

**Menite v Sahara Plaza LLC**

2023 NY Slip Op 32254(U)

July 5, 2023

Supreme Court, New York County

Docket Number: Index No. 157669/2022

Judge: Dakota D. Ramseur

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR PART 34M

Justice

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JAMES MENITE

Plaintiff,

- v -

SAHARA PLAZA LLC,

Defendant.

INDEX NO. 157669/2022
MOTION DATE 03/14/2023
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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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

were read on this motion to/for DISMISSAL

In September 2022, plaintiff James Menite commenced the instant action against his former employer, defendant Sahara Plaza LLC d/b/s the Plaza Hotel, alleging that defendant violated New York State and New York City Human Rights Laws by discriminating against him based on his age and disability and for terminating his employment in retaliation for complaining about said discrimination. In this motion sequence (001), defendant moves to dismiss pursuant to CPLR 3211 (a) (5) on grounds that plaintiff released his rights to pursue these claims when he entered into a voluntary settlement agreement (hereinafter, "VSA" or the "settlement agreement") with defendant in November 2019. (NYSCEF doc. no. 5, notice of motion.) In the alternative, should the Court find dismissal unwarranted, defendant also moves to compel arbitration pursuant to CPLR 7503 (a) based on the arbitration clause in the settlement agreement. Plaintiff opposes the motion and cross moves for leave to amend the complaint pursuant to CPLR 3025 and add a claim for fraudulent inducement. For the following reasons, defendant's motion to dismiss is granted, rendering the motion to compel moot, and plaintiff's cross motion to amend is denied.

FACTUAL BACKGROUND

From October 2014 to September 2019, plaintiff worked as a bartender at the Plaza Hotel's Palm Court Bar located on Fifth Avenue and Central Park South. During his employment, plaintiff (who during this time was in his early-to-mid 50s) alleges that he was a stellar employee, whose knowledge as a mixologist helped develop new drinks and innovation that increased overall business for the Plaza Hotel. Sometime towards the end of his employment, plaintiff became aware of several younger female servers and bartenders stealing tips and reported it to management, who failed to investigate or take disciplinary action. (NYSCEF doc. no. 2 at 36-42, complaint.) These same employees, plaintiff alleges, created a hostile work environment by treating him disrespectfully and calling him derogatory names. (Id. at 47-48.) Around this same time, plaintiff required treatment for a hernia condition and cataracts

and notified defendant that he would need to take leave to get surgery. Defendant approved the medical leave and gave him a return-to-work date of November 19, 2019. (*Id.* at 34-35.) Before plaintiff took medical leave but after reporting the younger servers to management and Human Resources, someone—allegedly one of the younger servers—anononymously reported to defendant that plaintiff had stated he “was going to bring a gun to work.” (NYSCEF doc. no. 18 at 61, amended complaint.) Defendant did not investigate the origin of the complaint or its legitimacy. (*Id.* at 44.) Nonetheless, on September 9, 2019, defendant sent plaintiff a termination letter in the mail, in which defendant not only informed him that he would not return to work after taking medical leave but also explained that “all monies owed to you will be processed on your final check.” (NYSCEF doc. no. 24, termination letter.) Defendant then sent plaintiff a check for approximately \$993.00 and \$4,864, representing respectively his final paycheck and the monetary value of accrued vacation days. (NYSCEF doc. no. 25, paycheck; NYSCEF doc. no. 26, vacation pay.)

On November 1, 2019, plaintiff, Sean O’Toole, his New York & Motel Trades Council, AFL-CIO delegate, Union delegate Randy Sullivan, and counsel for defendant held a meeting, wherein plaintiff and defendant executed the voluntary settlement agreement. Per paragraph 1, the parties agreed that plaintiff’s “discharge is hereby converted to a voluntary resignation for personal reasons” and in return “the Hotel agrees to pay [plaintiff] \$6,000... in full and complete satisfaction of any and all matters arising out of the [his] employment at the hotel.” (NYSCEF doc. no. 10 at ¶ 1, voluntary settlement agreement.) Paragraph 2 then provides that the Hotel would provide him with a neutral letter of reference upon request; paragraph 5 withdraws any grievance and any pending requests for information by plaintiff’s union; in paragraph 7, plaintiff “acknowledges that he has had an opportunity to consider the Agreement and to consult with an attorney before signing it and was given a period of at least twenty-one days to do so. By signing the agreement, [plaintiff] waives the 21-day period.” Paragraph 9 requires “any and all disputes between parties regarding the interpretation or application of this VSA shall be submitted to final and binding arbitration. Perhaps the most relevant paragraph, though, is 6 (a), which describes the claims plaintiff released:

“This VSA satisfies any and all claims and serves as a general release by [plaintiff] against...the Hotel, its parent(s) and any of its subsidiaries, affiliates, or related entities for any and all matters arising out of [plaintiff’s] employment with the Hotel, including the separation therefrom, under federal, state and local labor, employment and discrimination laws and regulations.” (*Id.* at ¶6.)

Thereafter, plaintiff commenced the instant action, alleging that defendant violated New York State and City Human Rights Laws (“NYSHRL” and “NYCHRL,” respectively) by subjecting him to a higher standard of employment than his younger female colleagues (an age-based violation), for terminating his employment after requesting time off for surgery (a disability-based violation), and for retaliating against him for reporting these violations. In asserting these causes of action, plaintiff’s complaint did not mention the settlement agreement. Under the settlement agreement, defendant moves pursuant to CPLR 3211 (a) (5) and asserts that plaintiff released it from liability for the causes of action described above. In opposition, plaintiff contends that defendant, through fraud, duress, and/or misrepresentation, induced him to sign the

release waiving all causes of action related to his employment.<sup>1</sup> Accordingly, plaintiff argues the settlement agreement is not enforceable—both as to the release clause in paragraph 6 and the arbitration clause in paragraph 9—and as such, the Court should not only deny the branch of defendant’s motion for dismissal but also the branch, in the alternative, to compel arbitration. Since the Court finds that the settlement agreement is, in fact, enforceable, the Court grants defendant’s motion to dismiss and denies plaintiff’s cross motion to amend his complaint.

### DISCUSSION

Courts will enforce clear, unambiguous settlement agreements according to their terms so long as both parties entered ‘knowingly and voluntarily.’ (See *Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 98 [1st Dept 2006]; *Skluth v United Merchants & Mfrs., Inc.*, 163 AD2d 104, 106 [1st Dept 1990].) Where a party has entered a settlement agreement that releases certain claims but later seeks to litigate those same claims, the Court must dismiss those claims pursuant to CPLR 3211 (a) (5). (See CPLR 3211 [a] [5] [“A party may move for summary judgment dismissing one or more causes of action on the ground that...the cause of action may not be maintained because of...release”]; *Inter-Reco, Inc. v Lake Park 175 Froehlich Farm, LLC*, 106 AD3d 955, 955 [2d Dept 2013] [“A valid release constitutes a complete bar to an action on a claim which is the subject of the release”].)

As with any agreement, settlement agreements are governed by principles of contract law and may be attacked for being the product of fraud, duress, misrepresentation, and undue influence. (*Id.*; *Global Mins.*, 35 Ad3d at 98, citing *Hack v United Capital Corp.*, 247 AD2d 300, 301 [1st Dept 1998].) Where fraud, duress, etc., procured the release, a CPLR 3211 (a) (5) motion to dismiss based such a release should be denied. (*Bloss v Va’ad Harabronim*, 203 AD2d 36, 37 [1st Dept 1994].) Moreover, where a party has secured the release inequitably—for example, “where the releasor has had little time for investigation or because of the existence of overreaching or unfair circumstances”—a release will not be deemed to bar the asserted claims. (*Hayes v Garez*, 304 AD2d 714 [2d Dept 2003]; *Johnson v Lebanese Am. Univ.*, 84 AD3d 427, 430 [1st Dept 2011] [recognizing the ‘fairly and knowingly made’- requirement extends to circumstances less than fraud but in which it would be inequitable to enforce a release].)

Defendant has satisfied its initial burden of demonstrating that the settlement agreement, specifically paragraph 6, covers the causes of action that plaintiff seeks to litigate herein. The claims that paragraph 6 bars include, “any and all matters arising out of” plaintiff’s employment “including the separation” “under state and local employment and discrimination laws.” (See *Johnson*, 84 AD 3d at 430.) Indeed, plaintiff’s opposition does not dispute that the terms of the purported agreement cover NYSHRL and NYCHRL claims. Accordingly, the only issue before the Court is whether defendant improperly induced plaintiff into signing the release through fraud, duress, misrepresentation, or by other inequitable methods.

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<sup>1</sup> Plaintiff raises duress and fraudulent inducement as reasons for why the settlement agreement is not enforceable for the first time in his opposition papers. Plaintiff omitted any reference to the settlement agreement in the original complaint. Hence, plaintiff now cross moves to amend the complaint to include a fraudulent inducement cause of action.

Plaintiff's argument that the settlement agreement is unenforceable due to duress, fraudulent inducement, and/or inequitable principles is primarily based upon the holding of the Appellate Division, First Department in *Johnson v Lebanese Am. Univ.* There, the plaintiff raised a triable issue of fact<sup>2</sup> as to whether the plaintiff fairly and knowingly released the defendant from liability for NYSHRL and NYCHRL claims (*Id.* at 428.). To the First Department, several factors were particularly important in its consideration. In his affidavit, the plaintiff had stated that he understood the "settlement payment" that he received to instead be backpay already owed to him for time worked and unused vacation and sick time. (*Id.* at 430 ["If plaintiff's version of events is correct... Plaintiff maintains that he was only paid what he was already owed, and that he was given no additional benefits that would have constituted consideration for a release of discrimination claims"].)

Moreover, the terms of agreement did not refute this understanding because the agreement only referred to the plaintiff's "services" (*Id.* ["If the parties indeed intended the release to settle payment and benefits issues only, then it makes sense that they used language releasing claims related to the 'services' plaintiff provided"].) The court further found that questions of fact existed as to whether it would be fair to enforce the release given that plaintiff was given "a take-it-or-leave-it" proposition of signing the release or not receiving payment. However, this was only because it would constitute "overreaching" for the defendant to tie the payment of already accrued wages to executing the release. (*Id.* at 431)

If it is not so far clear, from the Court's perspective, the most important words from the First Department in *Johnson* are "accepting as true plaintiff's statement that the release was prepared specifically in connection with wages and benefits owed to him at the time of his termination." (*Id.* at 433.) The entire basis for the holding in *Johnson* is that the plaintiff there credibly believed that the settlement agreement was for nothing more than what he was already owed. In differentiating the plaintiff in *Johnson* from the one in *Skluth v United Merchants* (163 AD2d at 104), the court explained that the *Skluth* plaintiff could not credibly argue the release he executed did not cover discrimination claims because the negotiated severance package was more generous than he was already entitled to, and it was obvious that the employer's incentive was a release of claims. (*Johnson*, 84 AD3d at 432.)

Here, plaintiff is more like the one in *Skluth* than *Johnson*, since it is clear from the pleadings that he had no reasonable basis to believe that the November 1st meeting was to settle any outstanding wages. Pursuant to the September 9, 2019 termination letter, defendant informed plaintiff that all monies owed would be settled on the final check that defendant then sent later that same week. (*See* NYSCEF doc. nos. 24, 25, and 26.) It therefore strains credulity, that Plaintiff, two months later in November, could have reasonably believed that he was "agreeing to resign and accept back wages" (NYSCEF doc. no. 19, plaintiff's opposition) or that the \$6,000 payment was anything other than consideration for the release. Moreover, unlike the plaintiff in *Johnson*, who discovered a possible discrimination claim five months *after* his termination when a coworker informed him of a possible discriminatory motive for his termination, the entirety of plaintiff's discrimination claims—whether based on his disparate treatment as an older bartender

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<sup>2</sup> In *Johnson*, the First Department decided a summary judgment motion as opposed to a CPLR 3211 motion to dismiss. Nonetheless, both parties recognize that it is instructive on the issue of duress, inducement, and the definition of "fairly and knowingly."

or his disability-based termination after requesting sick leave—were known to him before he entered into the settlement agreement. Even if one assumes, then, that defendant used the allegation of bringing a gun to work to pretextually terminate his employment, the settlement meeting, itself the result of a grievance plaintiff filed with his union, was held to resolve such known claims.

That plaintiff did not consult his own counsel and signed the settlement agreement on the same day in which it was presented to him does not suggest defendant obtained the release inequitably. First, it should be noted that in the meeting, plaintiff had both a union delegate—Sean O’Toole—and an Union representative—Randy Sullivan—who were there to represent plaintiff’s interest. But even so, by terms of the agreement, plaintiff could have consulted with an attorney had he so chosen (NYSCEF doc. no. 10 at ¶7) and that he explicitly waived the 21-day period in which to do so. (*Id.*) Even without these specific terms, however, the Court recognizes that the failure to consult with an attorney does not preclude enforcement of the release. (*See Skluth*, 163 AD2d at 107 [“There is, certainly, no requirement in the law that consultation with a lawyer must occur in order to render a contractual obligation enforceable, even one relinquishing a discrimination claim, so long as the agreement has been knowingly and voluntarily entered into... The absence of counsel is far less critical than the opportunity to consult counsel”].)

Lastly, plaintiff alleges that the overreaching and duress occurred because he was, in his words, under threat of being blackballed from the hospitality industry after a 30-year-long impeccable career. (NYSCEF doc. no. 19 at 9.) Yet, a party seeking to repudiate an agreement on the ground that it was procured by duress requires a showing of both a wrongful threat and the preclusion of the exercise of free will. (*See Fred Ehrlich, P.C. v Tullo*, 274 AD2d 303, 304 [1st Dept 2000]; *Wujin Nanxiashu Secant Factory v Ti-Well Intl. Corp.*, 14 AD3d 352, 352 [1st Dept 2005].) Neither plaintiffs’ original complaint nor proposed amended complaint allege a wrongful threat or that his free will was precluded during the settlement meeting. For these reasons, the Court finds that plaintiff voluntarily and knowingly entered into the settlement agreement and that it operates to bar plaintiff’s discrimination claims.

Plaintiff’s contention that the settlement agreement is not enforceable because he did not cash the \$6,000 settlement check is unpersuasive. (*See Calvano v New York City Health & Hosp. Corp.*, 246 AD2d 317, 318 [1st Dept 1998] [“Plaintiff’s unilateral decision with regard to acceptance or encashment of the settlement check does not modify the clear and binding terms of the written agreement”].) Plaintiff’s 1955, Franklin County Supreme Court case *Brennan v Fuller* (1 Misc. 2d 765) is neither binding nor persuasive authority.

Plaintiff’s proposed amended complaint does not rectify the above-described problems. Nor does plaintiff sufficiently plead a claim for fraudulent inducement. One element of a fraudulent inducement claim is that the plaintiff relied on the defendant’s misrepresentations in entering the contract or release. (*Aetna Cas. & Sur. Co. v Aniero Concrete Co., Inc.*, 404 F3d 566, 580 [2d Cir 2005].) Here, plaintiff bases this claim on defendant’s alleged misrepresentation that he was being fired for allegedly saying he would bring a gun to work. Yet an employer’s representation for why it terminated an employee may give rise to a fraudulent inducement claim only in limited circumstances where the employee, when releasing their claims, is not aware of the true discriminatory reason for their termination. (*See McCormack v IBM*, 145 F. Supp. 258

[SDNY 2015] [holding that releases did not bar the two plaintiffs' fraudulent inducement claim because they alleged that they relied on IBM's representation that they were terminated because there were "work opportunities" instead of the hidden age-based discriminatory reason for their termination]; *Johnson*, 84 AD3d at 430 ["Plaintiff did not make out a claim for fraud because he did not allege that he was induced by defendant's representation [of his poor work performance] to sign the release".])

In contrast to *McCormack*, wherein the two plaintiffs alleged that they were unaware of IBM's purportedly discriminatory age-based hiring policy until after they signed releases (*id.* at 275), here, plaintiff's age- and disability-based discrimination claims were entirely known to him when he entered into the release. This is because defendant's *actions* are what give rise to the claim. The age-based claim arises from defendant's more favorable treatment of its younger female employees, including by not investigating them for tip stealing or for their derogatory treatment of him; the disability claim arises from how soon after requesting medical leave that he was fired. Thus, even granting that defendant pretextually terminated his employment on the gun accusation, plaintiff was not relying on that pretext or any other representation when he entered into the settlement agreement. In this regard, then, *Johnson*'s secondary holding—that the plaintiff could not properly plead a fraudulent-inducement cause of action because he did not rely upon defendant's stated rationale for his termination—is determinative and precludes a fraud-based cause of action.

Accordingly, the Court finds that the settlement agreement bars plaintiff's discrimination claims under the NYSHRL and NYCHRL.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant Sahara Plaza LLC's motion to dismiss pursuant to CPLR 3211 (a) (5) is granted in its entirety and the complaint is dismissed; and it is further

ORDERED that plaintiff James Menite's motion to amend the complaint pursuant to CPLR 3025 is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for defendant shall serve a copy of this order, along with notice of entry, on all parties within twenty (20) days of entry.

This constitutes the Decision and Order of the Court.



7/5/2023

DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE