

Govender v Brooklyn Immunotherapeutics LLC

2021 NY Slip Op 32278(U)

November 9, 2021

Supreme Court, New York County

Docket Number: Index No. 650847/2021

Judge: Laurence L. Love

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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. LAURENCE LOVE PART 63M

Justice

-----X

DHESH GOVENDER,

Plaintiff,

- v -

BROOKLYN IMMUNOTHERAPEUTICS LLC, CHARLES
CHERINGTON, LUBA GREENWOOD, GEORGE DENNY,
NICHOLAS SINGER, YIANNIS MONOVOUKAS

Defendants.

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INDEX NO. 650847/2021

MOTION DATE 10/13/2021
10/13/2021

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38

were read on this motion to/for COMPEL ARBITRATION.

Upon the foregoing documents, it is

The following read on i) motion sequence no.1, defendants’ motion; to compel arbitration, CPLR 7503(a), and stay prosecution; or in the alternative, dismissing plaintiff’s claims for fraud, *quantum meruit*, and discrimination, for failure to state a claim, CPLR 3211(a)(7); and plaintiff’s cross-motion for leave to file a second amended complaint; and ii) motion sequence no. 2, plaintiff’s Order to Show Cause to permit plaintiff Dhesh Govender to file under seal, 22 NYCRR 216.1, the affidavit of financial hardship dated August 9, 2021.

A Microsoft Virtual Teams Appearance was held on October 13, 2021 at 11:00 AM where all parties were present.

An amended verified complaint states causes of action for: i) breach of contract, ii) breach of contract, iii) fraud, iv) quantum meruit, v) discrimination – NYC Administrative Code, vi) discrimination – NYC Administrative Code, and vii) discrimination – New York State Law (see NYSCEF Doc. No. 3). Defendants filed motion sequence no. 1 to compel arbitration.

Plaintiff worked as an independent contractor for Brooklyn Immunotherapeutics LLC pursuant to an agreement dated October 26, 2020 (see NYSCEF Doc. No. 12). The consulting agreement has an arbitration provision, “[c]onsultant and the Company agree to submit to arbitration and to arbitrate any and all controversies ... of the American Arbitration Association (“AAA”) (see NYSCEF Doc. No. 12 Par. 14 Sec. f).

A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration (see CPLR 7503(a)). In deciding an application to compel arbitration pursuant to CPLR 7503(a), the court is required to first make a determination whether the parties have entered into a valid arbitration agreement, and, if so, whether the issue sought to be submitted to arbitration falls within the scope of that agreement (see *Koob v. IDS Fin. Services, Inc.*, 629 N.Y.2d 426, 430 [1st Dep’t 1995]).

Plaintiff’s affirmation highlights that the arbitration clause is void under CPLR 7515 as it would require arbitration of plaintiff’s statutory discrimination claims (see *Newton v. LVMH Moet Hennessy Louis Vuitton Inc.*, 192 A.D.3d 540 [1st Dep’t 2021]), and that the arbitration costs prevent plaintiff from pursuing the claims (see *Green Tree Financial Corp – Ala. V. Randolph*, 531 U.S. 79 [2000]).

Defendants’ reply points to *Fuller*, “the FAA ... preempts any inconsistent state law. Thus, CPLR 7515 cannot block ... from enforcing its arbitration agreement with plaintiff to arbitrate his sexual harassment claims” (see *Fuller v. Uber Tech., Inc.*, No. 150289/2020 [Sup. Ct. N.Y. Cty. Sept. 25, 2020]).

When “a party seeks to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive, that party bears the burden of showing the likelihood of incurring such costs. Mere risk that the party will be saddled with prohibitive costs is too

speculative to justify the invalidation of an arbitration agreement” (see *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 92 [2000]). In the case at bar there is simply too much unknown as to what the cost maybe related to the arbitration process thus, due to mere speculation of potential cost is insufficient basis to preclude same from proceeding.

The order to show cause, motion sequence no. 2, to permit plaintiff to file his affidavit of financial hardship under seal per 22 NYCRR 216.1, “defendants do not oppose the issuance of an order” (see NYSCEF Doc. No. 40).

ORDERED that defendant’s motion to compel arbitration and to stay this action is granted; and it is further

ORDERED that plaintiff DHESH GOVENDER shall arbitrate his claims against defendants BROOKLYN IMMUNOTHERAPEUTICS LLC, CHARLES CHERINGTON, LUBA GREENWOOD, GEORGE DENNY, NICHOLAS SINGER, and YIANNIS MONOVOUKAS in accordance with the contract; and it is further

ORDERED that all proceedings in this action are hereby stayed, except for an application to vacate or modify said stay; and it is further

ORDERED that either party may make an application by order to show cause to vacate or modify this stay upon the final determination of the arbitration.

ORDERED that plaintiff’s cross-motion for leave to file a second amended complaint is DENIED as moot; and it is further

As explained in the accompanying memorandum opinion the court, having determined, in accordance with Part 216 of the Uniform Rules for the Trial Courts, that good cause exists for the sealing in part of the file in this action and the grounds therefor having been specified, it is now

ORDERED that the Clerk of the Court is directed, upon service on him (60 Centre Street, Room 141B) of a copy of this order with notice of entry, to seal THE AFFIDAVIT of FINANCIAL HARDSHIP of PLAINTIFF DHESH GOVENDER, Doc. No. 37 in the docket of the New York State Courts Electronic Filing System and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

11/9/21/2021
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: