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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0985-16T1

GLAMOROUS INC., d/b/a
ANGEL TIPS,

Plaintiff-Appellant,

v.

ANGEL TIPS, INC., BKG CORP.,
HAK SUN CORPORATION, and BYUNG
K. PARK, a/k/a BRUCE PARK,

Defendants-Respondents,

and

MUNICO ASSOCIATES and HEKEMIAN &
CO., INC., f/k/a S. HEKEMIAN &
CO., INC.,

Defendants.

Submitted June 6, 2017 – Decided June 23, 2017

Before Judges Fisher and Ostrer.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-235-16.

Peter Y. Lee, attorney for appellant.

Choi Law Firm, attorneys for respondents (E. Sandra Choi, on the brief).

PER CURIAM

Defendant Angel Tips, Inc., is a franchisor of nail salons. In 2002, it entered into an agreement with plaintiff Glamorous, Inc., for the latter's operation of an Angel Tips franchise in Wyckoff. Their agreement called for the arbitration of disputes in New York of "all controversies disputes or claims between them"; the arbitration clause contained "exceptions," including an exception for claims made by defendant against plaintiff for money "owe[d]." Finding defendant's claim that plaintiff was contractually obligated to renovate the Wyckoff premises did not fall within an exception — because it was not a claim for money owed — the trial judge enforced this provision and compelled New York arbitration of the parties' disputes.

Plaintiff challenges the judge's ruling, arguing the order either (1) violated "New Jersey public policy," (2) constituted an erroneous application of New York law, or (3) represented an erroneous judicial rewriting of the arbitration clause. We find insufficient merit in these arguments to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm. We add only the following brief comments.

The record reveals that when the franchise agreement was renewed in 2014, the parties discussed the need for a redesign of plaintiff's Wyckoff premises. In 2015, defendant made such a demand

on plaintiff. The record also suggests that plaintiff engaged in this process by hiring an architectural and design group and by making a few partial payments toward the development of renovation plans. Apparently because of the cost — approximated at $100,000 — plaintiff changed course and commenced this action.

Plaintiff asserted in the trial court that the dispute identified in its complaint about defendant's demand for the renovation of plaintiff's premises was really a claim by defendant for money owed and, thus, not arbitrable. Defendant, on the other hand, asserted it had made no demand for money from plaintiff; defendant demanded only enforcement of plaintiff's alleged contractual promise to renovate the premises. In agreeing with defendant's characterization of the dispute as a demand for renovations — that would require plaintiff's expenditure of money to be paid to contractors — and not as a demand by defendant for money, Judge Menelaos W. Toskos denied plaintiff's application for temporary restraints, granted defendant's motion to compel arbitration in New York, and dismissed the complaint without prejudice.

Plaintiff's first argument — that the judge's determination is contrary to New Jersey public policy because, in plaintiff's view, the determination deprives it of rights and privileges provided by the Franchise Protection Act, N.J.S.A. 56:10-1 to -31

— has no merit. The enforceability of the arbitration agreement is governed by the Federal Arbitration Act, 9 U.S.C.A. § 1 to § 16, which has repeatedly been interpreted by the Supreme Court of the United States to highly favor enforcement of arbitration agreements without regard for state law. See, e.g., Kindred Nursing Ctrs. v. Clark, 581 U.S. __, __, 137 S. Ct. 1421, __, 197 L. Ed. 2d 806, 812 (2017) (recognizing the FAA "displaces" state law that "prohibit[s]" or "covertly . . . disfavor[s]" arbitration agreements). To the extent New Jersey's "strong policy in favor of protecting its franchisees," Instructional Sys., Inc. v. Computer Curriculum Corp., 130 N.J. 324, 345 (1982), might arguably suggest otherwise, the supremacy of federal law renders that state policy irrelevant. Absent "grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C.A. § 2, or absent "'generally applicable contract defenses' like fraud or unconscionability," Kindred Nursing, supra, 581 U.S. at __, 137 S. Ct. at __, 197 L. Ed. 2d at 812 (quoting AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339, 131 S. Ct. 1740, 1746, 179 L. Ed. 2d 742, 751 (2011)), to which state law may provide grounds for avoiding arbitration, see Atalese v. U.S. Legal Services Grp., L.P., 219 N.J. 430, 446 (2014) — an argument plaintiff has not uttered — state law and policies pose no impediments to arbitration.

In its second argument, plaintiff contends that, to the extent applicable, New York law requires a determination that the franchise agreement is void, citing N.Y. Gen. Bus. Law §683(1), which declares that an offer or sale of a franchise must follow an "offering prospectus" or "disclosure document" registered with the appropriate governmental body. This argument was raised for the first time on appeal and, consequently, does not require our consideration. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Moreover, New York law has not been shown to be a bar to arbitration. Even if it was, as we noted above state law and policies may not stand in the way of the strong federal policy in favor of arbitration. To the extent New York law may have relevance, it would only go to the merits of the claim and not whether the claim is arbitrable. We offer no view of the impact of New York law on these arbitrable claims; we leave such questions for the arbitrator.

Lastly, plaintiff contends the judge erroneously "rewrote" the parties' arbitration agreement. Again, we disagree. The parties' agreement calls for the arbitration of all their disputes with exceptions not applicable here. The only exception relied upon by plaintiff is that which exempts claims by defendant for money owed to it by plaintiff. In interpreting this exception, the judge didn't rewrite the contract; he merely recognized — and

correctly – that defendant had not demanded money from plaintiff. Defendant contends only that plaintiff is contractually obligated to renovate the premises – an obligation that likely will require plaintiff's payment of money to others, i.e., contractors performing the work, not defendant. So viewed, this is not a dispute falling within the exception upon which plaintiff relies.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION