

Merhi v Rosario

2022 NY Slip Op 32176(U)

July 8, 2022

Supreme Court, New York County

Docket Number: Index No. 156472/2021

Judge: Shlomo Hagler

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This opinion is uncorrected and not selected for official publication.

Except as this Arbitration Agreement otherwise provides, Insperity, you and Client Company mutually agree to resolve by arbitration the following, which constitute “Covered Claims”: (a) all claims, or disputes related to or arising out of my application for employment, my employment, or the termination of my employment with Insperity and/or Client Company, (b) all claims that Insperity and/or Client Company may have against me and/or (c) all claims that I may have against Covered Persons. “Covered Persons” means: (i) Insperity and its parents, subsidiaries, affiliates, and dbas, and their respective officers, directors, employees, or agents, (ii) Insperity’s benefit plans, plan sponsors, fiduciaries, administrators, and their respective affiliates or agents, and/or (iii) Client Company and its officers, directors, employees, affiliates, or agents. Any and all Covered Persons may enforce this Arbitration Agreement. All Covered Claims will be decided by a single arbitrator through final and binding arbitration and not by way of court or jury trial.

(Rosario Aff. Ex. A, paragraph 1).

The Mutual Arbitration Agreement defines “Covered Claims”, including torts and defamation claims asserted in the complaint, as follows:

This Arbitration Agreement is intended to be as broad as legally permissible, and, except as it otherwise provides, Covered Claims includes, but are not limited to, any and all past, present, and future claims or disputes involving Covered Persons, including contract claims; *tort, defamation* and other common law claims; wage and hour claims, including claims relating to pay, minimum wage,

overtime, overtime exemption classification, wage penalties, and meal and rest breaks; discrimination, harassment, and retaliation claims, including claims based on race, creed, color, religion, sex, age, disability, workers compensation, leave status, national origin, ancestry, sexual orientation, marital status, veteran military reserve status, or any other characteristic protected by federal, state, or local law; claims arising under the Defend Trade Secrets Act, Fair Credit Reporting Act, Civil Rights Act of 1964, Americans with Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act (except for claims for employee benefits under any benefit plan sponsored by the company and covered by the Employee Retirement Income Security Act of 1974), Affordable Care Act, Genetic Information Nondiscrimination Act, Uniformed Services Employment and Reemployment Rights Act, Worker Adjustment and Retraining Notification Act, Older Workers Benefit Protection Act of 1990, Occupational Safety and Health Act, Consolidated Omnibus Budget Reconciliation Act of 1985, False Claims Act; And claims or causes of action arising under or relating to any and all federal, state, or local constitutional, statutory, regulatory, or common laws now or hereafter recognized. The arbitrator, and not any federal, state, or local court, or agency, shall have exclusive authority to resolve any dispute relating to the validity, applicability, enforceability, unconscionability, or waiver of this arbitration agreement. (Emphasis Added).

(Rosario Aff. Ex. A, paragraph 1A).

The issues before this Court on this motion are: (1) whether there is a valid arbitration agreement and (2) whether the dispute is within the scope of the arbitration agreement. CPLR § 7503(a). Here, it is clear that there is valid and enforceable arbitration agreement covering plaintiffs and defendant. Plaintiffs' strained argument that the subject arbitration agreement is unconscionable, which plaintiffs mandated as an incidence of defendant's employment, lacks credulity and is mere sophistry. The causes of action in the complaint for gross negligence, tortious interference with contract, and defamation are explicitly enumerated as covered under the broad scope of the subject arbitration agreement. This Court rejects plaintiffs' argument that defendant's post-termination conduct, such as alleged defamatory comments to patients of plaintiffs in order to persuade them to transfer to plaintiff's competitor, is not encompassed within the scope of the subject arbitration agreement, as it certainly "related to or arising out of the employment" relationship. (*Tong v S.A.C. Capital*, 52 AD3d 386 [1st Dept. 2008]).


Accordingly, it is

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

ORDERED that Plaintiffs Dr. Zaher Merhi and Rejuvenating Fertility NY PLLC d/b/a Rejuvenating Fertility Center shall arbitrate their claims against Defendant Justine Rosario in accordance with Mutual Arbitration Agreement entered into in or about October,2020 (NYSCEF # 14); 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.

<u>7/8/2022</u> DATE		 SHLOMO HAGLER, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE