SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 28

----------x

TERRY TINSLEY,

Plaintiff,

-against-

JP MORGAN CHASE BANK, N.A. JPMORGAN CHASE & CO., JOSEPH BROOKS, THE CITY OF NEW YORK, NEW YORK POLICE SERGEANT TIMOTHY MCLAUGHLIN, (SHIELD 04512), NEW YORK CITY POLICE OFFICER MICHAEL HAIGH (BADGE 19316), NEW YORK CITY POLICE OFFICER SHENGHANGSHI (BADGE 05025), NEW YORK CITY POLICE OFFICER FERNANDO ANTON (BADGE 04501), NEW YORK CITY POLICE OFFICER AUGUST MELENDEZ (BADGE 28869), JUSTIN ROTHSTEIN (6392), CLAUDIA SALAZAR (7838), LENOX HILL HOSPITAL, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION and ELIZABETH FEINGOLD, M.D.,

Defendants.

----------x

DECISION AND ORDER

[redacted]

Index No.: 158381/2013

HON. MARTIN SCHOENFELD, J.:

On this motion pursuant to 9 U.S.C. §§2, 3, 4, and 6 and CPLR §§7503 and 2201, defendants JP Morgan Chase Bank, N.A., J.P. Morgan Chase & Co. and Joseph Brooks (hereinafter "Chase" and "Brooks" or jointly, "the Bank") seek an Order compelling plaintiff Terry Tinsley to arbitrate his causes of action and staying the instant action pending conclusion of the arbitration.

Plaintiff Terry Tinsley opposes the motion. Co-defendants Justin Rothstein, Claudia Salazar and Lenox Hill Hospital ("LHH" defendants) partially oppose that part of the motion

which seeks to compel arbitration of all plaintiff's causes of action. The LHH defendants argue that they are not signatories to any contract that may exist between plaintiff and the Bank and as third parties are not bound by the agreement to arbitrate. The LHH defendants oppose the motion with respect to only those claims by plaintiff asserted specifically against the LHH and take no position on the enforceability of the arbitration agreement or the stay pending resolution of the arbitration. The remaining defendants do not take any position on the matter.

The Court has reviewed the Bank's notice of motion, affirmation in support and exhibits dated February 12, 2014, plaintiff's affirmation in opposition and exhibits dated April 17, 2014, Chase and Brooks' reply affirmation and memorandum of law and exhibits in further support of the motion dated April 17, 2014, and the LHH defendants' affidavit in partial opposition dated May 15, 2014. For the reasons stated below, the Bank's motion seeking to compel arbitration is granted but only with respect to those claims between plaintiff and the Bank, and the remaining claims in the instant action are stayed pending resolution of the arbitration.

On June 18, 2012, Plaintiff made cash deposits of $200 to his checking and $200 to his savings account in the JPMorgan Chase Bank, N.A. located at 181 East 90th Street in New York City. This proceeding arises out of an alleged incident on the following day when the plaintiff returned to the bank to express concern about a missing deposit receipt. Although the facts surrounding the subsequent events are in dispute, plaintiff alleges that he summoned the police to the Bank, that he was restrained and then transported by LHH Emergency Medical Services to Metropolitan Hospital Center, where he was involuntarily confined for three days in a locked psychiatric unit pending a mental health assessment. Among other things, plaintiff claims that the Bank breached a contract by failing to properly assist him with his deposit inquiries, misrepresented plaintiff's behavior to co-defendant police officers and emergency medical technicians, and caused him to be unlawfully restrained. The complaint seeks damages under theories of fraud, breach of contract, misrepresentation, negligence, civil rights violations under 42 U.S.C. 1983 and medical malpractice, all arising out of the foregoing incident.

Pursuant to the Brooks affidavit, plaintiff opened a demand deposit account at Chase in October of 2010 and again, in April of 2012. In each case, plaintiff signed a signature card which expressly acknowledged receipt of the Bank's Account Rules and Regulations as well as

an agreement to be bound by the terms and conditions contained therein.

The Deposit Account Agreement[1], General Account Terms, Part I, Section 12. Arbitration, provides as follows:

> "You and we agree that upon the election of either of us, any dispute relating in any way to your account or transactions will be resolved by binding arbitration as discussed below, and not through litigation in any court (except for matters in small claims court). This arbitration agreement is entered into pursuant to the Federal Arbitration Act, 9 U.S.C. §§1-16 ("FAA")...Claims or disputes between you and us about your deposit account, transactions involving your deposit account, safe deposit box, and any related service with us are subject to arbitration...Claims are subject to arbitration, regardless of what theory they are based on or whether they arose in the past, may currently exist, or may arise in the future...Arbitration applies whenever there is a Claim between you and us."
> (Bank's Verified Answer, Exhibit A at 16-17)

As an initial matter, the Bank argues that plaintiff's opposition to the instant motion should be rejected as untimely. The return date of the motion was March 18, 2014 and demanded service of the answering papers at least seven days before the return date or March 11, 2014. The parties stipulated to adjourn the return date to April 18, 2014 and, pursuant to CPLR 2214(b), plaintiff's opposition should have been served by April 11, 2014. Instead, the plaintiff's affirmation in opposition was served the afternoon before the return date on April 17, 2014. The Bank's reply affirmation in further support was served that same evening, four hours later, requesting that the Court reject the opposition papers as untimely and without justifiable excuse. Subsequently, the motion was adjourned to May 23, 2014 and after submission, was again adjourned until June 19, 2014 for oral argument.

CPLR § 2214(b) provides that a notice of motion that is served at least 16 days before the return day may demand that "[a]nswering affidavits and any notice of cross-motion, with supporting papers, if any, shall be served at least seven days before" that return day. "While a

---

[1] The Deposit Account Agreement specifically provides that it was formerly referred to as Account Rules and Regulations.

court can in its discretion accept late papers, CPLR 2214 and 2004 mandate that the delinquent party offer a valid excuse for the delay", *Associates First Capital v Crabill*, 51 A.D.3d 1186, 1187, *lv denied* 11 N.Y. 3d 702, [2008] see also, *Bush v Hayward*, 156 A.D.2d 899 (3d Dept 1989). Additional factors relevant when essentially extending the return day by accepting late papers include, among others, the length of the delay and any prejudice to the opposing parties. (See, CPLR 2214(c); *Mallards Dairy, LLC v. E&M Engrs. & Surveyors, P.C.*, 71 A.D.3d 1415 [4th Dept 2010]; *Bucklaew v Walters*, 75 A.D.3d 1140 [4th Dept 2010]; *Mosheyava v. Distefano*, 288 A.D.2d 448 [2d Dept 2001].

Although plaintiff offers no excuse for the delay, the Court in its discretion finds that the Bank was not prejudiced. The reply was well drafted despite plaintiff's dilatory papers. Moreover, plaintiff's opposition contained no legal arguments, merely reiterating the allegations contained in the complaint. Accordingly and under these circumstances, the Court will accept the late service of opposition papers.

With respect to the Bank's motion for a stay pending arbitration, CPLR § 7503(a) provides as follows:

> (a) Application to compel arbitration; stay of action. A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court; If an issue, claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application, shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.

New York public policy clearly supports arbitral resolution where the parties have agreed to submit their disputes to arbitration. The New York Court of Appeals has "repeatedly recognized New York's 'long and strong public policy favoring arbitration' " (*Stark v Molod Spitz DeSantis & Stark, P.C.*, 9 N.Y.3d 59, 66, [2007], quoting *Matter of Smith Barney Shearson v Sacharow*, 91 N.Y.2d 39, 49; *People v. Coventry First LLC*, 13 N.Y.3d 108, 113 (2009). New York courts should interfere as little as possible with the freedom of consenting parties to submit

disputes to arbitration (See, *Matter of Smith, Barney*, supra at 49-50).

An agreement to arbitrate is an agreement to surrender the right to utilize the courts in resolving a dispute and thus, must be clear, explicit and unequivocal, (See *God's Battalion of Prayer Pentecostal Church, Inc. v Miele Assoc., LLP*, 6 N.Y.3d 371, 374 [2006]; *Matter of Waldron [Goddess]*, 61 N.Y.2d 181, 183, [1984]. "Consent occurs in the most straightforward manner when a party signs a formal agreement to arbitrate", *People v. Coventry First LLC*, supra at 113.

Under the statute, once the court has determined the threshold issues of the existence of a valid agreement to arbitrate, that the party seeking arbitration has complied with the agreement, and that the claim sought to be arbitrated would not be time-barred were it asserted in state court, the remaining issues are for the arbitrator, see CPLR § 7503(a) supra, *Matter of Smith Barney, Harris Upham & Co. v Luckie, 85 N.Y.2d 193, 201; Shah v. Monpat Constr., Inc.*, 65 A.D.3d 541, 543 (2009)

Plaintiff does not contest the existence of a valid arbitration clause nor argue that the terms of the Agreement are not binding. Rather, plaintiff's opposition reiterates his factual allegations and argues that Chase "gave up any right to arbitration" by virtue of the events of June 19, 2012. Plaintiff asserts that the Bank's actions were the direct or indirect proximate cause for all his claims including those of civil rights violations, medical malpractice, involuntary psychiatric hospitalization, and extortion, and on that basis, argues that arbitration is an improper forum.

Here, the plaintiff has explicitly agreed pursuant to the terms of the Agreement, to the arbitration of "any dispute relating in any way to your account or transactions" and that his "[c]laims are subject to arbitration, regardless of what theory they are based on or whether they arose in the past, may currently exist, or may arise in the future" (Bank's Verified Answer at 16-17). The Agreement is forthright and without any ambiguity. It requires the arbitration of plaintiff's allegations against the Bank arising from the disputed deposit account under the varied theories asserted by the complaint. See, for example, *Estate of Jerry Castellone v. JP Morgan Chase Bank, N.A.* 60 A.D.3d 621 (2nd Dept 2009).

The LHH co-defendants take no position as to the existence of an enforceable arbitration

agreement or a stay pending resolution of the arbitration agreement, but correctly argue that, as non-signatories to the Deposit Account Agreement, the LHH defendants are not bound by the agreement to arbitrate those claims asserted against them. Indeed, all the co-defendants but for the Bank, are not party to the contract between the Bank and plaintiff and cannot be compelled to arbitrate their disputes with the plaintiff pursuant to the term of the Agreement (See *Shah v. Monpat Constr., Inc.*., supra).

However, the circumstances of June 19, 2012 form the basis of plaintiff's claims against all the defendants, not just against the Bank. Plaintiff himself concedes that Bank's actions were the direct or indirect proximate cause for all his claims. The arbitration will establish facts that are common to all parties and will narrow remaining issues in the proceeding. "Where arbitrable and nonarbitrable claims are inextricably interwoven, the proper course is to stay judicial proceedings pending completion of the arbitration, particularly where the determination of the issues in arbitration may well dispose of nonarbitrable matters" *Weiss v Nath,* 97 A.D.3d 661, [2d Dept 2012]. (See also, *Berg v. Dimson*, 151 A.D.2d 362, 363, [1st Dept. 1989]["the entire action was properly stayed pending arbitration because although some of the defendants [were] not signatories to the arbitration agreements . . . the issues to be determined in arbitration are inextricably interwoven with the remaining issues."]; *Estate of Jerry Castellone,* supra; *Cohen v. Ark Asset Holdings, Inc.*, 268 A.D.2d 285, [1st Dep't 2000], *Brown v V&R Adv.*, 112 A.D.2d 856 (1985), aff'd 67 N.Y.2d 772 [1986], 4-24 NY Practice Guide: Business and Commercial § 24.09 [4] [Matthew Bender 2009].

The controversy between the Bank and plaintiff is inextricably interwoven into all the allegations. Resolution of this dispute would in many instances, resolve factual issues against the co-defendants and will promote judicial economy by avoiding inconsistent or duplicitous results.

Based upon the foregoing, the Court grants the Bank's motion to arbitrate its claims against the plaintiff pursuant to CPLR § 7503(a) and stays the current proceeding pending resolution of the arbitration between the Bank and plaintiff.

This constitutes the decision and order of the Court.

Dated: October 31, 2014
New York, New York

J.S.C.