

ATTACHMENT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. No. 2019-CP-23-06745

The NEXT School, Inc., a Public, Not-for-)
Profit Corporation Incorporated & Existing)
under the Laws of the State of South)
Carolina,)

Plaintiff,)

vs.)

AT-NET Services-Charlotte, Inc., a Private)
Corporation Incorporated & Existing under)
the Laws of the State of North Carolina, and)
American Arbitration Association, Inc., a)
Not-for-Profit Corporation Incorporated &)
Existing under the Laws of the State of New)
York,)

Defendants.)

ORDER

RECEIVED
Apr 20 2021
SC Court of Appeals

AT-NET Services-Charlotte, Inc.,)

C. A. No. 2020-CP-23-00969

Plaintiff,)

vs.)

The NEXT School, Inc.,)

Defendant.)

This matter came before me for a hearing on March 1, 2021 on The NEXT School, Inc.’s (“NEXT”) motion to alter or amend the judgment of this court entered on July 7, 2020. Present at the hearing on behalf of NEXT was Steven Edward Buckingham of the Law Office of Steven Edward Buckingham, LLC. Present at the hearing on behalf of AT-NET Services-Charlotte, Inc.

(“AT-NET”) was Adam C. Bach of the law firm Eller Tonnsen Bach, LLC. For the reasons stated herein, and in its original order, NEXT’s motion to alter or amend the court’s judgment is denied.

NEXT contractually agreed to arbitration in North Carolina, demanded that AT-NET arbitrate its claims against NEXT, and participated in the arbitration proceeding in North Carolina. After an arbitration award was entered against NEXT, AT-NET filed an action to confirm its award as provided for by North Carolina law. NEXT failed to appear or contest confirmation in that proceeding. The North Carolina Superior Court confirmed the award, and it became a judgment of the North Carolina Court (the “North Carolina Judgment”). As a judgment of a sister state, the judgment against NEXT is entitled to the Full Faith and Credit of courts in South Carolina under both the United States Constitution and the Uniform Enforcement of Foreign Judgment Acts (“UEFJA”), S.C. Code § 15-35-900, *et seq.*

The North Carolina Superior Court had subject matter jurisdiction to entertain confirmation of the arbitration award because it was statutorily empowered to do so. If NEXT wished to contest the award prior to confirmation, it was obligated to do so in accordance with the procedure set forth by North Carolina law. This is consistent with South Carolina’s well-established law that South Carolina courts do not have subject matter jurisdiction to adjudicate motions related to arbitration proceedings in other states. *See Ashley River Properties I, LLC v. Ashley River Properties II, LLC*, 374 S.C. 271, 280–81, 648 S.E.2d 295, 299–300 (Ct. App. 2007) (“Courts of other states applying the Uniform Arbitration Act to this issue have uniformly held a court’s subject matter jurisdiction to consider motions related to arbitration is dependent upon, and arises from, the parties’ agreement to conduct the arbitration proceedings in that state.”).

In its motion to reconsider, NEXT relies on three cases: 1) Newberry v. Georgia Dep’t of Indus. Trade, 286 S.C. 574, 336 S.E.2d 464 (1985); 2) Melton v. Crowder, 317 S.C. 253, 254–56,

452 S.E.2d 834, 834–36 (1995); and 3) Franchise Tax Board of California v. Hyatt, 139 S.Ct. 1485, 1496-1498 (2019). It is notable to the court that in each of these cases, the objecting state actor presented its jurisdictional arguments to the sister states’ courts and did not, as NEXT has done here, failed to appear. In Melton, the North Carolina Highway Patrol moved to dismiss an action in South Carolina circuit court based on lack of subject matter jurisdiction and lack of personal jurisdiction. *See Melton*, 452 S.E.2d at 835. The North Carolina Highway Patrol argued that under North Carolina law, North Carolina state actors could only be sued in the North Carolina Industrial Commission. In rejecting these arguments, the South Carolina Supreme Court held that “North Carolina’s partial waiver of [sovereign immunity] is sufficient to allow Melton to maintain his suit” in South Carolina.

