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Supreme Court, Appellate Division, Third Department, New York.
In the Matter of the Arbitration between COLONIAL COOPERATIVE INSURANCE COMPANY, Respondent,
and
Stephen MUEHLBAUER, Appellant-Respondent,
and
York Claim Service, Inc., Respondent-Appellant.
Dec. 6, 2007.

Background: Insurance company and vice president of claims brought action against respondent company, which provided claim adjusting services to insurance company, seeking to compel arbitration between the parties, and to enjoin respondent from continuing or commencing any civil litigation against them. The Supreme Court, Ulster County, Zwack, J., partially denied the application to compel arbitration. Parties cross appealed.

Holdings: The Supreme Court, Appellate Division, Cardona, P.J., held that:
(1) respondent was barred from contending that arbitration agreement with insurance company did not require it to arbitrate tort claims;
(2) respondent was not required to arbitrate claims against former employee; but
(3) stay of civil action against former employee was warranted.

Affirmed as modified.

West Headnotes

[1] Alternative Dispute Resolution 25T 187

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk185 Stay of Arbitration
25Tk187 k. Application. Most Cited Cases
A party that fails to make a timely application to stay arbitration is precluded from challenging, among other things, the scope of an arbitration agreement. McKinney's CPLR 7503(c).

[2] Alternative Dispute Resolution 25T 187

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk185 Stay of Arbitration
25Tk187 k. Application. Most Cited Cases
Where application to stay arbitration is made on the ground that no agreement to arbitrate exists, it may be entertained notwithstanding the fact that the stay was sought after the 20-day period had elapsed. McKinney's CPLR 7503(c).

[3] Alternative Dispute Resolution 25T 186

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk185 Stay of Arbitration
25Tk186 k. In General. Most Cited Cases
Respondent company's contention that its arbitration agreement with insurance company required it to arbitrate contract claims only and did not include any tort claims against insurance company was a challenge to the scope of the parties' existing arbitration agreement, rather than a challenge to the existence of an agreement to arbitrate, and thus argument was barred by the untimeliness of respondent's stay application. McKinney's CPLR 7503(c).

[4] Alternative Dispute Resolution 25T 141

25T Alternative Dispute Resolution
25TII Arbitration
25TII(B) Agreements to Arbitrate

25Tk141 k. Persons Affected or Bound. Most Cited Cases
Respondent company, which provided claim adjusting services to insurance company, was not required to arbitrate any of its contract and tort claims against former employee, who had resigned from respondent's employ and had been appointed vice president of claims for insurance company, notwithstanding the interrelatedness between respondent's claims against insurance company and employee, where employee was not a signatory to the agreement between the two companies. McKinney's CPLR 7503.

[5] Alternative Dispute Resolution 25T 196

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk190 Stay of Proceedings Pending Arbitration
25Tk196 k. Particular Cases. Most Cited Cases
Even though respondent company was not required to arbitrate any of its claims against former employee, who had resigned from respondent's employ and had been appointed vice president of claims for insurance company, all of respondent's claims against employee, including tortious interference with a contract, would be stayed pending the outcome of arbitration between respondent and insurance company, given that issues in civil case against employee overlapped the issues subject to arbitration by respondent and insurance company. McKinney's CPLR 7503.
****814** Gleason, Dunn, Walsh & O'Shea, Albany (Lisa F. Joslin of counsel), for appellant-respondent and respondent.

Riker, Danzig, Scherer, Hyland & Perretti, L.L.P., Morristown, New Jersey (Edwin F. Chociey Jr. of counsel, admitted pro hac vice), for respondent-appellant.

Before: CARDONA, P.J., PETERS, SPAIN, CARPINELLO and LAHTINEN, JJ.

CARDONA, P.J.

1012** Cross appeals from a judgment of the Supreme Court (Zwack, J.), entered February 21, 2007 in Ulster County, which, among other things, partially denied petitioners'*815** application pursuant to CPLR 7503 to compel arbitration between the parties.

Respondent is a corporation providing claim adjusting services for, among others, insurance carriers. In 1998, respondent began providing those services to petitioner Colonial Cooperative Insurance Company (hereinafter CCIC), a cooperative insurance company that provides commercial insurance for New York businesses. In February 2004, CCIC and respondent memorialized their arrangement in a written contract that provided, among other things, "[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration." Petitioner Stephen Muehlbauer, who was employed by respondent at that time, was given the task of handling incoming CCIC claims. Thereafter, in August 2006, CCIC took steps to terminate the arrangement with respondent in accordance with the terms of their agreement. During that same month, Muehlbauer resigned from respondent's employ and was appointed vice-president of claims for CCIC.

Subsequently, respondent commenced an action in New Jersey against petitioners alleging, among other things, breach of contract and tortious interference with a contract. CCIC then filed a demand for arbitration which respondent did not seek to ***1013** stay within 20 days (*see*CPLR 7503[c]). Petitioners also commenced this proceeding seeking, among other things, to enjoin respondent from continuing or commencing any civil litigation against them. Supreme Court construed the application as a request to compel arbitration pursuant to CPLR 7503(a) while seeking the incidental relief of stay-

ing the New Jersey action pending arbitration. The court granted the application to the extent of staying all outstanding claims in the New Jersey action except the tortious interference with a contract claim against Muehlbauer and directed all parties to proceed to arbitration. These cross appeals ensued.

