

Hadland v Peloton Interactive, Inc.

2023 NY Slip Op 33046(U)

September 1, 2023

Supreme Court, New York County

Docket Number: Index No. 150622/2022

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART 34M

Justice

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VALENTINA HADLAND

Plaintiff,

- v -

PELTON INTERACTIVE, INC.,

Defendant.

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INDEX NO. 150622/2022

MOTION DATE 07/06/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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 STAY

Plaintiff, Valentina Hadland (plaintiff), commenced this action for personal injuries action against defendant, Peloton Interactive, Inc., (defendant), stemming from plaintiff's alleged fall from a stationary bicycle sold by defendant. Plaintiff now moves pursuant to CPLR §7503(c) to permanently stay arbitration proceedings. Defendant cross-moves pursuant to CPLR § 7503(a) to compel arbitration. For the following reasons, the petition is denied, and defendant's cross-motion is granted.

According to the complaint, on February 24, 2019, plaintiff was injured while operating the shoe clipping system on her Peloton bicycle. Plaintiff alleges that the clipping system caused her to sustain injuries to both of her ankles. Plaintiff commenced this action on January 20, 2022, by filing the summons and complaint. On June 16, 2022, defendant filed its answer with a counterclaim and a demand for arbitration pursuant to CPLR 7503(c).

In support of its cross-motion, defendant demands arbitration pursuant to the Terms of Service, an agreement entered into between plaintiff and defendant on January 2, 2019. Plaintiff contends that she does not remember agreeing to the Terms of Service, and that the Peloton bike was purchased as a gift for her, and thus, plaintiff argues, she has not signed any contract or agreement to arbitrate claims relating to the product (NYSCEF doc. no. 9, pla aff, ¶ 10). Plaintiff states that since she did not agree to the Terms of Service, she is not bound by the arbitration clause.

Defendant contends that plaintiff created her Peloton account using the touch screen tablet on her bike on January 2, 2019 (NYSCEF doc. no. 21, def affidavit, ¶ 8). Defendant further explains that part of the Sign-Up Flow provides defendant's Terms of Service, Privacy Policy, and Membership Terms that the user is required to agree to before completing an account creation (id., ¶¶ 8-100). Defendant states that the Terms of Service, Privacy Policy, and Membership terms were available to plaintiff via a hyperlink that showed her the entirety of the

documents on her bike's touch screen tablet once she clicked the link (NYSCEF doc. no., 16, def affirmation, ¶ 13). Plaintiff, as part of the Sign-Up Flow, was then directed to click a box that states, "I confirm that I have read and agree to the Peloton Terms of Service, Privacy Policy, and Membership Terms" (*id.*, ¶12). Defendant provides business records confirming that plaintiff did in fact create an account and agree to the Terms of Service on September 14, 2018 (def affidavit, 7).

In *Weissman v Revel Tr., Inc.* (217 AD3d 430 [1st Dept 2023]), the plaintiff was injured on an electric moped that he leased electronically on his mobile device. The court denied plaintiff's motion to stay arbitration after the plaintiff argued that he did not assent to the terms of use that required arbitration. The court found that the plaintiff and defendant agreed to arbitrate any disputes concerning the use of the moped, since the plaintiff "[w]as required to affirmatively click a box on the screen acknowledging his awareness and agreement to the terms of service" (*id.* at 430; *see also Sgouros v TransUnion Corp.*, 817 F3d 1029, 1033 [7th Cir 2016] ["Courts around the country have recognized that this type of electronic 'click' can suffice to signify the acceptance of a contract"]). Thus, the Court finds that plaintiff entered into an agreement with defendant to arbitrate claims arising out of the Terms of Service.

