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1 THE COURT: All right. We're on the record
2 in the matter of 1266 Apartment Corp. versus Security
3 Equipment Services, Incorporated, doing business as
4 Argus365. It is Chancery docket 267-25.

5 Can I have appearances, please?

6 MR. BOLSON: Andrew Bolson from Meyerson,
7 Fox and Conte, on behalf of 1266 Apartment Corp.

8 MR. O'NEILL: Good morning, Your Honor.
9 Brian P. O'Neill from Chiesa, Shahinian, Giantomasi,
10 on behalf of defendant, Security Equipment Services,
11 which does business as Argus365.

12 On the line with me this morning is my
13 colleague, Gabrielle Kohlhagen, from CSG.

14 THE COURT: Good morning to everybody
15 again.

16 All right. I have a motion to compel
17 arbitration and dismiss plaintiff's complaint without
18 prejudice, filed by the defendants -- or the
19 defendant. Mr. O'Neill, the floor is yours.

20 MR. O'NEILL: Thank you, Your Honor. The
21 state Supreme Court -- Goffe, respectfully the size
22 of this dispute for the Court today. Following
23 precedent from United States Supreme Court, Goffe
24 establishes really a straightforward analysis. If
25 the parties agree to arbitrate their disputes and

1 agree to delegate arbitability of claims to the
2 arbiter, the Court must compel arbitration unless
3 there is a claim challenging the validity of the
4 agreement to arbitrate, specifically. Challenging
5 the agreement to arbitrate.

6 As opposed to a claim challenging why their
7 agreement contained in the arbitration clause. If a
8 party challenges the arbitration agreement
9 specifically, then the Court may -- that claim
10 against the arbitration clause itself.

11 But that's not the case here today.
12 Plaintiff's verified complaint affirmatively admits
13 that it's general manager signed the commercial
14 security agreement as an agent for -- for 1266
15 Apartment Corp.

16 And plaintiff has not challenged, at all,
17 the arbitration provisions specifically, it's
18 attached our -- all the records at the commercial
19 superior agreement as a whole. That's evident from
20 it's verified complaint, particularly for counts one,
21 two and three.

22 But it's also evident from plaintiff's
23 briefing on this motion. So Goffe and the Federal
24 precedent that -- that are subject -- relied upon,
25 in Goffe, that holds arbitration agreements are

1 severable and enforceable -- agreements, that that's
2 where this rule in Goffe flows from.

3 It's really irrelevant whether the
4 challenge is on plaintiff's -- unconsciousability,
5 fraud, failure for consideration or otherwise. The
6 rule sending the question to arbitration encompasses
7 any challenging that's directed as a wider agreement
8 like the challenge here today.

9 So given that the plaintiff has not
10 challenged the agreement to arbitrate, Argus
11 respectfully requests the Court order plaintiff to
12 participate in the arbitration that Argus filed.
13 Which again, we believe is the necessary result under
14 Goffe. I'm happy to -- questions from Your Honor.

15 THE COURT: You're relying on Goffe, and
16 not Atalese because -- if I hear you correctly, and
17 obviously I'm gonna hear from Mr. Bolson, but this is
18 not a challenge to the -- to the -- to the language
19 of the arbitration clause in terms of whether it
20 notifies the parties that all claims, there's a
21 waiver of right to a jury trial, but the clause
22 itself, within the four corners of the clause is
23 valid, correct? That's why we're not talking about
24 Atalese and it's progeny, is that correct?

25 MR. O'NEILL: That -- , Your Honor.

1 THE COURT: All right. So the issue really
2 is, and again, Mr. Bolson, you're gonna address this
3 too, that this is not a challenge to the four corners
4 of the clause, this is a challenge to the fact that
5 there was -- and I don't want to put words in your
6 mouth, you're gonna have an opportunity to argue.
7 That there was an agreement and then there was a
8 subsequent contract. There was a proposal signed and
9 then a subsequent agreement signed, and it is the
10 proposal that controls, essentially, not the
11 subsequent agreement that controls.

12 So this is not a claim under Atalese, in
13 terms of, Judge, we can't -- we're not going to
14 arbitration -- it's -- because the clause itself
15 should be stricken. It just doesn't apply because
16 the contract that we signed is just a first proposal.
17 Is that generally the argument that you're making
18 here, Mr. Bolson?

