

Gol v TNJ Holdings, Inc.
2020 NY Slip Op 32655(U)
August 13, 2020
Supreme Court, New York County
Docket Number: 652304/2020
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

-----X

JANE GOL, AMIR CHALUTS, SARA RUBENSTEIN, JG
GROUP HOLDINGS LLC, PGFT LLC, JGFT LLC, AC
GROUP HOLDINGS LLC, CHALUTS TRUST,
CONTINENTAL VENTURES REALTY LLC

INDEX NO. 652304/2020

MOTION DATE 06/15/2020

MOTION SEQ. NO. 001

Petitioners,

- v -

TNJ HOLDINGS, INC., JOSSEF KAHLON, JULIAN
KAHLON, INDIVIDUALLY AND ON BEHALF OF
PROJECT VERTE, INC.,

DECISION + ORDER ON
MOTION

Respondents.

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42,
43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69,
70, 71, 72, 73, 74

were read on this Petition to STAY ARBITRATION.

This is a special proceeding under Article 75 of the CPLR to stay an arbitration currently
pending before the American Arbitration Association ("AAA").

The combatants are shareholders in a closely held corporation, Project Verte, Inc.
("Verte"). The company was founded by Petitioners Jane Gol ("Gol") and Amir Chaluts
("Chaluts") and Respondents Jossef Kahlon ("Jossef") and Julian Kahlon ("Julian"). The
founders' stakes in the company currently are held through various entities. The Gol interests
are held through Petitioners JG Group Holdings LLC, PGFT LLC, JGFT LLC, and the Chaluts
interests are held through AC Group Holdings LLC, and Chaluts Trust (collectively the "AJ
Entities"). The Kahlons' interests are held through Respondent TNJ Holdings, Inc. ("TNJ").

On May 15, 2020, Respondents initiated an arbitration claiming that Petitioners (through Gol and Chaluts) abused their powers as controlling shareholders and have harmed Respondents and Verte itself. Respondents allege in their arbitration pleadings that their claims arise out of or relate to the parties' Initial Stockholders Agreement ("ISA") and a subsequent Share Forfeiture and Note Transfer Agreement ("SFNTA"), both of which contain mandatory arbitration provisions to which Petitioners (including Gol and Chaluts individually) are contractually bound.¹ Accordingly, Respondents contend that AAA arbitration is the appropriate forum for their dispute.

Petitioners disagree. They argue that the ISA cannot be a basis for mandatory arbitration against Gol and Chaluts because it was superseded by an Amended and Restated Stockholders Agreement ("ARSA") to which Gol and Chaluts were not parties. Unlike the ISA, which Gol and Chaluts signed in their own names as Initial Stockholders, they signed the ARSA (which contains its own mandatory arbitration provision) solely on behalf of Verte and the AJ Entities. Further, they argue that the SFNTA cannot be a basis for mandatory arbitration because the claims in the arbitration do not relate to the SFNTA. Finally, they argue that even if there is an agreement permitting TNJ to arbitrate claims against one or more of the Petitioners, TNJ's owners Jossef and Julian Kahlon (who are not parties to the ISA or SFNTA) cannot do so. Petitioners seek to stay the arbitration.

¹ During the course of this proceeding, Respondents submitted a Proposed Amended Statement of Claims ("Arbitration Complaint") (NYSCEF 39) that, among other things, adds the SFNTA as a ground for arbitration. The Arbitration Complaint withdraws the claims asserted against named Petitioners Sara Rubenstein and Continental Ventures Realty LLC, who were not parties to either of the agreements. Although the Amended Arbitration Complaint has not yet been submitted to the AAA, the parties have stipulated that it is the operative arbitration pleading for purposes of this proceeding. (*See* NYSCEF 36.)

For the reasons set forth below, the Court denies the Petition to stay arbitration of claims asserted by TNJ. Given the Verte shareholders' broad contractual agreements to resolve disputes via arbitration, Petitioners have not established grounds to stop TNJ from going that route. Under the terms of the parties' agreements, which incorporate AAA's Rules, it will be for the arbitrator (not this Court) to decide whether TNJ's specific claims are within or beyond the scope of the arbitration provisions.

The Court grants the Petition to stay arbitration of claims asserted by Jossef and Julian Kahlon. Unlike TNJ, the Kahlons are not Verte shareholders and, more importantly, are not parties to the relevant agreements containing mandatory arbitration provisions.

BACKGROUND

Verte is a technology company that integrates marketing, sales, distribution, and logistics services for its e-commerce clients. It was founded in 2017, on a 50/50 basis, by TNJ on the one hand (owned initially by Julian and now by Jossef), and by Gol, Chaluts, "and a constellation of entities they control" (i.e., PGFT LLC, JGFT LLC, and Chaluts Trust) on the other. Gol and Chaluts eventually transferred their shares to JG Group Holdings LLC and AC Group Holdings LLC, respectively. According to the Arbitration Complaint, the Kahlons oversaw the business of Verte, while Gol controlled "back-office functions." (Arb. Compl., NYSCEF 39, ¶ 60.)

Boiled down to its essentials, the Arbitration Complaint asserts that while the business flourished under the Kahlons' management, the AJ Entities – "fronted" by Gol – were "engaged in a deliberate and elaborate scheme designed to undermine TNJ's equal position in the Company, deny TNJ the reasonable expectation of its investment in Project Verte, and to squeeze Julian and Jossef Kahlon out from the Company." (*Id.* ¶ 4.) Gol purportedly took advantage of the fact that the Kahlons were focused on the day to day operations of Verte to

“consolidate control over accounting and legal functions of Project Verte, and to manipulate its records for the benefit of the AJ Group – damaging both TNJ and the Company.” (*Id.* ¶ 5.)

Respondents assert direct and derivative claims for: (i) an accounting “to reconcile the capital accounts to the cash accounts of Project Verte”; (ii) breach of fiduciary duty; (iii) violation of the entire fairness doctrine; and (iv) a declaratory judgment that the ARSA and SNFTA are null and void.

Respondents assert venue in the AAA based on arbitration provisions contained in the ISA and SNFTA, to which TNJ and the Petitioners are parties.

The Initial Stockholders Agreement (ISA)

The ISA, dated August 17, 2018, sets forth the “[Initial Shareholders’] respective rights and obligations in connection with the financing, management and operation of” Verte. (ISA, NYSCEF 13, at 1.) For example, it addresses stockholder rights and obligations with respect to funding and loan repayment obligations (Article 4); management of the company and appointment of its board (Article 2); restricting the transfer of stock (Article 3); and amendment of the stockholders’ agreement itself (Article 8).

The agreement is signed by Verte (by Gol as President) and the Initial Stockholders as follows: Gol, Chaluts, Chaluts Trust (by Gol as Trustee), PGFT LLC (by Gol as Member), JGFT LLC (by Gol as Member), and TNJ Holdings Inc. (by Julian as Authorized Signatory). In the Arbitration Complaint, Petitioners assert that PGFT LLC, JGFT LLC, and the Chaluts Trust are “controlled by either Gol or Chaluts.” (Arb. Compl. ¶ 51.)

Section 8.12 of the ISA provides that: “Subject to Section 8.13 [relating to requests for injunctive relief, not applicable here], any dispute, controversy or claim arising out of, relating to, or in connection with, this Agreement or any breach, termination or validity thereof ... shall

be finally settled by arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration, except as they may be modified herein or by mutual agreement of the parties. The seat of the arbitration shall be New York, New York.”

Section 7.02 of the ISA provides that Section 8.12 “shall survive termination of this Agreement.”

The Share Forfeiture and Note Transfer Agreement (SFNTA)

The SFNTA, entered into as of March 1, 2019, amended (in part) the ISA. Effectively, the agreement provided that TNJ (as “transferor”) would forfeit 6,250,000 Verte shares, which would be transferred to the other Initial Stockholders (the “transferees”) in recognition of TNJ’s failure to repay certain advances made by the transferees to Verte on TNJ’s behalf. The agreement provided for the issuance of certain “Replacement Notes” to reflect the revised obligations of the parties and effected changes to the capital structure of the company. The agreement was signed by Verte (by Gol as Director), Gol, Chaluts, Chaluts Family Trust (by Gol as Trustee), PGFT LLC (by Gol as Authorized Signatory), JGFT LLC (by Gol as Authorized Signatory). As a result of the SFNTA, TNJ held 33.33% of the common shares of Verte. Petitioners collectively would hold the remaining 66.67%.

Section 9.9 of the SFNTA provides, in pertinent part, that “[a]ny unresolved controversy or claim arising out of or relating to this Agreement, except as (i) otherwise provided in this Agreement, or (ii) any such controversies or claims arising out of either party’s intellectual property rights for which a provisional remedy or equitable relief is sought, shall be submitted to arbitration by one arbitrator mutually agreed upon by the parties, and if no agreement can be reached within thirty (30) days after names of potential arbitrators have been proposed by the

[AAA], then by one arbitrator having reasonable experience in corporate finance transactions of the type provided for in this Agreement and who is chosen by the AAA. The arbitration shall take place in the State of New York, County of New York, in accordance with the AAA rules then in effect, and judgment upon any award rendered in such arbitration will be binding and may be entered in any court having jurisdiction thereof.”

The Amended and Restated Stockholder Agreement (ARSA)

The ARSA, dated May 16, 2019, introduces two new entities: JG Group Holdings LLC (“JG Group”) and AC Group Holdings LLC (“AC Group”). Pursuant to a Share and Note Transfer Agreement (which Respondents claim is invalid), those entities hold the Verte shares that had been held by Gol and Chaluts as individuals. Although the ARSA defines the various Gol-related entities as “Gol” and the Chaluts-related entities as “Chaluts” (NYSCEF 6 at 1), Gol and Chaluts did not sign the ARSA as individuals. The signatories are Verte (by Gol as President), AC Group (by Chaluts as Member), Chaluts Trust (by Gol as Trustee), JG Group (by Gol as Member), PGFT LLC (by Gol as Authorized Signatory), JGFT LLC (by Gol as Authorized Signatory), and TNJ (by Kahlon as Authorized Signatory).

Section 8.12 of the ARSA contains an arbitration provision that is substantially the same as Section 8.12 of the ISA.

In the arbitration, Respondents seek a declaration that the ARSA is not a valid agreement, in part because Gol and Chaluts did not sign the agreement reflecting a purported amendment of the ISA. Respondents point out that the ISA, by its terms, “may only be amended, modified or supplemented and the observance of any term hereof may be waived by an agreement in writing

signed by *all* of the Initial Stockholders,” ISA § 8.10 (emphasis added), two of whom were Gol and Chaluts, who did not sign the ARSA.²

ANALYSIS

The threshold question in assessing a Petition to Stay Arbitration is whether there is a valid and binding arbitration agreement (CPLR 7503 [b] [“a party ... may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with ...”]; *see also Matter of Belzberg v Verus Investments Holdings Inc.*, 21 NY3d 626, 630 [2013] [“Arbitration is a matter of contract, ‘grounded in agreement of the parties.’”] [citations omitted]). That is a question for the Court to decide (*Henry Schein, Inc. v Archer and White Sales, Inc.*, 139 S Ct 524, 530 [2019] [“Before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists.”]).

If the Court finds that a valid arbitration agreement exists, the next question is whether the dispute comes within the scope of that agreement. The parties can, if they choose, delegate to the arbitrator (rather than the Court) the job of making that determination (*Zachariou v Manios*, 68 AD3d 539, 539 [1st Dept 2009] [“Whether a dispute is arbitrable is generally an issue for the court to decide *unless the parties clearly and unmistakably provide otherwise.*”] [emphasis added]; *see also Henry Schein*, 139 S Ct at 530 [“[i]f a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue”]).

² Petitioners also claim that “the ARSA was not duly executed by TNJ,” as “Julian Kahlon’s electronic signature was applied to a signature page without his authorization, and under circumstances which presented misleading versions and drafts of the ARSA to TNJ for review.” (Arb. Compl. ¶ 144.) For purposes of determining whether an agreement to arbitrate exists as between the parties, however, Respondents agreed to defer (for now) the argument that “the ARSA was a product of fraud.” (NYSCEF 36 at 3.)

1. There Are Agreements Mandating Arbitration of TNJ's Claims

The threshold question of whether there is a valid agreement mandating arbitration of disputes between TNJ and Petitioners is easily answered here. Indeed, there are three of them. As noted above, the ISA mandates arbitration of “any dispute, controversy or claim arising out of, relating to, or in connection with, this Agreement or any breach, termination or validity thereof.” Similarly, Section 9.9 of the SFNTA mandates arbitration of “[a]ny unresolved controversy or claim arising out of or relating to this Agreement.” Collectively, those agreements bind all of the Petitioners. Even the ARSA, upon which Petitioners rely to free Gol and Chaluts from arbitration, would broadly mandate arbitration of disputes between TNJ and all Petitioners *other than* Gol and Chaluts. Although there are certain loan-related Verte agreements that envisioned litigation in specified courts to resolve disputes, those agreements are not at issue here and it is plain that in their foundational *stockholder* agreements the Verte parties evinced a preference for arbitration.³

Gol and Chaluts’s contention that the Initial Stockholders Agreement cannot be the basis of an arbitration against them individually has some appeal. After all, the ARSA on its face amends and restates the ISA and provides that it “constitutes[s] the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersede[s] all prior and contemporaneous understandings and agreements and agreements, both written and oral, with respect to such subject matter.” ARSA § 8.07. Such an agreement would ordinarily

³ The question whether the arbitration provisions extend to claims asserted in the arbitration by the *Kahlons* (who did not sign any of the relevant agreements in their individual capacities) is discussed *infra*.

supersede and supplant the earlier agreement, at least with respect to the rights and obligations of the parties to both agreements.

However, the ARSA states that it is the “sole and entire agreement of *the parties*,” a phrase that on its face seems to apply only to signatories of the ARSA, which (according to Petitioners) does not include Gol or Chaluts. Respondents make a compelling argument that the ISA remains a valid and binding agreement with respect to arbitration among the Initial Stockholders, including Gol and Chaluts, for claims arising out of or related to ISA.⁴ The arbitration provision in the ISA expressly survives its termination (ISA § 7.02). Respondents also have raised credible arguments that the ARSA does not supersede the ISA – at least vis-à-vis arbitration against Gol and Chaluts – because it is not agreed to by *all* Initial Stockholders of the ISA (which include Gol and Chaluts), as is required by Section 8.10 of the ISA itself.

In addition, Gol’s assertion that the ISA has been entirely supplanted by the ARSA is inconsistent with the position taken by Verte (under Gol’s signature) in a Delaware Chancery Court Complaint filed on June 16, 2020 against TNJ and Jossef Kahlon seeking to enforce the terms of a Rider to the ISA. (NYSCEF 44).⁵ It would be inequitable to permit Petitioner to disclaim an agreement in one proceeding while seeking to enforce the same agreement in another one (*cf. GE Energy Power Conversion France SAS, Corp. v Outokumpu Stainless USA, LLC*,

⁴ Petitioners argue that Gol and Chaluts ceased to be parties to the ISA when they transferred their Verte shares to JG Group Holdings and AC Group Holdings, respectively. Putting aside whether those transfers were permissible, which Respondents contest, it will be for the arbitrator to determine whether the various agreements should be construed to release Gol and Chaluts from the arbitration provisions of the ISA and SFNTA. (*See infra*, section 2.)

⁵ At oral argument, counsel for Petitioners conceded that these two positions “can’t be squared,” and that “a party may be able to be held liable under the terms of the first agreement” (Oral Arg. Tr. at 4-5.).

140 S Ct 1637, 1644 [2020] [“Generally, in the arbitration context, ‘equitable estoppel allows a nonsignatory to a written agreement containing an arbitration clause to compel arbitration where a signatory to the written agreement must rely on the terms of that agreement in asserting its claims against the nonsignatory.’”] [quoting 21 Williston on Contracts § 57:19 (4th ed.)].

On balance, the ISA suffices to satisfy the threshold showing of an agreement to arbitrate. Beyond that, “a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator” (*Buckeye Check Cashing, Inc. v Cardegna*, 546 US 440, 449 [2006]).⁶

The question whether the SFNTA is a valid and enforceable agreement to arbitrate is more straightforward. The arbitration provision in that agreement is clear and broad and has been agreed to by all Petitioners. The principal question with respect to the SFNTA is whether the Arbitration Complaint raises claims that arise under or relate to that agreement. As described below, however, that is a question for the arbitrator to decide.

2. The Scope of the Arbitration Provisions is for the Arbitrator to Decide

As noted above, once it is determined that there is a valid arbitration agreement among the parties, the next question is whether the matter in dispute comes within the scope of the agreement. That, in turn, raises the question whether the parties have “clearly and unmistakably” reserved that question for decision by the arbitrator. The Court finds that they have.

As the Court of Appeals has observed: “Once it appears that there is, or is not, a reasonable relationship between the subject matter of the dispute and the general subject matter

⁶ Even assuming TNJ’s claims arise out of or relate to the ARSA rather than the ISA, there would be no reason to stay the arbitration in its entirety. It would be up to TNJ whether to continue in arbitration with their claims against the AJ Entities, leaving any claims against Gol and Chaluts to proceed in Court (if they choose to assert such claims).

of the underlying contract, the court's inquiry is ended. Penetrating definitive analysis of the scope of the agreement must be left to the arbitrators whenever the parties have broadly agreed that any dispute involving the interpretation and meaning of the agreement should be submitted to arbitration” (*Nationwide Gen. Ins. Co. v Inv'rs Ins. Co. of Am.*, 37 NY2d 91, 96 [1975]).

More specifically, the First Department has held that “[w]here 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’” (*Zachariou v Manios*, 68 AD3d 539, 539 [1st Dept 2009] [citations omitted]). That is precisely the case here.

The ISA, SFNTA, and ARSA all expressly incorporate the AAA Rules which, in turn, provide that the arbitrator “shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” AAA Rule 7, https://www.adr.org/sites/default/files/CommercialRules_Web.pdf. By expressly invoking such Rules, the parties have agreed to have the AAA arbitrator determine questions such as the applicability of the ISA, SFNTA, and ARSA arbitration agreements and whether Petitioners’ claims in the arbitration arise out of or relate to one or more of those agreements.⁷ (*Cf. Funk v Golden Hands, Inc.*, 168 AD2d 220, 221 [1st Dept 1990] [“once the parties to a broad arbitration clause have made a valid choice of forum, all questions with respect to whether the agreement to

⁷ Respondents ask this Court to determine that the ARSA is not a valid and enforceable agreement, which is one of their claims in the Arbitration Demand. As noted above, a challenge to the validity of the ARSA as a whole, including whether the agreement was fraudulently induced, is for the arbitrator not the Court to decide (*Buckeye Check Cashing*, 546 US at 449.)

arbitrate was subsequently terminated or abandoned are for the arbitrator, not the court, to resolve.”)].

Petitioners’ arguments to the contrary are not persuasive. First, *Parfi Holding AB v Mirror Image Internet, Inc.*, 817 A2d 149, 155 [Del 2002] does not preclude arbitration of Respondents’ claims for breach of fiduciary duty as a matter of Delaware law.⁸ In that case, the court held that fiduciary duty claims asserted by minority stockholders did not arise out of or in connection with an underwriting agreement. That fact-specific finding offers little or no guidance as to whether a particular claim for breach of fiduciary duty arises out of or relates to a *stockholder agreement* that broadly governs the rights and obligations of shareholders. (*See id.* at 156 [“An arbitration clause, no matter how broadly construed, can extend only so far as the series of obligations set forth in the underlying agreement.”])). Moreover, the court did not address whether, as here, the parties had delegated to the arbitrator the question whether the claims raised in arbitration came within the scope of the arbitration provision.

Second, the fact that the arbitration provisions in the agreements contain certain inapplicable exceptions such as for intellectual property disputes or “as otherwise provided in the agreement” or “except as they may be modified” does not undermine the rationale of cases such as *Zachariou*. For the matters that *are* covered by the arbitration provision, the parties opted for the application of AAA Rules, which include deference to the arbitrator to decide issues with respect to scope of the provision and the like.

Finally, Petitioners’ reliance on Loan Agreements and related documents with forum clauses pointing to litigation is unavailing. Respondents do not rely on those agreements. The

⁸ The ISA, SFNTA, and ARSA choose Delaware as the governing law.

stockholder agreements that are the subject of the claims in this dispute have broad, straightforward arbitration provisions that incorporate AAA Rules. Under *Zachariou*, that is sufficient to indicate an intent to adopt the AAA Rule with respect to deferring certain decisions – including whether the dispute arises under these agreements – to the arbitrator.

3. There is No Agreement to Arbitrate the Kahlons' Claims

Unlike TNJ, the Kahlons do not point to any agreement with Petitioners that contains a mandatory arbitration provision. Nevertheless, they argue that they should be permitted to enforce the arbitration provisions of the ISA and SFNTA because they are “the parties of interest behind TNJ, both as the sole shareholders of the corporation, and as corporate representatives and signatories.” (Resp. Br. in Opp., NYSCEF 11, at 16.) There is, however, no legal support for that proposition.

