

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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In the Matter of the Application of

SMI CENTRAL PARK TOWER LLC and SHANGHAI MUNICIPAL INVESTMENT (GROUP) USA LLC,

Petitioners

For an Order Pursuant to Article 75 of the CPLR Staying Arbitration of a Certain Controversy,

- v -

GENESIS CENTRAL PARK TOWER, LLC,

Respondent.

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HON. BARRY R. OSTRAGER

INDEX NO.	655036/2021
MOTION DATE	
MOTION SEQ. NO.	001

DECISION & ORDER ON MOTION

In connection with Petitioner’s request for an order pursuant to Article 75 of the CPLR staying a pending AAA arbitration initiated by Respondent Genesis Central Park Tower LLC (“Genesis”), the Court held an evidentiary hearing on July 27, 2022 to determine whether a document captioned “Amended And Restated Limited Liability Company Agreement for SMI Central Park Tower LLC (“SMI”) (“the disputed agreement”) is a validly executed document. The disputed agreement contains an arbitration clause pursuant to which Genesis initiated the arbitration. As reflected in the Court’s Interim Decision & Order (NYSCEF Doc. No. 096), disputed issues of fact as to the authenticity of the disputed agreement necessitated the evidentiary hearing.

The purported signatories to the disputed agreement are Petitioner SMI’s then President, Tom Tao, and Genesis’ then “President” Jincheng Yuan (a/k/a Jason Yuan), both of whom testified at the hearing. (Mr. Yuan had multiple titles at Genesis). Mr. Tao maintained that his signature on the disputed agreement was fraudulently transposed from an electronic version of

his signature that appears on multiple documents relating to the underlying transaction. Mr. Yuan testified that he personally witnessed Mr. Tao sign the document in his presence in New York on June 15, 2016.

The disputed agreement is of a piece with multiple meticulously crafted inter-related legal documents relating to a three-billion dollar project in which Genesis invested \$33 million with funds borrowed from the Bank of Shanghai. The disputed agreement, if valid, would provide security to the Bank of Shanghai in the form of a guaranty by SMI of the loan the Bank of Shanghai made to Genesis to enable Genesis to invest in the project.

While the Court could and does accept that Mr. Tao was in New York when the disputed agreement was allegedly signed by him, and the Court could and does accept that Mr. Tao conducted business in a rather nonchalant and informal manner, the Court cannot fully accept Mr. Yuan's testimony because Mr. Yuan entered into an agreement with the Bank of Shanghai that provides, *inter alia*, that in the event Genesis prevails on the arbitrability issue and the disputed agreement is held to be valid, neither Genesis nor the Bank of Shanghai will proceed against Mr. Yuan on a \$40 million guaranty he signed in connection with the Bank of Shanghai loan to Genesis (NYSCEF Doc. No. 212). Consequently, there is sufficient doubt about the authenticity of the disputed agreement for the Court to grant Petitioner's motion to stay the arbitration. However, because a final determination of the validity of the disputed agreement would be entirely dispositive of the rights and obligations of the parties, the Court is granting the Petition to permanently stay the arbitration on the basis that Petitioner has met the burden of satisfying the Court that, at this preliminary stage of this dispute, there is insufficient evidence that Petitioner entered into an agreement to arbitrate. The Court finds that the issue of the validity of the disputed agreement is more appropriately decided in a plenary action in Court,

during which witnesses other than the witnesses who appeared at the July 27, 2022 hearing can provide further evidence bearing on the authenticity of the disputed agreement in the context of the entire transaction.

Accordingly, it is hereby

ORDERED and ADJUDGED that the Petition is granted and the Arbitration between the parties that is pending before the American Arbitration Association under Case No. 01-21-0004-3109 is permanently stayed.

Dated: August 18, 2022


BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE