UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:20-bk-03697-FMD
Chapter 7

Paul Charles Laubenstein and
Lisa Mary Laubenstein,

Debtors.
_____/

ORDER DENYING MOTION FOR RELIEF FROM STAY TO CONTINUE PENDING ARBITRATION AGAINST DEBTORS

On June 16, 2020, Pilgrim Skating Arena, Inc. ("Pilgrim") filed a *Motion for Relief from the Automatic Stay to Continue Pending Arbitration against the Debtors* (the "Stay Motion"),[1] and on July 6, 2020, Debtors filed a response to the Stay Motion.[2] On July 30, 2020, the Court held a hearing on the Stay Motion and the response and took the Stay Motion under advisement. After the hearing, on August 5, 2020, Pilgrim filed a reply to Debtors' response.[3] Because Pilgrim's reply addressed a new issue—whether Debtor Lisa Laubenstein may be compelled to arbitrate claims that Pilgrim intends to make against her even though she is not presently a party to the arbitration proceeding and did not sign the subject arbitration agreement—the Court entered an order directing Debtors to respond.[4] Debtors filed a response to the reply on August 18, 2020.[5]

A. The Facts

Debtors previously lived in Massachusetts. They own 100% of New England Senior Hockey League, Inc. (the "Corporation"). The Corporation was in the business of managing adult hockey leagues in Massachusetts.

Pilgrim owns three ice rinks and office space in Massachusetts. Pilgrim's primary business is the rental of the ice rinks to third parties.

In July 2010, Pilgrim as "Licensor" entered into a License Agreement with "Paul Laubenstein d/b/a New England Senior Hockey League" as "Licensee" for the rental of Pilgrim's ice rinks for on-ice hockey games, referred to as "Skating Programs," and Pilgrim's office space.[6] Mr. Laubenstein signed the License Agreement in a typed signature block that reads:

> LICENSEE:
> Paul Laubenstein d/b/a New England Senior Hockey League
> By its duly authorized officer or agent
> */s/ Paul Laubenstein*
> Paul Laubenstein

The License Agreement was for an initial ten-year term ending on August 30, 2020. It provided for the Licensee to pay Pilgrim quarterly rental payments for "ice time" and monthly rental payments for the office space. Under paragraph 7 of the License Agreement, Licensee was prohibited from renting any ice rinks within a 20-mile radius of Pilgrim's rinks during the term of the License Agreement or within five years after its termination. Paragraph 18 of the License Agreement required "any action for damages" by either party to be submitted to an arbitrator appointed by the American Arbitration Association.

In approximately 2014, Debtors moved from Massachusetts to Florida. After moving to Florida, Debtors operated the Corporation's business from their Florida residence.

On August 23, 2019, Pilgrim gave notice that it was terminating the License Agreement effective September 1, 2019. Pilgrim stated the termination was based on Mr. Laubenstein's alleged failure to pay rent and violation of the noncompete provision of the License Agreement.[7]

[1] Doc. No. 32.
[2] Doc. No. 36.
[3] Doc. No. 44.
[4] Doc. No. 46.
[5] Doc. No. 50.
[6] Exhibit A to Doc. No. 32.
[7] Doc. No. 32, ¶ 9.

On September 11, 2019, Pilgrim submitted a Demand for Arbitration (the "Arbitration Demand") to the American Arbitration Association ("AAA").[8] The Arbitration Demand names "New England Senior Hockey League, Inc. and Paul Laubenstein" as the respondents. In the Arbitration Demand, as its "brief description of the dispute," Pilgrim states:

> The Defendants breached their Amended License agreement (the "Agreement") with Pilgrim by not paying Pilgrim the ice rental fees owed to Pilgrim thereunder. The Defendants owe Pilgrim $242,308 for ice time leased through August 31, 2019.

An arbitrator appointed by the AAA held hearings in November 2019 and January 2020 on Pilgrim's request for an injunction to enforce the noncompete provision. The arbitrator scheduled an additional hearing on Pilgrim's request for an injunction for May 13, 2020.[9]

On May 12, 2020, the day before the scheduled hearing, Debtors filed a Chapter 13 bankruptcy petition. The Corporation ceased operations around the time of the bankruptcy filing.[10]

On May 26, 2020, the arbitrator entered a temporary restraining order enforcing the License Agreement's noncompete provision against the Corporation. In June 2020, the arbitrator entered a preliminary injunction against the Corporation.[11] Debtors' counsel has stated on the record that Debtors do not contest the preliminary injunction against the Corporation.

On June 1, 2020, Pilgrim filed a motion in the arbitration proceeding to amend its Arbitration Demand to add claims against the Corporation for misrepresentation, breach of fiduciary duty, and for the recovery of a fraudulent transfer. In the Stay Motion, Pilgrim states that if this Court grants its request for stay relief, it also intends to assert fraud and breach of fiduciary duty claims against both Debtors in the arbitration proceeding.[12]

The deadline to file a complaint against Debtors to deny their discharge under 11 U.S.C. § 727 or to determine the dischargeability of a debt under 11 U.S.C. § 523 in the bankruptcy case is September 21, 2020.

On August 14, 2020, Pilgrim filed a proof of claim in the bankruptcy case as an unsecured claim in the amount of $702,486.00.[13] The basis of the claim was stated by Pilgrim as "rental of ice, breach of contract." On August 18, 2020, Debtors filed an objection to Pilgrim's claim on the grounds that it was filed in an excessive amount.[14] On August 25, 2020, Pilgrim filed a response to Debtors' objection to its claim.[15]

In addition, on August 25, 2020, Pilgrim filed an objection to Debtors' claim of homestead exemption on their residence. Pilgrim claims that Debtors are not entitled to the homestead exemption under Article X, § 4(a)(1) of the Florida Constitution and Fla. Stat. §§ 222.01 and 222.02 they used the residence for commercial business purposes by operating the Corporation from the residence.[16]

In the Stay Motion, Pilgrim asks for relief from the automatic stay under 11 U.S.C. § 362 "to prosecute to conclusion its state law claims against the Debtors in the arbitration proceedings."

B. Analysis

In *In re Bateman*,[17] the bankruptcy court considered whether a dispute should be sent to arbitration under a prior arbitration agreement between the parties. The court stated that arbitration is a matter of consent, not coercion, with the intent of giving effect to the parties' contractual rights and expectations. The court then explained

[8] Exhibit A to Doc. No. 36.
[9] Doc. No. 32, ¶¶ 11-12.
[10] Doc. No. 32, ¶ 18; Doc. No. 36, ¶ 11.
[11] Doc. No. 32, ¶ 15.
[12] Doc. No. 32, ¶ 17.
[13] Claim No. 16.
[14] Doc. No. 49.
[15] Doc. No. 53.
[16] Doc. No. 54.
[17] 585 B.R. 618 (Bankr. M.D. Fla. 2018).

the Eleventh Circuit Court of Appeals' ruling in *In re Electric Machinery*:[18]

> Consistent with this purpose, the Eleventh Circuit has developed a two-step inquiry when considering a motion to compel arbitration. First, the court must determine whether the parties have actually agreed to arbitrate the dispute. If the parties have actually agreed, then the court must decide whether any "legal constraints external to the parties' agreement foreclose arbitration." Bankruptcy may be one of the legal constraints foreclosing arbitration, but only if the matter under consideration is within the bankruptcy court's "core" jurisdiction, and if enforcement of the arbitration agreement inherently conflicts with the underlying purpose of the Bankruptcy Code.[19]

Applying the analysis set forth in *Bateman* and *Electric Machinery*, the Court denies the Stay Motion for the following reasons:

First, the License Agreement's arbitration provision is limited to "any action for damages."

Second, Mrs. Laubenstein is not a party to the License Agreement and never agreed to arbitrate the dispute with Pilgrim. Although Pilgrim contends that Mrs. Laubenstein may be compelled to arbitrate because she is an agent or alter ego of the Corporation, the case that Pilgrim cites in support of its position involves the efforts of a party who was not a signatory to an arbitration agreement to compel arbitration with a person who had signed the agreement.[20] Here, Pilgrim seeks to compel arbitration by a non-party, who was not a signatory to the arbitration agreement, and who has not been established as an alter ego of a party to the agreement.

Third, it was only after the filing of the bankruptcy case that Pilgrim attempted to recast its breach of contract claim as claims for fraud and breach of fiduciary duty. If Pilgrim has such claims, it must file an adversary proceeding in this Court to determine whether they are excepted from discharge. Determinations of dischargeability are core proceedings under 28 U.S.C. § 157(b)(2)(I).

Fourth, there are two other contested matters pending in this Court: Debtors' objection to Pilgrim's proof of claim and Pilgrim's objection to Debtors' claimed homestead exemption. Both contested matters are core proceedings under 28 U.S.C. § 157(b)(2)(B).

In light of the core contested matters presently and potentially pending in the bankruptcy case, the Court finds, first, that enforcement of the arbitration agreement with respect to the claims that Pilgrim has asserted and intends to assert in the arbitration proceeding inherently conflicts with the underlying purpose of the Bankruptcy Code, and second, that principles of judicial economy require that the disputes between Pilgrim and Debtors be resolved in the bankruptcy court.

Accordingly, for the foregoing reasons, Pilgrim's Motion for Relief from the Automatic Stay to Continue Pending Arbitration against Debtors is DENIED.

DATED: September 9, 2020.

/s/ Caryl E. Delano

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Caryl E. Delano
Chief United States Bankruptcy Judge

[18] 479 F. 3d 791 (11th Cir. 2007).

[19] *In re Bateman*, 585 B.R. at 624 (citing *In re Electric Machinery Enterprises, Inc*., 479 F.3d 791, 796 (11th Cir. 2007)).

[20] *Machado v. System4 LLC*, 28 N.E.3d 401, 404 (Mass. 2015).