

**Desseaux v Muse Mgt., Inc.**

2023 NY Slip Op 30816(U)

March 14, 2023

Supreme Court, New York County

Docket Number: Index No. 654821/2022

Judge: Arlene P. Bluth

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

**PRESENT:** HON. ARLENE P. BLUTH **PART** **14**

*Justice*

-----X

CLEMENTINE DESSEAUX

Plaintiff,

- v -

MUSE MANAGEMENT, INC.,

Defendant.

-----X

**INDEX NO.** 654821/2022

**MOTION DATE** N/A

**MOTION SEQ. NO.** 001

**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

were read on this motion to/for COMPEL ARBITRATION.

Defendant’s motion to compel arbitration is granted.

**Background**

Plaintiff works as a model and contends that defendant used to be her manager. She alleges that she stopped using defendant’s services but that defendant refused to pay her the remaining amount owed to her. Allegedly, plaintiff’s clients would forward payments to defendant, who would then transfer the money to plaintiff.

Defendant contends that the parties’ agreement contains a clear arbitration clause which compels this dispute to be resolved in arbitration.

In opposition, plaintiff acknowledges that the agreement contains an arbitration clause but insists that plaintiff’s primary language is not English so she should not be bound by the agreement. She also complains that the title of paragraph containing the arbitration clause is confusing (it is titled Governing Law: Consent to Jurisdiction). Plaintiff characterizes that

agreement is one-sided as it permits defendant to sue plaintiff. She complains that defendant failed to seek mediation as required under the arbitration clause.

In reply, defendant contends that there is no requirement that an arbitration clause be labeled solely as an arbitration clause. It claims that a prior litigation cited by plaintiff dealt with purported non-solicitation concerns and that case was discontinued.

### **Discussion**

“It is well settled that a court will not order a party to submit to arbitration absent evidence of that party's unequivocal intent to arbitrate the relevant dispute and unless the dispute is clearly the type of claim that the parties agreed to refer to arbitration” (*Brady v Williams Capital Group, L.P.*, 64 AD3d 127, 131 [1st Dept 2009], *affd as mod*, 14 NY3d 459 [2010]).

Here, the subject provision of the management agreement between the parties provides that:

“This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any dispute, claim or controversy arising out of or relating to this Agreement or between Manager and Talent will be referred first to non-binding and confidential mediation before a single mediator chosen upon the mutual consent of both parties. The mediator chosen by the parties shall have either judicial experience or relevant industry experience. Mediation fees will be divided equally between the parties and each party will bear its own legal fees. Nothing in this provision precludes the Manager from seeking injunctive relief at any time. Any dispute, claim or controversy arising out of or relating to this Agreement not resolved through mediation shall be settled by arbitration administered by JAMS pursuant to its Arbitration Rules and Procedures. Any decision rendered by the arbitrator shall be conclusive and binding upon the parties and there shall be no right of appeal therefrom in any forum. Any arbitration hereunder shall be conducted in New York, New York and the arbitrator shall apply the laws of the State of New York, without giving effect to its principles of conflicts of laws. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, legal representatives and assigns. In the event that Manager deems it necessary to retain the services of an attorney to enforce or interpret this Agreement, Talent agrees to pay all attorneys' fees and costs incurred by Manager.” (NYSCEF Doc. No. 8, ¶ 16).

The parties do not dispute that the agreement contains an arbitration clause and that the instant dispute—payments allegedly owed to plaintiff that defendant has not turned over—falls under the auspices of this agreement. That compels the Court to grant the motion.

Plaintiff's assertion that she does not understand English is, in the first instance, not supported in admissible form. It is merely an allegation asserted by her attorney and therefore cannot be considered. Even if the Court could consider this conclusory and convenient argument, it would not change the Court's decision. "In the absence of fraud, duress or some other wrongful act by a party to a contract, a signer of an agreement is deemed to be conclusively bound by its terms whether or not he or she read it. Moreover, an inability to understand the English language, without more, is insufficient to avoid this general rule" (*Maines Paper and Food Serv. Inc. v Adel*, 256 AD2d 760, 761, 681 NYS2d 390 [3d Dept 1998]).

The circumstances here suggest that plaintiff signed an agreement for defendant to be her manager. She cannot get the benefit of that agreement for years—plaintiff admits defendant was her manager—and then suddenly claim she does not want to be bound by a specific provision of that agreement she does not like. In fact, the complaint specifically alleges that "Defendant breached its contract with the plaintiff" (NYSCEF Doc. No. 1, ¶ 23). She cannot simultaneously cite a contract as the basis for a cause of action and also claim she is not bound by the provisions in that contract.

Plaintiff's other contentions are wholly without merit. She did not cite any binding case law for the proposition that an arbitration clause is invalid because the title of a paragraph containing an arbitration provision does not contain the word "arbitration." That defendant started another lawsuit is also immaterial. There is no basis to find that defendant waived its right to seek arbitration.

And, to the extent that plaintiff claims that defendant did not seek mediation, that is an argument plaintiff can raise before the arbitrator. Certainly, the agreement requires that the parties attempt to mediate before going to arbitration. But that is not a reason to ignore the entire paragraph, which clearly and unmistakably requires arbitration of this dispute.

Accordingly, it is hereby


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

ORDERED that plaintiff shall arbitrate her claims against defendant in accordance with the subject 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.

The Court will set a control date of September 12, 2023 at 10 a.m. Even though the case is stayed, inputting a future date helps ensure the case does not get lost. The parties should upload an update about the status of the arbitration by September 5, 2023.

<u>3/14/2023</u> <b>DATE</b>			 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE