

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

COMPLEX Law and Motion Calendar

Judge: HONORABLE SUSAN GREENBERG
Department 3
400 County Center, Redwood City
Courtroom 2B

Thursday, June 20, 2024- AM

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. EMAIL Dept3@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING, OR
2. YOU MUST CALL (650) 261-5103 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.

AND

3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do item 1, or both 2 and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear by Zoom, advance authorization is not required for remote appearances

Zoom Video/Computer Audio Information COURTROOM 2B:

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 161 828 3335

Password: 711017

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case
9:00 LINE: 3 23-CIV-02974	HARVEY ANGLE VS. SAROTT CONSTRUCTION COMPANY

HARVEY R. ANGLE SAROTT CONSTRUCTION COMPANY	KANE MOON BARBARA A. COTTER
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MOTION TO COMPEL INDIVIDUAL ARBITRATION PURSUANT TO GRIEVANCE PROCEDURE IN COLLECTIVE BARGAINING AGREEMENT, TO STRIKE CLASS ALLEGATIONS AND TO STAY THE ACTION PENDING RESOLUTION OF THE ARBITRATION BY DEFENDANT SAROTT CONSTRUCTION COMPANY

TENTATIVE RULING:

Defendant Sarott Construction Company's Motion to Compel Arbitration and to Strike Class Claims is GRANTED, and the action is STAYED pending arbitration.

Defendant's Request for Judicial Notice is GRANTED.

Defendant has met its initial burden and proved by a preponderance of evidence that an arbitration agreement with class action waiver was entered into by the parties. (Knight, Cal. Prac. Guide: Alt. Disp. Res. (Rutter, Dec. 2023 Update) ¶ 5:320.)

Defendant has presented evidence of a master collective bargaining agreement that it is party to with Operating Engineers Local Union No. 3. (MPA ISO Compel Arb., p. 1:4-5; Dec. of Victor Sella ISO Compel Arb., ¶ 2, Ex. A ("Master CBA").) Plaintiff was a member of Operating Engineers Local Union No. 3 during his employment with defendant, as evidenced by the Declaration of Patricia Starks, defendant's office manager. (Dec. of Patricia Starks ISO Compel Arb. ("Starks Dec.")). Ms. Starks states that plaintiff "was dispatched from the Operating Engineers Local Union No. 3 Union Hiring Hall," and "remained a union member during his entire employment with Sarott." (Starks Dec., ¶ 2.) The declaration attaches the dispatch notification as Exhibit A. (Id. at ¶ 2, Ex. A.)

The Master CBA applies to any person who "operates, monitors and controls, maintains, repairs, modifies, assembles, erects, services each or all of them, power-operated equipment of the type or kind of power-operated equipment used in performance of work referred to in (a) above . . ." (Master CBA, § 02.04.00.) Section (a) covers persons "whose work for an Individual Employer in the area covered by this Agreement falls within the recognized jurisdiction of the Union." (Ibid.) Plaintiff was employed by defendant as an equipment operator. (Complaint, ¶ 7.)

Defendant is bound by the terms of the Master CBA pursuant to an Independent Agreement signed by defendant's president, Scott Griffiths, in 1999. (Dec. of Scott Griffiths ISO Compel Arb., ¶ 5, Ex. A.) The "Disputes" section of the Independent Agreement states that "[s]ettlement of any dispute under this Agreement shall be in accordance with Grievance/Arbitration Section of the current Master Agreement . . ." (Id.)

The relevant portion of the Master CBA states the following:

All claims arising under the Fair Labor Standards Act, the California Labor Code and the Industrial Welfare Commission Orders (e.g., Wage Order 16), all derivative claims arising under California Business and Professions Code section 17200, et seq. and all similar claims arising under any applicable local law, shall be resolved exclusively through binding arbitration before an impartial arbitrator (referenced herein as "Statutory Claims"). Such claims shall be resolved exclusively through binding arbitration before an impartial arbitrator and shall not be brought in a court of law or before any agency such as the California Labor Commissioner.

[¶¶]

This Section 18.05.00 shall apply to any representative PAGA claims, class and/or individual claims that arise or are pending during the term of the parties' current collective bargaining agreement, regardless of when they were filed with any court or administrative agency.

(Master CBA, § 18.05.00.)

The Court finds plaintiff has not met his shifting burden to prove by a preponderance of evidence a ground for denial. (Knight, *supra*, at ¶ 5:320.) In opposition, plaintiff does not dispute the existence of the Master CBA, nor his membership in the union. Instead, he argues that the Master CBA does not apply to him because the it "became in effect *after* Plaintiff was terminated from his employment from Defendant." (Opp., p. 1:8-10.)

As noted above, the Master CBA applies to "class and/or individual claims that arise **or are pending** during the term of the parties' current [CBA], regardless of when they were filed with any court or administrative agency." (Master CBA, § 18.05.00, emphasis added.) As plaintiff's claims are currently before the court, they are pending, and therefore subject to the Master CBA. (See, e.g., *Oswald v. Murray Plumbing and Heating Corporation* (2022) 82 Cal.App.5th 938 [finding that an MOU was retroactive, therefore the arbitration clause in the Master Agreement referred to in the MOU applied to an employee's claims]; *Salgado v. Carrows Restaurant, Inc.* (2019) 33 Cal.App.5th 356 [applying contract law principles to find that an arbitration clause with broad language had retroactive applicability]; *Franco v. Greystone Ridge Condominium* (2019) 39 Cal.App.5th 221 [same].)

However, even if the Master CBA were not applicable to plaintiff's claims based on his dates of employment, the 2020-2023 Master CBA also required mandatory arbitration. (Supplemental Dec. of Victor Sella to Reply ISO Compel, ¶ 2, Ex. A ("2020 Master CBA"), § 18.06.00.)

As for class action waiver, Section 18.05.00 of the Master CBA states that "[u]pon agreement of the Employer and Individual Employee, the Impartial Arbitrator shall have authority to consolidate multiple Individual Employee Statutory Claims for hearing but shall not otherwise have the authority to fashion a proceeding as a class, collective or representative action." (Master CBA, § 18.05.00.) (The Court notes that the 2020-2023 Master CBA also has a valid class action waiver. (2020 Master CBA, § 18.06.00.))

Plaintiff does not specifically object to the provision waiving class action claims, relying on his overall defense that the CBA does not apply to him because it was executed after his employment ended.

Pursuant to Code Civ. Proc. § 1281.4, and based on the above ruling, the Court orders that the action be stayed pending arbitration.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for Defendant shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.
