SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Santa Monica Courthouse, Department N

18SMCV00036 July 8, 2019
NEAL MORITZ, et al. vs UNIVERSAL CITY STUDIOS, LLC 11:00 AM
A DELAWARE LIMITED LIABILITY COMPANY, et al.

Judge: Honorable Craig D. Karlan
Judicial Assistant: Darian Salisbury
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 06/27/2019, now rules as follows:
RULING

Defendants Universal City Studios LLC, FFSO Productions LLC, and James Horowitz's Motion to Compel Arbitration and Stay Action is DENIED.

Defendants Universal City Studios LLC, FFSO Productions LLC, and James Horowitz to give notice.

REASONING

Plaintiffs Neal Moritz ("Plaintiff") and Neal Moritz, Inc., bring this action based on the alleged breach of an oral contract or alternatively, implied contract, for Plaintiff to produce the motion picture Hobbs and Shaw, a spinoff of the Fast and Furious motion picture franchise. Defendants Universal City Studios LLC ("Universal"), FFSO Productions LLC, and James Horowitz (collectively "Defendants") move to compel arbitration.

Defendants provide a redlined draft agreement containing an arbitration provision which was never signed by Plaintiff. (See Mot., Dormer Decl. ¶ 10, Exh. H.) Consistent therewith, Defendants' position is that no agreement exists between Universal and Plaintiff for Plaintiff to produce the feature film Hobbs and Shaw. The draft agreement is clear that the proposed written contract would become operative only when signed by the parties and, because the agreement was not signed, "no binding contract was created." (Banner Entertainment, Inc. v. Superior Court (1998) 62 Cal.App.4th 348, 358.) The parties do not dispute that the existence of an arbitration provision in the unsigned proposed agreement cannot serve as the basis for submitting this matter to arbitration.

Again, Defendants take the position there is no written (or oral) agreement between the parties with respect to Hobbs and Shaw. Defendants, nevertheless, argue Universal's prior agreements with Plaintiff for production of other Fast and Furious films contain arbitration provisions which mandate arbitration of this action. The parties have entered into at least seven such prior agreements.

Each of the first four Fast and Furious film agreements ("FF1 through FF4 Agreements") contains the following language in its respective arbitration provision:

Any controversy, claim, or dispute arising out of or relating to this Agreement or the interpretation, performance, or breach hereof, including but not limited to alleged violations of state or federal statutory or common law rights or duties (a "Dispute") shall be resolved according to the procedures set forth in this paragraph which shall constitute the sole dispute resolution mechanism hereunder.

(Mot., Dormer Decl. ¶¶ 3-6, Exhs. A-D, italics and underline added.)

There was no written agreement with respect to the fifth film in the franchise, Fast Five, only an oral agreement.

The sixth and seventh Fast and Furious film agreements contain a slightly modified version of the arbitration provision contained in the FF1 through FF4 Agreements, as partially set forth below:

Any controversy, claim, or dispute arising out of or relating to this Agreement or this agreement to arbitrate, including without limitation, the interpretation, performance, formation, validity, breach, or enforcement of this Agreement, and further including any such controversy, claim, or dispute against or involving any officer, director, agent, employee, affiliate, successor, predecessor, or assign of a party to this Agreement (each a "Dispute"), shall be fully and finally adjudicated by binding arbitration to the fullest extent allowed by law (the "Arbitration").

(Mot., Dormer Decl. ¶¶ 7, 8, Exhs. E, F, italics and underline added.)

The combined agreement for the eighth, ninth, and tenth Fast and Furious films ("the FF8 – FF10 Agreement") – which is one and a half pages in length – references the FF7 and FF3 Agreements

in the second paragraph ["Reference is made to the following …"], but does not therein incorporate the Agreements by reference. A few paragraphs later, in the "Services on FF8, FF9 and FF10" section, is the following language:

Universal shall engage Lender to provide Producer's individual producing services with respect to each such Qualified Subsequent FF Picture, and Lender shall provide Producer's individual producing services with respect to each such Qualified Subsequent FF Picture, pursuant to the terms and conditions set forth in the FF7 Agreement (including, without limitation, the vesting of Producer's credit and compensation as set forth in Paragraph 1, of the amendment to the FF7 Agreement)…

(Mot., Dormer Decl. ¶ 9, Exhs. G, italics added.)

Thus, for each "Qualified Subsequent FF Picture," under the FF8 – FF10 Agreement, Plaintiff shall provide producing services pursuant to the terms and conditions set forth in the FF7 Agreement. According to Defendants, this means that the arbitration provision of the FF7 Agreement applies to any Qualified Subsequent FF Picture; Plaintiffs disagree. Regardless, Hobbs and Shaw is not a Qualified Subsequent FF Picture, since it is neither a remake nor a sequel, but rather, a spinoff, and the parties so agree.

Defendants, though, argue that because Plaintiffs refer to and rely upon the FF8 – FF10 Agreement repeatedly in their Complaint, the terms thereof are applicable, including the arbitration provision in the FF7 Agreement. Plaintiffs counter that the references in the Complaint to the FF8 – FF10 Agreement are solely included to explain the financial terms of the oral agreement.

