

**Tratado De Libre Comercio, LLC v Splitcast  
Tech. LLC**

2020 NY Slip Op 30259(U)

January 27, 2020

Supreme Court, New York County

Docket Number: 652650/2016

Judge: Gerald Lebovits

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. GERALD LEBOVITS PART IAS MOTION 7EFM

Justice

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TRATADO DE LIBRE COMERCIO, LLC,  
PEDRO CHAVEZ,

Plaintiffs,

INDEX NO. 652650/2016

MOTION DATE 01/24/2020

MOTION SEQ. NO. 009

- v -

SPLITCAST TECHNOLOGY LLC, SPLITCAST INC.,  
SPLITCAST TECHNOLOGIA, SPA, AURUS S.A.  
ADMINISTRADORA GENERAL DE FONDOS, RAIMUNDO  
CERDA, CAMERON WENDT, HUGO NEIRA, FELIPE  
ARREDONDO, JOSE FLORES, JAVIER SALCEDO,  
IGNACIO NAVARRO, JOHN DOES,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208

were read on this motion for REARGUMENT AND RENEWAL

*CKR Law LLP*, New York, NY (Michael James Maloney and Rosanne Felicello of counsel), for plaintiffs.

*Comar Mollé LLP*, New York, NY (Rajeev E. Ananda and D. Inder Comar of counsel), for defendant Cameron Wendt.

Gerald Lebovits, J.:

This court previously dismissed all claims by plaintiffs, Tratado de Libre Comercio, LLC and Pedro Chavez (collectively, Tratado), against defendant Cameron Wendt, by order dated November 25, 2019, in motion sequence 008. Tratado now moves for reargument and renewal of this court's November 25 order (motion sequence 009). The court grants Tratado leave to reargue and renew, but on reargument and renewal adheres to its prior order.

**I. Tratado's Motion for Leave to Reargue**

Tratado argues first that this court's November 25, 2019, order overlooked that Tratado did not simply oppose Wendt's CPLR 3211 motion to dismiss on its merits, but also cross-moved to stay further consideration of Tratado's claims against Wendt pending resolution of a related arbitration proceeding. Tratado is correct that the court's November 25 order did not address the arguments on Tratado's cross-motion to stay. This court therefore grants leave to reargue. On reargument, though, this court concludes, in its discretion, that a stay of proceedings as to Tratado's claims against Wendt is unwarranted.

Tratado argues first that this court should have granted a stay under CPLR 7503 (a). (*See* NYSCEF No. 204, at 4-5.) But that provision was not implicated by Tratado's cross-motion. CPLR 7503 (a) sets out the procedure by which a party "aggrieved by the failure of another to arbitrate may apply for an order *compelling* arbitration," and provides that if the motion to compel is granted, the court shall stay that portion of the pending action that is referable to arbitration. Here, Tratado's cross-motion on motion sequence 008 did not seek to compel Wendt to participate in arbitration. (*See* NYSCEF No. 177 [notice of cross-motion for an order "granting a stay of proceedings against defendant Cameron Wendt"].) Instead Tratado sought only a stay of proceedings in this court as to Wendt because Tratado's "claims against the respondents in the pending arbitration include" closely-related "claims against Wendt." (NYSCEF No. 183, at 3-4; *see also* NYSCEF No. 177.) In the absence of a motion to compel arbitration, Tratado's stay request was governed not by CPLR 7503, but by CPLR 2201.<sup>1</sup>

CPLR 2201 provides that "the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." In deciding whether to grant a stay, courts should give "due consideration [to] the goals of judicial economy, orderly procedure and the prevention of inequitable results." (*Belopolsky v Renew Data Corp.*, 41 AD3d 322, 322 [1st Dept 2007].)

Tratado argues that since this court directed that Tratado's claims against the *other* defendants in this action must be resolved in arbitration, the court should stay Tratado's claims against Wendt to permit them to be resolved in arbitration as well, rather than decide Wendt's CPLR 3211 motion to dismiss those claims. This court disagrees.

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<sup>1</sup> It appears to be undisputed that Wendt did not sign the underlying arbitration agreement (*see* NYSCEF No. 183, at 3-4). Even had Tratado moved to compel arbitration as to Wendt—which it did not—that fact would tend to undermine Tratado's assertion now that the court "should have found that Plaintiffs' claims against Wendt are properly subject to arbitration" (NYSCEF No. 204, at 5). *See Oxbow Calcining USA Inc. v American Indus. Partners* (96 AD3d 646, 649-650 [1st Dept 2012] [affirming the denial of a motion to compel arbitration as to parties who did not sign the arbitration agreement].) The authorities cited by Tratado (on this motion and on motion sequence 008) to establish that Wendt must participate in arbitration even as a non-signatory (*see* NYSCEF Nos. 183, at 3-4, and 204, at 4) do not stand for that proposition. In *NAMA Holdings LLC v Greenberg Traurig, LLP* (62 AD3d 578, 579 [1st Dept 2009], the Appellate Division, First Department held that the trial court should have stayed judicial proceedings in light of earlier-commenced parallel arbitration proceedings; but the Court was not asked to—and did not—decide which parties were required to participate in that parallel arbitration. In *Pacer/Cats/CCS v MovieFone, Inc.* (226 AD2d 127, 128 [1st Dept 1996], the First Department merely affirmed the grant of defendants' motion to stay the action pending resolution of a parallel arbitration proceeding between defendants and a third party, because the non-signatory plaintiff in the action was closely related to the signatory parties in the arbitration and the two sets of proceedings raised interwoven issues. The Court did not suggest, much less hold, that the non-signatory plaintiff was *itself* required to participate in the related arbitration.

Tratado brought the present action well before it commenced arbitration proceedings against Wendt. Indeed, the record suggests that Tratado only brought claims against Wendt in the arbitral forum because other defendants in the present action—not Wendt—successfully moved to compel arbitration of Tratado’s claims against *them*, based on an arbitration agreement that *they*—but not Wendt—had signed with Tratado. (*See* Decision & Order, NYSCEF No. 141; Decision & Order, NYSCEF No. 151 [granting motions to compel arbitration brought by other defendants].) And Wendt has reserved his right to ask the arbitrator to dismiss Tratado’s arbitral claims against him on the ground that the arbitrator lacks jurisdiction over him as a non-signatory. (*See* NYSCEF No. 205, at 4-6.) In this action, on the other hand, Wendt’s motion to dismiss under CPLR 3211 (a) (7) has been filed, briefed, argued, and decided by this court.<sup>2</sup> Staying any consideration of a motion that this court has *already held* should be granted would hardly conserve judicial resources.

## II. Tratado’s Motion for Leave to Renew

Nor does this court agree with Tratado that the court should, in essence, vacate its dismissal of Tratado’s claims against Wendt to avoid the possibility of inconsistent results. Tratado asserts that this court’s November 25, 2019, order on motion sequence 008 dismissing the claims against Wendt in this forum conflicts with a later order by the arbitrator declining to permit respondents in the arbitration to file dispositive motions. Tratado seeks leave to renew to put that order before this court. This court grants leave to renew to consider the arbitral order on which Tratado relies; but on renewal concludes that the order does not alter this court’s conclusions on motion sequence 008.

The arbitral order on which Tratado relies denied permission to the respondents in the arbitration to file certain dispositive motions *at that time*. (*See* Arbitration Order, NYSCEF No. 202, at 2.) The order expressly reserved the question whether respondents would be permitted to file those and other dispositive motions—including a motion to dismiss the claims against Wendt for lack of arbitral jurisdiction—once Tratado had filed an amended statement of claim and supporting materials. And the order expressed no opinion on the merits of a potential motion to dismiss for lack of arbitral jurisdiction. (*See id.* at 3-4.) That order is thus not inconsistent with this court’s conclusion that the claims against Wendt fail to state a cause of action on the merits.

Additionally, as reflected in this court’s November 25, 2019, order on the prior motion, this court had little difficulty concluding that the extremely thin allegations against Wendt in Tratado’s complaint here failed to state a cause of action. (*See* NYSCEF No. 186.) This court declines to leave those allegations outstanding against Wendt nonetheless on the possibility that the arbitrator will later (i) rule that he has jurisdiction over Tratado’s claims against Wendt and then (ii) disagree with this court about the sufficiency of Tratado’s allegations against Wendt that are common to both the judicial and arbitral proceedings.<sup>3</sup>

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<sup>2</sup> Tratado’s reargument motion does not contend this court’s holding dismissing Tratado’s claims under CPLR 3211 (a) (7) was erroneous in any respect on its merits—merely that this court should not have reached the CPLR 3211 (a) (7) issue to begin with.

<sup>3</sup> Some of the allegations made against Wendt in Tratado’s initial statement of claim before the arbitrator also did not appear in Tratado’s complaint in this action. (*Compare* Statement of


Staying adjudication of Tratado's claims against Wendt in this action would neither further judicial economy, preserve the orderly resolution of the disputes between the parties, nor avoid a significant possibility of inconsistent or inequitable results. This court therefore declines, in its discretion, to vacate the court's prior dismissal of Tratado's claims against Wendt or grant Tratado's CPLR 2201 cross-motion to stay.

Accordingly, it is hereby

ORDERED that Tratado is granted leave to reargue and renew this court's order, dated November 25, 2019, that dismissed Tratado's claims against defendant Wendt; and it is further

ORDERED that on reargument and renewal, this court adheres to its November 25, 2019 order.

1/27/2020  
DATE

  
GERALD LEBOVITS, J.S.C.

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

Claim, NYSCEF No. 179, at ¶¶ 56-58, 86-90, with Am. Compl., NYSCEF No. 64.) A finding by the arbitrator that *those* allegations sufficed to state a claim would not be inconsistent with this court's disposition of Wendt's CPLR 3211 (a) (7) motion regardless.