Similarly, in Newberry, the State of Georgia presented its arguments concerning sovereign immunity to the courts of South Carolina. Newberry, 336 S.E.2d 464. Finally, in Hyatt, 139 S.Ct. at 1490-1491, the State of California spent 21 years in Nevada courts contesting Nevada’s ability to apply its sovereign immunity statute, rather than California’s, to an action against its Franchise Tax Board.

It is difficult for the court to believe that the Supreme Courts of both South Carolina and the United States failed to notice that the relevant state courts lacked subject matter jurisdiction to even hear and consider the matters before them. Instead, it is apparent that these courts possessed subject matter jurisdiction to hear and consider the objecting states’ sovereign immunity claims. Likewise, the North Carolina Superior Court possessed subject matter jurisdiction to hear and determine NEXT’s objections to the arbitration based on sovereign immunity grounds. NEXT failed to appear before the North Carolina Court and the North Carolina Judgment is final and entitled to Full Faith and Credit in South Carolina.

Further, even if NEXT had appeared in North Carolina to contest the award, South Carolina is amenable to suit in North Carolina based on South Carolina law. In its original motion seeking relief from the North Carolina Judgment, NEXT did not specify the basis for which it sought relief from the judgment but argued that sovereign immunity prevented it from being sued in North Carolina, citing to Newberry v. Georgia Dep't of Indus. Trade, 286 S.C. 574 (1985) and Franchise Tax Board of California v. Hyatt, 139 S. Ct. 1485 (2019). The issue in both Newberry and Franchise Tax Board was whether one state may exercise jurisdiction over another state despite that state's objection to the foreign state's proceedings. In both Newberry and Franchise Tax Board, the dispositive consideration was whether the state was a "consenting" state. The answer to this question depends on whether or not the state has waived sovereign immunity for the types of claims brought in the foreign court. *See Hyatt*, 139 S.Ct. at 1496-1497; Newberry, 336 S.E.2d at 464; Melton, 452 S.E.2d at 835-836. If it has, it is a "consenting" state and a foreign state court may choose to exercise jurisdiction over it. South Carolina has unquestionably waived sovereign immunity with regard to breach of contract claims. It is therefore a consenting state as to the claims brought by AT-NET, and the North Carolina judgment based on these claims is valid.

For these reasons, the North Carolina Judgment is valid and enforceable against NEXT. It is noteworthy, however, that NEXT appears to have shifted its position regarding whether a South Carolina state actor may be bound by an arbitration clause. In its original motions, NEXT argued that it could not be forced to arbitrate. Now it argues that it can be forced to arbitrate but only in South Carolina. This is noteworthy because the contract in this case involves interstate parties and the arbitration provision, therefore, is subject to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.* The Supreme Court of the United States has held that "when parties agree to arbitrate all questions arising under a contract, the FAA supersedes state laws lodging primary

jurisdiction in another forum, whether judicial or administrative.” Preston v. Ferrer, 552 U.S. 346, 359, 128 S. Ct. 978, 987, 169 L. Ed. 2d 917 (2008). Thus, the FAA preempts contrary state law and, therefore, the underlying arbitration itself was proper in North Carolina.

Finally, NEXT argues that the North Carolina state court failed to engage in any analysis regarding NEXT’s amenability to suit in North Carolina. This is unsurprising since NEXT chose not to appear and present any of its arguments to the North Carolina court.

THEREFORE, for the reasons stated above in its original order, and based on the arguments of counsel, the memoranda submitted, the record in this case, and the common and statutory law of the State of South Carolina, NEXT’s motion to alter or amend the judgment of the court is DENIED.

AND IT IS SO ORDERED.

Judge, Thirteenth Judicial Circuit

Greenville, SC



Greenville Common Pleas

Case Caption: Next School Inc vs. AT Net Services Charlotte Inc , defendant, et al

Case Number: 2019CP2306745

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763