

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV11-303 PSG PLAx	Date	July 5, 2017
Title	Burton Way Hotels, Ltd et al. v. Four Seasons Hotels Limited		

Present: The Honorable	Philip S. Gutierrez, United States District Judge
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Wendy Hernandez

Not Reported

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings (In Chambers): **Order GRANTING in part and DENYING in part Defendant’s motion to compel arbitration and RENDERING MOOT the request to appoint arbitrators**

Before the Court is Defendant Four Seasons Hotels Limited’s (“Four Seasons”) motion to compel arbitration, appoint arbitration panel, and interpret the scope of the Ninth Circuit’s ruling. Dkt. # 553. The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); L.R. 7-15. After considering the arguments presented in the moving, opposing, and reply papers, the Court COMPELS arbitration pursuant to the parties’ Arbitration Agreement, renders MOOT the motion to appoint arbitrators under § 1281.6, and DENIES the motion to the extent it asks this Court to interpret the scope of the Ninth Circuit’s October 18, 2016 ruling.

The parties and this Court are well versed in the factual and procedural background of this case, so the Court will only recount what is relevant to the motion at issue.

In June 2013, after two years of litigation, the parties in this suit executed an Arbitration Agreement and submitted their dispute to arbitration before JAMS. Dkt. #553–5, *Declaration of Anthony S. Fiotto* (“Fiotto Decl.”) Ex. 3 (“Arbitration Agreement”). An 11-day arbitration hearing took place from April 22, 2014 to May 9, 2014. *See* Dkt. # 437–1. On August 1, 2014, the Arbitration Panel issued its Final Award in this dispute establishing Four Seasons as the prevailing party and finalized the fees and costs award to Four Seasons in the Corrected Final Award, issued on August 25, 2014. *See id.* This Court confirmed the Arbitration Award in its entirety, including the fees and costs portion, in its November 5, 2014 order. Dkt. # 478. Burton Way then filed an appeal to the Ninth Circuit. On October 18, 2016, the Ninth Circuit issued its decision, affirming in part and reversing in part the Court’s order confirming the Arbitration Panel’s award, and remanded the action for further proceedings consistent with its decision. Dkt. # 505.

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Following the Ninth Circuit’s ruling, Burton Way moved to void the Arbitration Agreement. Dkt. # 519. The Court denied the motion on March 22, 2017, finding the Arbitration Agreement valid and enforceable, and ordered Four Seasons to file a motion to appoint new arbitrators pursuant to Cal. Code Civ. P. § 1281.6. Dkt. # 543. On April 10, 2017, Four Seasons filed its motion to compel arbitration of the remaining dispute and appoint arbitrators under § 1281.6. Dkt. # 553. In addition, Four Seasons’ motion requests that this Court interpret the Ninth Circuit’s October 18, 2016 ruling in order to determine the scope of the forthcoming arbitration. *Id.*

In connection with this motion, the parties met and conferred concerning the process for selecting a new arbitration panel. Dkt. # 560-1, *Declaration of Garrett S. Llewellyn* (“Llewellyn Decl.”) ¶ 19. After multiple proposed selection protocols, the parties reached an agreement for a protocol to select a new arbitration panel that obviates the need for this Court’s intervention under § 1281.6. *Id.* The parties submitted a joint stipulation regarding the arbitrator selection protocol, which the Court granted on June 22, 2017. Dkt. # 561, Ex. A (“Stipulation”), Dkt. # 562. Pursuant to the Stipulation, the portion of Four Seasons’ motion asking the Court to appoint arbitrators under § 1281.6 is stayed. *Id.* Therefore, for purposes of the motion presently before the Court, Four Seasons’ motion to compel arbitration is granted subject to the parties’ stipulated arbitrator selection protocol, and Four Seasons’ motion to appoint arbitrators under § 1281.6 is rendered moot.

As to Four Seasons’ request that this Court interpret the Ninth Circuit’s ruling, the Arbitration Agreement expressly provides that the scope of the claims to be arbitrated is to be determined by the arbitrators. Rule 11(c) in the Arbitration Agreement provides:

“Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation, or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrators. Arbitrators have the authority to determine jurisdiction and arbitrability issues as a preliminary matter.”

Arbitration Agreement, Rule 11(c). This language, drawn from JAMS Rule 11(c), “is clear and unmistakable evidence of the intent that the arbitrator will decide whether a [c]ontested [c]laim is arbitrable.” *Hartley v. Superior Court*, 196 Cal. App. 4th 1249, 1256–57 (2011) (citing *Dream Theater, Inc. v. Dream Theatre*, 124 Cal. App. 4th 547, 557 (2004)). Moreover, “[w]hether a court or an arbitrator determines if a dispute falls within the scope of an arbitration agreement ‘turns upon what the parties agreed about that matter.’” *See Choksi v. Airpush, Inc.*, CV 15-4828 GHK AS, 2015 WL 12806465, at *4 (C.D. Cal. Nov.4, 2015) (quoting *First*

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Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 943 (1995)). Therefore, because Rule 11(c) in the Arbitration Agreement expressly contemplates that “jurisdictional and arbitrability disputes . . . shall be submitted to and ruled on by the Arbitrators,” the arbitration clause controls, and the Court will defer interpreting the Ninth Circuit’s ruling to the new arbitration panel. *See Strick v. Los Angeles Times Communications LLC*, CV 11-4043 CBM FFM, 2011 WL 13129702, at * 4 (C.D. Cal. Oct. 25, 2011) (deferring the question of arbitrability to arbitrators based on identical provision in arbitration agreement). Four Seasons’ motion is therefore denied to the extent it asks this Court to interpret the scope of arbitrability by interpreting the Ninth Circuit’s holding.

Based on the foregoing, the Court GRANTS the motion to compel arbitration subject to the parties’ Stipulation, RENDERS MOOT the portion of Four Seasons’ motion to appoint arbitrators under § 1281.6, and DENIES Four Seasons’ motion for this Court to interpret the scope of the Ninth Circuit’s October 18, 2016 ruling.

IT IS SO ORDERED.

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