

**Brach v Wydra**

2023 NY Slip Op 30874(U)

March 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 528670/22

Judge: Lawrence Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 21<sup>st</sup> day of March, 2023.

P R E S E N T:

HON. LAWRENCE KNIPEL,  
Justice.

-----X

MENDEL BRACH,  
Petitioner,

ORDER

For an Order, Pursuant to Articles 76 and 75 of the CPLR, Compelling Arbitration in Accordance with an Agreement Between the Parties,

Index No. 528670/22

Mot. Seq. No. 3

-against-

EDWARD WYDRA and MARTIN WYDRA,  
Respondents.

-----X

The following e-filed papers read herein:

NYSCEF Doc No.:

Order to Show Cause, Affirmations, and Exhibits Annexed	___	<u>27-37</u>
Affirmation in Opposition and Exhibits Annexed	_____	<u>38-41</u>
Additional Submissions to the Court	_____	<u>42-43</u>

Petitioner Mendel Brach (“Brach”) moves, by order to show cause, dated November 15, 2022, for an order: (1) pursuant to CPLR 602 (a), consolidating this proceeding with a prior proceeding entitled *Wydra v Brach*, index No. 27286/10 (Sup Ct, Kings County) (the “prior proceeding”); (2) in effect, pursuant to CPLR 2222 (e), granting leave to renew Brach’s prior order to show cause, dated October 26, 2022 (in Seq. No. 2) (the “prior order to show cause”) (NYSCEF Doc No. 17), which was for an order: (i) pursuant to CPLR articles 75 and 76, to compel respondents Edward Wydra and Martin

Wydra (the “Wydras”) to appear for arbitration before the Rabbinical Court of Kollel Horabonim (the “Bais Din”); (ii) pursuant to CPLR article 75, compelling arbitration before the Bais Din; (iii) issuing a preliminary and permanent injunction directing that, pending further order of the Bais Din and this Court, all proceedings in this Court (including in the prior proceeding) cease in accordance with the explicit directions of the Bais Din; and (iv) awarding Brach costs, attorney’s fees, disbursements, and other expenses incurred in this proceeding; and (3) staying, pending further order of this Court, entry of the proposed judgment, noticed for settlement on November 14, 2022 in the prior proceeding. Respondents Wydras object.

The *initial* branch of the instant order to show cause which is for consolidation of the instant proceeding with the prior proceeding is *denied*. As evidenced by the Second Judicial Department’s recent ruling in *Matter of Wydra v. Brach*, 203 AD3d 1169 (March 30, 2022) (the “March 2022 appellate order”), all appeals in the prior proceeding (which had culminated in the entry of the April 2018 amended judgment in the amount of approximately \$20 million in favor of the Wydras and their affiliates as against Brach and his affiliates) were exhausted. The pendency of a motion by Brach for leave to reargue the March 2022 appellate order and/or for leave to further appeal it to the Court of Appeals (Petition, ¶ 25) does not change the current finality of the March 2022 appellate order. Subsequently, Justice Devin P. Cohen of this Court, in a comprehensive decision and order, dated July 27, 2022 (the “July 2022 motion court order”), addressed certain outstanding discovery issues for purposes of enforcing the judgment in the prior proceeding. By notice of appeal, dated September 6, 2022, nonparty Sarah Brach appealed the July 2022 motion

court order to the Second Judicial Department. More fundamentally, however, the prior proceeding has been – and remains – a standalone matter not amenable to consolidation with the instant proceeding, which, as more fully set forth in the petition, is based on the recent (*i.e.*, post-March 2022 appellate order and the post July 2022 motion court order) Bais Din directive, dated September 8, 2022 (the “Bais Din directive”), that Moshe (Martin) Wydra appear before it to answer Brach’s newly levied charges against him in connection with the original Bais Din arbitration which formed the basis of the prior proceeding and which (as noted above) culminated in the judgment as against Brach and his affiliates (NYSCEF Doc No. 33 [Bais Din directive] and 1 [Petition]).

The *next* branch of the instant order to show cause which is for renewal of the prior order to show cause is denied for two reasons. First, as the Court cogently explained in denying the prior order to show cause:

“While the parties may have been bound to submit their disputes to arbitration, collection on a [heretofore] rendered judgment [in the prior proceeding] is not such a dispute. The [arbitration] dispute was resolved by the rendering of judgment [in the prior proceeding]. Accordingly, the [prior] OSC is denied.

This determination is without prejudice to movant[’s] seeking vacatur of said judgment (on appropriate grounds) [in the prior proceeding].”

(NYSCEF Doc No. 23) (emphasis in the original).

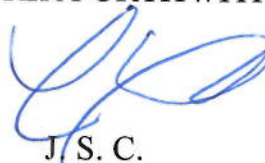
Second, it is for the Court presiding over the prior proceeding (rather than for this Court presiding over the instant proceeding) to address the legal question of whether the Bais Dein directive constitutes an impermissible collateral attack on the arbitration award.

in the prior proceeding (*see Oppenheimer & Co. Inc. v Pitch*, 129 AD3d 621, 622 [1st Dept 2015]).

The *final* branch of the order to show cause which is for a stay of entry of the proposed judgment is *denied*. As noted, the instant proceeding is not a proper vehicle for challenging the propriety of the confirmation of the arbitration award in the prior proceeding.

This constitutes the order of the Court.

ENTER FORTHWITH,



J. S. C.

HON. LAWRENCE KNIPEL  
ADMINISTRATIVE JUDGE