SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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STAFFORD BROUMAND, M.D., Index No.: 655954/2018

Plaintiff, **DECISION & ORDER**

-against-

MICHAEL ABBOT, NICHOLAS VITA, and
COLUMBIA CARE, LLC,

Defendants,

-and-

APELLES VENTUREFORTH SPV, LLC a/k/a
APELLES VENTUREFORTH SPE, LLC and
VENTUREFORTH HOLDINGS, LLC,

Nominal Defendants.

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JENNIFER G. SCHECTER, J.:

Motion sequence numbers 004 and 007 are consolidated for disposition.

Plaintiff Stafford Broumand moves for leave to file a proposed second amended complaint (Dkt. 127 [the PSAC]). Seq. 004. Defendants Michael Abbott, Nicholas Vita, and Columbia Care, LLC (Columbia Care) oppose and move to dismiss and to compel arbitration. Seq. 007. Plaintiff opposes defendants' motion. For the reasons that follow, plaintiff's motion for leave to amend is granted and defendants' motion is granted to the extent of compelling arbitration on all claims pleaded in the PSAC.

Introduction

This case concerns the parties' investment in medical marijuana companies. Broumand is a minority, non-controlling member in a special purpose investment vehicle

(SPV) that has a majority stake in a holding company that owns a medical marijuana company that operates in the District of Columbia. Abbott and Vita are managers of those companies and, either directly or indirectly, have equity in them. Broumand is also a minority, non-controlling member of another nationwide marijuana company that was recently acquired by a Canadian company as part of an initial public offering (IPO). Abbott and Vita are managers of that company and hold a large equity stake in it. Broumand alleges that the holding company that owns the District of Columbia business was, according to its offering materials and operating agreement, supposed to invest in a nationwide marijuana business and that defendants were prohibited from operating competing businesses. Broumand further alleges that instead of developing the nationwide business through that holding company, defendants formed a new company in which Broumand was given an interest (albeit a smaller one) and that defendants profited greatly when it was sold to the Canadian company. In other words, Broumand claims defendants stole the business. In this action, Broumand principally assets double derivative claims (by virtue of his interest in the SPV) to compensate the holding company for the loss of its business.

While there are complex issues raised by these claims, as defendants correctly aver, they are all subject to a mandatory arbitration clause in the holding company's operating agreement. The right to compel arbitration, contrary to Broumand's protestations, was not waived by defendants' successful defense against Broumand's multiple motions to enjoin the sale to the Canadian company. This case, however, will

not exclude from arbitration what defendants contend are supposedly time-barred claims because, under governing federal law, passage of the statute of limitations is an issue reserved for the arbitrator.

Broumand's direct claims concerning defendants' fraudulent inducement of his investment in the SPV and their alleged promise to provide him with more equity in the competing company are also subject to arbitration.

Background & Procedural History

The following facts are drawn from the PSAC[1] and are assumed to be true for the purposes of this motion unless refuted by documentary evidence.

The LLCs, Broumand's Membership Interests & the Operating Agreements

In 2012, defendants solicited Broumand to invest in a new medical marijuana business. Broumand was provided with an Investment Summary indicating that the business would "establish a network of fully licensed medical marijuana facilities and brands **nationwide** beginning in our Nation's Capital" (Dkt. 170 at 1 [emphasis added]). It explained that "a new **national** venture" would be "named VentureForth" (*id.* at 2 [emphasis added]). Broumand claims he invested over $250,000 in exchange for a 12.5% membership interest in Apelles VentureForth, SPV, LLC (AVF), a Delaware LLC.[2] AVF

[1] Plaintiff is granted leave to file the PSAC because of new facts that came to light during the injunction-related discovery (e.g., Holdings' operating agreement) and because it makes sense to permit the amendment and apply the motion to dismiss to the PSAC so there is clarity as to the full scope of claims being sent to arbitration.

[2] The complaint alleges the equity split changed over time, for instance, with Broumand eventually owning 14.5% of AVF by February 2016. The precise equity split is immaterial in this context.

owns a 78.2% membership interest in VentureForth Holdings, LLC (Holdings), a District of Columbia LLC. Holdings, in turn, wholly owns VentureForth LLC, a District of Columbia LLC that owns medical marijuana cultivation and dispensary businesses in the District of Columbia (the D.C. Business). All three LLCs are governed by operating agreements.

AVF's operating agreement is dated as of October 4, 2012 (Dkt. 173 [the AVF Agreement]). The terms of the AVF Agreement are not material since it was not allegedly breached.[3] Simply put, AVF is the SPV formed to permit investment in a holding company that would own a national marijuana business, with each business owned by a separate LLC. AVF is a member of that holding company, Holdings, which is governed by an operating agreement dated October 5, 2012 (Dkt. 174 [the Holdings Agreement). This is the most critical agreement since Holdings is the entity that was to own all of the marijuana businesses across the country.[4]

Section 4.1 provides that Holdings is to be operated by Managers (*see id.* at 9). Abbott and Vita are Managers of Holdings. Holdings' Members and Managers agreed to

[3] Sections 6.9 and 7.5 of the AVF Agreement permits AVF's members to engage in competing businesses (*see* Dkt. 173 at 12, 15). This provision is a red herring that was frivolously proffered by defendants at the outset of this case to make it appear that their operation of a competing business was permissible. Holdings' operating agreement – which should have been disclosed – expressly prohibits competition. Despite defendants' playing fast and loose with the facts, what has come to light would not have changed the court's prior determinations as the delay and irreparable harm justifications relied upon by the court are unaffected by the true nature of the parties' contractual and fiduciary obligations. Going forward, the arbitrator will be capable of policing counsel's conduct. Defendants should be mindful that misconduct before an arbitrator may justify vacating an arbitration award (*Accessible Dev. Corp. v Ocean House Ctr., Inc.*, 4 AD3d 217 [1st Dept 2004]; *see Matter of Sci. Dev. Corp.*, 156 AD2d 253, 254 [1st Dept 1989] [lack of candor to an arbitrator constitutes misconduct sufficient to set aside an award]).

[4] Indeed, section 5.4.6 contemplates an IPO (*see id.* at 18).

explicit restrictions on competition. Section 3.7 ("participation in other Ventures") provides:

> If any Member proposes to invest in a separate entity that will pursue any business related to medical cannabis (**whether in the District of Columbia or another jurisdiction**), such Member shall offer the other Members the right to invest along with such Member in such new entity on a pro rata basis; provided that (AVF) shall be allowed to invest in the medical cannabis vaporizer business now under consideration by its Affiliates without offering such to the other Members. Interested Members shall be given the right to purchase their pro rata share of any securities not purchased by other Members (*id.* at 9 [emphasis added]).

Section 4.1.1.6 ("Manager Non-Competition Agreement") further provides:

> (E)ach Manager will be required to execute a noncompetition and confidentiality agreement **including agreement of such Manager not to support the efforts of competitors to the Company** or use the Company's confidential information for any purpose unrelated to the Company. Such non-competition and confidentiality agreements will cover the period from appointment as a Manager until twenty-four (24) months following the departure of that person from the Board (*id.* at 10 [emphasis added]).

It is undisputed that Abbott and Vita never signed such a "noncompetition and confidentiality agreement" even though, as the individuals who controlled Holdings, no one prevented them from doing so. However, the Holdings Agreement, unlike the AVF Agreement, does not disclaim the default fiduciary duty of loyalty owed by managing members to the LLC; thus, notwithstanding their non-compliance with section 4.1.1.6, Abbott and Vita could not legally compete with Holdings or divert corporate opportunities.

Critically, section 12.8 of the Holdings Agreement contains a broad arbitration clause. It provides that:

> All disputes, claims, controversies, rights, and obligations of every kind and nature between the parties to this Agreement **arising out of, or in connection with**, this Agreement or breach thereof, including but not limited to existence, construction, validity, rescission, interpretation, meaning, performance, non-performance, enforcement, operation, breach, or termination thereof and the damages, compensation, and/or restitution claimed therefrom shall be submitted to, and resolved by, final and binding arbitration (*id.* at 44 [emphasis added]).

Thus, all claims for breach of the Holdings Agreement or those concerning Holdings' internal affairs are subject to arbitration.[5]

Broumand alleges that in 2013, Abbott and Vita committed massive breaches of their fiduciary duties to Holdings by forming and operating Columbia Care, a competing holding company they used to operate another marijuana business in the District of Columbia and to own marijuana businesses across the country. Simply put, Abbott and Vita allegedly did with Columbia Care the very thing that they were supposed to be doing with Holdings.

Columbia Care is a Delaware LLC. Abbott and Vita originally held 95% of Columbia Care's membership interests, which is a far greater stake than they had in Holdings. Abbott and Vita provided AVF's members with an aggerate "founder's grant" of 5% of Columbia Care's membership interests to be allocated among them. Broumand alleges that, on July 25, 2014, Abbot orally promised that if "Broumand raised capital from third party investors for Columbia Care, (Broumand) would receive equity with a value equal to 5% of the total capital raised" (PSAC ¶ 47). Broumand alleges that by

[5] The terms of the D.C. Business' operating agreement, which also contains a broad arbitration clause (*see* Dkt. 175 at 20), are not material since no claims are asserted on behalf of the D.C. Business.

June 2015, he had secured $2.5 million of investment (¶ 48). In August 2015, Abbot told Broumand in an email that "The $ you brought in has a 5% stock grant [in Columbia Care]" (¶ 50). Abbot also offered to appoint Broumand, a doctor, to the Columbia Care Scientific Advisory Board, which Broumand orally accepted one week later (¶ 51).

Broumand claims these alleged oral agreements were breached and that he was told by Abbot on September 5, 2015 that he only had a 2% stake in "the Cannabis Business." This allegedly was false since Broumand was actually given a 1.5% stake in Columbia Care as part of the "founder's grant" and, as previously discussed, he had a 12.5% stake in AVF. Defendants now concede that Broumand is a member of Columbia Care but claim he only has a 0.434% membership interest.

Columbia Care is[6] governed by a third amended operating agreement dated June 1, 2017 (Dkt. 179 [the Columbia Care Agreement]). Section 13.14 provides that

> Any dispute, claim, or controversy (i) that **arises under or relates to this Agreement** and/or the operation of the Company, or (ii) between a Member and the Company and is not able to be resolved by good faith negotiation must be submitted to confidential binding arbitration (*id.* at 49 [emphasis added]).

Section 13.14 contains a pre-dispute resolution process and extensively sets forth the procedure for how arbitration is to be commenced and how it is to proceed (*see id.* at 49-50). The "Commercial Arbitration Rules of the AAA" are to govern the arbitration (*see*

[6] The court is unaware if the governance of Columbia Care has changed since the sale to Canaccord, which was supposed to result in the surviving entity being converted to a corporation. It is unclear if Columbia Care merged into that corporation or operates as a wholly owned subsidiary.

id. at 50). Applications for injunctive relief are carved out of the arbitration provision (*see id.*).[7]

The Columbia Care Sale

In September 2018, Broumand received "materials related to a purported 'Columbia Care Secondary Sale,' pursuant to which defendants claimed to be selling equity interests in Columbia Care to an unnamed investor in a 'modified' Dutch auction process pursuant to which current investors could sell their interest in the business at different price intervals between $500 million and $1.2 billion" (PSAC ¶ 60). By letter dated September 27, 2018, Broumand objected to the sale on multiple grounds, including that "defendants purported to be selling equity that in fact belonged to him and his fellow seed investors" (¶ 61). In an October 5, 2018 letter, defendants responded and rejected his concerns (*id.*).

On October 17, 2018, Columbia Care announced a different iteration of the sale, a going-public transaction with a valuation of $1.35 billion (¶ 62). "On November 21, 2018 (Abbott and Vita) announced that Columbia Care had signed a definitive transaction agreement and that they planned to close the go-public transaction by the first quarter of 2019," which, likely due to this litigation, was subsequently extended to April 30, 2019 (¶ 63). The going-public transaction consisted of a Canadian special purpose acquisition

[7] Broumand has, at various times in this action, taken the position that Columbia Care's second amended operating agreement was not validly amended (*see* Dkt. 178). The court declines to opine on this issue since Broumand, as on his injunction motion, has not identified a material difference between the two versions of the agreements that would affect the disposition of these motions. Indeed, the prior version's arbitration clause is virtually identical (*see id.* at 50-51). Thus, the question of which operating agreement governs is itself an arbitrable issue.

corporation, Canaccord Genuity Growth Corp. (Canaccord), conducting an IPO in September 2018 and using the proceeds to fund a share exchange with Columbia Care whereby Columbia Care's members would receive equity in Canaccord, which would change its name to Columbia Care Inc. (*see* Dkt. 217 at 2-3). Abbot and Vita would collectively obtain a 36.5% stake in this new corporation (*see id.* at 4).

Procedural History

On November 30, 2018, Broumand commenced this action and filed his original complaint. On December 7, 2018, he moved for expedited discovery in aid of an injunction stopping the Canaccord transaction. The court denied the motion by order dated December 14, 2018 (Dkt. 89; *see* Dkt. 111 [12/14/18 Tr.]).

On January 7, 2019, defendants moved to dismiss the complaint, principally arguing that Broumand's core claims concerning Columbia Care are classically derivative yet pleaded as direct claims. Plaintiffs conceded this point and filed a first amended complaint on February 25, 2019 (Dkt. 117 [the FAC]), mooting the original motion to dismiss (*see* Dkt. 122).

After a discovery conference on March 5, 2019, the court ordered defendants to produce the operating agreements of the D.C. Business and Columbia Care and the books and records of AVF and Columbia Care (Dkt. 120). Production of the Holdings' operating agreement was not ordered because neither the court nor Broumand was aware one existed. The following day, on March 6, the parties agreed that a motion to dismiss would be made by March 25 and fully submitted on April 18 (Dkt. 121).

On March 12, 2019, Broumand initiated an emergency conference call in which it was revealed that defendants, gratuitously, produced the Holdings Agreement and he then learned, for the first time, that Abbott and Vita are in fact bound by a non-compete. Broumand therefore requested leave to amend and was given until April 1 to do so; defendants would cross-move to dismiss by April 18 (Dkt. 123).

On March 20, 2019, Broumand made two motions, the first of which is this motion for leave to file the PSAC (Seq. 004). The PSAC seeks to asserts 12 causes of action: (1) breach of the Holdings Agreements' non-compete provisions, asserted double derivatively against Abbott and Vita; (2) breach of fiduciary duty, asserted derivatively and double derivatively against Abbott and Vita,[8] based on their transfer of the Holdings' business to Columbia Care; (3) aiding and abetting the foregoing breach of fiduciary duty, asserted derivatively against Columbia Care; (4) unjust enrichment and quantum meruit, asserted derivatively and double derivatively against Abbott, Vita, and Columbia Care; (5) conversion, asserted derivatively and double derivatively against Abbott, Vita, and Columbia Care; (6) corporate waste (breach of fiduciary duty), asserted derivatively and double derivatively against Abbott and Vita; (7) constructive trust over Abbott's and Vita's equity stake in AVF, Holdings, and Columbia Care, asserted derivatively and

[8] While the court is skeptical that derivative claims brought on AVF's behalf (as opposed to double derivatively on Holdings' behalf) should be styled as asserting AVF's rights rather than Holdings' rights, this is immaterial because, however styled, the claim is subject to arbitration as both AVF (under the Holdings Agreement) and Broumand (under the Columbia Care Agreement) are subject to mandatory arbitration on all claims related to those agreements. While the internal affairs of AVF are governed by Delaware law and Holdings' are governed by District of Columbia law, any conflict of laws issues are beyond the scope of these motions. Indeed, the arbitration issues here are governed by federal law.

double derivatively; (8) breach of the alleged oral agreement, asserted directly against Abbott, Vita, and Columbia Care; (9) account stated based on performance of the alleged oral agreement, asserted directly against Abbott, Vita, and Columbia Care; (10) promissory estoppel, based on the alleged oral agreement, asserted directly against Abbott, Vita, and Columbia Care; (11) fraudulent inducement of Broumand's investment in AVF, asserted directly against Abbott and Vita;[9] and (12) unjust enrichment and quantum meruit based on performance of the alleged oral agreement, asserted directly against Abbott, Vita, and Columbia Care.

Broumand also moved for a preliminary injuction enjoining the Canaccord transaction (which was set to be voted on by Canaccord's shareholders on April 22) and again sought expedited discovery (Seq. 005). By order dated March 26, 2019, the court denied the motion without prejudice and ordered limited expedited discovery, including the depositions of Abbott and Vita (Dkt. 162; *see* Dkt. 164 [3/26/19 Tr.]). On April 6, 2019, Broumand filed a renewed motion for a preliminary injunction (Seq. 006), which was denied by order dated April 15, 2019, based on, among other things, evidence demonstrating that Broumand knew about Columbia Care for years yet waited until eve of the proposed sale in 2018 to object (Dkt. 227; *see* Dkt. 231 [4/12/19 Tr.]).[10] On April 25, 2019, defendants moved to dismiss and to compel arbitration.

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[9] While it is not entirely clear if this claim also is meant to be pleaded against Columbia Care, Columbia Care did not even exist at the time of Broumand's investment in AVF; thus, it could not have induced Broumand's investment.

[10] Denial of that motion should not be taken as an indication that the court is not disturbed by what may well have been material misrepresentations to Canaccord's shareholders about this

Discussion

Leave to Amend

Leave to amend should be granted freely and denied only when the proposed amendment is clearly devoid of merit or would cause prejudice (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]). Here, the PSAC's claims are substantially similar to those in the FAC and, in fact, are better pleaded given the new evidence produced in conjunction with the injunction motions (*see* Dkt. 128 [redline against FAC]).[11] The claims are not clearly devoid of merit. On the contrary, many of them appear quite strong. For instance, it seems clear that Broumand will be able to make out a prima facie case for breach of fiduciary duty by proving that Abbot and Vita operated what was supposed to be Holdings' nationwide marijuana business under the auspices of Columbia Care – though to be sure, there are potential affirmative defenses including the statute of limitations and laches. The actual merits of these claims and defenses will ultimately be decided by the arbitrator. It is therefore appropriate to permit the amendment so the full scope Broumand's claims are before the court to be sent to arbitration. Indeed, denial of

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litigation and the current state of the District of Columbia businesses (one of which apparently burned down). But neither Canaccord nor its shareholders objected to the transaction on the basis of inadequate disclosures. Indeed, Canaccord opposed the motion. Thus, the court found that harm to Canaccord, which Broumand lacks standing to assert, was not a basis for enjoining the transaction.

[11] The derivative claims brought on behalf of Columbia Care were withdrawn. This obviates the conflict between pursuing claims on behalf of Holdings against Columbia Care while also pursuing claims on behalf of Columbia Care. This also avoided the problem of defense counsel representing Columbia Care since it is no longer adverse to Abbot and Vita.

leave to amend would be academic because Broumand could still assert these claims in an arbitration anyway. Leave to amend is therefore granted.

Motion to Compel Arbitration

The Federal Arbitration Act (FAA) applies because Broumand's claims involve interstate commerce (*Cusimano v Schnurr*, 26 NY3d 391-92, 400 [2015], *see Mahn v Major, Lindsey, & Africa, LLC*, 159 AD3d 546 [1st Dept 2018]). Matters concerning companies' operation of nationwide marijuana businesses affect interstate commerce (*see Diamond Waterproofing Sys., Inc. v 55 Liberty Owners Corp.*, 4 NY3d 247, 252 [2005]). Thus, gatekeeping statute of limitations rulings may not be made by the court (*see N.J.R. Assocs. v Tausend*, 19 NY3d 597, 601-02 [2012] ["Under the (FAA), resolution of a statute of limitations defense is presumptively reserved to the arbitrator, not a court. New York law, in contrast, allows a threshold issue of timeliness to be asserted in court"]). Here, neither the operating agreements of Holdings or Columbia Care are governed by New York law, nor do the parties contend they contain the requisite language reserving statute of limitations issues for the court notwithstanding applicability of the FAA (*see ROM Reinsurance Mgmt. Co. v Cont'l Ins. Co.*, 115 AD3d 480, 481 [1st Dept 2014]).

In fact, the arbitration provision itself states that AAA rules will govern; thus, arbitrability and the statute of limitations are issues reserved for the arbitrator (*Flintlock Const. Servs., LLC v Weiss*, 122 AD3d 51, 54 [1st Dept 2014]; *see Zachariou v Manios*, 68 AD3d 539 [1st Dept 2009] ["Where there is a broad arbitration clause and the parties' agreement specifically incorporates by reference the AAA rules providing that the

arbitration panel shall have the power to rule on its own jurisdiction, courts will leave the question of arbitrability to the arbitrators"]; *see also Garthon Bus. Inc. v Stein*, 30 NY3d 943, 944 [2017]). So long as any claim plausibly "relates" to the Holdings and Columbia Care Agreements, questions as to arbitrability of any claim are for the arbitrator, and not the court, to decide.

All of Broumand's claims relate either to the Holdings or Columbia Care Agreements. The bulk of his claims are brought either derivatively on behalf of AVF or double derivatively on behalf of Holdings and concern Abbot and Vita taking virtually all of Holdings' business and moving it under the auspices of Columbia Care. This, allegedly, amounts to a breach of their duty of loyalty as Holdings' managers and breach of their non-compete obligations under the Holdings Agreement. These claims "relate" to the Holdings Agreement. LLCs are creatures of contract and their operating agreements govern their internal affairs. Thus, claims based on breach of fiduciary duty inherently relate to the operating agreement. And of course, a claim that the operating agreement was breached arises thereunder. Simply put, the Holdings Agreement's broad arbitration clause covers all of these claims, whether grounded in contract, quasi contract, or tort (*see DS-Concept Trade Invest LLC v Wear First Sportswear, Inc.*, 128 AD3d 585 [1st Dept 2015] ["the broad arbitration clause in the contracts … [that] provides that all disputes arising in connection with the contract shall be settled through arbitration, is applicable [and] there is a reasonable relationship between the subject matter of the

dispute and the general subject matter of the underlying contract, requiring arbitration of this matter"]).

The same is true of Broumand's direct claims concerning his investment in AVF and the promises made to him concerning Columbia Care. AVF is the vehicle through which Broumand acquired his interest in Holdings. His personal claims concerning that investment relates to Holdings, especially since the alleged fraud was failure to disclose how Holdings would operate in relation to Columbia Care. Likewise, promises concerning Broumand's relationship with Columbia Care relate to its operating agreement. To be sure, if the arbitration provisions were limited to claims arising under those agreements, these claims would not be subject to arbitration. But given the breadth of the arbitration provisions, it is clear that the parties have an unmistakable agreement to arbitrate and that the subject matter of the claims is fairly interpreted as falling within their scope. Thus, at most, Broumand's contentions that his direct claims are not arbitrable may be raised with the arbitrator but are not grounds for precluding arbitration (*Telenor Mobile Communications AS v Storm LLC*, 584 F3d 396, 406 [2d Cir 2009] ["the federal policy in favor of arbitration requires that any doubts concerning the scope of arbitrable issues be resolved in favor of arbitration"]; *see In re Am. Exp. Fin. Advisors Secs. Litig.*, 672 F3d 113, 128 [2d Cir 2011] ["federal policy requires us to construe arbitration clauses as broadly as possible. Therefore, we will compel arbitration unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute"]).

Finally, defendants did not waive their right to compel arbitration (*see Skyline Steel, LLC v PilePro LLC*, 139 AD3d 646, 647 [1st Dept 2016] ["Whether analyzed under the CPLR or the (FAA), respondents' conduct, viewed in its entirety, does not constitute a waiver of arbitration. Throughout the parties' dispute, respondents repeatedly made clear their position that the matter belongs in arbitration"]). Under the FAA, in "determining whether a party has waived its right to arbitration by expressing its intent to litigate the dispute in question, (courts) consider the following three factors: (1) the time elapsed from when litigation was commenced until the request for arbitration; (2) the amount of litigation to date, including motion practice and discovery; and (3) proof of prejudice" (*Louisiana Stadium & Exposition Dist. v Merrill Lynch, Pierce, Fenner & Smith Inc.*, 626 F3d 156, 159 [2d Cir 2010]). None of these facts supports waiver. All that has occurred thus far in this action are proceedings related to the injunction motions, which are expressly carved out of the arbitration provisions. Waiver has been found in instances where the plaintiff has sought to litigate in court for an extended period but only sought to compel arbitration when the merits of its claims were questioned by the court (*see Cusimano*, 26 NY3d 391 at 401) or where the defendant had made the affirmative decision to pursue litigation only to later decide it prefers arbitration (*see Tengtu Int'l Corp. v Cheung*, 24 AD3d 170, 172 [1st Dept 2005]). Here, by contrast, defendants have always insisted that the case belongs in arbitration. Broumand, therefore, cannot claim that he is prejudiced by defendants seeking to compel arbitration at this time.

Accordingly, it is ORDERED that Broumand's motion for leave to amend is granted to the extent that the PSAC, filed at Dkt. 127 on March 20, 2019, is deemed served as of that date; and it is further

ORDERED that defendants' motion to dismiss and to compel arbitration is granted to the extent that all claims pleaded in the PSAC are to be arbitrated in accordance with section 12.8 of the Holdings Agreement and section 13.14 of the Columbia Care Agreement; and it is further

ORDERED that this action is stayed pending completion of the arbitration, and the court retains jurisdiction over the parties' eventual motions to confirm or vacate the arbitration award and to resolve any applications for relief in aid of the arbitration.

Dated: October 4, 2019

ENTER:

Jennifer G. Schecter, J.S.C.