

CASE NUMBER: 23SMCV05829

**Tentative ruling in department 205 on Feb. 07, 2024
in Los Angeles County, CA - Case no: 23SMCV05829**

Tentative Ruling prepared for:

Sean Daly

HEARING DATE

Feb. 7th, 2024

COUNTY

Los Angeles County, CA

DEPARTMENT

205

DOCKET FILING DATE

Dec. 13th, 2023

Tentative ruling in department 205 on Feb. 07, 2024 in Los Angeles County, CA - Case no: 23SMCV05829

CASE NAME: [JUAN D. LOPEZ VS MCGUIRE AND MCGUIRE, INC., ET AL.](#)

CASE NO.: [23SMCV05829](#)

On February 7, 2024, Los Angeles County Superior Court Department 205, issued the following tentative ruling.

The Reference Case No.: [23SMCV05829](#) Los Angeles County, California. Hearing Date 02.07.2024.

View [Case Records](#) and [Case History](#).

Case Number: 23SMCV05829 Hearing Date: February 7, 2024 Dept: 205

Superior Court of California

County of Los Angeles

West District

Beverly Hills Courthouse / Department 205

JUAN D. LOPEZ,

Plaintiff, v.

MCGUIRE AND MCGUIRE, INC., et al.,

Defendants.

Case No.: 23SMCV05829

Hearing Date: February 7, 2024

[TENTATIVE] ORDER RE: DEFENDANTS

MOTION TO

COMPEL ARBITRATION AND STAY

PROCEEDINGS

BACKGROUND

This case arises from an alleged double collection of sales tax. Defendant The Farms Market is a neighborhood grocery store located at 2030 Montana Avenue, Santa Monica, California. (Compl. ¶10.) It is a dba and owned by Defendant **McGuire** & McGuire, Inc. Defendant Carolyn McGuire, through her trust, is the sole shareholder of the corporation. She is the CEO and CFO of the corporation (id.

¶11), and her daughter, Shelli Peyton, is the corporations secretary (id. ¶12).

Plaintiff Juan **Lopez** began working for the Farms when he was 15 years old. (Id. ¶20.) In April 2012, pursuant to a written lease agreement

(Lease) between Sean McGuire (Lessor) and Juan Lopez and Jose Luis Castillo (Lessees), Lopez took over operation of the deli located within the Farms. (Id.

¶22; Ex. A to Compl.) Schedule A to the Lease

provided that Lopez shall pay (3%) of gross sales less the Sales Tax recorded on hot deli prepared foods key & Farms will pay the taxable Deli Tax for Lessees when reporting Taxable sales. The Tax will be deducted from the amount rendered to the Lessees weekly. (Ex. A to Compl.)

In 2016, the written agreement expired, and the parties continued to operate under the economic terms of the written lease until in or around January 2022 when Lopez and the Farms formed a new oral contract.

(Id.

¶¶

25, 26.)

Under the oral contract, Lopez and Sean McGuire agreed that Lopez would pay the Farms a flat monthly rent of \$11,200 in addition to sales tax on taxable items sold at the Deli. (Id.

¶27.) Lopez understood that he was paying the Farms the sales tax for the purpose of remitting that money to the State of California. (Id.)

Lopez later discovered that since 2012, in addition to collecting sales tax from customers on hot deli items, the Farms also deducted sales tax from amounts paid to Lopez. (Id.

¶31.) In other words, the Farms took money from customers for sales tax and then charged Lopez for the same taxes. (Id.

¶¶ 31, 32.)

From 2012 through August 2023, the inappropriately deducted taxes totaled \$239,212. (Id.

¶35.)

The operative complaint alleges six claims for (1) breach of oral contract, (2) breach of implied covenant of good faith and fair dealing, (3) money had and received, (4) unjust enrichment, (5) breach of fiduciary duty, and (6) fraudulent transfer.

This hearing is on Defendants motion to compel arbitration and stay proceedings. Defendants argue that arbitration is mandatory based on the following clause in the written lease agreement: If we disagree at any time, we will engage in a binding arbitration in Santa Monica or West Los Angeles.