19 MR. BOLSON: That is correct, Your Honor.

20 THE COURT: All right. I'll hear from you.

21 MR. BOLSON: Yes, Your Honor. So there was
22 a proposal signed in December of -- my recollection,
23 I believe, 2024, -- or 2023, I'm sorry. Which
24 controls this -- which is the operative contract
25 here.

1 There -- it was for \$17,000 a month, and it
2 was for remote -- services. Thereafter, another
3 document was sent, but there was no purpose to that
4 document. My client was getting nothing out of that
5 additional document. Or the additional contract that
6 was being signed.

7 My clients relied upon the proposal and
8 believe that is the operative document that controls
9 in this situation. The -- they were providing --
10 \$17,000 for remote -- services. The other document
11 for monitoring services, it just doesn't make sense
12 as to why that document was -- was necessary and
13 there's no explanation as to why that would be the
14 operative document.

15 But -- but say it is the operative
16 document. What we're also arguing is that, you know,
17 in that case we undoubtedly, based on our papers we
18 challenge that -- that second agreement, for various
19 reasons -- and so forth.

20 But we've also indicated in our moving
21 papers that we should be allowed to challenge the --
22 the severability of that, for lack of consideration.
23 Goffe does not indicate that -- Goffe refers to, you
24 know, challenging the totality of that document, and
25 we should have an opportunity to challenge based on

1 lack of consideration as to the provision itself.

2 That's our position --

3 THE COURT: Which -- which provision?

4 Challenge which provision?

5 MR. BOLSON: The arbitration provision.

6 Based upon the -- the Burzik(phonetic) file -- case.

7 Burzik has -- . Which basically states that the
8 party may not impose an arbitration clause, after the
9 parties have already -- consideration -- enforceable
10 contract.

11 So in this case, we had an enforceable
12 contract, that was the -- contract. A second
13 contract was sent over from Argus -- you know, to --
14 to impose an arbitration provision, where my client
15 was not getting any consideration. That's what we're
16 saying should not be allowed. And that's why it
17 should be founded under that provision, if the first
18 document's found not to be the operative documents.

19 THE COURT: Mr. Bolson, I can think of
20 countless examples, countless examples of agreements
21 that then turn it -- written agreements that then
22 turn into a formal contract, with all of the clauses
23 that apply.

24 For example, a negotiation between an
25 employer and a labor union, we have memroandums of

1 agreement. They're contracts. They're enforceable.
2 However, they are the first step towards a more
3 complex contract that encompasses all the agreements
4 between the party. They don't enter into the
5 contract and all the additional provisions that go
6 along with it, they talk about the material terms,
7 what's the rate of pay, what's the salary structure,
8 what's the percentage raise gonna be over the next
9 three years.

10 But then all of the additional stuff,
11 vacation time, things like that, other rights, are
12 added in, arbitration clauses, things of that nature,
13 are then a more encompassing document, which takes a
14 lot more time, a lot more expense, and makes no sense
15 to enter into until the main material terms are
16 agreed to.

17 So that would be just as an example. In
18 this case, Argus is arguing, we had a proposal. The
19 material terms, the most important term is, it's
20 gonna cost you \$17,000 a month for our services. And
21 the general manager of 1266 Apartment Corporation
22 signs off and says, all right, we agree to that
23 number. We've negotiated and agree to that number.

24 Then they enter into -- and again, these
25 are sophisticated parties, entered into a contract

1 that encompasses the \$17,000 a month, as well as all
2 the other clauses, including the arbitration
3 provision.

4 There's also a clause in there that
5 acknowledges that this is the new encompassing
6 document. -- Mr. O'Neill, the name's escaping me,
7 what is the clause that -- that basically references
8 that this is the -- everything is included here?

9 MR. O'NEILL: Right. There's a integration
10 clause --

11 THE COURT: Integration clause.

12 MR. O'NEILL: Yes.

13 THE COURT: That's what I meant to say.
14 And this becomes the working document, the full
15 agreement going forward. Your argument is that there
16 was a proposal and that that's the operative
17 document, and that the second contract including it's
18 arbitration clause is not relevant to this analysis,
19 is that what I understand?