[1][2] CPLR 7503(c) provides that an application to stay arbitration must be made within 20 days after service of a demand to arbitrate. A party that fails to make a timely stay application is precluded from challenging, among other things, the scope of an arbitration agreement (*see Matter of Matarasso [Continental Cas. Co.],* 56 N.Y.2d 264, 267, 451 N.Y.S.2d 703, 436 N.E.2d 1305 [1982]; *Aetna Life & Cas. Co. v. Stekardis,* 34 N.Y.2d 182, 185, 356 N.Y.S.2d 587, 313 N.E.2d 53 [1974]). However, "where the application for a stay is made on the ground that no agreement to arbitrate exists, it may be entertained notwithstanding the fact that the stay was sought after the 20-day period had elapsed" (*Matter of Matarasso [Continental Cas. Co.],* 56 N.Y.2d at 267, 451 N.Y.S.2d 703, 436 N.E.2d 1305; *see Matter of Steck [State Farm Ins. Co.]*, 89 N.Y.2d 1082, 1084, 659 N.Y.S.2d 839, 681 N.E.2d 1285 [1996]).

[3] Here, respondent contends that its arbitration agreement with CCIC required it to arbitrate contract claims only and did not include any tort claims against CCIC. Although respondent characterizes this argument as challenging the existence of an agreement to arbitrate tort claims, it is more properly construed as challenging the scope of the parties' existing arbitration agreement. Consequently, the argument is barred by the untimeliness of respondent's stay application (*see Matter of Steck [State Farm Ins. Co.],* 89 N.Y.2d at 1084, 659 N.Y.S.2d 839, 681 N.E.2d 1285).

[4][5] With respect to Muehlbauer, respondent claims that it had no agreement to arbitrate with him at all and, indeed, Meuhlbauer does not contend that he was ****816** a signatory to the agreement between respondent and CCIC. Instead, he argues that the connection between that agreement and the claims against him should be sufficient to entitle him to arbitration. However, the Court of Appeals has held that "interrelatedness, standing alone, is not enough to subject a non-signatory to arbitration" (*TNS Holdings v. MKI Secs. Corp.,* 92 N.Y.2d 335, 340, 680 N.Y.S.2d 891, 703 N.E.2d 749 [1998]; *see Mionis v. Bank Julius Baer & Co.,* 301 A.D.2d 104, 111, 749 N.Y.S.2d 497 [2002]). Accordingly, we conclude that respondent is not required to arbitrate any of its claims against Muehlbauer. Nevertheless, ***1014** because the issues in the civil case against Muehlbauer overlap the issues subject to arbitration by respondent and CCIC, we conclude that all of respondent's claims against Muehlbauer in the New Jersey action, including the claim for tortious interference with a contract, should be stayed pending the outcome of that arbitration (*see County of Broome v. Dickinson,* 91 A.D.2d 780, 781, 457 N.Y.S.2d 1010 [1982]; *see also Cohen v. Ark Asset Holdings,* 268 A.D.2d 285, 286, 701 N.Y.S.2d 385 [2000]; *Pacer/Cats/CCS v. MovieFone, Inc.,* 226 A.D.2d 127, 128, 640 N.Y.S.2d 55 [1996]).

Next, given New York's strong public policy favoring arbitration (*see Matter of Smith Barney v. Hause,* 91 N.Y.2d 39, 49, 666 N.Y.S.2d 990, 689 N.E.2d 884 [1997]), we do not agree with respondent's contention that Supreme Court's decision to stay the New Jersey action with respect to CCIC should be reversed on the basis of the doctrine of comity (*see Curtis, Mallet-Prevost, Colt & Mosle v. Garza-Morales,* 308 A.D.2d 261, 265, 762 N.Y.S.2d 607 [2003]). Furthermore, we disagree with respondent that the record before us establishes that it is entitled to relief pursuant to the doctrine of unclean hands (*see National Distillers & Chem. Corp. v. Seyopp Corp.,* 17 N.Y.2d 12, 15-16, 267 N.Y.S.2d 193, 214 N.E.2d 361 [1966]; *Sparkling Waters Lakefront Assn. v. Shaw,* 42 A.D.3d 801, 804, 841 N.Y.S.2d 146 [2007]; *Tierno v. Puglisi,* 279 A.D.2d 836, 838-839, 719 N.Y.S.2d 350 [2001]).

The parties' remaining arguments have been ex-

amined and found to be unpersuasive.

ORDERED that the judgment is modified, on the law, without costs, by reversing so much thereof as directed respondent to arbitrate claims against petitioner Stephen Muehlbauer and as partially denied petitioners' application to stay all claims against Muehlbauer in New Jersey; all claims are stayed; and, as so modified, affirmed.

PETERS, SPAIN, CARPINELLO and LAHTINEN, JJ., concur.
N.Y.A.D. 3 Dept.,2007.
In re Colonial Co-op. Ins. Co. (Muehlbauer)
46 A.D.3d 1012, 846 N.Y.S.2d 813, 2007 N.Y. Slip Op. 09663

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