During oral argument, both sides urged the Court to apply Marsch v. Williams (1994) 23 Cal.App.4th 250 (Marsch), arguing it is directly on point. The Court agrees. In Marsch, the parties entered into two separate partnership agreements involving two separate developments, the Horizon partnership agreement and the La Jolla partnership agreements; the La Jolla agreements did not contain an arbitration provision, while the Horizon partnership agreement contained one. (Id. at pp. 252-253.) In his complaint, plaintiff Marsch alleged defendant Williams' conduct in seeking to obtain control over Horizon undermined Marsch's ability to operate the La Jolla project. (Id. at pp. 255-256.) As such, Williams argued Marsch's claims had their "roots in the relationship created by the Horizon Properties Partnership Agreement" and, therefore, the Horizon agreement's arbitration provision controlled. (Id. at p. 253.) The trial court found the arbitration provision in the Horizon partnership agreement did not cover the La Jolla

claims raised by Marsch. (Id. at p. 254.) In affirming the trial court, the appellate court found the agreements "were not closely connected in purpose, did not incorporate one another's terms, were not executed at the same time, and the breach of the Horizon agreement did not necessarily lead to the breach of the La Jolla agreements." (Id. at p. 256.) The Court further found that evidence Marsch may choose to introduce to prove his claims, "will not, by itself, demonstrate the existence of such an agreement." (Id. at p. 257.)

Here, the seven prior agreements are not closely connected in purpose, i.e., each addresses a different feature film in the Fast and Furious franchise. They do not incorporate one another's terms, i.e., except the FF8 – FF10 Agreement as explained above. They were not executed at the same time, and the breach of any one agreement does not necessarily lead to the breach of any of the other agreements. Moreover, the fact that the Complaint references the FF8 – FF10 Agreement does not render any potential arbitration provision contained therein applicable to this matter pursuant to Marsch, supra, 23 Cal.App.4th at page 257.

Defendants argue whether this dispute is subject to arbitration must be decided by an arbitrator. The Court disagrees. "Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." (United Public Employees v. City and County of San Francisco (1997) 53 Cal.App.4th 1021, 1026.) Here, the parties did not clearly and unmistakably provide otherwise.

To the contrary, the FF8 – FF10 Agreement, which Defendants rely upon, is hardly a model of clarity. For example, even though it suggests in the "Contingencies" section that the agreement was executed at the same time as the FF7 Agreement, in actuality, the agreements were executed two years apart. Plus, it is unclear whether the FF8 – FF10 Agreement actually incorporates the arbitration provision of the FF7 Agreement; the parties disagree on this point. The Court, though, need not decide this issue herein, as the parties agree Hobbs and Shaw is not a Qualified Subsequent FF Picture within the meaning of the FF8 – FF10 Agreement.

Defendants argue even if the Court decides the issue of arbitrability, the parties' seven prior agreements to produce other films in the Fast and Furious franchise constitute evidence they agreed to arbitrate any claims related to those films and this is a dispute related to those agreements. As stated above, the Court does not agree. The existence of a different written agreement for each Fast and Furious film belies Defendants' contention that claims related to Hobbs and Shaw are related to other Fast and Furious contractual agreements. To the contrary, and again, Universal takes the position Hobbs and Shaw is neither a remake nor a sequel of any other Fast and Furious film, which the parties agree means it is not a "Qualified Subsequent FF

Picture" within the meaning of the FF8 – FF10 Agreement, and which places it outside the purview of those prior agreements. (See Mot., Dormer Decl. ¶¶ 5, 9, Exhs. C, G; Opp'n, Abramson Decl. ¶ 2, Exh. A [describing Hobbs and Shaw as a standalone film, "neither a 'Remake' nor a 'Sequel'"].)

Notably, Plaintiff represents he has produced other films with Universal outside the Fast and Furious franchise, but the agreements for those films are not provided in the context of this motion because a producer's relationship with a studio is determined on a film-by-film basis, unless there is an agreement which states otherwise. Here, Defendants provide no evidence the parties agreed to arbitrate claims relating to Hobbs and Shaw, and Plaintiff specifically denies this fact. (Opp'n, Moritz Decl. ¶ 2.)

Finally, each of the above cited arbitration provisions – i.e., that in the FF1 though FF4 Agreements, the FF6 Agreement, and the FF7 Agreement – applies to disputes "arising out of or relating to this Agreement …" (Italics added.) The current dispute does not arise out of or relate to any of the prior agreements or films. Had the parties wished to have any and all disputes "arising out of or relating" to the entire Fast and Furious franchise be arbitrated, they could have easily drafted such an expansive arbitration provision; they chose not to.

It is axiomatic that "[t]he petitioner bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence." (Ruiz v. Moss Bros. Auto Group, Inc. (2014) 232 Cal.App.4th 836, 842.) Defendants fail to meet their burden here. While there is a public policy favoring arbitration of disputes, that public policy is not implicated when "the parties have not agreed to arbitrate." (Los Angeles Police Protective League v. City of Los Angeles (1988) 206 Cal.App.3d 511, 514.) Accordingly, Defendants Universal City Studios LLC, FFSO Productions LLC, and James Horowitz's Motion to Compel Arbitration and Stay Action is DENIED.

The Court hereby lifts the stay on the case in its entirety.

Clerk to give notice. Certificate of Mailing is attached.