favor of arbitration as a speedy and

relatively inexpensive means of dispute resolution.’ [Citations.]” (*Ibid.*) “Consequently, courts will ‘ “indulge every intendment to give effect to such proceedings.” ’ ” (*Ibid.*) “In cases involving private arbitration, ‘[t]he scope of arbitration is ... a matter of agreement between the parties’ [citation]” (*Id.* at pp. 8–9.) “A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract.” (Code Civ. Proc., § 1281.) Furthermore, except for specifically enumerated exceptions, the court must order the parties to arbitrate a controversy if the court finds that a written agreement to arbitrate the controversy exists. (*Id.*, § 1281.2.)

Arbitration agreements are governed by state contract law and are “construed like other contracts to give effect to the intention of the parties.” (*Crowell v. Downey Community Hospital Foundation* (2002) 95 Cal.App.4th 730, 734, disapproved of on other grounds in *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334.) A motion “to compel arbitration is simply a suit in equity seeking specific performance of that contract.” (*Engineers & Architects Assn. v. Community Development Dept.* (1994) 30 Cal.App.4th 644, 653.) If the contractual language is clear and explicit, it governs. (Civ. Code, § 1638.) “ ‘Absent a clear agreement to submit disputes to arbitration, courts will not infer that the right to a jury trial has been waived.’ [Citations.]” (*Adajar v. RWR Homes, Inc.* (2008) 160 Cal.App.4th 563, 569.)

“The party seeking to compel arbitration bears the burden of proving the existence of an arbitration agreement, while the party opposing the [motion] bears the burden of establishing a defense to the agreement’s enforcement. [Citation.]” (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 890; Civ. Code, § 1670.5, subd. (a) [“If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract”].)

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2. Standard of Review

In deciding a motion to compel arbitration, “the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court’s discretion, to reach a final determination.” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.)

3. Discussion

In support of the motion, FirstPV’s Chief Executive Officer Ivan La Frinere-Sandoval declares that on July 23, 2021, FirstPV and plaintiff executed an arbitration agreement. (Mot., Frinere-Sandoval Decl., ¶ 2 & Ex. A.) FirstPV included a copy of the purported agreement with its moving papers.¹ (*Id.*, Ex. A.) The agreement bears both parties’ signatures. (*Id.*, Ex. A at p. 4.) The arbitration provision is found at Paragraph 12 and reads:

APPLICABLE LAW; ARBITRATION. This Agreement shall be interpreted, construed, and governed by and under the laws of the State of California. Any dispute or controversy arising under or in connection with this Agreement or breach thereof shall be settled exclusively by arbitration at a mutually agreed location in accordance with the JAMS Endispute commonly accepted guidelines and rules. Venue of the arbitration shall be in San Francisco, CA.

(*Id.*, Ex. A at p. 3, ¶ 12.)

Plaintiff objects to the admission of the arbitration agreement on the grounds that Mr. Frinere-Sandoval lacks personal knowledge, that the document lacks foundation and authentication, and that the document is hearsay. (Pl.’s Objections to Frinere-Sandoval Decl. at p. 2.) The court overrules these objections. Mr. Frinere-Sandoval has personal knowledge because he signed the document on behalf of SolarUnion. (Mot., Ex. A at p. 4.)

¹ Technically, the agreement is between plaintiff and “SolarUnion.” However, Mr. Frinere-Sandoval declares that FirstPV does business under the fictitious business name, “SolarUnion.” (Mot., Frinere-Sandoval Decl., ¶ 3.)

His declaration states that Exhibit A is the purported agreement. (Mot., Frinere-Sandoval Decl., ¶ 2.) Lastly, the agreement is not hearsay because it is a document of legal significance that is not offered for the truth of the matter asserted. (Evid. Code, § 1200.)

Based on the foregoing, the court finds that FirstPV has met its initial burden of producing prima facie evidence of the existence of a written agreement to arbitrate. The claims covered by the agreement include “[a]ny dispute or controversy arising under or in connection with this Agreement or breach thereof.” (Ex. A at p. 3, ¶ 12.) The burden now shifts to plaintiff to establish a defense to the enforcement of the arbitration agreement.

Citing one of the enumerated exceptions in Code of Civil Procedure section 1281.2, plaintiff argues the petition should be denied because arbitrating his claims against defendant FirstPV creates the real possibility of conflicting rulings on common issues of law or fact. Plaintiff explains that this action involves third parties that did not agree to arbitration; that is, defendants Service and Western. Plaintiff’s claims against Service and Western arise out of the same series of related transactions as his claims against FirstPV. Because plaintiff’s claims against defendants are closely related and because neither Service nor Western agreed to arbitration, plaintiff asserts that each of the claims must be adjudicated in a single forum to avoid conflicting rulings. Moreover, plaintiff argues that a single forum will avoid duplication of effort by the attorneys.

The court agrees that splitting these claims and controversies—which arose out of the same series of related transactions—between multiple parties into multiple actions and forums could very well result in conflicting rulings on common issues of fact or law. (See Code Civ. Proc., § 1281.2, subd. (c).) The court further agrees that, under the circumstances here, splitting the parties’ various claims between multiple forums would result in a duplication of effort, which would defeat the primary reasoning behind the state’s strong policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution. (See *Moncharsh, supra*, 3 Cal.4th at p. 9.)

The court also notes that Business and Professions Code section 7191, subdivision (a), prescribes certain requirements for residential renovation contracts. “If a contract for work on residential property ... contains a provision for arbitration of a dispute between the principals in the transaction, the provision shall be clearly titled ‘ABRITRATION OF DISPUTES.’ If a provision for arbitration is included in a printed contract, it shall be set out in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.” (Bus. & Prof. Code, § 7191, subd. (a).) In this case, the arbitration provision is not titled correctly and is not typed in boldface, red print, or capital letters.

The petition to compel arbitration and to stay proceedings is denied.

TENTATIVE RULING # 2: DEFENDANT FIRSTPV’S MOTION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. DUO v. VAIL RESORTS, INC., ET AL., 22CV0091

OSC Re: Failure to Appear and Failure to Prosecute

**TENTATIVE RULING # 3: PLAINTIFF'S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY,
AUGUST 11, 2023, IN DEPARTMENT FOUR.**

4. SEMPER SOLARIS CONSTRUCTION, INC. v. TURNEY, 22CV0160**Order of Examination Hearing**

The Order of Examination Hearing was originally set for July 7, 2023. On July 6, 2023, the court granted plaintiff's request for a continuance. Also on July 6, 2023, proof of mail service was filed showing that judgment debtor Robert Turney was served with the order to appear for examination on August 11, 2023.

TENTATIVE RULING # 5: JUDGMENT DEBTOR'S APPEARANCE IS REQUIRED AT 1:30 P.M., FRIDAY, AUGUST 11, 2023, IN DEPARTMENT FOUR.