Plaintiff also argues that the Terms of Service apply to Peloton services and not the bike itself. The introductory paragraph of the Terms of Service states:

"Peloton Interactive, Inc. . . . provides an online fitness community and related products, services, content and features through Peloton websites, such as those for our studio, support, boutique, and local country pages . . . , the interfaces on tablets connected to Peloton fitness equipment (such as the Peloton Bike and Tread), ...and through mobile, desktop, or device applications (including iOS and Android applications ... and Peloton -controlled social media pages To make these Terms easier to read, the Peloton Sites and Apps, along with the Peloton tablet and studio interfaces and Peloton-controlled social media pages are collectively called the 'Peloton Service' or 'the Services'. By registering as a member or by visiting, browsing, or using the Peloton Service in any way, you . . . accept and agree to be bound by these Terms of Service . . .".

(NYSCEF doc. no. 20, Terms of Service at 1).

Plaintiff argues that the segment of the Terms which states that, "[t]he Peloton Sites and Apps, along with the Peloton tablet and studio interfaces and Peloton-controlled social media pages are collectively called the 'Peloton Service' or 'the Services,'" indicates that the bike itself is not included in the "the Services" meant to be governed by the Terms of Service. The interfaces accessed by users are contained within the touch screen tablets connected to the Peloton bike; therefore, they cannot be used without also simultaneously using the bike (def affirmation, ¶ 44). Furthermore, section six of the Terms of Agreement entitled "Sale of Products" concerning all Peloton products, provides further support for defendant's claim that the Terms of Service encompass the bike. The Court finds that the scope of the Terms of Service includes the bike.

Lastly, defendant's demand for arbitration dated June 16, 2022, specifies the services of JAMS instead of AAA due to an ongoing fee dispute between AAA and Peloton. Plaintiff states that since the Terms of Service specifies that arbitration is to be held with AAA, she rejects the modification on part of defendant to use JAMS in a rejection letter dated July 6, 2022 (petition, ¶ 11; NYSCEF doc no. 13, rejection letter). The Terms of Service specified AAA as the service to be used (Terms of Service ¶ 20[c]). The Terms of Service relating to arbitration state:

“[I]f Peloton changes any of the terms of this Section 20 after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice within 30 days of the date such change became effective, as indicated in the “Last Updated” date above or the date of Peloton’s email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Peloton in accordance with the terms of this Section 20 as of the date you first accepted these Terms.”

(Terms of Service, ¶ 20[f]).

Plaintiff argues that she rejected the change to JAMS in writing within 30 days as required by the terms. Defendant provides a letter from AAA stating that AAA will no longer provide administration of parties’ disputes due to the ongoing fee dispute. The Court finds that plaintiff has timely rejected the change to JAMS in accordance with the terms; however, this does not negate the rest of the Terms of Service where plaintiff agreed to arbitration.

Paragraph 20(c) of the Terms of Service designates AAA as the arbitrator, but as evidenced by the letter from AAA to defendant, arbitration with AAA would be impracticable. The Terms of Service include a severability clause stating, “If any term of these Terms is found invalid or unenforceable by any court of competent jurisdiction, that term will be severed from these Terms” (Terms of Service, ¶ 22). Other than plaintiff’s rejection, plaintiff fails to provide any case law to support the change of arbitration services, or otherwise suggest an alternative. Importantly, plaintiff does not argue that plaintiff will be prejudiced by using JAMS.

Defendant first suggested JAMS to take the place of AAA in its demand for arbitration (NYSCEF doc. no. 4) and made a second request in its cross-motion (def affirmation, 8-18). CPLR § 7504 states, “If the arbitration agreement . . . fails or for any reason is not followed, or if an arbitrator fails to act and his successor has not been appointed, the court, on application of a party, shall appoint an arbitrator.” Defendant has made an application pursuant to CPLR § 7504, and therefore, the Court appoints JAMS as the arbitration service to be used by the parties.

Accordingly, it is hereby

ORDERED that the petition to permanently stay arbitration is denied; and it is further

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

ORDERED that plaintiff, Valentina Hadland, shall arbitrate her claims against defendant, Peloton Interactive, Inc., in accordance with the Terms of Service; and it is further

ORDERED that arbitration shall take place using JAMS arbitration services; 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.

This constitutes the decision and order of the Court.



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9/1/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" 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