As a general matter, “[a] party to a written arbitration agreement may not be compelled to arbitrate disputes which arise thereunder with a nonparty.” (*Funk v Golden Hands, Inc.*, 168 AD2d 220, 221 [1st Dept 1990]; see also *Groval Knitted Fabrics, Inc. v Alcott*, 39 AD2d 524, 524 [1st Dept 1972] [“It is axiomatic that arbitration is consequent upon an agreement to arbitrate and no one can be forced to arbitrate with one whom he has not contracted to do so”], *affd sub nom. Groval Knitted Fabrics v Alcott*, 31 NY2d 796 [1972]). Under that straightforward principle, Petitioners cannot be forced to arbitrate with the Kahlons because there is no agreement between Petitioners and the Kahlons (other than as shareholders of TNJ) to do so.

The Kahlons’ reliance on *Hirschfeld Prods. v Mirvish*, 88 NY2d 1054 [1996], is misplaced. In that case, the Court of Appeals held that non-signatory corporate officer defendants could compel arbitration of a dispute arising out of a contract between their corporate employer and the plaintiff. In reaching that conclusion, the court observed that “[t]he Federal

courts have consistently afforded agents the benefit of arbitration agreements entered into by their principals to the extent that the alleged misconduct relates to their behavior as officers or directors or in their capacities as agents of the corporation. The rule is necessary not only to prevent circumvention of arbitration agreements but also to effectuate the intent of the signatory parties to protect individuals acting on behalf of the principal in furtherance of the agreement.” (*Id.* at 1056 [citations omitted].); *see also Huntsman Intl. LLC v Albemarle Corp.*, 163 AD3d 420, 421 [1st Dept 2018] [affirming grant of a motion by non-signatory officer defendants to compel arbitration “because any breach of [the agreement] would have to be the result of an action or inaction attributable to [the officers], lv to appeal dismissed in part, denied in part, 32 NY3d 1040 [2018)].”⁹

Hirschfeld and *Huntsman* do not, as Respondents suggest, stand for the proposition that “[b]ecause Jossef and Julian seek to vindicate their rights as corporate representatives of TNJ, they may avail themselves of the arbitration agreement to which TNJ is a party.” (Resp. Br. at 16.) At most, they stand for the proposition that in certain circumstances a non-signatory *defendant* in a civil action may be permitted to compel arbitration of a claim that is, effectively, against the signatory (acting through its non-signatory corporate officer). Respondents have not cited any cases applying that rationale in the context of a non-signatory *plaintiff* seeking to enforce an arbitration agreement as a sword rather than as a shield.

⁹ There are also situations in which an arbitration agreement can be enforced *against* a non-signatory. For example, “[u]nder the direct benefits theory of estoppel, a nonsignatory may be compelled to arbitrate where the nonsignatory ‘knowingly exploits’ the benefits of an agreement containing an arbitration clause, and receives benefits flowing directly from the agreement.” (*Belzberg*, 21 NY3d at 631).

Here, the Kahlons are not faced – in this case, at least – with claims of “misconduct” or breach of contract based on their association with TNJ or Verte.¹⁰ Accordingly, *Hirschfeld* and *Huntsman* do not apply. To the extent the Kahlons have affirmative claims for relief against Petitioners that are distinct from those held by TNJ as a signatory of the relevant agreements, their claims are not the subject of a valid arbitration agreement.

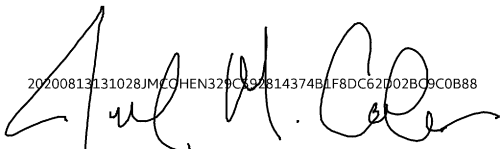
Accordingly, the Court sees no reason to stray from the general rule that Respondents cannot be compelled to arbitrate against parties (the Kahlons) with whom they have no agreement mandating arbitration. The Petition to stay the arbitration is granted to the extent it applies to claims asserted on behalf of the Kahlons.

It is, therefore

ORDERED that the Petition to Stay Arbitration is **denied** with respect to claims asserted in arbitration by Respondent TNJ Holdings Inc. and **granted** with respect to claims asserted in arbitration by Respondents Jossef and Julian Kahlon.

This constitutes the decision and order of the Court.

8/13/2020
DATE


20200813131028JMCCHEN329C92814374B1F8DC62002BC9C0B88
JOEL M. COHEN, J.S.C.

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

¹⁰ The Court does not address whether the Kahlons could successfully seek to compel arbitration in Verte-related cases in which they are named as defendants. That is beyond the scope of the Petition.