LEGAL STANDARD

Under California law, public policy favors arbitration as an efficient and less expensive means of resolving private disputes. (Moncharsh v. Heily & Blase (1992) 3 Cal.4th 1, 8-9; AT&T Mobility LLC v. Concepcion, 563 U.S. at 339.) To further that policy, Code Civ. Proc. §1281.2 requires a trial court to enforce a written arbitration agreement unless it finds (1) no written agreement to arbitrate exists, (2) the right to compel arbitration has been waived, (3) grounds exist for rescission of the agreement or (4) litigation is pending that may render the arbitration unnecessary or create conflicting rulings on common issues.

When seeking to compel arbitration, the initial burden lies with the moving party to demonstrate the existence of a valid arbitration agreement by a preponderance of evidence. (Ruiz v. Moss Bros. Auto Group (2014) 232 Cal.App.4th 836, 841-42; Gamboa v. Northeast Community Clinic (2021), 72 Cal.App.5th 158, 164-65.) It is sufficient for the moving party to produce a copy of the arbitration agreement or set forth the agreements provisions. (Gamboa, 72 Cal.App.5th at 165.) The burden then shifts to the opposing party to prove by a preponderance of evidence any defense to enforcement of the contract or the arbitration clause. (Ruiz, 232 Cal.App.4th at 842; Gamboa, 72 Cal.App.5th at 165.) The trial court then weighs all the evidence submitted and uses its discretion to make a final determination. (Id.)

If the court orders arbitration, then the court shall stay the action until arbitration is completed. (See Code Civ. Proc., § 1281.4.)

DISCUSSION

In ruling on a motion to compel arbitration, the Court must first determine whether the parties actually agreed to arbitrate the dispute, and general principles of California contract law help guide the court in making this determination. (Mendez v. Mid-Wilshire Health Care Center (2013) 220 Cal.App.4th 534, 541; Victoria v. Superior Court (1985) 40 Cal. 3d 734, 835.)

Although [t]he law favors contracts for arbitration of disputes between parties (Player v. Geo. M. Brewster & Son, Inc. (1971) 18 Cal.App.3d 526, 534), there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate[.] (Weeks v. Crow (1980) 113 Cal. App. 3d 350, 353..)¿ [A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. (AT&T Technologies v. Communications Workers (1986) 475 U.S. 643, 648 (citations and internal quotations omitted); see also Sparks v. Vista Del Mar Child & Family Services (2012) 207 Cal.App.4th 1511, 1518¿ (Because arbitration is a contractual matter, a party that has not agreed to arbitrate a controversy cannot be compelled to do so.).)¿¿¿¿¿¿¿¿

Here, Defendants point to a single clause in the written lease which states If we disagree at any time, we will engage in binding arbitration in Santa Monica or West Los Angeles.

Plaintiff argues this sentence is too vague and ambiguous, as it fails to specify the nature of the disputes subject to arbitration, how the arbitrator will be selected, how costs and fees will be split, what arbitral rules will apply or what law will govern. The Court agrees with Plaintiff.

The terms of the arbitration **Lopez** supposedly agreed to are manifestly unclear. Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable & If a supposed contract does not provide a basis for determining what obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract. (Bustamonte v. Intuit (2006) 141 Cal.App.4th 199, 209.)

Here, the single-sentence arbitration provision does not provide a means to determine material aspects of a standard arbitration agreement including which claims are arbitrable, how the arbitrator will be selected, what rules will apply, and what law will govern.

Flores v. Natures Best Distribution LLC (2016) 7 Cal.App.5th 1 is instructive.

There, the Court concluded the agreement was vague and ambiguous where it failed to identify the specific disputes subject to arbitration or the arbitral rules that would apply. (Id. at 11.) The arbitration agreement there was exceedingly more detailed than the one-sentence arbitration provision here. (Id. at 4-5.)

Given its ruling, the Court need not analyze the parties other arguments including whether non-signatories to the lease agreement -- Carolyn **McGuire** and Shelli Peyton may enforce the arbitration provision.

CONCLUSION

For the foregoing reasons, the Court DENIES
Defendants
motion to compel arbitration
and to stay the proceedings pending completion of the arbitration.

DATED:
February 7, 2024

Edward B. Moreton, Jr.

Judge of the Superior Court