

ENTERED ON
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
GEORGE PETER PROTOS)	CASE NO. 02-74770-MHM
)	
Debtor)	
)	
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GARY A. SILVER)	
)	
Plaintiff)	
)	
v.)	ADVERSARY PROCEEDING
)	NO. 03-6473
GEORGE PETER PROTOS)	
)	
Defendant)	

**ORDER ON MOTION TO QUASH
AND MOTION FOR PROTECTIVE ORDER**

This adversary proceeding is before the Court upon the Motion for Protective Order filed by Gary Silver ("Plaintiff") and a Motion to Quash filed by John Sherrill ("Sherrill"), Special Master in the case of *Gary A. Silver, Inc. And Gary A. Silver, individually v. George Protos and Distinctive Builders, Inc.*, Civil Action No. 99VS157196H, State Court of Fulton County, Georgia, between George Protos ("Debtor") and Plaintiff. Sherrill seeks an order of the Court quashing a subpoena (the "Subpoena") issued by the Clerk of the Bankruptcy Court on December 19, 2003. Plaintiff seeks a protective order preventing Debtor from deposing Sherrill. Jurisdiction over this case arises pursuant to 28 U.S.C. § 1334(b). For the reasons set forth below, both Plaintiff's and Sherrill's motion should be granted.

Statement of Facts

The lawsuit in the State Court of Fulton County between Debtor and Plaintiff began in September 1999. On May 30, 2002, after extensive discovery and pleadings, the parties agreed to submit to arbitration pursuant to a consent order. The consent order issued by Judge Susan Forsling of the State Court of Fulton County named Sherrill as the Special Master to handle the arbitration. The consent order provided that Sherrill was

empowered to make a determination on all legal issues and shall consider, without limit, all matters pertaining to the issues between the parties...All pending issues to resolve the disputes between the parties including the award of attorney's fees shall be decided by and in the discretion of the Special Master...The finding of the Special Master shall be final, non-appealable, and shall (become) the judgment of this Court...The parties have agreed and the court hereby orders that any rights of appeal or reconsideration are hereby waived by the parties. The finding of the Special Master shall be binding upon the parties.

After several weeks of evidentiary hearings, a Final Amended Decision of Special Master was issued by Sherrill December 13, 2003 (the "Decision") and was entered by the State Court of Fulton County as an Order and Judgment on December 16, 2003.

Debtor's counsel has subpoenaed Sherrill for a deposition and document production to question Sherrill on the bases for the Decision. The Decision, which was final and binding, contained findings on all issues, including a finding of liability on the part of Debtor, pertaining to the dispute between Debtor and Plaintiff in the state court action. Debtor has not challenged or appealed the Decision. Additionally, an order has been entered in this adversary proceeding granting summary judgment to Plaintiff.

Discussion and Conclusions of Law

Plaintiff's Motion for Protective Order is governed by Bankruptcy Rule 7026, which incorporates Fed. R. Civ. Proc. 26(c), which sets forth grounds for the entry of a protective order, applicable in contested matters.¹ Rule 7026(c) provides that the court may issue "a protective order which justice requires to protect a party or person" from "annoyance" or "undue burden." Bankruptcy Rule 9016 makes Fed. R. Civ. Proc. 45 applicable in bankruptcy cases. Rule 45 permits an entity from which discovery is sought to seek protection if a discovery request requires disclosure of privileged information, or if a discovery request is unduly burdensome or costly.

Georgia law provides that arbitrators cannot be required to testify as to their rationale or the reasoning behind their awards. *Hood v. Garland*, 476 S.E.2d 827 (Ga.App. 1996); *Green v. Hundley*, 468 S.E.2d 350 (Ga.App. 1996); *Atlantic Gas Light Co. v. Trinity Christian Methodist Episcopal Church*, 500 S.E.2d 374 (Ga.App. 1998). Federal law is consistent with Georgia law. *E.G. Gramling v. Food Machinery and Chemical Corporation*, 151 F.Supp. 853 (D.S.C. 1957). To allow Sherrill to be subpoenaed and deposed regarding his final ruling would be no different than the inappropriate procedure of subpoenaing a judge who has ruled on a matter to question that judge's decision. Both Debtor and Plaintiff agreed in the consent order issued by Judge Forsling that the Special Master's decision is final and binding upon the parties. Both Debtor and Plaintiff agreed in the consent order to waive their rights of appeal or reconsideration. The Decision became final when it was adopted and entered as an Order and Judgment by the State Court of Fulton County.

¹ Bankruptcy Rule 9014(c) provides that, unless the court directs otherwise, Bankruptcy Rule 7026 applies to contested matters.

Additionally, the Georgia Arbitration Act, O.C.G.A. § 9-9-1, *et seq.*, sets forth in O.C.G.A. § 9-9-13 the only appropriate procedure for challenging and vacating arbitration awards. Included in this section is a three (3) month time limit to challenge or appeal an arbitration award. Even though Debtor waived his rights to any appeal or reconsideration, neither has he attempted to appeal the Decision. Thus, the decision became final and binding. Deposing the arbitrator would be a useless act.

Debtor's subpoena is unnecessary, inappropriately annoying, would be unduly burdensome and costly for all parties involved, and serves no legally cognizable purpose. The interests of justice require that an order protecting Sherrill from Debtor's deposition and document production requests be issued. Accordingly, it is hereby

ORDERED that the motion to quash the subpoena on John Sherrill is granted.

ORDERED that Plaintiff's motion seeking a protective order against the deposition of John Sherrill is granted.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, and Debtor's attorney.

IT IS SO ORDERED, this the 10th day of September, 2004.



MARGARETH MURPHY
UNITED STATES BANKRUPTCY JUDGE