NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
DOCKET NO. C- 374-11

ORA BILLIG,

***Plaintiff(s)*,**

v.

ESTATE OF JOSEF BILLIG, OFRA BILLIG, WEST 108TH PARKING GARAGE CORPORATION, BILLIG REALTY CO. LLC, MIRIAM CINQUINO, HERMAN NEFF, and VALLEY NATIONAL BANK,

***Defendant(s)*.**

CIVIL ACTION

OPINION

DECIDED: January 20, 2012

APPEARANCES: PASHMAN STEIN (Dennis T. Smith, Esq., appearing), attorneys for plaintiff
DAY PITNEY LLP (John D. Coyle, Esq., appearing), attorneys for defendant Valley National Bank, Executor of the Estate of Joseph Billig
THE KNEE LAW FIRM, LLC (Robert A. Knee, Esq., appearing), attorneys for defendants Ofra Billig, Miriam Cinquino, Billig Realty Co., LLC and West 108th Parking Garage Corporation

HARRY G. CARROLL, J.S.C.

BACKGROUND

In this contested estate matter, defendant Valley National Bank, as Executor of the Estate of Josef Billig, moves to compel arbitration on the purchase of decedent Josef Billig's ninety percent (90%) interest in Billig Realty Co., LLC, an entity that owns a number of parking garages in New York City and which has continued to operate since Mr. Billig's death. The Executor submits that the company's Operating Agreement provides that the value of a member's interest shall be determined by arbitration, and that its remaining members, Ofra Billig and Miriam Cinquino, have

agreed to participate in arbitration but object to plaintiff's participation in such proceedings. Nonetheless, it is the Executor's position that plaintiff should be allowed to participate in the arbitration inasmuch as she asserts claims against the Executor concerning Billig Realty as well as for purposes of judicial economy.

Plaintiff Ora Billig, decedent's wife, joins in the Executor's motion. She seeks to be included as an active participant in the arbitration proceeding as she is a prospective beneficiary of the estate with a potential claim to a significant percentage of decedent's interest in Billig Realty which will be directly impacted by the valuation arrived at for such interest.

Ofra Billig ("Ofra") and Miriam Cinquino ("Miriam") hold the remaining ten percent (10%) interest in Billig Realty. They indicate that they submitted a demand for arbitration on June 15, 2011. However, they object to plaintiff's participation in the arbitration on the grounds that she lacks standing, that it would unnecessarily increase the cost and complexity of the process, would not foster judicial economy, and would permit plaintiff access to confidential financial information which would not otherwise be disclosed.

ANALYSIS

New Jersey has a strong public policy favoring arbitration as a means of dispute resolution and, to that end, liberally construes agreements to arbitrate. Marchak v. Claridge Commons, Inc., 134 N.J. 275, 281-82 (1993). While generally a party cannot be required to submit to arbitration unless it has contractually agreed to do so, exceptions have been recognized by which non-signatories to arbitration provisions can be compelled to submit a dispute to arbitration. See Mutual Benefit Life Ins. Co. v. Zimmerman, 783 F. Supp. 853, 865-66 (D.N.J. aff'd, 970 F. 2d 899 (3d Cir. 1992); Wasserstein v. Kovatch, 261 N.J. Super. 277, 286 (App. Div.), certif. denied, 133 N.J. 440 (1993). Courts must hence analyze the connection between the claim, the arbitration agreement and the parties. See Bruno v. Mark MaGrann Associates, Inc., 388 N.J. Super. 539, 546-48 (App. Div. 2006). In conducting this analysis the court in Bruno, supra at 548, recognized that permitting all parties to resolve disputes in a singular proceeding avoids piecemeal litigation. [Citing Ohio Cas. Ins. Co. v. Benson, 87 N.J. 191, 199 (1981); see also Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989) (resolving a dispute in a single proceeding promotes the recognized goals of fairness to all parties with a material interest in the action, enhances efficiency, reduces delay and avoids waste).]

Here it is undisputed that under Article XII, Section 12.2(b) of the company's Operating Agreement, the valuation issue is to be determined by arbitration. Moreover, Ofra and Miriam do

not seek to avoid this arbitration provision. Rather, through their attorney Mr. Knee, by letter dated June 15, 2011 they advised counsel for the Executor that they were "demanding arbitration to determine the fair market value of the Estate's Membership Interest in Billig as of the date of Josef's death." Hence, then, there is no need to compel these parties to participate as they have not only expressed a willingness to participate in the arbitration process but in fact have initiated it via their previous formal demand.

The real issue to be resolved then is the extent, if at all, that Josef Billig's widow, the plaintiff herein, who has asserted various claims against the estate including Josef's interest in Billig Realty, should be allowed to participate in the arbitration. Again, the court is not faced with a situation where it is being asked to compel her participation. In contrast she is a willing participant. Nonetheless the court draws guidance from the principles expressed in the case law cited above. While Ofra and Miriam contend that the Executor is the only proper party who should participate, certainly the arbitration process will be critical to establishing the valuation of decedent's, and hence the estate's, interest in Billig Realty. To the extent that plaintiff has claims to the estate it appears that she will be affected, if not bound, by the arbitration results. Indeed in this regard the court notes Article 14.5 of the Operating Agreement which expressly provides that it "shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, executors and administrators…"

Ofra and Miriam additionally argue that plaintiff's interests will be adequately represented by virtue of the Executor's participation in the arbitration since their interests are identical, i.e., to gain the greatest value possible for the decedent's interest in Billig. However, tax and other considerations do not necessarily mandate such a conclusion, and throughout the course of this litigation plaintiff and the Executor have asserted positions which, while not necessarily adverse, cannot be categorized as harmonious, aligned or consistent.

Finally, Ofra and Miriam contend that judicial economy will not be served since the arbitration proceeding will not negate plaintiff's right to seek a judicial accounting if she is dissatisfied with the results. However, the possibility that plaintiff would seek such relief is greatly enhanced should she be denied the right to participate in the arbitration. Rather, less likely is it that plaintiff can later be heard to complain if she is afforded the opportunity at this juncture to actively participate in the arbitration proceeding.

Hence, for the reasons stated above, I conclude that resolving the valuation dispute with

respect to the estate's interest in Billig Realty in a single arbitration proceeding will allow all parties having a material interest to fully and fairly participate, enhance efficiency, and likely reduce delay and avoid piecemeal litigation of this valuation issue. Accordingly, the Executor's motion is granted. The terms of the arbitration, including provisions for confidentiality and discovery, shall be left for discussion with and determination by the arbitrator selected who will thereafter exercise significant control over the arbitration process.

Dated: January 20, 2012

HARRY G. CARROLL, J.S.C.