20 MR. BOLSON: I mean, I think -- the -- I
21 think -- somebody said limited discovery -- I
22 understand where you're coming from. I don't know
23 that the -- this case was -- I think the nature of
24 that second contract wasn't necessarily understood.
25 And what that purpose intent was, and whether it was

1 meant to create a new contract, or whether it was
2 separate and apart.

3 But I understand what Your Honor is --

4 THE COURT: Mr. Bolson, were they -- let's
5 just get a few facts cleared up for this record.

6 These were contracted -- contracts entered between
7 the Horizon House, for lack of a better -- just the
8 Horizon House Apartment Complex, at least one of the
9 buildings there, and a security company, correct?

10 MR. BOLSON: Correct.

11 THE COURT: These are not -- this isn't an
12 employment contract, or it's not a take it or leave
13 it contract, this is not a contract of adhesion,
14 correct?

15 MR. BOLSON: Correct.

16 THE COURT: These contracts were entered
17 into with the parties represented by counsel,
18 correct?

19 MR. BOLSON: I cannot say that, Your Honor.

20 THE COURT: Well, as far as the
21 sophistication under the law, and the case law that
22 talks about sophisticated parties, we're not talking
23 about an individual in terms of -- it might be an LLC
24 or -- no, it's an incorporation, Security Equipment
25 Services, Incorporated. We're talking about a

1 company, fair to say?

2 MR. BOLSON: We are talking about a
3 company. I just -- for the record -- for the
4 record's sake, I do want to make it clear that one of
5 the issues that we would have here in court or would
6 be at arbitration, I just want to make this clear, is
7 -- is the -- some of the issues with the person --
8 the authority that that person had to execute the
9 contract, that person is no longer with the general -
10 - with the company. There was --

11 THE COURT: Which -- which contract? What
12 are we talking about, the proposal or the contract?

13 MR. BOLSON: Both.

14 THE COURT: Okay. Were they at the time
15 that the contract was signed?

16 MR. BOLSON: I'm sorry, it would be the
17 second contract. Well -- but there was no vote on
18 the second contract. There was no vote from the
19 board with regard to that second contract.

20 THE COURT: Yeah, but the law clearly
21 states that if the -- if Argus had every reason to
22 believe that the individual who signed is an agent
23 with the authority to sign the contract, the inner
24 workings of whether or not it got board approval
25 within your company structure, which again, we're

1 talking about sophisticated parties, let's talk about
2 - here, we're talking about somebody in a capacity
3 who's gotta bring it back to a board of directors, I
4 mean, we're not talking about lay people here.

5 I won't find as a fact that attorneys
6 without representation, I don't know if Mr. O'Neill
7 can tell me that there were attorneys involved in
8 this -- in this negotiations. But neither here nor
9 there. These are sophisticated parties.

10 But I think the law is crystal clear, I
11 have to look at this through the prospective of Argus
12 and whether Argus was dealing with the then general
13 manager, who was an agent, an apparent agent of the
14 company, 1266 Apartment Corporation, and had the
15 authority.

16 The inner workings and whether or not -- I
17 mean, taking as true what you're saying, I think the
18 law is crystal clear that they -- that contract is
19 not voided because -- internal policy, internal
20 procedure wasn't followed. I have to look at it from
21 the prospective of, what did Argus know. What did
22 Security Equipment Services Incorporated know about
23 that person. Did that person have the apparent
24 authority?

25 You know, I don't think that's gonna move

1 the needle on today's argument. I don't think --

2 MR. BOLSON: Your Honor, I -- I understand
3 I just wanted to make it for the record. -- for the
4 record.

5 THE COURT: I -- Mr. Bolson, I understand.
6 I understand. I just -- look, I know this is a court
7 of equity, okay, but I keep a little -- a little
8 phrase on the corner of my desk that reminds me every
9 day that my powers are somewhat limited. People tell
10 me all the time, Judge, you're a Chancellor, you're
11 in a court of equity, you have broad powers, some
12 even argue broad powers that the Appellate Division
13 defers to quite often.

14 But equity follows the law. That's the
15 first thing I learned when I took this seat. It's a
16 case, Dunkin Donuts of America, Incorporated versus
17 Middletown Donut Corporation, 100 New Jersey 166 at
18 page 183. 1985. Courts cannot use their equitable
19 powers to disregard clear legal principles. And I
20 have to follow the law first and foremost.

21 In contract law, although can be very
22 complex, oftentimes can be very straightforward. If
23 there is a meeting of the minds, if there is
24 consideration, if there is a contract that is then
25 supplemented by a second contract, again, between

1 sophisticated parties, and the clause or parameters
2 of that contract are not void, have an issue, like
3 they're not just illegal, for example, why ask the
4 question about Atalese and its progeny if -- and I
5 looked, again, I'm not -- I learned this -- I don't
6 want to say I learned it the hard way, but a little
7 bit I did, because -- when I was in the law division,
8 I had a lot of cases like this.

9 And I -- I did a whole analysis on
10 arbitration clauses. And there were some cases where
11 I found it was inexcusable for the clause to not
12 state exactly what the law requires it must state.
13 It was either bad lawyering, intentional of bad
14 lawyering, strategy or the like. But when the clause
15 doesn't say certain things, it should be stricken.

16 So first thing I do is, I look at the
17 clause, and the clause -- and again, I know you
18 concede this, I'm just making a record, the clause
19 itself clearly states, by arbitrating the parties
20 waive their right to a trial before a jury -- a judge
21 or a jury, waive their right to appeal the
22 arbitration award and waive their right to
23 participate in a class action.

24 So this is not an Atalese situation. So
25 then I look at, what was the purpose of the contract?

1 And the purpose of the contract, when you compare the
2 contract to the proposal, was to include all other
3 aspects of the -- of the meeting of the mind between
4 the parties. Including what was the primary issue
5 about this contract, which is why there was a
6 proposal and a signature, which is a contract. For
7 \$17,000.

8 Going back to my example, in employment
9 situations. If the -- if the employer and the
10 employee association enters into a memorandum of
11 agreement, it's a contract. If they can't reach an
12 agreement on all of the rest of the contract, it
13 usually goes hand in hand the month later when the
14 lawyers start drafting it.

15 The argument is now, well that memorandum
16 of agreement that we signed is not a contract. It's
17 enforceable to the extent that that contract
18 addresses certain principles. Or agreements.

19 It wouldn't be enforceable to enforce an
20 arbitration clause if that's all that existed and we
21 never had a secondary contract, it would talk to the
22 terms of the agreement. As simple as it might be,
23 and that's what usually those agreements are.

24 I have an opportunity to look at this
25 proposal and it is a very straightforward proposal.

1 I'll hear argument from either party otherwise, but
2 it's a very straightforward proposal, very simple
3 document. Signed by the manager of 1266 Apartment
4 Corporation and there are no facts or arguments to
5 suggest that Security Equipment Services, doing
6 business as Argus365 had any reason to believe that
7 the individual who signed did not have authority to
8 sign. Not only the proposal, but the contract.

9 They have no -- they had no reason to
10 believe, no knowledge of any internal issues
11 concerning whether not the board "voted on it or not"
12 and did they have a right to rely on the apparent
13 authority of -- of an individual in the capacity to
14 sign contracts.

15 And the answer is, yes. So in my
16 hypothetical, and then I'll get to this case, because
17 they parallel one another.

18 When there is a followup contract that adds
19 all the standard terms, the employment contract,
20 well, you still have your four weeks vacation, you
21 still have your three personal days, you still have
22 the holidays off that you always had. The -- you
23 know, your pay, which was agreed to in the -- in the
24 memorandum of agreement is also put back into the
25 contract. Once that's executed, and it has an

1 inclusionary clause, that replaces the first
2 contract.

3 It becomes the new enforceable contract.
4 And then the court looks to the new contract. This
5 isn't even a case where we have contracts that have
6 different terms, different material terms on the
7 issue in question. The 17,000 a month. It has an
8 integration clause. So there's not even an argument
9 to say, this contract doesn't specifically say to the
10 sophisticated parties that this is the new contract,
11 and everything in the proposal isn't integrated into
12 this contract. It says that.

13 So if a contract's terms are not void as a
14 matter of law, the arbitration clause in the case
15 specifically, not void as a matter of law, it's not
16 vague, it meets all the other elements, meeting of
17 the minds, consideration, full value, then the
18 contract's enforceable.

19 And in cases involving arbitration clauses,
20 federal case law, you guys cited the cases, and state
21 case law says quite clearly -- I mean, they're --
22 they're -- they're set forth in the briefs.

23 When a valid arbitration agreement is
24 stated in a contract with clarity, it's enforceable,
25 the courts favor arbitration. The courts should

1 enforce arbitration clauses that are valid.

2 This clause goes beyond just telling the
3 parties, you're waiving a right to a jury. It is not
4 a one sided agreement. It says, either party can
5 seek arbitration. And that would compel arbitration.
6 It has the selection process of -- of how the
7 arbitrator would be selected. It says, if selected
8 by any party, arbitration shall proceed pursuant
9 through the Arbitration Service, Incorporated,
10 arbitration rules at
11 www.arbitrationservicesincorporated.com and the
12 Federal Arbitration Act, FAA. Except that no
13 punitive or consequential damages may be awarded.
14 Dot, dot, dot.

15 As far as arbitration clauses go, and I've
16 had my fair share in my short tenure, it appears that
17 this clause was written with a full understanding of
18 Atalese and the progeny as far as what has to be
19 included if you want this arbitration clause to be
20 upheld by a court.

21 The integration clause makes it very clear
22 that the first contract is subsumed within the second
23 contract.

24 Now, those are findings, but if I stated
25 anything that the parties find inaccurate factually,

1 Mr. Bolson, most importantly you, please tell me what
2 I've said that is not factually accurate or legally
3 accurate.

4 MR. BOLSON: Your Honor, I will -- I'll
5 just leave it at that.

6 THE COURT: Okay. Look, just step back for
7 a second. We all know why parties engage in
8 arbitration clauses. We all know why more and more
9 parties are agreeing to arbitrate disputes, all
10 disputes, as in this clause.

11 It allows for a quicker adjudication of
12 merits. It allows for the limitation of -- when I
13 say limitations, it talks about limiting punitive
14 damages and the like. And the most obvious reason is
15 the cost associated with a lawsuit, for example, in
16 the Chancery Division, or the Law Division, and the
17 drawn out litigation, and the backlog that usually
18 goes with getting on the docket in the Superior
19 Court.

20 And we know that parties aren't just in
21 favor of it, our court system says, our Supreme Court
22 says, the Supreme Court says, that when these
23 agreements are reached, they should be enforced.
24 They're favored.

25 I -- as you know, Mr. Bolson, I have the

1 deepest respect for your work and -- and for the
2 arguments that -- that you made here. And -- and
3 sometimes you're only -- you can only -- you're only
4 as good as the facts that are before you and the
5 language that's before you.

6 MR. BOLSON: I appreciate that --

7 THE COURT: This is -- this is really clear
8 cut. I mean, I'm incorporating all the cases that
9 you guys cited, I don't want to have to go through --
10 you guys both mentioned the Federal case.

11 The case law is clear on this. I
12 incorporate those cases that -- that -- by reference
13 in your papers, for the reasons stated.

14 But my factual findings, applying that to
15 the law that's supplied, I don't think there's a
16 disagreement on the law on that. This -- this case
17 is gonna be referred to arbitration.

18 MR. BOLSON: Understood. Thank you, Your
19 Honor.

20 THE COURT: All right, everybody. Anything
21 further? Mr. O'Neill, I'm gonna ask you but I think
22 we all -- I think we know the general rule, right?

23 MR. O'NEILL: Right. Thank you, Your
24 Honor.

25 THE COURT: I just -- for the record, the

1 general rule is that, if I've already said everything
2 you need to say, don't say anything, right?

3 MR. O'NEILL: The first time I ever had
4 court, I stood up after the judge laid into the other
5 side and she looked at me and said, sit down. -- .

6 THE COURT: Well, I -- I try to be a little
7 bit more -- a little -- I remember being on the other
8 side, and being told to sit down. And I promised
9 myself when I took the bench, I'd never behave that
10 way, but I think I covered anything and I didn't
11 think you had much to add. But I do want to be a
12 gentleman and ask you if there's anything else that
13 you want to add to this?

14 MR. O'NEILL: I appreciate it, Your Honor.
15 No, thank you.

16 THE COURT: All right. I wish you all a
17 good weekend. I'll sign the order for the reasons
18 stated on the record.

19 MR. BOLSON: Thank you, Your Honor.

20 THE COURT: Take care.

21

22 (Hearing concluded)

23

24

25

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Date: 2-23-2026

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